

VOLUME 2

PAGES: 632 to 842

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 3

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ORIGINAL

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MR. HOLLOWELL: May it please the Court, a little stipulation that counsel made and I made which we'll specifically make at this time and which might save some time and some inconvenience to the parties.

MR. COLLIER: Let me state what I think the stipulation is about this document?

MR. HOLLOWELL: All right. Suppose you read it, I think it's been written there.

MR. COLLIER: All right. That you have no objection to the admission of this document in evidence, subject to your right to contest the validity and applicability of this ordinance.

MR. HOLLOWELL: That's correct, that's what we stipulate. I state that I will certainly stipulate that it is a correct, certified copy.

MR. COLLIER: That it is a correct certified copy.

MR. HOLLOWELL: Certified copy of the subject ordinances as recorded in the Code of the City of Dawson, 1910 Edition, subject to the right to contest the validity and applicability of the ordinance.

THE COURT: All right.

MR. HOLLOWELL: And I would like to stipulate that the questions and answers which have been read from the various depositions during the course of the trial were a correct recordation of them as made at the respective

Mr. Hollowell:

depositions; namely, Hattie Brazier and Odell Brazier on November 24, 1962 in Albany, Georgia, the original of which is on file with the Court;

Ragan Arnold, Mary Carolyn Clyde in Dawson on January 19, 1963, the original of which is in the custody of the Court.

Dr. Charles M. Ward, V. L. Singletary, Mansfield Edward Matthews, Robert T. Hancock and L. Jones, Albany, Georgia, November 24, 1962. I might say the originals of all of these are filed in the Court.

Weyman B. Cherry, Eugene Magwood, Zachary T. Matthews and Randolph McDonald on October 10, 1962 at Americus, Georgia.

MR. BLOCH: The alternative to the stipulation would be, as I understand it, merely that Mr. Joiner would have to get on the stand and testify that they were correct copies. I am perfectly willing to stipulate that Mr. Joiner would so testify.

THE COURT: Now, I want to point out in connection with the first stipulation that you referred to there that there's still one feature of the matter that is not covered; and that is, it is not stipulated there that the ordinance referred to was in force and effect on April 20, 1958. That still leaves that question open.

MR. COLLIER: The certificate, Your Honor, states that it is; it is stipulated its admission into evidence.

THE COURT: Well, does the certificate say that counsel have stipulated that it was in force and effect on April 20, 1958?

MR. COLLIER: The stipulation says that he would admit this paper in evidence.

THE COURT: Yes, but he doesn't say that he's stipulating that it was in force and effect on that date, and that's what I wanted to call to counsel's attention. Let's not misunderstand each other when we stipulate. Sometimes stipulations get us in more trouble than otherwise.

MR. BLOCH: The certificate is: "I, R. R. Jones Clerk of the City of Dawson, the officer having legal custody of said ordinance, do hereby certify that the foregoing is a true and correct copy of Sections 230 and 231 and 240 of the Code of Ordinances of the City of Dawson, adopted August 7, 1909, and that same is still in force and effect."

THE COURT: It doesn't say it was in force and effect on April 20, 1958.

MR. BLOCH: I understood the "still" to mean that it had been continuously in effect.

THE COURT: But it doesn't say so.

MR. BLOCH: It doesn't say it, but can we stipulate that that means that it was continuously in effect from August 7, 1909 up to and through April 20, 1958.

MR. HOLLOWELL: Well, I would say this, that my stipulation is the same as has been read and that as you read your certificate I would be agreeable to the word "continuing" being read as a part of the certificate.

THE COURT: All right, it is the Court's interpretation of the stipulation that it is being stipulated that that ordinance was in force and effect in the City of Dawson on April 20, 1958.

MR. HOLLOWELL: But I mean, this is the Court's interpretation. My stipulation is as read. Of course, this is the way the Court interprets it.

THE COURT: Well, is that the way counsel interprets it?

MR. HOLLOWELL: Counsel takes this position, sir: that this is a properly certified document. It does not have the seal on it, incidentally, which would not really make it properly certified; but out of deference to the gentlemen, I think that's an inadvertence because there was a seal on the one this morning and I know that they could get the seal, and I would waive the matter of the seal, Your Honor.

Mr. Hollowell:

But I say I stipulate that it is a certified and accurate certification of the ordinances as recorded in the 1909 edition of the City Code of Dawson; subject, of course, to our right to object to the applicability and to the validity of the particular ordinances. I think that's as clear as I can make it.

THE COURT: Well, of course, I can't make the stipulation for counsel. All I'm doing is raising the question, which seems to me to be perfectly obvious with regard to it. It seems to me to be just so simple to stipulate, if it is the intention of counsel to so stipulate, that that ordinance was in force and effect in the City of Dawson on April 20, 1958. It just seems to be so simple until I don't understand why counsel are having any difficulty about the stipulation.

MR. HOLLOWELL: I tell you why in my situation, sir, why I could not say. I don't know of my own knowledge that it was, because the only two copies that I have seen of the Code are so old and so shattered. You saw the condition of them; and they run back 70 years, approximately 70 years; and that is a long time for there having been perhaps no change; and I have not seen the minutes and the resolutions of the Council. And this is the point: If there was anything to even

Mr. Hollowell:

indicate that there had ever been some revision in a period of 70 years, I would feel better. But as a matter, as counsel, with that much lapse of time, Your Honor, I think it's a matter of a lawyer not wanting to put himself in that position. That's all.

But I stipulate that it reads exactly as the Code which they have presented and that it says that it was a valid and subsisting ordinance as of this time -

MR. BLOCH: As of what time?

MR. HOLLOWELL: From the date that it recites in there, the date of the passage in 1909, until the current date.

THE COURT: In other words, you're agreeing that it says that but you're not agreeing that that is true.

MR. HOLLOWELL: I'm not. That's the only thing.

THE COURT: Well, we're not getting anywhere. Let's go on to something else. To agree that a paper says it, without stipulating that it is true doesn't produce anything. That's not any stipulation that gets us anywhere. So, let's move on to something else.

MR. BLOCH: We'll have the Clerk here, Your Honor.

THE COURT: All right, let's go on to something else.

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

DIRECT EXAMINATION

BY MR. HOLLOWELL:

Q Would you give your name, please?

A Hattie B. Williams.

Q Where are you presently residing?

A What you mean? Where I live?

Q Yes?

A I live in Newark, New Jersey now.

Q Were you living in Newark, N. J. in 1958?

A I was not. I was living here, in Dawson, Georgia,
at 209 Center Street.

Q How long did you live in Dawson, Georgia?

A Well, I was practically, you might as well say,
all my life. I was born out there to Mr. Earl Anderson's
place. My father and mother lived out there. I married at
Mr. - out there at Mr. - out in the country in front of
Bill Duggan's place. That's where I married at.

Q Would you consider yourself as an old resident of
Dawson?

A Dawson; that was my county.

Q You know the reputation of most or many of the people
there, do you not?

A Everybody in Dawson knew me, excusing them that
come there lately, because I worked for practically, for quite

a few there.

Q For whom did you work?

A Well, I worked for Mr. Ragan, what carried the Independent; I worked for him about 5 months. I worked for Mr. Bill Fenn. I worked for the Dawson Cotton Oil Company 18 years. And I worked for Mrs. Malook, who was about as good a friend as we ever had.

Q I'll ask you whether or not you had the occasion to attend church on the 20th of April, 1958?

A Yes, I did.

Q With whom did you go on that day?

A I went to my church first, I HOPE Baptist Church. That's where I was a member of the church at.

Q Did you see James Brazier there?

A Yes sir, I did.

Q Did you see his wife there?

A Yes, I did.

Q Do you know his wife?

A I reckon so; she's my daughter.

Q About what time did you leave?

A Church?

Q Yes?

A Well, I wouldn't exactly know the hour but it was away over in the evening. We went to Rev. Reynolds' church, after we left I HOPE Church. We had sacrament and, after we

left, we went to Rev. Reynolds' church. I wouldn't know the name of the church but I know it when I get to it. And they was having a program out there, and we all went to that program, me and James Brazier and his wife and children; and Annie Belle Latimer and her husband and her daughter. They all was there on the program that day.

Q Would you remember about what time it was when you left?

A Well, it was close to arand - now, I'm making a rough guess, because I wasn't watching the clock, because I had been very happy that day and I shouted quite a bit; and I wasn't thinking about the time of day, but I know it must have been close to around 3:30 or 3:00, 3 o'clock or 3:30, after we left the church. Now, I'm rough guessing about the time.

Q That's when you left I HOPE?

A Yes, when we left I HOPE.

Q And then, when you went to the other church, was it Mt. Mary or Mt. Zion, Zion Hill?

A Yeah, I think it was Mt. Mary, if I'm making no mistake.

Q Do they sometimes call Mt. Mary and Zion Hill, do they use the names interchangeably?

A Well, I'm not quite sure but I think, if I ain't mistaken, it's Mt. Mary; but I can go to get there now if I had to go.

Q Who was the pastor?

A Rev. Hillman at the time when I went there.

Q Down at I HOPE?

A Not Hillman, that man out there in that hall.

What his name?

Q What's his name?

A Give me a little time now because this is something I never did in my life, been onno stand and I'm 60 years old; but I think he named Reynolds.

Q Rev. Reynolds?

A Rev. Reynolds.

Q Who was the pastor at I HOPE?

A Who was the pastor at I HOPE?

Q Yes?

A At that time, Rev. Andrews. He's dead now.

Q He's dead now?

A Yes.

Q Now, about what time did you leave Rev. Reynolds' church?

A Well, it was pretty much late.

Q Was it still light?

A Yes sir, it was light.

Q Where did you go?

A I went home.

Q And you lived on Center Street?

A Yes sir, I did.

Q Where is that from Ash Street?

A That's not very far. I would say that it's about a block and a half. Now, I'm rough-guessing about the block because I didn't measure it. But I lived there; I bought that little house there.

Q You bought it while you were working at the Cotton Oil Company?

A Yes sir, I did.

Q What's the name of it, Cotton Oil?

A Dawson Cotton Oil Company.

Q Did you have the occasion to visit the home of James Brazier that day?

A Oh yeah.

Q When was it that you visited it?

A After I came from church, I went down there to tease him about shouting. He tried to shout that day and I went down there to tease him. And just a little bit before I got there, I looked and I see'd a great crowd; and I didn't know what was happening. I heard a lot of hollering. And I said, "What's the matter, what's the matter down there!" And someone said "They're fighting down there." I said "Call the law, go there and call the law". That's what I told them. And Miss Hattie what stay on the corner, she say "No ruse to call the law because that's the law down there

"now". And then I rushed up there to see what was happening. I thought if I get there and talk to them, I could get them to stop since everybody knowed me what lived close down there.

Q Well, did you see any - What law did you see when you got there?

A I saw Mr. Cherry right there (pointing) and another man, Mr. Randolph, I believe; that's what I call him. That's what I knowed him as, been knowing him as being Mr. Randolph.

Q Had you known them over a period of yeafs?

A Yes. Well, I practically been knowing Mr. Cherry a good while 'cause I used to go to his house and carry Mr. Ray's children down there to his house. I know his wife very well.

Q Do you know him when you see him?

A Who, Mr. Cherry?

Q Yes?

A Mr. Cherry?

Q Yes?

A Yes sir, I do.

Q Is he here in this room?

A Yes sir, he is.

Q Would you point him out?

A There he is right there (pointing). . .

Q Is he the first one, the man on the corner?

A No, that man in the middle, with that wrist watch

on his arm.

Q Do you know Mr. McDonald?

A If I see him. I can't remember names but I can remember faces.

Q Well, do you see that person?

A Yonder he is (pointing). . .

Q Let the record show that the witness pointed out both Mr. McDonald and Mr. Cherry.

What were they doing when you saw them?

A It's so difficult for me to say, but I got to tell the truth, 'cause if the truth kill me, I'll just have to go.

Q Well, that's all we want, of course?

A When I saw him, he was making a sling at Bubber, at James Brazier. Everybody - excuse me, I will say "Bubber" because I been calling him that all his days; but his name James Brazier.

Q He was making a sling, you say?

A He was making a sling at him.

Q What kind of a sling?

A What I mean, he hit him.

Q What did he hit him with?

A Hit him with the handle of his pistol.

Q With what?

A With the handle of his pistol.

Q Looked like the handle of his pistol?

A He was it by the barrel.

Q Where would you say that he hit James Brazier?

A Looked like to me it went right there (pointing).

That's the way I see'd it. I'm going to tell you the truth, when he hit him, it excited me. I tell you, I loved Bubber; he was a real son; he wasn't no son-in-law, he was a son to me, 'cause I didn't have no husband at the time; and he always acted like that he cared for me.

THE COURT: Well, you're on the stand now to testify about facts, if you know facts; you're not on the stand to deliver any oration of any kind. Just answer the questions he asks you.

A The Witness: I'm going to do the best I can; it's hard for me though.

Q Mr. Hollowell: Now, let me ask you this; where were you when you saw Mr. Cherry hit James Brazier?

A I was standing what you might say the edge of the yard. They had a little what you call a sewer pipe across the ditch of the yard, where you go into the yard. His car was parked up there. Bubber's car was parked to the back of the door. And I saw them bringing him out there; and when they brought him out, looked like one of them had him in his belt. And they was handling him so rough 'til I hollered. I couldn't help it. And the children was hollering so. Then I heard Mr. Cherry say - I don't want to say what he said

because I can't bear to see him. But when he did that, he first pulled his pistol out and aimed it at me. I thought he was going to shoot him.

Q What did you do then when you thought he was going to shoot him?

A I just turned my head and screamed as loud as I could.

Q Did you see Mr. McDonald?

A Who?

Q Mr. Randolph, as you call him?

A Yeah, he was there; both of them was there.

Q What was he doing?

A Well, both of them was beating him. Both of them was hitting him on the head.

Q Is that the way it looked to you?

A That's the way it seemed to me.

Q What was James Brazier doing at the time?

A Nothing but looked like he had his hand up trying to keep some of the licks off of his head.

Q Now, you said that Mr. Cherry said something that you can't repeat; would you call these words, words that persons would use in normal conversation?

A Yes, I don't say those words unless I'm forced to say it.

Q I mean, would you say that the words that he used

and the kind of words that he used in that conversation that

A No.

Q In conversation between, just ordinarily between people?

A No, he was cursing.

Q I see. Well, we won't ask you to say what he said, except you do say that he cursed him?

A Yes, he did.

Q Did you at any time see James Brazier swing at either Mr. Randolph or Mr. Cherry?

A No, 'cause he didn't have time.

Q Did you see - What happened to James Brazier after that?

A After they hit him.

Q Yes?

A Well, they pushed him on to the car.

Q How did he get in the car?

A Mr. Cherry pushed him in there.

Q At the time when he was being pushed in the car, were his hands free?

A No, he had - I never seen a pair of hand-cuffs in my life before them. They had his hands fastened.

Q His hands were fastened?

A Both of them; both of them was fastened.

Q And was that man ever pushed into the car?

A Mr. Cherry, that was right there (pointing).

Q Did he push him all the way in?

A He pushed him in; looked like to me he couldn't get him quite in. One of his feet was hanging out, out the car. And he went there to shut the door and he shut the door on that right leg.

Q Now, did you have the occasion - What happened after that? What was the next thing that you saw?

A I saw him get down then and take his foot, you know, and put him up in the car; and then they shot the door and took off.

Q Did they take off in a hurry or slowly?

A Well, I would say it's a hurry. They didn't - you know, they didn't just fly, but they take off like a car do take off.

Q Did you have the occasion to be in the vicinity of the jail at anytime that night?

A I went right behind them, not long after they left. I begged my daughter, I said "You carry me up there."

Q With whom did you go?

A My daughter, Hattie Belle. I asked her, I said "Come on let's go up there." I said "As good as I know Mr. Matthews", I say "I believe he'll let me have him."

Q Well, who took you or did you walk?

A Yes, my daughter carried me.

Q And did you talk to the Sheriff?

A No, I didn't. I talked to Mr. Lee.

Q Mr. Howard Lee?

A Yes.

Q The Chief of Police?

A Yes.

Q What did he say to you?

A He told me I wouldn't be able to get him.

Q What did you do then?

A I left and went back to the jail-house.

Q Where did you see Mr. Lee?

A He was standing in front of the court-house when I saw him, not far from the jail. In other words, the courthouse is on that side and he was standing over there on the street when I saw him; and then I went there and asked him about him and he told me I wouldn't be able to get him.

Q And what did you do then?

A There wasn't nothing I could do then, but I went back there to the jail and I called to see how was he.

Q Called where and to whom?

A I called him.

Q Called whom?

A James.

Q From where?

A Beg your pardon?

Q I mean, whereabouts were you?

A I was peeping through that hole. They got a fence up over that jail and I was peeping through the hole like this (demonstrating); and I called his daddy.

Q Excuse me a moment: hold it just one moment, please. Let me show you PLAINTIFF'S EXHIBIT #10 and ask you whether you recognize that as being the jail?

A Now, right here (pointing on P-10) is where I was standing, right here on this side, on the right; and they was in that first cell.

Q Let me turn this around here. Now, point to where you said?

A This is the back of the jail, what I would call it. Well, this here, it was on this side, on this side right there.

Q Let the record show that the witness is pointing to the right wing of the jail?

A That's where I was. I know exactly because I never will fogget that.

Q Near the fence as shown in PLAINTIFF'S EXHIBIT #10. How did you know they were there?

A Beg your pardon?

Q How did you know they were in there?

A 'Cause he answered me.

Q Who answered you?

A James answered me.

Q Beg your pardon.

A James Brazier answered me.

Q What did he say?

A I asked him how was he, and he said his head hurt him.

Q What did you do then?

A I couldn't do nothing. I wanted to go to get to Mr. Matthews. So, I left this side of the wing and went around on the front.

Q Around on the front of the courthouse or the jail?

A I would call it the front of the courthouse, the front of the jail.

Q When you say the front, do you mean on the opposite side of the picture that is -

A No, you go around here on this side and be on that side of the jail. Mr. Matthews was standing in the door looking out. I don't know who he was looking for.

Q You saw Mr. Matthews yourself?

A Yes, I did.

Q Who was with Mr. Matthews?

A Well, there wasn't nobody with him but my daughter was there, and I told her to wait, that I felt like I could get Mr. Matthews to let me have him. I just had that kind of confidence in him 'cause he knowed me all my life.

Q Did you get a chance to talk with him?

A No, I didn't 'cause Mr. Ragan Arnold came.

Q Mr. Arnold came?

A Yes.

Q Mr. Ragan Arnold?

A Yes.

Q Do you know what Mr. Arnold does?

A Say, do I know what he does?

Q Yes?

A Now?

Q Well, what he did then?

A He was running a car place where you sell cars at.

Q Do you know where James Brazier worked?

A He was working for him.

Q Do you know how Mr. Arnold happened to have gotten there?

A Beg pardon?

Q Do you know how Mr. Arnold happened to have gotten down to the jail?

A We went out there and got him. We went out there.

Q Who is "we" and when did you do this?

A Me and my daughter went out there and asked him to go up there and see what was happening 'cause I wanted to know what it was about; and he -

Q Excuse me - you and your daughter went to Mr.

Arnold's house.

I went to Mr. Arnold's father's house. I used to work for them. I know them well.

Q Was he there?

A Yes, he was.

Q I mean, was Mr. Arnold at his father's house or was he at his own home?

A He was at his father's house.

Q This is your best recollection, that he was at his father's house?

A Yes sir.

Q And where did he go?

A We followed him back to the jail, to Dawson. He led us; he went on ahead of us and us went behind him.

Q And where did he go after he got there?

A He went in the jail-house and we stayed outside.

Q Now, when you say he went into the jail-house, into what portion of the jail did he go?

A He went around on that side. I can't - not at the jail but right on around, you know -

Q Do you know the streets in Dawson? Was it on the side? Was it on the far side? You know where the post office is?

A Yes sir, I do.

Q Was it on that side?

A Well, come around, he come right on around, you know, there's a little wire come through from the courthouse into the jail-house.

Q Yes.

A He come right on through there and went around to that side door.

Q On the side door?

A On the side door.

Q Is that the door where you had seen, where you say you had seen the Sheriff?

A Yes, I saw Mr. Z. T. looking out there.

Q How long did he stay in there?

A Well, I wasn't holding no watch on him but he stayed in there a good while.

Q Let me show you PLAINTIFF'S EXHIBIT. #9 and ask you do you recognize the jail in that picture?

A Yeah; now, this is the courthouse?

Q Yes.

A Right here (pointing on P-9), where you come - this is the front, what I call the front of the courthouse. Back over there by that jail, I would call it the back of the courthouse. Well, he went around there to that door, Mr. Arnold did and went in there.

Q I see; he went in the door?

A Yes, he did.

Q Did you see him go in the door?

A Yes sir, I saw him go in there and waited till he come out.

Q Approximately how long did you wait?

A Well, by the time we could get home, I don't know exactly what time it was because I didn't hold no watch on him; but when we got home and parked the car and got out and went in the house, it was 11 o'clock.

Q It was about 11 o'clock?

A Yes sir, by my clock.

Q Did you go back to your daughter's first?

A She carried me by home and she went on home; and when I got in the house, it was about 11 o'clock.

Q As near as you can recollect, it was approximately 11 o'clock?

A About 11 o'clock.

Q Did you talk with Mr. Arnold when he came out?

A Mr. who?

Q Mr. Arnold, when he came out of the jail; you said you saw him?

A Yeah.

Q Out of this door there on the side which goes into the jail?

A Uh huh.

Q Now, did you see him and talk with him when he

A He and my daughter went and caught him. When we saw him coming out the door, we run and caught him. He wanted to ask him what was the result in the. And he told her; he say "Hattie - "

THE COURT: Just a minute now!

Q Mr. Hollowell: You can't tell what he said unless it was in the presence of one of the Defendants?

A Oh, I'm sorry.

Q That's alright; I'm sure you didn't know. Do you know Dr. Ward?

A Yes sir, I do.

Q Did you see Dr. Ward that night,

A Yes, I did. He was coming out of the jail.

Q When was that? Was that when you first went there or was it later when you came back with Mr. Arnold, or when was it?

A When us come back from Mr. Arnold's.

Q You saw the doctor?

A Dr. Ward.

Q Where was the doctor?

A He was coming out, coming out the jail house.

Q Did you have the occasion to learn whether or not he had seen your son: I mean your son-in-law?

A No, I just know what he said, that's all.

Q You know what he said?

A Yes sir.

Q When was this?

A When he come out the jail-house.

Q Did he address you?

A No, he didn't say anything. I don't know whether he recognized me or not; but my daughter said, "Doctor" -

THE COURT: Just a minute!

Q Mr. Hollowell: You can't tell what he said?

A Well, we was together.

Q But you did see him?

A Yes, I did.

Q After you saw him, what did you do?

A I stood up there and she the one that did the talking to him; I just listened, looked at him.

Q After she had talked with him and you had observed them, what, if anything, did you do?

A Well, I didn't do anything because, I tell you the truth, I didn't know what to do; I was so upset; I didn't know nothing to do but cry, at the moment.

Q And then, you say subsequently you went on home?

A Went on home.

Q Now, did you have the occasion to visit the jail any more that night, to visit the jail any more that night?

A No, I didn't go back to the jail no more until the

next morning.

Q Now, were you working at the Cotton Oil Mill in April of 1958?

A Yes, I was.

Q I believe this happened on the 20th of April?

A I think so.

Q When I say "this", I mean the incident involving James Brazier. Now, the next morning, what time did you go to work?

A I went to work at 2 o'clock in the morning.

Q Was that every morning?

A Every morning God sent, excusing Sunday morning. I went at 8 o'clock on Sunday morning.

Q Did you go to work on Monday morning?

A Yes, I did.

Q What route did you normally travel?

A Say what route did I track?

Q Travel, going from your home to your work?

A Str aight down, I would say, 6th Avenue. That's what I would call it. It was straight from Mr. Senn's Store down; you know my house sits back up that way from the corner (indicating).

Q Is that near the peanut mill?

A That was on the other side of that, on the other side, across the railroad.

Q Did you ever go on occasion to pass it?

A Yes sir, I passed it.

Q How often would you pass it?

A Well, I went by there every morning and every evening when I go to work.

Q Did you know the person who was the night watchman there?

A Yes, I did.

Q What was his name?

A Well, I call him Mr. Hunter.

Q How long have you known Mr. Hunter?

A Ever since 1950, I believe it was 1950.

Q Had you known his family?

A I know his wife very well.

Q Have you had or did you have the occasion to talk with him from time to time as you would pass going to and from work?

A Well, he seemed to be very friendly to me whenever I would see him. He always had a smile for me and I had one for him. So, he was teasing me about somebody was going to git after me coming to work that time of morning; and I'd tell him 'oh, there aint nobody want a ole hen like me', and first one thing and then another.

Q Then, you would carry on conversations with him from time to time over a period of the years from the time

that you first knew him?

A That's right, ever since.

Q And you made that trip a couple of times each day?

A Yes, practically every morning at 2:30, which I would say was the next morning.

Q Where would you normally see him?

A Well, he would - sometimes he would be sitting out there on the compress porch; and then I would walk close, you know go through that little path. There was a little path that run not far from the Compress, and I'd call myself making the short cut. And sometimes he'd be sitting there, and then sometimes he would be coming off of his rounds around there to the peanut mill, there in front of the peanut mill, which was right on the side of the road. And whenever I saw him, I never would pass him unless I said something to him.

Q When did you come back to Albany?

A Talking about this - ?

Q Or come back to this section?

A To Dawson?

Q Yes?

A I ain't never been back since that happened.

Q Well, I mean, when did you come back to the vicinity of Dawson or Albany, this area? When did you return from New Jersey, is what I'm asking?

Q Now, did you see Mr. Hunter?

A Yes, I saw him when I came back.

Q Now, have you had an occasion to see Mr. Hunter since you've been back?

A Yes, I did. I stopped down there and talk with him, for I was glad to see him.

Q Now, did you have the occasion to talk with Mr. Hunter within a close period of time to the incident that is the subject-matter of this trial; that is, close to April 20, 1958? Did you have the occasion to talk with him at any time after that within the next 2 or 3 days?

A Yeah, when I stopped there, I talked with him. I asked him what had -

Q Well, you can't tell at the moment what you asked him now. Did you at any time have any conversation with him concerning the matter of your son-in-law's death?

A Yeah, I did.

Q When was that?

A When I came back and before I left.

Q Would you be able to indicate whether you had any conversation with him during the week immediately after the incident involving your son and Mr. Cherry?

A Yes, yes sir.

Q Would you indicate what day and what time of day it was?

A It was on a Tuesday, around about 7:30 in the morning.

Q Where were you?

A Where was I?

Q Yes?

A I was going home from work.

Q Going home from work?

A Yes.

Q Well, I believe you said you went to work at 2 o'clock?

A Yeah, I did. That was before day; it wasn't day. I always get off, I would clean up and then I'd go home and then I'd come back to work. They give me that permission.

Q I'll ask you whether you sought him out or did he seek you out or how did you come to engage in a conversation on that day?

A Well, I had been to Columbus that day. That's the day they taken Bubber, James, to Columbus. I came back home to see about the children and to keep the job until my daughter get back. So, that morning he saw me coming and he rushed to the road where I was at; and he said -

THE COURT: Just a minute!

Q Mr. Hollowell: Did he call you over?

A He come to the road where I was at. You see, I was coming by the Compress and he see'd me and he met me, just like you'd meet somebody to talk to. He say, "Howdy, Hattie " -

THE COURT: Now, Counsel, this is your witness, and I don't know whether she understands but I wish you would help her understand what the rule is.

MR. HOLLOWELL: Yes, we'll be happy to, Your Honor, be happy to.

Q What I am trying to have you understand, ma'm, is that you can't testify as to what somebody else told you, unless one of these persons was present; so that, if you'll try to keep this in mind, it might save us a little time.

But I do understand that you say he greeted you and came up to meet you on this occasion?

A Yes.

Q Is that correct?

A That's right.

Q Did you talk with him?

A Yes.

Q Yes, I talked with him as he talked to me.

Q Did you discuss the Brazier incident? Did you discuss with him the matter?

A No, he asked me how was he?

MR. BLOCH: Now, we object -

THE COURT: Yes.

Q Mr. Hollowell: Don't say what he asked you; I'm not asking you what was said.

A I'm sorry.

Q I'm asking you, did you discuss the matter of what had happened to James Brazier? Did you talk about it?

A Well, you tell me not to say what he said. He was the one talking about it and I was listening.

Q Allright, no further questions at this time.

CROSS EXAMINATION

BY MR. COLLIER:

Q Hattie, I believe you said that you went down to the jail after James was arrested and called out to him, is that right?

A I beg pardon; I didn't understand you. What you say?

Q I believe you said you went down to the jail after James was arrested and called out to him?

A After they had put him in there; yes sir, I did.

Q Did he answer?

A Yes, he did.

Q What did he say?

A He told me - I asked him how was he, and he said he was all right, his head hurt him.

Q Said he was all right?

A Yes.

Q Was Odell in the jail with him?

A Yes, he was.

Q Now, when the officers came and arrested James, how far were you from where the arrest took place?

A Well, I was on my way down there already, when I see'd this crowd and heard this hollering.

Q How far were you from them?

A Well, I didn't measure it, but I wasn't far. I was close enough to hear.

Q As far as this room?

A Well, no - how far is the room? It looked, you know -

Q About the same distance, just about?

A Yeah, it might be and it might be a little further, I wouldn't exactly know 'cause I didn't measure it.

Q What did James say?

A Well, when I heard him, he was crying.

Q You didn't hear him say anything to the officers about getting in the car or not getting in the car?

A No, because they was pushing on him when I got there.

Q Where was Hattie?

A She was standing up in the yard.

Q When did you say you left Dawson?

A You say, when did I say I left?

Q When did you move from Dawson?

A ~~I moved from Dawson in August in 1958; I lost my~~ job, that's why I moved.

Q Where did you live prior to then? I believe you said you lived close to James?

A I did, up there on Center Street, 209 Center St.

Hattie Williams - cross

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Q Did you say that you had taken some children around to Chief Cherry's house on occasions?

A I used to - I used to go to Mr. Cherry's house. Mr. Cherry know me well.

Q Where does Mr. Cherry live?

A He used to live down there, you know where all of them pretty houses they built back there in that field; he lived in one of them houses down there; I would say right, not far from that health, the clinic office what they got built now.

Q No further questions.

REDIRECT EXAMINATION

BY MR. HOLLOWELL:

Q I believe you said you lost your job that you had been on for 18 years?

A Yes sir, I had. I went to Macon; after I come from Macon - I went down there and asked them could I go to Macon, is how it happened; and I told them that they had brought me a subpoena.

MR. COLLIER: Your Honor, I fail to see the relevancy.

THE COURT: I don't want any conversations.

Q Mr. Hollowell: Not any conversation?

A Yes, I lost my job.

Q Were you fired or did you resign?

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A No, I didn't resign. I don't resign no job. I don't never do that.

Q You were released from your job?

A Yes sir, he told me I couldn't work there no more; that's what the man told me.

THE COURT: All right; you may go down; you're excused; you may go.

FRANK HUNTER

witness called in behalf of Plaintiff,
duly sworn, testified on

DIRECT EXAMINATION

BY MR. HOLLOWELL:

Q What is your name, sir?

A Frank Hunter.

Q Beg your pardon?

A Frank Hunter.

Q Where do you live?

A Dawson.

Q How long have you lived in Dawson?

A About 15 years, I reckon.

Q What do you do?

A I night-watch.

THE COURT: Just a minute, Counsel; what is it?

MR. COLLIER: This is another witness, Your Honor, that was not on our list. I don't believe he was even here the other morning.

MR. HOLLOWELL: I believe it was announced in open court that the man was being subpoenaed; and the Judge heard, the jury heard and counsel heard.

THE COURT: All right, go ahead.

Q Mr. Hollowell: Now, how long had you lived in Dawson?

A About 15 years, I think; maybe a little better than that.

Q Beg pardon?

A About 15 years.

Q Where do you live in Dawson?

A I live on 12th Avenue.

Q How long have you lived at that place?

A About the same time, ever since I've been in Dawson except one year.

Q Do you work on a job?

A Yes.

Q Where do you work?

A Dawson Compress & Storage Company.

Q I'm sorry?

A Dawson Compress & Storage Company.

Q Who is your immediate boss?

A Mr. Baldwin.

Q Baldwin?

A Baldwin.

Q What is your job there?

A I night watch, watchman, carry the clock.

Q How long have you been on that job?

A About 12 years, nearly.

Q Were you on that job in April of 1958?

A Yeah.

Q What nights of the week do you work?

A Every night, seven nights a week.

Q Is that all during the year?

A Yeah.

Q Do you have any vacation?

A Yes, if I want to take it unpaid.

Q Unpaid?

A Yes.

Q Did you take one in 1960?

A When?

Q 1960?

A Yeah, I taken about a week off.

Q What month did you take then?

A In August, I believe it was.

Q Did you take one in '59?

A No, I don't believe I taken one in '59.

Q Did you take one in '58?

A Yeah, I think I did.

Q When did you take one in '58?

A I think it was in May then when I taken that.

Q So, that excdpt for the month of May, when you took your vacation, you worked every night seven nights aweek, is that correct?

A That's right.

Q What time do you go on duty?

A I went on duty back then at 6 o'clock.

Q And you worked until when?

A Until 6:00 the next morning.

Q Where did you spend most of your time during that period of work?

A On the job, in the warehouse and the office.

Q How many punches did you have to make?

A 12, I believe it is.

Q Do you have warehouses there?

A Yes.

Q What do they store in the warehouses?

A Cotton.

Q How many warehouses?

A They've just one big warehouse. They've got different rooms in it.

Q Do you remember April 20, 1958?

A Yeah.

Q Did you know Hattie Williams?

A No.

Q You don't know Hattie Williams?

A I don't know Hattie, not personally. I may have saw her but I don't know her personally.

(Hattie Williams called to courtroom door)

Q Do you know the lady there?

A I've saw her.

Q When is the last time you saw her?

A I saw her here one night last week.

Q When is the last time you had seen her before then?

A I don;t know. I hadn't saw her, I don't think, since away back in '55, about 5 years, I believe.

Q About '58?

A Yeah, I think it was; maybe, I probably saw her then in passing, just passing.

Q All right, you may go. (Hattie Williams withdrawn from courtroom). . .

Where did you sit when you were on the job and it was warm weather and you were not in the process of making your rounds?

A In the office.

Q Even when the weather was warm?

A Yes.

Q You always sat inside?

A Most of the time, yes.

Q Most of the time?

A Most of the time I set in the office.

Q Even on warm summer evenings?

A Yeah.

Q You sat on the inside?

A That's right.

Q Did you have a clock inside?

A Yeah.

Q You did have?

A Yeah, there's a clock.

Q I mean, is this one of these duplex clocks that has the key that you punch?

A Yeah, I've got a clock like that.

Q Is there a station inside of the house that you used as an office?

A No, there's not one inside of the office.

Q And it's your testimony that you would stay on the inside even during the hot summer evenings?

A Yeah, I was in there when I wasn't on my rounds.

Q Did you ever sit out in the front?

A Yeah; yeah, at time.

Q Would you have the occasion from time to time to see that lady that was just there come back and forth?

A I saw her pass, pass the street.

Q Did she come right by where you would sit very often?

A No, just pass on the street and I saw her; saw her

pass up and down the street.

Q Is the Dawson Cotton Oil Company up the street or not too far from where your place is, the place where you work?

A You mean the Southern Cotton Oil Company?

Q Is it Southern Cotton - yes?

A Yes, it's just across from where I worked.

Q It's just across from where you worked?

A Yes.

Q Did you know that she worked there?

A Yeah, I think she did. I'm not sure but I think she worked there though.

Q And you would see her passing there quite often, wouldn't you?

A I saw her, I don't know how often but I saw her though at different times.

Q And you would come off you say at 6 o'clock in the mornings?

A 6:00 in the morning.

Q In April at 6 o'clock, it's daylight, isn't it?

A Yes.

Q I'll ask you on the night of April 20 or early in the morning of the 21st of April, 1958, did you have the occasion to make any telephone call?

A No.

Q You did not call the Sheriff?

A No.

Q Did you at any time call any police officer, indicating that there was a body there and they'd have to come and get it and, if they didn't, you were going to report it?

A No.

Q Did you ever make any such statement to Hattie Williams?

A No.

Q You say under oath that you've never indicated any such statement?

A That's right, not to her or anybody else.

Q Not to anybody else?

A Not to anybody.

Q Is it your testimony that you have not even seen any one behind a bale of cotton wrapped in a blue blanket about April 20 or 21st, 1958?

A That's right, I haven't saw any.

MR. HOLLOWELL: All right, no further questions.

THE COURT: You may go down; you're excused.

MR. HOLLOWELL: We would like to report to the Court that the witness has made contrary statements.

THE COURT: Well, hold the witness until I hear what counsel is going to say.

MR. HOLLOWELL: The witness has made contrary

Mr. Hollowell:

statements and we submit that the statements that he has indicated that he did not make, that he has in fact made; and that the witness who was on the stand immediately before him was the person to whom he made such statements; and we would like to even seek to impeach him under the circumstances, with permission of the Court, by recalling the witness who preceded him.

THE COURT: What do you have to say about that, Mr. Bloch or Mr. Collier?

MR. COLLIER: He doesn't show any grounds of entrapment or make any statement to the witness that he was entrapped.

THE COURT: Is counsel stating to the Court that he has interviewed this witness who was just on the stand?

MR. HOLLOWELL: Not that counsel has -

THE COURT: Just a moment! That he has interviewed this witness and that that witness has made statements to counsel contrary to what he said on the stand and that is what led you to put him on the stand?

MR. HOLLOWELL: Not counsel as such, no sir; but to the witness who immediately preceded him.

MR. COLLIER: You're just relying on what she told you.

MR. HOLLOWELL: Beg pardon?

MR. COLLIER: On what she says.

MR. HOLLOWELL: I'm relying on - she's relying on what he told her.

MR. COLLIER: And you're relying on what she told you?

MR. HOLLOWELL: I'm relying on these as being the facts.

MR. COLLIER: I suggest it's too remote, Your Honor, and I don't see how it has any relevancy at all.

THE COURT: I'm not clear on that either.

MR. HOLLOWELL: Well, I think it would be relevant.

THE COURT: Even if it should appear that the man has ever said what was said, there's no indication of any connection of that with this case, whatever it is.

MR. HOLLOWELL: May I explain?

THE COURT: Well, I wouldn't want you to go into it in the presence of the jury. I don't know what it is you might be about to say. I don't know whether you ought to go into it in the presence of the jury or not; but counsel is saying that he hasn't interviewed the witness.

MR. HOLLOWELL: Counsel has not specifically said that.

THE COURT: And the witness has not told him that he was going to say anything any different.

MR. HOLLOWELL: But there are -

THE COURT: In that way, Counsel, you could always put somebody like that on the stand and have them deny saying something, just so you could put somebody else on the stand, so that they could say that they did say it; and in that way you could get in all kinds of alleged statements, real or fictitious, that might get into the evidence that wouldn't be admissible in any other way.

MR. HOLLOWELL: They might be telling the truth, Your Honor, and we submit that the witness would tell the truth.

THE COURT: Well, every witness is presumed to speak the truth, not just your witnesses, but all witnesses are presumed to speak the truth.

MR. HOLLOWELL: That's true, Your Honor.

THE COURT: And this man is presumed to have spoken the truth; and you have already stated that he did not mislead you, that you haven't even interviewed him.

MR. HOLLOWELL: I say, not him as such.

THE COURT: Under the circumstances, Counsel,

I think, for the various reasons that are suggested, it would be improper procedure to put anybody on the stand to contradict that witness.

MR. HOLLOWELL: Very well, sir. We call Mr. Cherry for just a couple of questions, sir, that we failed to ask.

W. B. CHERRY

party Defendant, duly sworn, recalled
by Plaintiff as adverse party, testified
further on

ADVERSE EXAMINATION

BY MR. HOLLOWELL:

Q Mr. Cherry, you will recollect that I asked you the other day, whether or not you had made, or on the deposition whether or not you had made any investigation pertaining to the death of James Brazier; do you remember that?

A Yes.

Q And I believe you said no, isn't that right?

A No.

Q You didn't say that?

A I don't think that I said that, no.

Q Well, did you say that on deposition??

MR. BLOCH: I submit, sir, that the depositions would be the highest and best evidence of that.

THE COURT: Yes.

Q Mr. Hollowell: I mean, I am asking you, have you at any time made any investigation of this case?

MR. BLOCH: I submit that the depositions would be the highest and best evidence of that.

MR. HOLLOWELL: I'm not asking about the depositions now. I've gone to another question.

THE COURT: He's abandoned the depositions and is simply asking him whether he ever made any investigation or not.

Q Mr. Hollowell: Whether he ever made any investigation or not?

A I talked to one, yes.

Q With whom did you talk?

A I talked to James Latimer.

Q Is he the only one with whom you've talked?

A No, I talked to Bill ^BRobinson, Bill Roberts.

Q Is he the only one that you've talked to?

A They are the only two that I remember talking to, yes.

Q Isn't it true that you came down into the area generally where James Brazier lived and went from house to house, seeking information about this matter?

A I went to Bill Roberts house, yes

Q Do you know where Bill Roberts lives?

A Yes.

Q Who else did you go and talk to?

A I don't remember off-hand.

Q Were there others?

A There could have been.

Q Are you suggesting that there may have been others or that there may not have been others?

A There may have been and then there may not have been.

Q You don't know?

A Off-hand, I do not.

Q I'll ask you whether or not on deposition, which was taken on October 10, 1962, you were asked this question and you gave this answer:

A I don't remember what was said in the deposition.

Q Just a moment, sir! I haven't asked the question. "How many persons have you interrogated pertaining to it?" And the answer was, "None"?

A I don't remember what was said in the deposition. I'm not testifying at this time to a deposition.

Q Well, are you testifying that your statement now is right, or that your statement on deposition was right?

A I said I didn't know what I said in the deposition, and am not testifying to the deposition at this time.

MR. HOLLOWELL: If it please the Court, we would ask that the Court instruct the witness to answer the question that was asked categorically and then he can explain it if he desires.

THE COURT: Well, suppose you step back right over here, Counsel.

MR. HOLLOWELL: I wanted to be able to read it to him.

THE COURT: Well, he appears not to want to read it.

MR. HOLLOWELL: Well, he doesn't want to read it; very well.

THE COURT: Now, what was the question again?

MR. HOLLOWELL: Will you read it, sir?

THE REPORTER: "Are you testifying that your statement now is right or that your statement on deposition was right? Answer: I said I didn't know what I said in the deposition and am not testifying to the deposition at this time."

THE COURT: I think that does answer it.

MR. HOLLOWELL: I don't think it does, Your Honor.

THE COURT: Well, he is saying that he doesn't recall what he said on the deposition, and whatever it is, he's not testifying based on that but he's testifying from the stand. Now, I think that gives a satisfactory answer.

MR. HOLLOWELL: What I want to know from the witness, Your Honor, is, was he telling the truth when the deposition was taken or is he telling the truth now?

THE COURT: Well, he says he doesn't recall.

MR. HOLLOWELL: Well, I'm showing it to him, Your Honor, and asking him whether he said this?

THE COURT: He's not required to read it unless he wants to.

MR. HOLLOWELL: Well, I'm asking him.

THE COURT: You can ask him to read it.

Q Mr. Hollowell: All right, would you like to read this, sir?

A I don't care to read it and I haven't read it since it was taken.

MR. BLOCH: Your Honor, may I make a suggestion?

THE COURT: Yes.

MR. BLOCH: Those depositions were taken for the purpose of discovery. On the taking of depositions for the purpose of discovery, the question of whether or not a given question and an answer are material to the issue involved cannot be brought out.

Now, dealing with the basic question here, whether or not he made an investigation, as I understand it, if he did or whether he didn't would be immaterial and irrelevant to any issue in the case now pending before the Court. So that, I object to all of this line of questioning as immaterial and irrelevant to any issue in this case now being tried before the Court and jury.

MR. HOLLOWELL: Well, of course, Your Honor, I think it's elementary in the law that depositions can be used for impeachment purposes; and certainly the credibility of this witness is important; and certainly whether or not he, as the perpetrator in the situation,

Mr. Hollowell:

made any investigation involving that in which he was a part of and in which he engaged under color of law it seems to me is most, most relevant in this particular case; and we're trying to see whether this man tells the truth.

THE COURT: All right, I overrule the objection but now, I think he has answered the question.

MR. HOLLOWELL: May I ask Your Honor, if you would direct him to make a categorical yes or no answer and whatever explanation that he wishes to make, then certainly we would not want to restrict him but I believe this is according to the rules of evidence.

THE COURT: Well, this is the difficulty, Mr. Hollowell. He says that he does not recall what he testified at the time of taking his deposition, that he does not care to have his memory refreshed, that he is testifying now, that these are the facts.

MR. HOLLOWELL: That these are the facts.

THE COURT: I say, that's the situation we're in. ~~He's testifying that what he's saying now are~~ the facts and, if you wish to introduce that portion of the deposition, I will allow it.

MR. HOLLOWELL: Thank you.

THE COURT: But I mean to pursue it further with

The Court:

the witness, he has answered it the only way that he's willing to answer it.

MR. HOLLOWELL: I have one other question directed to it, and then I may want to introduce this. As a matter of fact, I think the depositions have been stipulated as being correct, the questions as asked by both Plaintiff and the Defendants, as read from the depositions, were true and correct. And I believe that is part of the record. I want to ask him just this question:

Q Why did you say on deposition that you had not made any interrogation?

A I didn't recall making any at that time, no.

Q You didn't recall making any?

A At that time, no.

Q Well, what was it that refreshed your recollection?

A When the witnesses were asked on the stand yesterday, I believe it was yesterday, if they had talked to me at any time.

Q That's when it came to you?

A That's right.

Q As a matter of fact, you took some affidavits, didn't you?

A I don't remember if I did or didn't.

Q Where do you keep your regular records?

A Five years ago, I don't know where they were being kept off-hand.

Q I mean you are a police officer?

A Yes, I am.

Q You were a police officer in 1958, were you not?

A Yes.

Q Did you have a regular file at the police office?

A No.

Q Where you kept papers?

A No, I did not.

Q There were no files at the police office?

A None, no personal files, no.

Q Did you have a file where you filed your investigations?

A Where accident investigations and such as that was investigated, yes.

Q Only accidents?

A That's right.

Q What about police reports, did you make police reports?

A Any police reports made were kept in a personal note-book.

Q In a personal note-book?

A Right.

Q There was no file in which investigations of other

things, other than accidents, were recorded in that office?

A I don't keep my personal notes in a file.

Q Well, was there any official investigation notes that were filed other than accidents?

A I don't know of any.

Q You don't know of any?

A No.

Q Are there any now?

A Not that I know of.

Q And you're the Chief of Police?

A Yes.

Q Well, why did you take affidavits in the first instance?

A I don't know that I taken affidavits.

Q Do you say that you didn't?

A I haven't said that I did.

Q I say, do you say that you did not?

A I don't recall taking any.

Q Do you recollect whether or not you took James Latimer's?

A No, I do not.

Q But you wouldn't say that you didn't take his either, would you?

A I wouldn't say I did nor I didn't.

Q Let me ask you this: Would such an affidavit

constitute a part of your personal file?

A If it was in a personal notebook, yes.

Q Well, would you normally take an affidavit in your notebook?

A If there was a record that I desired to have to refresh my memory at a later date, yes.

Q Then, what?

A It would be in the personal note book.

Q Now, suppose it had come to you in other form, what would you do with it?

A How do you mean in "other form"?

Q Say typewritten on a sheet of legal-size paper? Fold it up and put it in your personal notebook?

A I've never made any notes like that.

Q I beg pardon?

A I've never made any notes of that type.

Q Well, suppose you took an affidavit and it was typed up on legal size paper, where would you file it?

A It would be kept in my personal papers.

Q And that was true in 1958 and is true now, is that correct?

A If there was any, yes.

THE COURT: All right, is that all from this witness at this time?

MR. HOLLOWELL: I think that's all from this witness at this time.

recalled in her own behalf,
testified further on

REDIRECT EXAMINATION

BY MR. KING:

Q I believe on yesterday you testified that you did recognize these clothes as belonging to your husband and were such clothing as he had on?

A Yes sir.

Q At the time of his arrest?

A That's right.

Q Is that correct?

A Yes sir.

Q I ask you now whether or not the clothes that you have identified are substantially in the condition that they were in when you got them?

A What you mean?

Q Well, where did you get them from?

A I got that coat out of the police car, out of the back of the police car.

Q On what occasion was this done?

A I went and got it after they was coming from downstairs. It was in the back of the police car.

Q Coming from downstairs?

A Out of the courtroom.

Q This was on the morning of the day that he was taken to Council?

A That's right.

Q On what occasion did you get these?

A Well, he had on the pants and I got them from Columbus.

Q These were the pants that he had on when you took him to Columbus?

A Yes sir.

Q Did he have on the shirt at that time?

A No sir, he didn't have on a shirt at all.

Q Where did you get the undershirt and tie from?

A Well, he had on that gauze shirt and the tie was in that coat pocket.

Q Was the gauze shirt in the condition that we presently see it?

A That's right, just like it is now.

Q Was it in that condition on April 20, 1958, the morning of April 20, 1958?

A When he put it on?

Q Yes?

A It was clean when he put it on.

Q Well, did it have any other tears or anything else?

A No sir, it didn't have any holes in it.

Q Do you identify the tie as his?

A Yes sir, I give him that tie.

Q Under what circumstances did this tie come into your custody?

Plaintiff - redirect

A It was in the pocket of that coat.

Q In the pocket of the coat?

A Yes sir.

Q Then, your testimony is that you got
coat out of the police car?

A That's right.

Q Now, I believe that you testified a minute ago
that you did not get the shirt at the time that you took
his effects from Columbus?

A No sir, I didn't get the shirt. I got the shirt a
week later.

Q And from whom did you get it?

A Nettie Kate, the cook of the jail, she brought it
to me.

Q Do you know where she got it from?

A Well, she said Gene give it to her.

Q That was Gene Magwood?

A That's right.

MR.KING: If Your Honor pleases, we would at
this time respectfully want to introduce into evidence
as exhibit of the Plaintiff what has been identified as
P-27.

THE COURT: Is that the entire bundle of clothes?

MR.KING: Yes sir, this bundle of clothes,
which is comprised of the shirt, the undershirt, the
tie, the coat and trousers.

THE COURT: Any objection?

MR. BLOCH: No objection.

THE COURT: They're admitted.

MR. KING: No further questions.

RE CROSS EXAMINATION

BY MR. COLLIER:

Q You say you got all of these clothes within a few days after your husband's death or thereabout?

A Well, I got the coat the same Monday morning.

Q On the same Monday morning?

A That's right, and the tie.

Q And in a few days you had all of these clothes?

A Well, I got the pants that Monday night after they taken them off out of the hospital in Columbus, and that gauze shirt.

Q Where did you move when you left Dawson in 1958?

A Where did I move?

Q Where did you move to?

A Albany.

Q Did you take these clothes with you?

A That's right.

Q Have you had them with you ever since?

A I kept them a while until I give them to my lawyer.

Q How long have they had them?

A I don't exactly know how long he been had them.

Q Several years?

A Well, I don't exactly know how many years.

THE COURT: All right, you may go down.

MR. HOLLOWELL: May it please the Court, we would ask the Court - But let me put on one witness just before then, sir. I call associate counsel, C. B. King.

MR. C. B. KING

of counsel for Plaintiff, called in
behalf of Plaintiff, being first duly
sworn, testified on

DIRECT EXAMINATION

BY MR. HOLLOWELL:

Q Give your full name?

A Chavene Bowers King.

Q I ask you whether or not you had the occasion to go to Dawson, Georgia, on the 1st day of February, 1963?

A I did.

Q What did you do there on that occasion and what did you go for?

A I went there for the purposes of having photographs taken of the interior and exterior of the jail of Terrell County.

Q Did you see that such pictures were taken?

A Yes, I, in fact, supervised their being taken.

Q Who gave you the permission?

A The Sheriff; as a matter of fact, he escorted the photographer and me.

Q Did you have occasion to observe the type of lock that is on the doors in the left wing; that is, those cells that are in the left wing of the jail, as you look from the rear of the courthouse?

A Yes. Now, when you say left wing, looking from the courthouse toward the jail?

Q That's right?

A This is, in fact, the east wing, is that correct?

Q Yes?

A Yes.

Q How were they locked?

A With keys.

Q Did you at any time see the Sheriff or any agent of his lock any of the cells?

A Yes; as a matter of fact, as I indicated previously, the Sheriff was eminently present at all times.

Q Let me show you PLAINTIFF'S EXHIBIT No. 3 and ask you if you can identify it?

A Yes, I can. This is what has been referred to as Cell #3 in the east wing of the Terrell County jail.

Q Can you state how it was taken and where it was taken, and where the Sheriff was at the time it was taken?

A As a preface to this, I might say that I asked

the Sheriff tounlock the door so that I might get in. I was admitted to this particular cell. I first of all put my head as close to the barred section, to which a little door is attached, and at this time it was opened, and peering out with the head as close as I could possibly get it to the bar, I was able to discern what is represented in this photograph. This is to say this window, which is seen in the distance in the corridor.

Q Would you point so that the jury can see what window you're talking about?

A This one (pointing on P-3). . . which was subsequently pointed out to me by the Sheriff as being the office of the Sheriff in the Terrell County jail.

Q Was the door locked as of the time that that photograph was taken?

A It was locked at my special request and as attested to by the Sheriff yesterday.

MR. HOLLOWELL: I might state in my place, Your Honor, that on whatever day it was that we were in Dawson for the taking of the depositions, I myself went over with Mr. Cherry and got into that cell, didn't lock it but viewed with it closed and not locked; and I was able to see down to the Sheriff's office and see at least this portion of the window, if not a little more, as of the time that I was there.

MR. HOLLOWELL: I have no further questions.

CROSS EXAMINATION

BY MR. COLLIER:

Q But you didn't make this picture, did you?

A No, after -

Q That's all I wanted to know?

A There is an explanation that I choose to give:

After I had seen what could be seen from the point at which I was looking after the jail had been locked, I then requested that the photographer accompanying me take a picture or virtually simulating, of putting the camera in the approximate position of my line of vision in looking myself in the direction of the Sheriff's office in the Terrell County jail

MR. HOLLOWELL: You may come down.

MR. HOLLOWELL: There are several matters of which we would ask the Court to take judicial notice that the Court may want to record.

May it please the Court, we ask the Court to take judicial notice of the fact that calendar table 11 on page 476 in Book 32 of the Georgia Code will show that the 20th day of April of 1958 was on a Sunday.

We would ask the Court to take judicial notice -

THE COURT: Hold it there, Mr. Hollowell, if you have more than one, suppose we take them one at a time.

MR. HOLLOWELL: All right, sir.

THE COURT: Do counsel for the Defendants raise any question concerning the Court taking judicial notice of this?

MR. BLOCH: We don't question the fact that April 20, 1958 was Sunday. It's been repeatedly referred to that way.

THE COURT: All right, the Court takes judicial notice of the fact that April 20, 1958 was Sunday.
All right.

MR. HOLLOWELL: We would ask the Court 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.

THE COURT: All right, do you wish to respond to that, Mr. Bloch?

MR. BLOCH: We have no objection to that.

THE COURT: The Court will take judicial notice accordingly. Was I premature, had you completed what you wanted to say?

MR. COLLIER: Has a life expectancy of how many years?

MR. HOLLOWELL: 33.68, I believe.

MR. BLOCH: Whatever the book says.

MR. COLLIER: We accept that.

THE COURT: All right, judicial notice is taken.

MR. HOLLOWELL: We ask the Court to take judicial notice of the duties, that amount the duties of the Sheriff, as recited in Code Section 77-110, is the duty of taking "custody of the jail and the bodies of such persons as are confined therein, with the precept, writ, or cause of detention," as well as the other duties which are related in that Code Section.

THE COURT: Had you concluded that?

MR. HOLLOWELL: Sir?

THE COURT: Were you through with that?

MR. HOLLOWELL: With that one, yes sir.

THE COURT: Well, I think the way it reads is that the Sheriff - you can correct me if my recollection

The Court:

is wrong - the Sheriff shall take custody of the jail and the prisoners therein from his predecessor; isn't there some language like that?

MR. HOLLOWELL: That is correct, the preceding Sheriff.

THE COURT: Yes, I understand.

MR. HOLLOWELL: And all other laws relating to the duties of Sheriff, both code and common law.

THE COURT: All right, I'll take judicial notice of the provisions of Georgia Code Section 77-110.

MR. HOLLOWELL: I believe there are further duties recited in 24-2813, of which we would ask the Court to take judicial notice.

THE COURT: All right, whatever duties are referred to in that section we will also take judicial notice of them.

MR. HOLLOWELL: We ask the Court to take judicial notice of the fact that an officer must possess a legal warrant to make an arrest of a person for a misdemeanor, where the act did not happen in his presence.

THE COURT: Do you wish to be heard on that, Mr. Bloch?

MR. BLOCH: Yes sir, I don't accept counsel's statement of the law. I have no objection to the Court

Mr. Bloch:

taking judicial notice of whatever the law of Georgia is in that respect.

MR. HOLLOWELL: That will be satisfactory.

THE COURT: All right, the Court will take judicial notice of whatever the law is. That's sufficiently indefinite for the moment.

MR. HOLLOWELL: As relates to what constitutes a legal arrest by a police officer of a person charged or alleged to be charged with a misdemeanor.

THE COURT: Whatever the law is.

MR. HOLLOWELL: We ask the Court to take judicial notice of the fact that an officer in the execution of his duties is restricted to using only that force which is reasonably necessary to effect a legal arrest.

MR. BLOCH: I've never heard of a proceeding quite like this, where the Court is asked to take ~~judicial notice of what the law of Georgia is.~~ I don't know how many other suggestions of that sort counsel has but my reply to all of them is that we have no objection to the Court take judicial cognizance or judicial notice of whatever the Court is of the opinion is the law of Georgia applicable.

THE COURT: That's what we will do.

MR. HOLLOWELL: We will ask the Court to take judicial knowledge of the fact that the actions of a police officer acting under the color of law is state action.

THE COURT: Well, as stated before, any of these suggestions that counsel is making, the Court will take notice of whatever the law is, as understood by the Court. And I suggest - well, go ahead, counsel.

MR. HOLLOWELL: We ask the Court to further take judicial knowledge of the fact that a person may be a deputy sheriff without having been officially appointed and sworn in as such by the sheriff, according to law.

MR. BLOCH: I don't agree to that. There's no authority cited for it.

MR. HOLLOWELL: We can get some authority.

MR. BLOCH: Wait just a minute!- And even if there should be authority which counsel thinks holds that, that's a question of law.

THE COURT: Yes, I think, without specifying all of these items that you suggest that the Court take judicial notice of, Counsel, that you simply call them to the Court's attention by a request to charge; and if the Court feels that it should be charged to the jury at the proper time, we will charge it.

MR. HOLLOWELL: I have another. I would ask the

Mr. Hollowell:

Court to take judicial knowledge of the fact that patients in hospitals are not normally bludgeoned over the head while a patient in such hospital.

THE COURT: Suppose you go ahead, Mr. Hollowell and just complete everything you've got of that nature.

MR. HOLLOWELL: I have only one other. I felt that I would want to be sure that we had a ruling on that and will indicate to the Court why it comes up; and that is, that the man was in the hospital for a period of some 5 days; and at the time of the autopsy there were certain conditions found. And, therefore, we ask the Court - and, of course, the testimony is that he was in the hospital beginning as of the evening or late afternoon of the 21st; and we ask the Court to take judicial knowledge of the fact that a patient in the hospital does not normally receive abrasions and contusions and lacerations and fractures of the skull, while a patient in the hospital.

THE COURT: Do you want the Court to take ~~judicial notice of your statement to that effect?~~

MR. HOLLOWELL: That is correct; that the hospital, that patients in the hospital are not normally subjected to treatment that would be productive of lacerations, contusions, abrasions and fractures of the skull of an unclinical nature.

THE COURT: Well, it occurs to me that that would be something that you could argue to the jury; but for the Court to take judicial notice of whether people ever receive such types of injury in hospitals, I think and it occurs to me goes beyond the scope of what is contemplated by the judicial notice procedure.

I'm making note of your requests but I'm simply making that comment in passing. For this Court to sit here and say that, as a matter of law, we take notice that people don't get hurt in hospitals like this or in any other way, impresses me as going beyond the scope of judicial notice procedure.

MR. HOLLOWELL: Well, I submit to your Honor that under the law of evidence that the Court is capable of taking judicial notice of those things which are of common knowledge to the normal public; and I am certain that this Court would not indicate or insinuate that it would not be common knowledge that hospitals are for the treatment of patients and that patients do not normally receive lacerations, abrasions, contusions and fractures of the skull of an unclinical nature when they are patients in the hospital.

I don't know anything that I can think of that would be more prevalent and more patent, of which the Court could take judicial knowledge; not only that under

Mr. Hollowell:

the law of judicial knowledge, but Your Honor, I know, is familiar with the fact that where it is a fact of which the Court can take judicial knowledge, the Court can acquaint itself from any logical and legitimate source; and going even further, if I might quote in substance from the old decision by Justice Field, it is said that the Court cannot be blind to those matters which the ordinary person finds within his knowledge from ordinary observation.

THE COURT: Go ahead.

MR. HOLLOWELL: We ask the Court to further take judicial knowledge that in the Southwest area generally and in the County of Terrell specifically it has been common for negro prisoners to be brutalized over the past 10 years.

THE COURT: You ask me to take judicial notice of that?

MR. HOLLOWELL: Yes sir, and during the period of 1958 there was existing there what was known as a "reign of terror."

THE COURT: Go ahead.

MR. HOLLOWELL: I believe that those are all of the matters at the moment that we would ask the Court to take judicial knowledge of.

MR. HOLLOWELL: I would seek again to introduce the particular photostatic copies of the originals of the autopsy report, as identified by Dr. Webber, inasmuch as the operating doctor was operating and indicated that it would work an extreme hardship upon him. The testimony is already in, of course; and the doctor here, Dr. Webber, has indicated that these were the originals; and I ask that they be admitted into evidence. This was P-18 and P-25.

MR. BLOCH: Have I stipulated that they could be admitted?

MR. HOLLOWELL: I would have to resort to the record. I wouldn't want to say anything that was not proper. I know that we discussed whether or not these two, not the total record, only these two. You remember they were marked at the time of taking depositions, just the autopsy reports. That red up there is the deposition number and in ink, which is almost illegible, Mr. Bloch, down on the bottom, you will see where the Clerk has put the number of identification on it here.

~~Only those two are the ones we are interested in.~~

MR. BLOCH: These two sheets, Your Honor, were identified evidently by the reporter on November 16, 1962 as P-1 and P-2. They are copies, they are not originals; they refer to attending physicians, Dr.

Mr. Bloch:

Louis Hazzouri and Dr. John Durden, neither one of whom has testified in this case, and whose depositions were taken at that same time; and, I, therefore, object to their admission.

MR. HOLLOWELL: I believe they were identified by the other, I would ask the Court to indicate what the ruling would be on those two, they having been identified as originals by the doctor who made them, who made the autopsy, and who testified substantially as they indicate, and identified his signature on them.

THE COURT: On yesterday you will recall at the time you were making reference to these photostats, the Court specifically raised the question, where are the originals?

MR. HOLLOWELL: That's right.

THE COURT: And as I recall, counsel said they are in the possession of another physician who may or may not appear. And the reason I raised that question at that time was because I anticipated this very difficulty, we all being familiar with the rule that, unless the absence of the original is satisfactorily explained, copies should not be admitted unless the absence of the original is satisfactorily explained.

MR. HOLLOWELL: Well, I have explained the situation

Mr. Hollowell:

of the absence of them and have indicated that the doctor was operating, as so indicated to me, and the circumstances are that the doctor who performed the autopsy - we are not asking that the record relating to other things - but only the doctor who sat in that chair, was sworn, was cross-examined and testified that this is this; so, it would be a matter of a pure technicality, which I believe the Court has a discretion to waive and admit, if the Court saw fit.

THE COURT: Do you wish to be heard, Mr. Bloch?

MR. BLOCH: Sir?

THE COURT: Do you wish to be heard?

MR. BLOCH: Simply to renew my objection, on the further ground that this is secondary evidence and the original is the highest and best evidence, and has not been reasonably accounted for.

THE COURT: I sustain the objection.

MR. HOLLOWELL: If it please the Court, I would ask leave to present to the Court in the morning a certified copy from the Coroner, who is a State official officer and who is an officer who would be in a position to make a certificate relating to that. It is being prepared but the Coroner was away and out of the city today.

THE COURT: It will have the consideration of the Court at the time that it is presented in the proper form.

MR. HOLLOWELL: Thank you, sir. We would also like at this time to renew our objections, which took on the form of a continuing objection, which were made earlier and which the Court indicated that it would rule upon, or it was ruled upon then, subject to the matter having been tied up; and before the Plaintiff rests, we wanted to renew that objection, indicating that it has not yet been so tied in.

THE COURT: Well, of course -

MR. HOLLOWELL: On the same grounds and with the same argument that we made before.

THE COURT: Of course, the Defendant hasn't had any opportunity yet to put up any witnesses.

MR. HOLLOWELL: I understand; he has only cross-examined as of this time.

THE COURT: No, what I mean is, the Defendant has not put up any witnesses as yet; so, they have not had an opportunity to tie it up, as suggested; but, if you wish to renew your motion later, you may do so. I understand you are renewing it now.

MR. HOLLOWELL: Yes sir.

THE COURT: And with the same ruling that I previously indicated.

MR. HOLLOWELL: The Plaintiff rests, subject to leave for the purpose of making a minor amendment to the petition, to remove a couple of words and subject also to the submission of a certified copy of the record that we have just discussed.

THE COURT: Well, I don't know what it is.

MR. HOLLOWELL: The amendment would relate only to the matter of removing the word "intentionally," I believe in paragraph 7, which we would like to ask leave for and which we do instanter, subject to reducing it to writing and presenting it to the Court in the morning.

MR. BLOCH: What is the amendment?

MR. HOLLOWELL: Remove the word "intentionally," I think as it relates to paragraph 7. You remember, we discussed it in the Court's office.

MR. BLOCH: Paragraph 7? Isn't it paragraph 5?

MR. HOLLOWELL: It may be 5, in whichever paragraph in which it comes. We simply don't want to close without that being said to the Court.

THE COURT: ~~That you plan to do that?~~

MR. HOLLOWELL: Yes sir.

THE COURT: All right, the only thing you are reserving then, is you want to reserve the right to submit further evidence or further presentation in proper

The Court:

form of a portion of the record we were talking about,
the hospital records?

MR. HOLLOWELL: And the amendment along the line
that I suggested?

THE COURT: Yes, of course, I understand.
And with that the Plaintiff rests?

MR. BLOCH: I didn't quite understand. Was the
amendment to be that the word "intentional" is to be
removed from paragraph 5 of the amended complaint?

MR. HOLLOWELL: I suggest that the amendment
be drafted and I didn't want to take the Court's time
in order to do it at the moment but simply to indicate
that this was the intention that we were to make an
amendment along those lines, where it does appear in
the amended petition, and we will submit it to the
Court in the morning, if leave is granted.

THE COURT: All right. Is that satisfactory
to you? Do you understand it sufficiently, Mr. Bloch?
Do you understand sufficiently?

MR. BLOCH: I'm afraid I don't. I didn't
understand what it was referred to the Court.

THE COURT: Well, what counsel is saying is
that he has an amendment to his petition, where he
wishes to strike a certain word or two from the petition.

MR. BLOCH: A word?

THE COURT: A word or two, whatever the words are. The word "intentionally" at one place. Do you wish to have the benefit specifically of the specific amendment before you produce, before you put any evidence on the stand?

MR. BLOCH: Yes sir, yes sir. I want to know what it is that we're meeting and not have it amended after the evidence is in.

THE COURT: All right, it shouldn't take counsel but a moment to write that out, if the amendment is simply the striking of a couple of words.

MR. HOLLOWELL: I would submit in open court that this is the general tenor of what it is expected in the amendment. I would have to read each paragraph to see where it appears. But I say in open court that this is substantially the only change that is anticipated.

MR. BLOCH: General tenor doesn't mean a thing to me. My feeling is to go along with the evidence until the amendment is presented in form with the words in it that counsel intends to use.

MR. HOLLOWELL: Of course, I call Mr. Bloch's attention that under the Federal Rules of Civil Procedure that one can even amend his petition within five days after judgment.

THE COURT: Yes; of course, we're confronted with situation where counsel states that he does intend to amend and the other counsel states "that since you say you're going to amend, I want to know what your amendment is before I proceed with my evidence," which creates a situation where it seems to me that counsel should have the benefit of the amendment.

What counsel says is right? You have the right of amendment within the Court's discretion for a period of time; and doubtless, when you tender the amendment, doubtless I will allow it; but counsel is saying that he wants the benefit of it before he proceeds with putting up any evidence.

MR. HOLLOWELL: May I respectfully suggest to the Court, sir? I merely suggest this, that it's nearly 5:00. I don't know how long Your Honor might desire to run this evening but I would assure, Your Honor - Mr. Bloch, are you staying in Atlanta or in Americus?

I was going to say I would make sure that I got it to him this evening, so that he could have it tonight; and even if the Court would desire, we could present it even early enough in the morning if Mr. Bloch would have certain objections. I'm trying to be just as amenable as possible.

MR. BLOCH: I'm staying here in Americus at the Americus Motel.

MR. HOLLOWELL: I was thinking that it being so near the time that we might normally adjourn that this might accommodate everybody in the situation.

THE COURT: All right, we'll follow that course. Instead of convening in the morning at 9:30, we will convene at 9 o'clock, unless that inconveniences some member of the jury in some way. Does it? Would convening at 9:00 tomorrow morning inconvenience any member of the jury?

All right, we will convene in the morning at 9 o'clock instead of 9:30. Now, I wish to make this statement to counsel in this case: We would like, if there is no objection on the part of counsel for either side, during the early part of the morning proceedings tomorrow, to allow counsel in another case - of course, entirely unrelated to this matter - to strike a jury to report later upon the conclusion of the trial of this case, in order that we may excuse a number of jurors who otherwise would have to remain available to the court. Is there any objection on the part of counsel to our doing that some time during the morning session?

MR. BLOCH: I have no objection.

MR. HOLLOWELL: We certainly have none, Your Honor.

THE COURT: All right, we will convene in the morning at 9 o'clock and we'll stand recessed at this

The Court:

time until that time; and the members of the jury will be allowed to withdraw and everyone else remain seated until they have withdrawn; remembering the admonition that I have previously given to you about not discussing the case with anybody. You may go now.

4:55 PM, FEBRUARY 6, 1963: HEARING RECESSED

9:00 A. M., FEBRUARY 7, 1963: HEARING RESUMED:

THE COURT: All right, proceed for the Defendants, Mr. Bloch.

MR. BLOCH: Your Honor, I was just served with this amendment.

THE COURT: Yes, I understood that was going to be done last night. . . All right, look it over. . . .

MR. BLOCH: If the Court please, as I understood, counsel for the Plaintiff yesterday afternoon, he stated to the Court that he proposed to amend paragraph 5 of the amended complaint, by striking the word "intentionally". As I understood counsel's statement to the Court, that was the extent of the amendment.

THE COURT: That was my understanding too.

MR. BLOCH: The proposed amendment goes much further than that. Perhaps Your Honor would rather read it than for me to read it.

MR. HOLLOWELL: I think, if the amendment is read carefully, it will be found that generally speaking this is what has been done. There is some rearrangement of the language but there was very little change; if you would check against the original amended complaint, you will find that there has been very little change; but the removal of the word "intentional", as was spoken of yesterday, necessitated some changes in the language as such, but the sum and substance is still as it was.

(The Court reading amendment) . . .

THE COURT: Of course, all of this could have been done before we got together at 9 o'clock this morning. We've got the jury sitting here, taking up their time and taking up the Court's time. It was the Court's suggestion that this be done before we got together this morning.

I'm not ruling on the amendment; I'm simply observing that I am not having the cooperation of counsel.

That's all I'm doing. Go ahead, Mr. Bloch. Take all the time that you need to examine the amendment. You're entitled to the time that it is necessary for you to examine it. . . .

MR. BLOCH: Your Honor, I have read the amendment briefly and, of course, I can perceive the changes that it makes. The amendment, under Rule 15, I assume that the Plaintiff has a right to make. May

Mr. Bloch:

May I see that rule, please? . . .

"If done at the proper time, Rule 15(b) - well,
I'll start at the beginning:

"A party may amend his pleadings once as a matter of course at any time before responsive pleadings is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

"(b) When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment;

Mr. Bloch:

"but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

"Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."

Now, this amendment, Your Honor, goes very much further than just striking the word - very much further than just striking the word "intentional" in paragraph 5 of the complaint. It makes a very, very substantial change in the contentions of the Plaintiff, that change being this:

That in the original amended complaint, in the original amended complaint, the Plaintiff alleged in

Mr. Bloch:

paragraph 5 that:

"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 act" - no act I assume - "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."

Then, they alleged in paragraph 6 of the original amended complaint:

Mr. Bloch:

"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 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, they come in and they strike amended paragraph

Mr. Bloch:

6 of the complaint and substitute this one:

"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 - "

No allegation that he was taken out of the jail, you see, in the amended complaint -

"-- 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 Brazier of rights, privileges and immunities as

Mr. Bloch:

"well as due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and enforcing statutes."

And there's a great difference there, as I have pointed out, between the original 6 and this one, because it's categorically alleged in the original paragraph 6 that Brazier was caused or permitted to be illegally taken from the jail. Now, they say that Brazier was within or without the jail when he was beaten by someone. That's one difference, graphic difference that I've caught so far.

But here's the main one and it's important, it seems to me, particularly in connection with counsel's statement before the Court yesterday afternoon, that he intended to amend only by striking the words "and intentionally" from paragraph 5 of the complaint.

~~You will notice that under the original complaint~~
there is not the slightest allegation that the alleged beating, the alleged striking on the head, caused by Mr. Cherry or Mr. McDonald, caused Brazier's death.
The allegation in the original complaint, paragraph 5, said nothing whatsoever in paragraph 5 that what Mr. Cherry and Mr. McDonald were alleged to have done caused Brazier's death. It wasn't until they got over to

Mr. Bloch:

paragraph 6, and alleged and brought in other defendants, the Sheriff and the two gentlemen who are now deceased, Mr. Chapman and Mr. Lee, and stated, thereby alleging ~~that~~ the so-called beating outside of the jail, and then stated "said injuries". What "said injuries" ? "Said injuries" referred toⁱn the immediately preceding paragraph, "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" - "said injuries" inflicted there while he was outside of the jail is what they allege in the original complaint caused his death.

Now then, paragraph 6-a: "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."

Now, I submit, sir, that coming after the conclusion of the Plaintiff's evidence, and on the morning that we are about to start to introduce evidence, that this amendment should be rejected, on the ground that it

Mr. Bloch:

states a new and distinct cause of action; and liberal though the Federal Rules are, they are not intended to permit a plaintiff to take advantage of a situation by introducing a brand-new theory about the case right in the middle of the trial, when preparation has been made for the trial of the case, when depositions, as Your Honor has heard, started on the 10th of October last year. We took depositions on the 10th of October here. We took depositions in Columbus on the 15th or 16th of November. We took depositions in Albany on November 24; we took depositions in Dawson on January 19, all within the framework of the amended complaint, which had been filed last August; due to have been filed on August 15, the Court will recall, but not actually filed until August 21, under the Court's order.

So, I say, Your Honor, that in the interest of fairness and justice to these Defendants that this amendment should not be allowed at this time.

THE COURT: Before I hear from you, Counsel, Mr. Bloch, let me ask you this: Do you feel that you need to have a definite ruling with respect to the amendment before you start presenting your evidence?

MR. BLOCH: No sir.

THE COURT: Or, do you feel that you can go

The Court:

ahead and start presenting your evidence and then let me let you know what my ruling is on it later.

MR. BLOCH: I feel that I can go right ahead.

THE COURT: All right then.

MR. BLOCH: Because the evidence can't be any different from what I'd planned it at this time.

THE COURT: All right, let's go ahead and, if I deem it necessary to hear from counsel who submitted the amendment later before I rule, I will do so at that time.

MR. HOLLOWELL: That wasn't what I wanted to address myself to the Court on: First, if it please the Court, in the light of the statement made by the Court, I think it proper for counsel to indicate for the record that as of the time that Mr. Bloch began to talk, that is to argue his objection to the motion, only 7 minutes of the Court's time had been used, 7 minutes in all until the time that he began to argue, which he would have had the right to do anyhow.

No. 2: ~~I think the record ought to also show that~~
counsel for the Plaintiff do not have at their disposal all of the accommodations and facilities that the counsel for the Defendants have and, therefore, are put at quite a disadvantage and makes for some difficulty

Mr. Hollowell:

in meeting the schedule even in the presentation of the motion. I felt that in the light of the Court's statement that ought to be made.

THE COURT: Well, the only comment I want to make is that the time we've spent on it is 23 minutes instead of the time indicated by counsel. But go ahead, go ahead, Mr. Bloch.

MR. BLOCH: Call Mr. Ellington.

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

DIRECT EXAMINATION

BY MR. BLOCH:

Q Were you sworn, Mr. Ellington?

A Yes sir, Monday.

Q What is your name, sir?

A Gene Ellington.

Q Where do you reside?

A McRae, Georgia now.

Q What do you do at McRae?

A I'm Superintendent of the Southern Cotton Oil
Company.

Q How long have you been living in McRae?

A Three years, this month.

Q Prior to that, where did you live?

A Dawson, Georgia.

Q What did you do in Dawson?

A I was Superintendent of Southern Cotton Oil Company
over there, until they sold out.

Q How long had you lived in Dawson?

A 14 years.

Q All the time with the Southern Cotton Oil Company?

A Yes sir.

Q Where is the plant of the Southern Cotton Oil
Company or where was it at that time in Dawson?

A Well, it was on Stonewall Street and went all the way down to Main Street too and joined - well, it joined Dawson Compress and Storage over there down at the railroad, the Central of Georgia Railroad.

Q On April - On a Sunday afternoon, April, 1958, did you have occasion to see a colored man named Odell Brazier?

A Yes sir.

Q Had you known Odell by sight prior to that time?

A Oh yeah, he worked with us. He worked with us.

Q At that time?

A Well, I don't recall right at that time. I believe he was though. I'm not positive. You see, I was superintendent of the oil mill and we had a shelling plant there and he worked at the shelling plant and Mr. McGarrity at that time, I mean Ammons was superintendent; but he worked off and on, I know, for several years.

Q Well, you have no doubt about knowing him then?

A Oh, I know him, yes sir, been knowing.

Q On that particular Sunday afternoon, April 20, 1958, first, please sir, tell the Court and jury where you were at the time you first saw Odell?

A Well, I was coming in to Dawson on Main Street from towards Columbus.

Q Where were you coming from?

A Well, we'd just been riding around, my wife and

daughter; we'd been up to Parrott and were coming back into Dawson about, I'd say it was about 5 o'clock, because I had headed to the Mill to turn the lights on for the night. And we were coming up that little hill and the Stevens Chevrolet people have a used car lot there, I believe, and I saw this car coming; and he was kind-of wobbling like --

Q First, please sir, let me get you definitely located before we get him located: You were driving south?

A I was coming south, yes sir, and he was going north on Main.

Q Where were you with reference to the old Parrott Road?

A Well, he hadn't got to the old Parrott Road yet; you see, he was up on top of the hill there, along about the used car lot, between the Chevrolet place and the used car lot.

Q Is the Chevrolet place on North Main Street?

A It's on Main Street on the left going into Dawson from towards Columbus, and the used car lot is over on the right.

Q How far, where is it with reference to the motel that's there on the right-hand side of Main Street going north?

A That Oak Lawn Motel?

Q Yes?

A Let's see, about 2 blocks or 3 - 2½ blocks.

Q South or north?

A Going north is the used car lot.

Q Now, I've got it located all right; then, you were --now, when you were there, now tell me, tell the Court and jury what you saw?

A Well, I saw this car, I didn't know who it was at first, because I seen him coming on up the road, you know, a pretty good piece; and he was kind-of wobbling, and then all at once he just turned and just headed right toward me. And my wife, she kind-of screamed and said "Watch out"; and I turned and pulled my car off to the right to the edge of the curb and he was still coming into me and I just whirled up into the used car lot. There happened to be, you know, we've got a used car lot up there and they cut the curb out and had it paved where you could just run on up in there. So, I just drove on up into the used car lot. And I had almost stopped, liked to have throwed my daughter over in the front seat - she was in the back. And I told my wife, I said "I'm going to rush to town and get the police."

And about that time I saw the police car come by, Mr. McDonald. And he had - I don't remember whether he had his siren on or not. I believe he did though. And he taken after him. I said "Well, we'll just go on to the mill, he'll get him."

So, I went on over to the plant, which is just

around, just about a half a block, and turned the lights on. And I knew, I recognized the colored fellow, I knew it was Odell because, You know, I had seen him down there every Saturday for several Saturdays getting his pay.

Q What kind of car were you driving?

A I was driving a Chevrolet, '57 C hevrolet.

Q And he was driving a Chevrolet?

A A Chevrolet too, a blue one, I believe it was blue.

Q In the car with you was your wife and who else?

A And my daughter.

Q How old a child is she?

A Well, she's 17 now and she was about 12 then.

Q You have no doubt, you have seen Odell Brazier around here for the last 3 or 4 days?

A Yes sir, I've seen him.

Q You have no doubt but that that's the same man?

A Oh, that was him, yes sir.

MR. BLOCH: The witness is with you.

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q Mr. Elliott, is it Elliott?

A Ellington, Ellington.

Q Excuse me, sir; Mr. Ellington, where was it you said that you turned into?

A Turned into a used car lot.

Q What's the name of the used car lot?

A It's Stevens Industries, the Stevens Chevrolet Co.

Q How far in did you go? You went all the way in?

A Well, I drove on off of the highway up into the used car lot and kind-of turned back into the highway after he went on back. He pulled back over and went across the street and back down the road and I didn't notice then because I saw the police car coming, and I was trying to get my daughter quiet. And I turned back into the street and went on down towards the plant.

Q Well, what I'm trying to get at is, did you turn in on the side which was in the direction that you were going, in other words, to your right?

A I turned to my right, yes.

Q And how far up in there did you go? Did you go up into the lot or did you just drive just off of the surface of the road and right back into the road?

A Well, I went on up in the used car lot, I imagine, the length of my car.

Q The used car lot to which you make reference is a fenced used car lot, is it not?

A Yeah, it's fenced and then there's a place out on the front that they park cars out in front of the fence. They've got a place there about the length of one car and they park them there sometimes.

Q As a matter of fact, that fence runs almost adjacent to the road, doesn't it?

A Well, it runs on down nearly about the length of where they park the cars, yeah.

Q And it's almost right out to the road, isn't it?

A No, it's not out to the road. I'd say about 18 feet, the fence.

Q About 18 feet?

A Yes.

Q Between the fence and the road?

A Yeah, where the street used to be before they made a used car lot, where they used to have a curb there.

Q Now, from the approximate point of the curb to the fence, you say is about 18 feet, is that correct?

A Somewhere like that.

Q Now, is this the little apron, so to speak, that you say you drove up on?

A Well, yeah, it was kind of an apron, where they had it paved there, where they parked cars. I don't -- there was 2 or 3 cars parked up on the upper end and they've got one place there with a cover over it, but I was beyond that. I was below that place where they have a, I believe it's a little cover over it, or either a place to drive a car up on it for inspection or something.

Q And so, you saw the police coming and you think he

had his siren on, is your best recollection, is that correct?

A Yeah, after I got out of Odell's way, the police car come zooming by; so, I told my wife, wasn't no use for me to go get them because they'd get him. I said, he's going to hurt somebody if he don't be picked up.

Q Was he going in the same direction?

A The same direction that Odell was.

Q That Odell was going?

A Yes, that was just a few minutes = well, I just got pulled back into the highway when this police car came by.

Q Did you see the police car again or Odell Brazier on that occasion?

A No.

Q Or, did you go on about your business?

A No, I went on about my business.

MR. HOLLOWELL: I don't believe we have any further questions, Mr. Ellington. Thank you, sir.

THE COURT: Go down. You may be excused, Mr. Ellington.

MR. BLOCH: He can go home.

THE COURT: I say he may be excused.

MR. COLLIER: Call Oscar Will Nixon.

MR. BLOCH: Your Honor, with the Court's permission, Mr. Collier and I had planned sort of to alternate with the witnesses.

Nixon - direct

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THE COURT: That's all right.

MR. BLOCH: Whoever starts with a witness will go through with him. We won't double team any witness.

MR. COLLIER: He has not been sworn. (Witness sworn)

OSCAR WILL NIXON

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

DIRECT EXAMINATION

BY MR. COLLIER:

Q Will you speak right up now so that I can hear you and so the jury can hear you? What's your name?

A Oscar Will Nixon.

Q Where do you live, Oscar?

A Dawson, Georgia.

MR. HOLLOWELL: I didn't get that.

~~MR. COLLIER: Oscar Will Nixon.~~

Q How long have you lived in Dawson, Oscar?

A Ever since '50.

Q Where did you live?

A Lives there at Apartment 20.

Q Do you recall having seen Odell Brazier on April 20, 1958, a third Sunday in April?

A Yes sir.

Q Well, tell the jury what caused you to see Odell and what transpired when you saw him?

A Well, he came to my house that Sunday evening, and also I had a little drink there; and me and him drink one together. He was drinking a half of a half and I was drinking beer. So, he looked like he had had a drink at that time, acted like it.

Q Now, Oscar, what time of day was it that you estimate he came to your house?

A As near as I can remember it now, it was around 4 o'clock or later.

Q Around 4 o'clock?

A Yes sir, or later.

Q Did I understand you to say that he appeared to have been drinking when he came there?

A Looked like to me he had.

Q And you and he drank some together?

A Yes sir.

Q Did he pay you for it?

A 50 cents was all he paid me.

Q Was he alone or with someone?

A He was alone.

Q How long did he stay at your house?

A As near as I can remember it was about 15 or 20 minutes.

Q Did he leave alone?

A Yes sir.

Q Have you ever paid him for any wood that he might have brought to you or that you sold to him?

A If it is, I don't remember it.

Q Have you ever paid him for any wood that he sold you?

A I don't remember.

Q Do you recall whether or not he was picked up by the police after he left your house?

A Yes sir, he was picked up by the police after that.

MR. HOLLOWELL: Well, we would ask that that be stricken, No. 1, as being leading and No. 2, there being no foundation to show how in fact he knew.

THE COURT: Did you see him arrested by the police?

The Witness: No sir, I didn't.

THE COURT: All right, I sustain the objection to the last question and the last answer and order it stricken. Any cross-examination?

MR. HOLLOWELL: Yes sir.

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q Nixon, what kind of alley is that you say you live in?

A Dale's Alley.

Q Dale's Alley?

A That's right.

Q And how long have you lived in that alley?

A Ever since '51.

Q And you've been selling whiskey all the time?

A Nope.

Q How long have you been selling whiskey?

A I was selling it but I don't sell it now because I been caught.

Q How many times have you been caught?

A Once.

Q Just once?

A (No answer) . . .

Q How many times did you say you had been caught?

A Once.

Q When was that?

A I been caught since then; I don't know just exactly what year it was.

Q And you've been caught since then?

A That's right.

Q So, that's twice; now, how many more? Tell me in all?

A Just one time is the onliest time I've been caught.

Q Beg your pardon?

A One time and I've done paid for that one.

Nixon - cross

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Q Well, you said you had been caught, also been caught another time?

A I said one time.

Q Since then?

A I said one time.

Q Now, when was this, when was this other time, when you said you had been caught another time since then?

A I didn't say but one time.

Q You didn't say but one time?

A No; that's the onliest time I said.

Q You don't remember who it was that caught you on that occasion?

A I remember.

Q Who caught you that time? . . . Sir?

A Police Dunaway.

Q And when was that?

A I don't know what year 'twas.

Q Is that a deputy sheriff?

A That was when I was caught. He was police then.

Q He was a policeman then?

A Yes.

Q Where was it that he caught you?

A At the house.

Q Your house?

A (No answer) . . .

Q: Sir?

A At the house.

Q You mean in the alley there where you live?

A (No answer) . . .

Q Sir, speak up?

A That's right.

Q Do you remember what day the 20th of April was on?

A It was on a Sunday, I guess.

Q You guess? Don't you know?

A I don't remember. It was on a Sunday when he was to my house.

Q It was on a Sunday. What kind of stove do you have at your house?

A Stove?

Q Yes, what kind of stove?

A Wood stove.

Q You have a wood stove, is that correct?

A That's right.

Q Is that right?

A That's right.

Q And you burn wood in it, is that correct?

A Sure.

Q Do you furnish all of your own wood or do you buy some wood?

A I buy wood.

Q Now, on this occasion you mentioned the fact that

Odell Brazier came by your house, you say, about 4 o'clock?

A That's right.

Q What kind of car was he driving?

A He was driving his car.

Q I say, what kind of car was it?

A Listen! I was sworn to tell the truth and the truth so help me God; so, I ain't got no more to say.

MR. HOLLOWELL: If it please the Court, we ask the Court to direct the witness to answer the question.

THE COURT: Do you know what kind of car he was driving?

The Witness: He was driving Chevrolet.

THE COURT: All right, answer the questions. If you know the answers to the questions, answer them; if you do not know the answers, say "I do not know." If you know the answers, give the answer.

Q Mr. Hollowell: A Chevrolet?

A That's right.

Q What color was it?

A I don't know definitely the color.

Q You don't know the difference in the color; what model was it?

A I told you '55.

Q Was it a 2-door or 4-door?

A I don't know that. I ain't paid it that much attention.

Nixon - cross

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Q Well, didn't you say you saw him drive up there?

A He driv' up there and driv' away.

Q And he drove away; and you said you knew him, didn't you?

A I know him.

Q And you say you know automobiles; have you got an automobile? . . . Do you have an automobile?

A Sho do.

Q What kind do you have?

A Pontiac.

Q What model?

A '49.

Q '49; is that the one you use to haul your liquor in?

A I didn't use, don't use nary one to haul none in now.

Q Well, did you use it?

A Never have.

Q How did you get your whiskey?

A It was brought to me.

Q It was brought to you; who brought it to you?

A I don't know who he was.

Q Did you ever get any from Mr. Cherry?

A Never have.

Q Never have?

A Never have.

Q Now, you indicated that there was a 50 cent drink

that Odell Brazier got is that right?

Q A 50 cent drink? And how much do you sell for 50 cents?

A I said me and him was drinking a half together.

Q A half together?

A That's right.

Q You mean a half a pint?

A That's what I said.

Q A half a pint makes about a glassfull, is that right; a half pint makes a glassfull? Is that right?

A According to what size glass it is.

Q Well, an 8punce glass, an ordinary water glass? I agree with you. An 8-ounce drinking glass; and so, half of that would be a half of a glassfull?

A Yes.

Q Is that correct?

A Yes sir.

Q And this is what you say he drank?

A That's what I see'd him drink.

Q And this was about 4 o'clock?

A Around 4 o'clock, as near as I can remember.

Q Do you belong to a church?

A Sho do.

Q What church do you belong to?

A Friendship at Dover.

Q Friendship at where?

A Dover.

Q Had you been to church that day?

A She had.

Q Well, what is it that causes this particular date to stick in your mind?

A Beg your pardon?

Q I say, what is it that causes you to remember that the 20th of April, 1958, was on a Sunday?

A I just know it was on Sunday when he came to my house.

Q Now, you really don't know what Sunday it was, do you?

A I know it was in April.

Q You know it was in April but you don't know what Sunday it was, do you? You don't know whether it was the first Sunday or the third Sunday; isn't that right?

A I wouldn't definitely know what Sunday it was but I do know it was the Sunday when he was arrested.

Q How do you know he was arrested? You didn't see him arrested, did you? . . . Did you?

A I didn't see him arrested.

Q Did you see him in jail?

A I see'd him after he left the jail.

Q Did you see him in jail?

A I see'd him after he left there.

Q Did you see him - you saw who after they left?

A I see'd him on a Monday.

Q On Monday?

A After he got out of jail.

Q Well, you didn't see him in jail, did you?

A I didn't go down there.

Q You didn't see him in court, did you?

A Sho didn't. I don't go to court no more than I can help.

Q How is it that you happen to be here today?

A On account of they subpoenaed me here.

Q Who subpoenaed you?

A I don't know who subpoenaed me here, I got the subpoena.

Q When did you inform them that Brazier had been at your house?

A What you say?

Q When did you inform them that Brazier had been - yes, that Odel Brazier had been at your house?

THE COURT: He means when did you tell him?

A The Witness: Somebody else had to tell them because they didn't know.

Q Mr. Hollowell: Who did you talk with concerning this?

A Well, he was seen there and leaving there.

Q No, I said, with whom did you talk pertaining to it?

A I don't understand what you mean.

Q Have you ever talked - of course, you know what we mean by "talked" - right?

A The man I work with knowed he was there.

Q Beg pardon?

A The man I worked with knowed he was there.

Q That isn't the question. I asked you, with whom had you talked concerning Odel Brazier's having been at your house on a Sunday?

A I don't remember who.

Q Have you talked with anyone?

A I wouldn't be personally that I know who I talked with.

MR. HOLLOWELL: We will ask the Court to direct the witness to answer the question. The question was, "Have you talked with anyone pertaining to --"

The Witness: It's been 5 years and I can't remember exactly.

MR. HOLLOWELL: Excuse me, sir; I'm addressing the Court. We would ask the Court to direct the witness to answer the question, if he knows.

THE COURT: Yes. Do you know who you may have talked to back there at that time about 5 years ago or whenever it was? Do you know who you may have talked to about this at that time; do you remember?

A The Witness: I can't remember.

THE COURT: You can't remember?

A The Witness: No sir.

Q Mr. Hollowell: Do you know - the Judge said about five years ago; do you know who you have talked to on any date since that time, this year? - Beg pardon? You don't know?

A Sho don't.

Q You what - you don't know? You don't know if you have talked to anyone in 1963 about it? . . . is that right, yes or no?

A I talked with --

MR. HOLLOWELL: Now, if it please the Court --

A The Witness: I talked with.

MR. HOLLOWELL: Just a minute -

THE COURT: He's trying to answer.

MR. HOLLOWELL: But Your Honor, I have an objection ~~not related to that witness but relating to this counsel~~ right here (pointing): and it so happens that I raised it at the exact and precise moment that counsel spoke.

THE COURT: What is this now?

MR. HOLLOWELL: My associate counsel. And that is, that this counsel right here (pointing) at that time was gesturing with his head in this manner (indicating) . . . I was looking at him, I saw him, and at the same time, Your Honor ---

THE COURT: Well, we need not go into that. I don't know whether that's true or whether it isn't true.

MR. HOLLOWELL: Well, we're stating in our place that it is true.

MR. KING: In my place, I assert that it is true.

THE COURT: All right, let's presume that it is. It's not necessary to go into it any further. Counsel for both sides know the rules that there should be no coaching or indication from counsel table to any witness. I'm not saying that it has taken place, I'm not saying that it hasn't but, if it has taken place, it should not take place, should not have, should not now and should not in the future. So, there's no use to go into it any further.

All right, go ahead, what was the answer to the last question?

MR. HOLLOWELL: Excuse me, would you repeat the last question, if it's not so far back, Mr. Joiner?

A The Witness: I talked with Lawyer Collier.

THE COURT: You talked to Lawyer who?

The Witness: Collier.

THE COURT: Lawyer Collier?

The Witness: Yes sir.

Q Mr. Hollowell: When did you talk to Lawyer Collier?

A When?

Q The first time?

A Well, I was asked to tell the truth about it and so, I had to tell him.

MR. HOLLOWELL: If it please the Court, we will ask the Court to instruct the witness to answer the question that is asked, and that was -

Q When did you talk to Mr. Collier the first time?

A I believe it was Tuesday night.

Q Of this week?

A That's right.

Q It was night before last?

A That's right.

Q Speak up, sir, so we can hear you. Did he call you to his office?

A (Witness nodding head affirmatively). . .

~~Q Speak up, sir?~~

A Yes.

~~Q I mean, the Clerk can't hear you when you shake your head?~~

A Yes.

Q Is that the first time you had talked to him?

A The first time I was even questioned about it. I don't know why they knowed he was to my house, but it was

the first time I was ever questioned about it.

Q That was the first time. Have you talked with him since?

THE COURT: Answer the question?

The Witness: No sir.

Q Mr. Hollowell: What did you talk to him about?

A He just asked me about what I already told you, did he come there.

Q And you had never at any other time told anybody else that Brazier had been at your house on that occasion, had you?

A I don't remember telling nobody.

Q Well, do you think you would have remembered it if you had in fact told somebody?

A It's been 5 years; I don't figure - I might have remembered it.

Q You might have remembered it?

A But I don't remember now.

Q Did Mr. Collier tell you that it was on April 20, 1958?

A He didn't tell me when it was but I just heard that's when it was.

Q Oh, you heard that?

A It was already in the paper when it was.

Q I see. You heard that? You didn't know as a fact

that it was in fact on that date, did you? Did you?

A I didn't keep it in remembrance.

Q Didn't keep what?

A Because I know it's been about that long. I say, I didn't keep it in remembrance.

Q Didn't keep it in remembrance at all?

A No, but it was that long.

Q Let me show you PLAINTIFF'S EXHIBIT No. 31 and ask you to start reading right there?

A I can't see well enough ~~to~~ to read.

Q Where are your glasses? Do you wear glasses?

A Don't wear them.

Q You don't wear any glasses?

A No.

Q And you can't see well enough to read?

A No.

Q Well, how did you read it in the paper?

A ~~It was read to me. I got a daughter do all my~~
reading.

Q So, you don't know whether --

A Grand-chillun.

Q So, you don't know that that which she was reading was proper or correct, do you? Do you?

A I kind-of believe what she said.

Q But you don't know that she was reading from the paper, do you? She might have been telling you something

she heard, isn't that right?

A She was reading.

Q Did you see it?

A I could see it but still, I can't see good enough to read.

Q So, you don't know, as a matter of fact, when it was, do you? . . . Do you?

A It was in April, I know that.

Q All you know is that it was in April? And it's been 5 years --

A It was in April but the days I didn't keep up with.

Q You didn't keep up with it and it's been 5 years ago, so you really don't know what year it was at this late date, do you?

A I know it was 5 years ago, I know that. That's all I can go by; but what date, I knowed it was in April.

MR. HOLLOWELL: Now, if it please the Court, I am sorry, I'm as sorry as I can be and I hate to take the

Court's time, but I have to observe and I have to make note to this Court what I see, because I feel as an

officer of the court if there's something improper that's

going on in the presence of counsel and in the presence of the Court, I have the responsibility for doing so.

THE COURT: What is that?

MR. HOLLOWELL: And that is, as I was waiting for

Mr. Hollowell:

the answer of that question, the Defendant, Cherry, was shaking his head in this manner (indicating) . .

I stand here and say it in my place and, unfortunate as it may be and whatever implications that there are, sir, I have to report to the Court what I have observed and I see very well. It may be inadvertence. I don't know. I know sometimes when we're thinking about things we shake our head maybe positively or negatively without really knowing that we do so.

But I would certainly respectfully request of the Court that all counsel and all persons at the tables, of both Plaintiff and Defendants, would be instructed, may it please the Court, that they are not to gesticulate in response to questions when they are asked by counsel on either side.

THE COURT: Well, your observation is noted but I've noted all through the course of this trial, and I notice it in the course of all trials, sitting up here where I am you can see it all the time; you see it in counsel, you see it in parties to the case, you see it in spectators, you see it even sometimes in members of the jury, when somebody is testifying people have a tendency to either agree with what the witness is saying or disagreeing with what the witness is saying;

The Court:

and sometimes they're not even aware that they are gesticulating one way or another way. I don't know how you can ever look in a person's mind and tell what his intent is or his feeling is, if he's indicating agreement with the witness or disagreement with the witness. But it is not an unusual occurrence.

I've noticed counsel for the Plaintiff themselves do the very thing that counsel is talking about and I'm sure entirely without any intention of influencing a witness. It's just a human reaction frequently.

However, I will do as counsel has suggested that I do; and that is, make the observation and direct this admonition to counsel for Defendants, to the Defendants themselves, to counsel for the Plaintiff, to the Plaintiff herself and to all parties in the courtroom to avoid any movement, any gesticulations, any indications by nod or ~~shake of the head or raising of the hands or raising of the eye-brows~~, or in any way, because that is improper to attempt in any way to influence a witness during the course of his testimony, who may be looking at him, or to suggest to the witness during the course of his testimony what his answer should or should not be to any particular question.

And I hope that that observation will suffice to cover the situation.

MR. HOLLOWELL: May I ask respectfully of the Court, in the light of the Court's statement that the Court indicates that it has observed counsel for the Plaintiff,

I would like for the record to respectfully show any occasion when there has been any such observation made of counsel for the Plaintiff?

THE COURT: You mean specifically?

MR. HOLLOWELL: If there is any.

THE COURT: Oh, I cannot recall specifically. I can't recall any instance specifically. I see it all the time; I see it all the time, among the parties, among counsel, among witnesses, among spectators, that frequently when a witness is testifying, they either indicate agreement with what the witness is saying or disagreement with what the witness is saying; it's a common, every day, practically every hour occurrence.

MR. HOLLOWELL: I merely wanted the record to be clear on that point.

THE COURT: Yes, all right.

MR. COLLIER: Your Honor, I find it very difficult to sit mute in view of these accusations. However, I'm going to do so, but I would suggest that if he is insinuating that I am making signals to this witness that he so state; and, if not, I would appreciate him dropping those insinuations. And I secondly suggest that

Mr. Sollier:

the testimony that he is hearing is damaging and I think he is trying to direct the jury's attention to me rather than to the witness.

THE COURT: Well, with that now, I don't want to hear any more about the matter at all, unless there's some occasion to hear about it from either side. It's very easy to get off of the main purpose of the proceeding which is to try this lawsuit.

All right, do you have any further questions of the witness? Mr. Hollowell, do you have any further questions?

MR. HOLLOWELL: One moment. . . Just before I make the next question to the witness, I think that I should say to Your Honor that there has been no intention to influence the jury, and that it was not an insinuation that counsel made; it was a direct charge, which counsel made in his place based upon his observation, and counsel ~~was within two hands length at the time.~~

THE COURT: Well, I don't want to pursue it any further now, unless there's some occasion to pursue the matter further. Let's go ahead with the examination.

Q Mr. Hollowell: How old are you?

A 53 years old.

Q Can you read at all with your glasses or could you read before your eyes got in this condition?

A I could read.

Q How far did you go in school?

A No higher than 5th.

Q Went to the 5th Grade, and where did you go to school?

A Cuthbert, Randolph County.

Q Do you remember when you last were there?

A When I last went to school or what?

Q Yes?

A I don't remember when I last went to school.

Q Do you remember how old you were when you last, when you left the Fifth Grade?

A 14.

Q And you were in the 5th Grade at that time?

A That's right.

Q You could read, you say?

A Sho could.

Q When did your eyes get so you couldn't read?

A My eyes started to giving me trouble in '51.

Q When did you get to where you couldn't read?

A I can read but as far as seeing it long enough, it all goes together before I can read it.

Q When you saw Brazier, as you indicate, leave your house on this occasion that you've alleged he was there, did you notice which direction he went?

A Didn't notice.

Q Beg pardon?

A When he left my house, he went towards town.

Q Toward town?

A That's right.

Q You don't know whether he went straight on to town?

A Don't know which-a-way he went when he got to the street out there.

Q Where is your house in relationship to downtown, what direction is it?

A The west side of Dawson.

Q Beg your pardon?

A The west side of Dawson.

Q How far is that, approximately?

A It's 2 blocks, I'd say, from Main Street. It's in the second block from Main Street.

Q How would one have to go, in what direction would one have to go, what route would one have to travel in order to get to the service station?

A Get to where?

Q To get to that service station right down there where the policemen sometimes park, that S. & W. Service Station?

A Oh, I reckon about a half a mile.

Q I say, what route, if one was going straight to that station, what route would he travel from your house?

A When he leave my house, he'd have to be going east and then turn back north.

Q On what street?

A Turn on Main Street; I stay across Vine and Vine is just before you get to Main.

Q And then, he'd make a left turn?

A Left turn at Main.

Q Would you go straight down the street then in order to go past the S. & W. Service Station? Sir?

A North, straight down the street north.

Q Now, you say he came about 4 o'clock, what time did he leave? Would you say some 30 or 40 minutes later?

A He stayed there around 15 or 20 minutes, I'd say.

Q Would you say it was about 4:30 or thereabouts when he left, around 4:30?

A I wouldn't say. He stayed there 15 or 20 minutes. He was there around 4:00 as near as I can remember it.

~~Q As near as you can remember it; did you look at a~~
clock? Sir?

A Didn't look at no clock.

Q You don't have any clock?

A I had a clock but I didn't time it.

Q So, it's just your guess as to the fact that he was there around 4 o'clock, is that right?

A I said as near as I could remember, it was around

4:00. I don't know what time it was.

Q So then, your testimony is that you were there one day that Odell Brazier was there, one day in April, which somebody told you was on a Sunday, the 20th of April, '58, and that you and he -- Did anybody else join in? You said there was a third party? Did the three of you drink this half pint, you say?

A I didn't say there was any third. I said it was the two of us.

Q That the two of you?

A Me and him.

Q Drank about a half a glass apiece?

A That's what I said.

Q About half of an ordinary 8-ounce water glass apiece?

A That's right.

Q And you were sitting there talking in the process?

A He didn't stay there but a few minutes, about 15 minutes.

Q About 15 minutes, I see; were you talking back and forth?

A We talked while he was there.

Q While he was there?

A Yes.

Q Did he seem to be in a hurry?

A He didn't stay very long. He said he had to go.

Q And then you saw him when he drove off?

A When he driv' off.

Q About 15 or 20 minutes later?

A That's right.

Q You don't know where he went?

A Don't know where he went and don't know which way he went, no more than I know he went straight out towards Main Street; and don't know which way he turned when he got to Vine Street.

Q He walked in your house straight, didn't he?

A Yeah, he walked in there.

Q He walked in there straight?

A And he walked out.

Q And he walked out straight, didn't he?

A (No answer) . . .

Q He talked to you, did he not?

A He talked to me.

Q Did you understand what he said?

A I understood what he said.

Q Did he say it clearly and plainly? Did he say it clearly and plainly?Sir?

A Sho did.

Q Well, how then can you say that he looked like he had had a drink? How does a man look when he looks like he's had a drink?

A Well, I always can tell if a person has been drinking.

Q How can you tell?

A By his appearance and the way he acts, if I know him.

Q Well, you said this man walked in straight, didn't he? Isn't that what you testified to?

A That's right.

Q And that he went out straight; that's what you said, isn't it?

A That's right.

Q And you said that he talked to you, isn't that right?

A Sho did.

Q And that you understood everything that he said?

A Sho did.

Q And that he said it clearly and distinctly, so you could understand it; isn't that what you said? Did you shake your head "Yes"?

A Yes.

Q No further questions.

REDIRECT EXAMINATION

BY MR. COLLIER:

Q Now, Oscar, tell the jury how you remember what day it was that Odell came to your house?

A Well, I couldn't remember it just on what date it was, if it hadn't come back on me like it did, by me being

subpoenaed up here. That's the onliest way I could remember what date of the month it was or what month it was; but I know he had just left there when he was arrested.

Q Did he look like he had been drinking when he got there?

A Yeah, he had been drinkingsome when he got there; looked like to me he had.

Q And did he have something there?

A He drank some there.

Q No further questions.

THE COURT: All right, you may go down.

RECBROSS EXAMINATION

BY MR. HOLLOWELL:

Q Just a moment, sir; just a moment! Do you remember what day the 13th of April was on, 1958?

A It was ona Sunday, wasn't it?

Q Sir?

A Was it on a Sunday?

Q I asked you did you remember what day it was? Sit down, sit down. I say, do you remember what day the 13th of April was on?

A I don't remember what day it was on.

Q You don't remember what day the 13th of April of 1958 was on, do you?

A I don't remember what day it was on.

Q You don't know, do you?

A Sho don't remember what day it was on.

Q All right, do you remember what day the 27th of April, 1958 fell on? You don't remember that date do you? Do you?

A I wasn't keeping up - I couldn't keep up with the days. It wasn't on my mind.

Q Did you know as a matter of fact that Odell Brazier had a 1955 Chevrolet?

A He had a 1955 Chevrolet.

Q This is your best recollection?

A I know he had a '55 Chevrolet.

Q If I told you that he actually owned a 1956, then you would be wrong, wouldn't you?

A I know he had a '55.

Q You know he had a '55, all right.

THE COURT: All right, you may go down. Can this witness be excused? Allright, you may go home.

All right, who do you have next now, Mr. Bloch?

RANDOLPH E. McDONALD

party Defendant, called in behalf of
Defendants, first duly sworn, testified

DIRECT EXAMINATION

BY MR. BLOCH:

Q Mr. McDonald, I exhibit to you what purports to be

criminal warrant of The State v. James Brazier, charged with threatening an officer and interfering with an arrest, sworn to and subscribed the 20th day of April, 1958; before Mr. D.F. English, Justice of the Peace, and ask if this is your signature there, "R. E. McDonald"?

A Yes sir, that is.

Q And is that Judge English's signature there?

A Yes sir.

Q And there?

A Yes sir.

Q In the upper left-hand corner and down toward the right?

A Yes sir.

Q When you were on the stand a day or so ago, being questioned by counsel for the Plaintiff, you were asked about the depositions that you gave here in this room here?

A Yes sir.

Q On October 10, 1962?

A It was some time this year or last year, I don't remember.

Q It's the only time that your depositions were taken?

A Yes sir.

Q Counsel at that time, that counsel, asked the question with respect to Odell Brazier -

MR. HOLLOWELL: Now, if it please the Court, we

Mr. Hollowell:

would ask that the witness not be led. This is direct examination and this is his witness. I think he would be entitled to ask him what he recollected having said, but I think to direct his attention as such would be leading and we respectfully would object.

THE COURT: All right, proceed, Mr. Bloch.

You may wish to rephrase your question.

Q Mr. Bloch: Counsel for the Plaintiff who has just spoken asked you the question, "When you got to the car"

MR. HOLLOWELL: Excuse me, Your Honor. I understood Your Honor to suggest that he would rephrase his question. The manner in which it is being asked I think would still be objectionable.

THE COURT: Mr. Bloch, his objection is that the form of the question is leading, if you simply read from the deposition to him.

MR. BLOCH: Oh well, let's start over and put it this way.

THE COURT: That's what I'm suggesting, that you rephrase the question so it will not be leading.

Q Mr. Bloch: Forget the deposition. When you saw Odell Brazier on that afternoon, about which you've already testified here before the Court and jury, state whether or not you took any liquor off of him?

A I taken two half-pint bottles off of him and about that much (indicating), I'd say about an inch or inch and a half deep in each bottle, one out of each coat pocket.

Q Did you take any weapons or anything else off of him?

A Taken a pocket knife off of him.

Q State whether or not it was after you took the liquor and the pocket knife off of him that you told him to open the door and get out?

A Well, I had got him out of the car, you know; and then frisked him or searched him, whichever you want to call it.

MR. HOLLOWELL: If it please the Court, I must still object to the form of the question. This is direct examination and I submit that the language used by counsel is leading the witness.

THE COURT: Well, this witness, of course, has ~~already been on the stand on cross-examination~~ by counsel for Plaintiff and he testified concerning some of these details during that time; and apparently what Mr. Bloch is doing is, he's simply recalling that he did testify that way, and he's asking him about what he has already said. Now, do you still insist that it's injurious to your case to allow him to question that way based on what he's already testified?

MR. HOLLOWELL: Yes sir, because of the fact that on the cross-examination this witness made no reference to any liquor being taken off of the defendant, I mean not the defendant but Odell Brazier. In the cross examination, my recollection is that he made no reference to it.

THE COURT: Well, somebody did. I don't remember who it was. I thought it was this witness. But to be absolutely sure about it, Mr. Bloch -- somebody has testified about the liquor being taken off of him but I don't remember whether it was this witness or not. So, to be absolutely sure about it, let's don't lead him. Examine him as if he is on direct examination.

MR. BLOCH: All right. He has testified now to the liquor.

THE COURT: Well, the question was objected to. Let's proceed this way: Let's presume that this witness has not been on the stand before, insofar as the form of your question is concerned, to avoid the objection of counsel about leading questions.

Q Mr. Bloch: All right, let's do this, Mr. McDonald: Will you tell the Court and jury in your own words everything that you saw Odell Brazier do that afternoon and what you did in connection with his arrest?

A All right.

Q Take your time and state it?

A Well, I was patrolling the streets in a routine duty that afternoon. I went down North Main to the Chevrolet place, went to make, swung out to make a turn and stopped, waiting for the traffic to go by; and while I was sitting there with the motor running, I saw this car coming from the south heading north, and he was weaving back and forth across the street and folks were having to dodge him.

Well, when he came by me, I pulled in behind him and about the time I pulled in behind him, that's when Mr. Ellington, he went across the white line and Mr. Ellington and his wife had to whirl off of the highway to the right up that little incline parking place there at the used car lot to miss him.

Well, I hit the siren and he went back across the street on the right and parked and stopped. Well, I parked behind him, as usual; got out and walked up to the car and I asked him what was the trouble. He said nothing.

I said, "Well, there's something wrong, you're wobbling all across the street". And I smelled liquor, alcohol. So, I told him, I said "You're driving under the influence, you're drinking." I said "Get out of the car." Well, he said he had to go home or had to do something or another.

Anyway, I opened the door and told him to get on out. Well, he got out and when he got out I searched him.

And I got a half a pint liquor bottle out of each coat pocket with about that much (indicating) in each bottle. OK, I taken a knife off of him, and told him to let's go to the car, I'd have to take him in and lock him up.

So, I taken him by the arm, carried him to the car, opened the door, and told him to get in. Well, he turned around and sit down in the seat, with his feet out like that (demonstrating). I told him to get on in. Well, he caught the door with each hand like that and come out and stood up again. I told him, I said "Get on in, old man". I said "I've got to carry you on in; you'll hurt yourself and somebody else too driving around here like that."

So, he set back down. He started to get back out; I pulled his hands loose and his feet were out there. I told him, I said "Get in and put your feet in." Well, he wouldn't do it, so I reach down to get his feet to put them in the car. When I did, he kicked me in the stomach with one foot; and when he did, I slapped him up over the eye with the black-jack; and he got in there.

In the meantime, Mr. Herrington had stopped there to help me, walked up there side of the car. Well, about the time I got him in the car and shut the door, Mr. Herrington, said "Look out", and I whirled. And that's when James Brazier was coming across the street to me, rushing at me; said that was his daddy I hit and I was going to get hurt, that he'd

get me if he had to steal me in the dark.

So, that's when I told him, no, he wouldn't do that, that I was going to lock this old man and I'd be back for him for interfering with an officer making an arrest and threatening.

And I got in the car and backed up, turned around and went and taken Odell to jail and locked him up. In the meantime, Mr. Cherry came up and I told him what happened, and we went and got a warrant and went to pick up James.

Q (Mr. Bloch): How old are you, Mr. McDonald?

A How old am I now?

Q Well, either way, either in '58?

A I'm 52 now.

Q How much did you weigh at that time?

A Around 135, between 135 and 140.

Q How tall are you or were you then?

A 5 feet 7½.

Q 48 years old, 5 feet 7½, weighed 135 pounds, at

that time?

A Yes sir.

Q Had you had - state whether or not you had ever had any occasion to arrest Odell Brazier before?

A No sir, I don't think I had ever arrested him before.

Q When you took him to the jail, did you state a while ago in what part of the jail you put him?

A Well, I put him on the right-hand side going in from the courthouse, from the back of the courthouse, I put him in the right wing, in the right wing, the west side, in what they call the "bullpen".

Q The bullpen?

A Yes sir, it's a big opening in there and no individual cells. It's just a big opening.

Q Now, when you afterwards brought in, you and Officer Cherry brought in James Brazier, did you put him in the bullpen?

A Nosir.

Q Or did you put him over in the other wing?

A No sir, put him on the left, on the left wing.

Q Now, after you put James Brazier, after you arrested him and put him in jail, how long did you stay on duty?

A Until 5 o'clock the next morning.

Q You were on duty until 5 o'clock the next morning?

A Yes sir.

Q How many times during that night, between the time you put him in jail and 5 o'clock the next morning, did you personally see James Brazier?

A Well, the best that I can remember, it was at least 3 times that I personally saw him myself.

Q I couldn't hear you?

A 3 times, the best I can remember, it was 3 times that

I saw him personally myself.

Q Well, as near as you can after these years, give me the approximate times and the interval between those times that you saw him? When was the first time that you saw him after you arrested him?

A Well, I don't know exactly. It was - say, we locked him up after the doctor examined him, it was around an hour and a half or two hours later. I don't remember the exact time.

Q Why did you go to see him an hour and a half later after the doctor examined him?

A In his cell.

Q I say, why did you go?

A Well, that was the doctor's orders.

Q Had the doctor told you to do that?

A Yes sir.

Q Told you and Mr. Cherry?

A Yes sir.

Q Well, after you saw him the first time, where was he at that time?

A He was in the cell where we had put him to start with, laying on his bunk.

Q Well, now how long was it before you saw him again?

A Well, it was some time after midnight.

Q Was he in the same cell then?

A That's right.

Q And when was the next timethat you saw him?

A It was between 4 o'clock and 5 o'clock, somewhere between 4:00 and 5 o'clock.

Q And then, you went off duty at 5:00?

A That's right.

Q At the time you saw him last, between 4:30 and 5:00, which was on Monday Morning, the 21st of April, was he in substantially the same physical condition that he was when you put him in jail?

A Yes sir, that's right.

Q Will you please state whether or not at any time during the night of April 20, 1958 or the early morning hours of April 21, 1958, you severely beat James Brazier about the headto the point of unconsciousness?

A I have never hit James Brazier a lick in my life.

Q State whether or not you permitted anybody else to do that during the night of April 20-21, 1958?

A No sir, I would not allow that, not in my presence.

Q State whether or not you know anything at all about James Brazier being taken out of the jail during the night of April 20-21, 1958?

A No sir, he was not.

Q After your last visit to look at him early in the morning of the 21st around 4:30, did you ever see him again?

A Never seen him again, no sir.

Q The last time you saw him was 4:30 in the morning; state whether or not he was able to walk around and talk?

A He was. I called him, woke him up and he got up and come to the door. I asked him how he was doing and he said "all right but I've got a little headache".

Q Is there anything else that you know about, that I have omitted asking you about, that you'd like to state?

A How was that now?

Q Have I given you the opportunity to tell everything you know about the charges that are made against you in this case?

A The charges that are being made against us, the way I understand it, is that we allowed somebody to go in and beat up the prisoner in the jail or take him out of the jail would be all false because we could not allow a thing like that as sworn officers.

Q Did you do that?

A No sir.

Q Did you beat him up?

A Never hit him in my life.

MR. BLOCH: The witness is with you.

THE COURT: Before you begin the cross-examination of the witness, everybody engaged in the trial of this case will take a recess; and while you're in

The Court:

recess, the Court will go ahead with some other business in connection with another matter which was mentioned on yesterday.

Mr. Marshal, take this jury to the jury-room first and then I will give instructions further.

(JURY WITHDRAWN TO JURY ROOM)

Now, at this time I request that all spectators in the courtroom and all parties and counsel involved in the trial of this case withdraw from the courtroom for just a few minutes, so that we can get a large number of jurors and other lawyers in here to strike a jury, and then, as soon as we have finished that, we'll call you back in. You can just leave all of your documents and papers.

(JURY SELECTED IN CIVIL CASE: Fix v. Hurt, CA-517)

RECESS: 10:50 AM to 11:00 AM FEB. 7, 1963

THE COURT: Allright, Mr. Hollowell, now before you begin the examination of this witness, Mr. Hollowell, I ask you to recall that this witness was cross-examined by you rather extensively earlier in the trial; and, in order to save time, I ask you not to retrace things that have already been gone over simply for the purpose of repetition; in other words, save all the time possible.

MR. HOLLOWELL: Yes sir, I shall certainly be happy to conform, Your Honor.

RE CROSS EXAMINATION

BY MR. HOLLOWELL:

Q When you say you took out after the car that Odell Brazier was driving, how far did you have to go?

A A couple of hundred yards maybe.

Q You recollect that you said you took out immediately behind him and that your siren was turned on and that he stopped immediately?

A He stopped as soon as I got up close enough for him to hear that siren, he pulled over to the right and stopped.

Q You can hear a siren all over town?

A Well, sometimes an older person like that, if their glasses happen to be run up, they can't.

Q But you didn't know that?

A No.

Q You didn't know when he heard it?

A I don't know when he did but he did pull over and stop.

Q He was only going about 25 or 30 miles an hour?

A That's right; he wasn't speeding.

Q Where did you first see Mr. Herring?

A Mr. who?

Q Herring?

A Herrington?

Q Yes?

A When he stopped and come up to the police car.

Q What were you doing at that time?

A Trying to get Odell Brazier to get in the car.

Q He was already out of his car and had been taken over to the police car?

A That's right.

Q From which direction did Mr. Herrington come?

A I don't remember which way, whether he passed me or whether he was coming from the other way; I don't remember.

Q Had you hit Brazier at that time?

A I don't remember whether I had hit him at that time or it was after; I don't remember.

Q You don't remember at all?

A I don't remember whether it was before Herrington stopped or after he stopped.

Q Did Herrington put his hands on him, on Odell Brazier?

A I don't remember whether he did or not. I don't think he did.

~~Q You don't believe he did?~~

A I don't think so.

Q Now, where was he standing when you say James Brazier came up?

A At the back door, the left back door of the police

car. I had just shut the door, and Mr. Herrington spoke and said "Look out, Mac", and I turned; and that's when I saw James coming across.

Q Now, this is the first time that you have ever said, either on deposition or under cross-examination or under direct examination except a few moments ago, that Mr. Herrington, said "Look out", isn't that true?

A I don't remember whether I've ever said it before or not.

Q Do you deny that this is the first time that you've said it?

A I don't deny it.

Q Why didn't you indicate that before?

A Maybe I didn't think about it.

Q Well, you say maybe you didn't think about it; I ask you, why didn't you?

A Well, if I had thought about it, I would have told it.

Q Isn't it true that at the time of the deposition, you were asked whether or not there was anything else pertaining to this -

A I don't remember.

Q Just a moment - I say, isn't it true that on deposition you were asked whether or not there was any other matter relating to the matter of the arrest of Odell

Brazier or relating to the matter of the situation involving James Brazier?

A I don't remember whether I was asked that question or not.

Q I will ask you whether or not, at the deposition which has been referred to earlier, you were asked: "And that's everything that happened as of that time"?

A I don't remember anything about that.

Q Well, I haven't finished yet. My question is, "Isn't it true that on the deposition you were asked the question, it says "Question: You and Odell? Answer: Me and Odell going back to town. Question: And that's everything that happened as of that time?" The answer: "Yes". Do you remember that question and that answer?

A I don't remember. I've been asked so many questions until I don't remember which one.

Q Do you deny that you were asked that question?

A I don't deny.

Q Do you deny that you made that answer?

A I don't deny it.

Q Well, which is the truth?

A Well, I could have made that at that time. I don't remember whether I did or not, but what I'm telling you now is the truth.

Q This is the truth that you're saying now?

A. Yes.

Q And that which you said at that time, that is the time of the deposition, was not the truth?

A I don't remember. No, I don't say it wasn't the truth. I don't remember saying that.

Q These liquor bottles that you say you took off of Odell Brazier, what did you do with them?

A Put them in the office.

Q Where are they now?

A I wouldn't know.

Q What did you ultimately do with them?

A Do what?

Q What did you ultimately do with them?

A I just put them in the office. I don't know what became of them. There wasn't enough to charge him with possessing untaxpaid whiskey; so, I just put it there in the office and let it go. I don't --

Q Excuse me - was it untaxpaid whiskey?

A It was shine whiskey.

Q Well, don't you know that you testified on direct that it was only about an inch and a half out of each bottle?

A That's right.

Q And these were half-pint bottles?

A Half pint bottles about that deep (indicating) in each bottle.

Q. And this was not enough to charge him with the possession of untaxpaid whiskey?

A I never charge a man, I haven't, for untaxpaid whiskey, without he had at least a half a pint or more.

Q Well, he had two half pints with only an inch and a half out?

A Yes. No, I didn't say an inch and a half out. I said about an inch and a half in the bottom of the bottle.

Q About an inch and a half in the bottom of the bottle?

A That's right.

Q Well, actually, if he had one eye-dropper full, that would be enough, would it not?

A Well, I didn't charge him for it anyway.

Q Why?

A I didn't want to. That was my privilege, to make the charge if I saw fit to and if I didn't, I didn't have to.

Q It is also your privilege and your duty to carry out the law, isn't it?

A I do carry out the law.

Q You didn't carry it out that time, did you?

A I carried it out to the best of my skill and knowledge, but that was my privilege.

Q Now, you indicate that Brazier came over, James Brazier came over, and he said that was his father?

A He said that was his father that I hit.

Q That you hit; all right, and after he said that was his father that you hit, you say that he said "I will get you if I have to get you in the dark", is that what he said?

A: Yeah, he said I was going to get hurt and he would -

Q Well, now -

A - and he would get me if he had to steal me in the dark.

Q Now, don't you know this is the first time in all of the examination that has been, when you have said that he had said -

A I don't know whether it is or not.

Q Just a moment! - that you were going to get hurt?

A I don't remember whether it's the first time or not.

Q Have you ever said that?

A I don't remember whether I have or not.

Q Have you ever told anybody that?

A Oh yeah.

Q Have you ever told anybody that on deposition?

A If I have, I don't remember it.

Q ~~Have you ever said that before in this court?~~

A I don't remember whether I have or not.

Q As a matter of fact, you haven't, have you?

A I wouldn't say I have or that I haven't

Q And isn't it your statement that he said that he

would get you if he had to get you in the dark, if he had to get you in the dark; isn't that what you testified to?

A That's what I just said.

Q Did he lay his hand on you?

A No.

Q Did he lay his hands on his father?

A No.

Q Did he lay his hand on Mr. Herrington?

A No, he did not.

Q Did he say he was going to kill you?

A He said that I was going -

Q Just answer my question: Did he say it?

A No, he didn't say he would kill me.

Q Did he say he was going to hit you?

A He said I was going to get hurt.

Q Did he say he was going to hit you?

A No, he didn't say he was going to hit me.

Q Did he put his hand in his pocket and take out a knife?

A No, he did not.

Q Did he say he was going to cut you?

A He didn't say he was going to cut me.

Q And now, for the first time, you say that he said he was going to hurt you, isn't that right?

A I don't know whether it's the first time or not.

Q Isn't it true that on deposition, the same one to which we referred before, you were asked the question, "He said he was going to get you" and the answer, you said, "That's right". "Question: Did he say what he was going to do? Answer: Well, he said he would get me if he had to get me in the dark"; isn't that what you said on that occasion?

A I don't remember whether that's what I said or not.

Q You don't deny that you said it?

A I don't deny it.

Q Well, wasn't it the truth?

A If I said it, it was the truth.

Q Do you recall having stated, do you recall having stated at the time of your deposition that you had the siren on and stopped him when he came by?

A Say what?

Q This is Odell Brazier?

A ~~I didn't have the siren on when he came by, no;~~
I don't remember saying I had the siren on when he came by.
I wouldn't have had it on when he came by.

Q ~~Don't you recollect that you said that he came by~~
and you turned on the siren and hailed him?

A I taken out behind him and turned on the siren and stopped him.

Q Don't you remember on cross-examination Monday that

you testified at that time that you were parked over in the service station and that you hailed him?

A No, I didn't say I "hailed" him.

Q You didn't say you hailed him?

A No, I didn't.

Q What did you say?

A I said I taken out behind him, turned on the blinker and the siren and he pulled over and stopped; and I stopped behind him.

Q And you stopped right behind him?

A I stopped right behind him.

Q Now, let's take for just a moment - let me ask you this question: Now, what time did you say it was when you made this first visit in the jail - I want to be clear about this -to check on Brazier?

A I don't remember. It was some time after an hour and a half or two hours, something like that, after the doctor had left, after we had put him in the cell.

Q And about what time was that?

A I wouldn't know.

Q Now, what did you do between the first one and the second one, which you said was made after midnight?

A Just routine duty.

Q Were you patrolling around in the area?

A Patrolling around or either walking around on routine

duty.

Q I mean, were you in the vicinity of the courthouse at alltimes?

A Not right in the vicinity of the courthouse at alltimes; no, I couldn't stay around the courthouse all the time.

Q You were patrolling around in town?

A In the town.

Q Was Mr.Cherry with you?

A Practically all the time.

Q And then, the third visit you say you made between 4:00 and 5:00A. M. in the morning; now, tell me what you did between your second visit, which came after midnight, and your third visit?

A Just routine duty.

Q Just routine duty; and that consisted of driving around in the City?

A Either driving around or walking through the alleys or onthe sidewalk.

Q And on each of those occasions you awoke James Brazier?

A Each occasion I went in there, I did.

Q And you went three times?

A To the best of my knowledge.

Q How many of those times was Mr. Cherry with you?

A I don't remember.

Q Would you say that he was with you any of those times?

A I imagine he was; I don't remember.

Q You don't remember?

A I don't remember whether he was with me at all times or one time or two times.

Q Now, I believe you said on direct examination, when Mr. Bloch was asking you the question of whether or not there had been any such brutality as is alleged in the complaint, you said "I wouldn't allow that in my presence"?

A I would not.

Q That is not to say that you wouldn't allow it to go on behind your back, is it?

A If I knew anything about it at all, I would not allow it.

Q Now, you say that Brazier was not taken out of the jail during the night but you really don't know because you weren't there all the time, were you?

A He was not took out of the jail.

Q Were you there all of the time?

A I wasn't there all the time but didn't anybody take Brazier out of jail.

Q You didn't have your eyes on the jail when you were out there patrolling?

A. No, but didn't nobody take him out.

Q And you didn't have your eyes on the jail when you were out there walking, did you?

A I didn't have my eyes on the jail but didn't nobody have a key to get in there.

Q You don't know that they didn't have a key, do you?

A Yes, I know they didn't have a key. The keys was locked up.

Q You don't know but that someone had a key to that place where they were locked up?

A No person is supposed to have a key to that.

Q I didn't say suppose. I say, you don't know, as a matter of fact, that there is no other person that has a key, do you, as a matter of fact?

A As a matter of fact, I know nobody didn't have a key to that safe but an officer.

Q You know that?

A I know that's a fact.

Q Let me see, I know I asked Mr. Cherry, I'm not sure I asked you - where is that exhibit of the Defendant which purports to be a warrant - Did you at any time see Mr. Cherry change pens in the process of writing the warrant?

A I don't remember whether he did or not.

Q I said, did you see him?

A I wasn't looking at Mr. Cherry direct all the time

he was writing that.

Q You don't know, as a matter of fact then, that Mr. Cherry wrote all of this warrant, because you weren't looking, is that right?

A Well, Cherry wrote the warrant.

Q Didn't you say you weren't looking all the time?

A I wasn't looking direct at him all the time he was writing. I wasn't standing over his shoulder watching every word he put down.

Q How long have you been wearing glasses?

A Oh, about, I'd say, 4 years.

Q Do they correct your eyes so that you are able to see for reading purposes, I mean substantially well, I mean very good?

A I can read without them.

Q You're not color-blind, are you?

A I'm not color blind.

Q Are you able to distinguish shades of blue?

A Some of them.

Q Well, let me show you this DEFENDANT'S EXHIBIT No. 1 and ask you do you see any difference between the color of the writing which says "interfering, threatening and interfering"

MR. BLOCH: Start that over again and let me get around here.

____ Q Mr. Hollowell: Let me just ask it again, Mr. Bloch: Do you see any difference in the color of the writing on DEFENDANT'S EXHIBIT #1, where it says "threatening and interfering" as against the words - what is that - "with an arrest"?

A There's a little difference in that.

Q "With an arrest", would you say that "with an arrest" is darker than the rest of the writing that appears in that portion?

A It seems to be.

Q You don't know, as a matter of fact, when the latter three words were written on there, do you?

A It was all put in there at the same time. If they hadn't been in there right, Mr. English wouldn't have never signed it.

MR. HOLLOWELL: We ask that that be stricken as a conclusion, Your Honor.

THE COURT: Allright.

MR. HOLLOWELL: Sir?

THE COURT: Allright, it is stricken.

____ Q Mr. Hollowell: So then, since you didn't look at him all the time, you don't know whether it was all written at the same time or not? Do you?

A I would say it was.

Q You would say it was but you really don't know?

A. Yes, it was put in there all at the same time.

MR. HOLLOWELL: I don't believe there are any further questions for this witness at this time.

THE COURT: Anything further, Mr. Bloch?

MR. BLOCH: No sir.

THE COURT: You may go down.

MR. BLOCH: Your Honor, I offer the warrant in evidence, which has been marked DEFENDANTS' EXHIBIT No. 1.

THE COURT: Any objection, Mr. Hollowell?

MR. HOLLOWELL: Yes sir, we have innumerable objections. We object, Your Honor, No. 1, on the ground that it appears from the face of the instrument that it was not all written at the same time. There is a difference in the texture of the ink -

THE COURT: I have already looked at it.

MR. HOLLOWELL: You've looked at it. That there's a difference in the texture of the ink, as relates to the words which have been entered, "James Brazier, threatening and interfering" and "20th of April, 1958", as against "with an arrest". It is evident, I say patently evident, in my opinion at least, that it was not written with the same pen, and there is nothing to indicate that it was written at the same time by the same person, or that it was there as of the time that it

Mr. Hollowell:

was inscribed, because the witness has testified that he did not look at the writing all of the time, and also that he did not read it; on cross examination he testified that he did not read it; but he does say that he did sign it; and the signature as it exists we do not deny is his, but there's a difference; the ink is different from that which purports to be, other language which recites that, "with an arrest".

No. 2: The signature of the alleged Justice of Peace has not been identified. There has been no testimony indicating where this instrument has been since the time that it was first issued. If there is, I have no recollection of having heard any such.

On the further ground that the warrant is insufficient, in that the language used says "threatening, interfering with an officer making arrest", without saying that it was a police officer. Therefore, we do not know from the particular language here what the nature of the office was, of the person that is purported to have been interfered with.

Also, on the further ground that under the testimony that has been elicited here, there is no evidence that there has been a crime perpetrated by the person that was alleged to have made the threat.

Mr. Hollowell:

And then, on the further testimony of Mr. Singletary who was the judge, who indicated that there was no charge made; and I submit that that language or that testimony, being as tenuous as it is, plus the discrepancy in the paper which is patent on its face, plus the looseness of the language, I submit that in a warrant the language does not have to be precise, but it certainly has to be sufficiently clear to identify to the person upon whom it is to be served the particular act with which he is charged and give some indication of the person that he is alleged to have interfered with.

And on those grounds, Your Honor, I would ask that it be not admitted into evidence.

THE COURT.: All right, the objection is overruled and the exhibit is admitted in evidence.

All right, who do you have next, Mr. Bloch.

MR. ELTON HERRINGTON

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

DIRECT EXAMINATION

BY MR. COLLIER:

Q Would you state your name for the jury, please sir?

A Elton Herrington.

Q Mr. Herrington, have you been sworn?

A I was the first day.

Q You have been sworn?

A The first day.

Q Mr. Herrington, did you have the occasion to see Officer McDonald on the day of April 20, 1958?

A Yes sir.

Q Would you relate to the jury under what circumstances you saw him?

A May I ask you one question?

Q Yes sir?

A Under what, you mean under what circumstances, what he was doing at the time?

Q Tell us what you saw and what took place at that time?

A At the time I saw Mr. McDonald, I was coming down the road - well, let me start with the beginning, before I saw him. I was pulling into the highway going north. This colored man liked to have run into me. I go on behind him and Mr. McDonald stopped him and was having trouble putting him in the car between their cars; and I pulled down below and stopped and went back and helped McDonald put him in the police car.

Then, after I put him in, helped put him in the police car, before the time I put him in the police car, his boy come up and threatened McDonald.

MR. HOLLOWELL: We object to that language, Your Honor, as being a conclusion.

THE COURT: Well, he can - yes, just the simple statement is a conclusion. He, of course, can recite what was said and what was done, but any conclusion by him as to whether it was a threat or what not would be for the jury.

____Q Mr. Collier: Go ahead, please, Mr. Herrington and tell the jury what James Brazier said to Mr. McDonald?

A He said "You're going to get hurt and I'll get you." And after we put, after we got the old man in the police car and he taken him, Mr. McDonald taken the old man and went back towards town, and I got in my car and went on north; and from then on, as far as what happened to the boy and McDonald, I don't know what happened from then on.

Q Now, Mr. Herrington, you said in the beginning of your statement that someone almost hit you previously to that?

A The old man.

Q This same one?

A The same one. That's the reason I was so cautious to stop and help him.

Q Do you know it was the same one?

A I know it was because he liked to have run over me; otherwise, I was pulling out into Main Street in Dawson and he started to turn in; and when he started to turn in,

in place of making his turn to where I was turning, he whipped right out in front of me, and went on down the street and I followed him on north, going north; and I saw McDonald had stopped him; and when McDonald had stopped him, I saw he was having trouble with him; and when he was having trouble, why I don't know but just my - I generally do that when I see somebody, an officer in trouble. I just got out and went back to help him.

Q Did you observe Mr. McDonald when he first began his chase on Brazier? Did you see him pull up behind him and stop him?

A When he first pulled up behind him, he pulled out from the filling station and behind him at the S. & W., what is now the Chevrolet place. It was S. & W. filling station at that time.

Q During the time that Mr. McDonald was putting him in the car, did you say you assisted Mr. McDonald?

A Yes.

Q Were you very close to Odell Brazier?

A Odell? Well, I was side of the car where he was at.

Q Were you close enough to observe whether or not, in your opinion, he had been drinking?

A He was drinking mighty heavy.

Q It is your opinion that he was drinking heavily?

A Yes, because he turned out driving the car on the

road, down the road below me; and from the way he liked to have run into me on down to where he was stopped, he was weaving across the road.

MR. HOLLOWELL: If it please the Court, I object to that as being a conclusion of the pleader and not sufficient foundation laid in order to make that conclusion, nor has this witness been qualified, I respectfully suggest, to be able to draw that kind of a conclusion.

MR. COLLIER: I think, Your Honor, a person who observes a situation like this is competent to testify to what he observed.

MR. HOLLOWELL: He's competent to testify what he observes but he's not competent to testify and draw this kind of a conclusion.

THE COURT: Well, the question is simply whether he thinks he had been drinking. As I understand it, that's the question, whether he thinks he had been drinking?

MR. COLLIER: Yes sir.

THE COURT: Well, it doesn't take a medical expert to have an opinion about something that common, and I overrule the objection. Of course, on cross examination, I will allow you to go into it fully, as to why he thinks he was drinking, just as was done in the case of the previous witness who was on the stand who made

The Court:

a similar observation. In other words, as to why he thinks the man was drinking, I'll let you go into that fully; and the jury can judge by what the witness says as to whether it is a proper conclusion or not.

Q Mr. Collier: Mr. Herrington, where did all of this arrest and placing Odell in the car take place?

A It taken place on the right-hand side of the road, just below where the used car lot, at the slope of the hill below the used Stevens Chevrolet car lot.

Q Are you familiar down where the Old Parrott ^R Road is?

A Yes sir.

Q Had he gone down to the Old Parrott Road?

A No.

Q Did Odell drive his car on to the Old Parrott Road?

A No.

Q Mr. Herrington, where do you live now, sir?

A I live in Dawson, on College Street.

Q What do you do, sir?

A I work at the Gulliston (Karaghusian) Carpet factory in Albany.

Q How long have you been a resident of Dawson?

A All my life, Terrell County and Dawson.

THE REPORTER: Did you say Gulliston?

The Witness: It's Gulliston or Karaghusian either one.

Q Mr. Collier: At the time that you say you saw James Brazier approach the car, did you have the occasion to see one Willie Roberts in James Brazier's presence or in his car?

MR. HOLLOWELL: Now, if it please the Court, he's leading the witness.

THE COURT: Yes, that's leading him. Ask him if he saw anybody-

A The Witness: I could not say.

THE COURT: Ask him if he saw anybody and, if so, who?

Q Mr. Collier: Did you see anyone?

A James Brazier, the boy, is the only one I remember seeing at the place, besides McDonald and the old man, Odell.

Q Did you hear any statement made, other than the ones that you have related here?

A I don't think so. At the present, I don't think I did. I don't remember any off-hand.

Q Did you make a remark to Officer McDonald?

A At the present, I can't - it's not fresh on my memory if I did.

MR. COLLIER: He's with you.

THE COURT: Alright, you may cross-examine, Mr. Hollowell.

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q Mr. Herrington, how do you know that the 20th of April was on a Sunday?

A How do I know that the 20th of April was on Sunday?

Q Yes?

A Because I know it was Sunday.

Q You know it was on Sunday?

A Yes, I know it was Sunday.

Q Well, how do you recollect that it was the 20th of April?

A I wouldn't say it was the 20th of April because I don't remember the dates but I know it was Sunday the day that it happened.

Q You only know that it was the 20th - let's see, I'm sorry - you only know that it was on Sunday?

A I know it was on Sunday.

Q But you wouldn't be able to say what Sunday it was?

A I wouldn't say what date it was.

A Q You wouldn't even say what year it was of your own knowledge? . . . Did you say "No"?

A No, I wouldn't say what year but I know when it happened.

Q You just remember that it did happen in Dawson on a Sunday? Are you shaking your head "yes"?

A Yes, I did.

Q When did it first come to your attention that you were to come to this court?

A Say that again?

Q When did you first know that you were to come to this court?

A Last week.

Q Is that the first time you had discussed it with Mr. McDonald or Mr. Cherry?

A I didn't discuss it with them then.

Q You didn't discuss it with them then?

A I did not discuss it with them then.

Q Have you ever discussed it with them since the time that you say that this happened?

A No.

Q And the time that you got a subpoena?

A No.

Q Did you receive a subpoena?

A Yeah.

Q Do you know who subpoenaed you?

A Yeah.

Q Who subpoenaed you?

A The policemen in Dawson.

Q What policemen?

A Let me get it (getting subpoena out of pocket) . .
Fred Metz, Mr. Fred Metz.

Q Who?

A Police, Fred Metz.

Q Mr. Fred Metz?

A Mr. Fred Metz.

Q I'm sorry I couldn't hear you for that truck.

Now, who is he?

A He's a policeman in Dawson.

Q He brought it to you?

A He brought it to my house.

Q Do you have it with you?

A Have it with me?

Q Yes?

A Yes.

Q Could I see it?

A (Subpoena handed to counsel) . . .

Q Do you know who the attorneys were that sent it to you? No, there's none listed though, are they?

A I don't think they are.

Q Do you know who signed that?

A Well, it says Mr. Pantone, Mr. Cliff Pantone.

Q Do you know him?

A No.

Q You don't know Mr. Pantone?

A I do not know him.

Q Now Mr. Herrington, where do you work?

Q Now Mr. Herrington, where do you work?

A I work at Gulliston Carpet Factory in Albany, Karagheusian.

Q What did you happen to be doing in Dawson on this occasion?

A On which occasion?

Q On the occasion about which you've testified?

A I was going out riding one Sunday evening.

Q Was anybody with you?

A Nobody with me.

Q You were just taking a ride?

A Sure.

Q And so, you drove down to Dawson?

A No, I was in Dawson. I left my house and rode up town.

Q I see; you live in Dawson?

A I live in Dawson.

Q But you worked in Albany?

A I work in Albany.

Q Were you working there at that time?

A No.

Q Where were you working at that time?

A W. K. Norton Grocery.

Q Where is Mr. Norton's store?

A It was on Main Street, but he is dead now and he does not have the store.

Q How long had you worked with him?

A How long had I worked with him?

Q Yes?

A Well, I couldn't exactly tell you because I worked there off and on all my life.

Q Now, you say you were going in what direction?

A I come in east and was going north.

Q You come in from the east?

A From in the east.

Q On what street?

A Now, the name of the street I don't remember but I know it was by the depot, coming in by the depot going in to Main Street in Dawson.

Q Is the depot down in town generally?

A The depot is at the railroad.

Q I mean, is that generally in town?

A It's at the edge of town where you go up into the main part of town.

Q And you've lived at Dawson how long?

A I've lived in Terrell County all my life.

Q And you don't know what street runs by the depot?

A Well, I don't remember it.

Q Do you still live in Dawson?

A Sure I do.

Q And you don't know what street runs by the depot?

A I don't practice remembering all the streets.

Q Have you frequented the depot?

A How is that?

Q Have you frequented the depot?

THE COURT: That means, have you gone there often?

A The Witness: Well, you have to go there when you go by Main Street the way I go in.

Q Mr. Hollowell: That's the way you go in, isn't it?

A By the oil mill, if I'm going that way.

Q And how old did you say you were?

A I'm 43 years old.

Q And you've lived in Terrell County all of your life?

A Yeah.

Q And you have to pass, that's the only way you can get up and down there?

A No sir, no, it's not the only way I can go in and out of there.

Q Well, that's the way that you normally use, is it not?

A That's the way I was going that day. There's more ways to get to Main Street than one.

Q But you don't even know what street runs past the depot?

A I said I didn't remember.

Q Did you see any other cars along there?

A Sure.

Q Were they going up and down the road normally?

A Normally traveling.

Q Where was Odell Brazier's car when you first saw it?

A Where Odell Brazier's car was when I first saw it?

Q Yes?

A He was coming down Main Street, started, made an effort to turn in there where I was stopped at the intersection.

Q And you were at the intersection of what?

A Of Main Street and the street coming out there by the depot. And I stopped to let the traffic go by and he done as if he was going to turn in there at that intersection.

Q Going to turn in which direction?

A Coming in towards where I was parked, with the traffic to his right.

Q He was going to make a turn to his right?

A Yep.

Q And you were coming out?

A Yep.

Q In other words, and you were going to go which way?

A I was going north.

Q You were going to go north, to your right?

A Yep.

Q And he was going to go to his right?

A He was supposed to but he didn't.

Q Now, where did he go?

A He turned back to his left in front of me and almost run into my car.

Q As if he had changed his mind, is that correct?

A Had something.

Q Well, you know, as a matter of fact, that the traffic courts are full of people who have to go to traffic school and who have to go to traffic court?

A They need to sometimes.

Q Because of illegal driving, don't they? Isn't that true?

A How's that?

Q I say you know that there are hundreds of people every day all over the country, do you not, that go to traffic schools or traffic courts because of illegal driving?

A Yep.

Q None of whom have been drunk, isn't that right, or under the influence? Is that right?

A I couldn't say because I haven't been to one.

Q Have you ever been to traffic court?

A No.

Q Never have?

A No.

Q But you know that a lot of folks do though, don't you?

A I've heard of it but I don't know it.

Q Do you know that 1 out of every 5 persons who drives a car under the statistics are probably going to have to go to traffic court during the course of a year for traffic violation?

A They could do it.

Q For traffic violation?

A They could do it.

Q For violation of the traffic rules?

A They could do it.

Q Beg pardon?

A They could do it.

Q And he continued onup the road?

A Went weaving up the road.

Q How far did he go?

A Until McDonald, Mr. McDonald stopped him.

Q Now, which way was he driving at this time, which way was he driving, what direction was he driving at this time?

A Going north.

Q He was going north too?

A Yep.

Q And you took out behind him?

A Yep.

Q Was that the direction that you had planned to go?

A Yeah.

Q How fast was he going?

A How fast was I going?

Q Yes?

A At a low, moderate speed.

Q How fast was he going?

A His average speed, not very fast, but he was weaving across the road.

Q Where did he weave across the road?

A From the railroad he weaved in toward the used car lot there and back and after that McDonald, Mr. McDonald, had stopped him then.

Q I see. Was that the only point where you saw him weave? You say that's the only place?

A Well, he was weaving back and forth where he weaved in there and like d to have hit me across the railroad back and forth in there.

Q Well, you say he weaved back and forth over at the point right after he crossed the railroad, isn't that right?

A Yeah, he weaved back.

Q And that was the only place where you saw him weave because Mr. McDonald got him right after that, didn't he?

A After he passed there.

Q All right; did you see any other cars going up and down?

A Well, there was passing.

Q Did all of them get past as you passed in the same general way?

A General passing and weaving.

Q You didn't see him bother anybody else?

A That I know of, I didn't.

Q And you were right behind him, weren't you?

A Well, there was cars between us. I don't say I was right bumper to bumper to him because he had time for Mr. McDonald to pull in between us.

Q How many cars were in between?

A I didn't count them.

Q How many do you think there were?

A I wouldn't think on it because I don't know.

Q Excuse me - were you finished?

A Yes.

Q Were there as many as two?

A I said I wouldn't say because I don't know how many was between there.

Q Were there many cars?

A I wouldn't say.

Q Were there a few cars?

A I said there was cars between us.

Q Cars; would you say 2 or more?

A I say there was cars between us; now, how many, I

wouldn't say.

Q How far would you say you were behind him, even with the cars there? 100 feet?

A I don't remember because I wasn't thinking and studying about how far it was until I got down there.

Q Well, when you got down there, how far was it?

A I was even with them when I discovered what was going on.

Q Even with whom?

A Mr. McDonald and -

Q When you discovered what was going on?

A Yeah.

Q Now, how far was Odell Brazier in front of you; that's what I'm trying to get? Was he as far as from you as the distance of this courtroom?

A How far was Odell ahead of me?

Q That's right?

A He pulled out ahead of me and in traffic but I do not remember how many cars and how many was between us and how far it was, until I got down there and saw what was going on.

Q Well, I mean traffic wasn't heavy that day, was it?

A The average speed.

Q Beg pardon?

A The average traffic.

Q Average traffic, and what is the average traffic?

A I wouldn't tell you.

Q You wouldn't know?

A No, I wouldn't know.

Q Maybe 2 or 3 cars every 2 or 3 minutes?

A I did not have a watch to time it and I wouldn't know.

Q Well, you said average traffic?

A Yes.

Q And I'm trying to understand what you mean by "average traffic?"

A Well, average traffic.

Q Well, what is average traffic?

A Well, I don't know. That's been so far I don't remember. Traffic is better, there's more traffic now than there was then and I don't know, don't remember how much traffic was there at that time.

Q Well, what was the average traffic at that time, that you're talking about?

A If I knew, I could tell you but I don't remember.

Q Well, how can you say it was average traffic?

A I said it.

Q You're just saying it was average traffic?

A Yes.

Q But you don't know why?

A No, I don't know why.

Q Now, you could always see Odell Brazier, couldn't you?

A No.

Q You couldn't see him? You were never other than on the same street once you turned right?

A Yes.

Q How many cars did you have to wait for before you turned right?

A I don't remember.

Q Was it more than two? Sir?

A I told you I didn't remember how many cars was between us.

Q Well, I'm trying to find out. You were on this street and you were on the same street he was, isn't that right?

A Yes.

Q And you followed, you didn't wait there after he passed by, you went on at the first opportunity, isn't that correct?

A Yeah.

Q And how far is it from that turn to the point where he was arrested, approximately, sir? Sir?

A Well, I don't remember how many yards it is and I don't remember the feet because I haven't got out and stepped it.

Q Well, in blocks; how many blocks would you say it was?

A In the next block below there.

Q In the next block?

A In the next block, the kind of block it is.

Q Is this a regular city block?

A Yeah, like that block, like it is there.

Q Is it about like this block out here in front of the courthouse from this corner here to our left to the corner here to our right?

A It's more than that, I think.

Q It's a little longer?

A Yes.

Q Would it be maybe half the distance of the next block as to that?

A It might be longer than that.

Q Would it be longer than the two blocks together?

A You mean the next block they was in?

Q Well, you said that it was in the next block?

A Yes, it was in the next block.

Q After you made your turn where Brazier was stopped was in the next block?

A In the next one where the next road turned out.

Q Well, what I'm only trying to get from you, sir, is about how far it is from the point where you turned to

the point where you saw Mr . McDonald arrest Odell Brazier?
Now, I asked you was it the distance, the block about the size of the block in which this building sits, or was it longer than that? I'm just trying to get distance, that's all?

A Well, there's difference in the size blocks and I don't know exactly the size this block is shaped and how that one is shaped; you see, blocks are shaped different.

Q Well, you are about 40-something years old?

A I'm 43 years old.

Q How far do you think the average block is? What do you understand the average distance of a block to be?

A It's according to where it's located.

Q The average city block in Dawson?

A Well, they're shaped different.

Q Well, they all run up and down, don't they?

A Some go cross-ways.

Q You've got some blocks that run cross-ways.

A They're different shape.

Q Well, let's say the blocks that you know along the street that you were on; tell me about what the average length of those blocks are?

A I haven't measured them.

Q Well, can't you estimate, being 43 years old?

A On some things.

Q Can you estimate the distance of a block?

A It would be best to measure it and give you exact.

Q Well, I don't want it exact; I just want your estimation?

A No, you rather have the exact measurements for what you're after.

Q Well, we'll ask you whether or not you have any general idea as to what the length of a block is on the street which you were driving in Dawson on the 20th of April, about how long is it? Do you have any idea?

A Not in feet and inches I don't.

Q How about in yards?

A Well, in yards, I wouldn't say in yards because I wouldn't know exactly what to tell you.

Q Well, I'm not asking you exactly?

THE COURT: He says he can't do it in feet, he says he can't do it in inches, he says he can't do it in yards.

Q Mr. Hollowell: Can you do it in any measurement?

A Well, I would not try to because I do not know.

THE COURT: He says he doesn't know in any other way. Now, Mr. Hollowell, do you think it's really any value now in pursuing that any further, when the witness obviously cannot give you an estimate? Do you think it is of any value.

MR. HOLLOWELL: I was trying to make it as easy for the witness as I could, Your Honor, to put it in some

Mr. Hollowell:

kind of frame of reference. That's all I wanted, to get some kind of frame of reference to know where he was; and so, any frame of reference which he might have would be satisfactory. I'm just trying to get some frame of reference. He says he's worked at a store and says he's 43 years old.

THE COURT: Well, let me ask him a question: Mr. Witness, can you in any measurement of any kind or any relation of any kind, can you give counsel the estimate of the distance that he is asking you about? If you can, why, give him the estimate. If you cannot, say "I cannot". Now, which is your answer to the question? Can you give him the estimate that he wants?

A The Witness: Well, as far as feet and inches, I would not say, about how far it is; but now getting down to the actual mileage and inches and all, I would rather not tell him how far. I know where it happened and I know how far it is but to get out and give him the inches and feet and mileage -- I know where it happened.

THE COURT: You don't feel you're in position to give an estimate of the distance?

The Witness: And in the block it happened, about where it happened, but to get down and measure it off, in foot and inches and all without measuring it, I can't.

____ Q Mr. Hollowell: Very well, I will pursue another line, Your Honor. You continued to drive on immediately after making your right turn, didn't you?

A Sure did.

Q And Brazier continued to drive on, did he not?

A Yeah.

Q That is Odell Brazier?

A That's right.

Q Until he was stopped by the officer?

A Yep.

Q Now, did you see the officer in his stopped position?

A See the officer in what position? You mean before he got out after Brazier?

Q Yes?

A He was stopped at the filling station.

Q Was he parked?

A Yeah, he was parked.

Q Did you see him when he came out?

A Yeah.

Q How did he come out, by foot or in the car?

A In the car.

Q Did he get in immediately behind Brazier?

A The best I remember, he did.

Q Did he turn on his siren?

A No.

Q Did he turn on his lights?

A I couldn't tell you because I wasn't that close to him.

Q I see, but he did turn on - he did not turn on his siren?

A I did not hear it.

Q And you followed, you never did stop your car until you got abreast of where he was?

A Below where he was at.

Q Even had passed him?

A I had passed him.

Q How far past had you gone?

A I would be several car lengths.

Q Beyond?

A Beyond there.

Q That's beyond the place where he and Brazier were stopped?

A Where him and Brazier was stopped.

Q This is Odell Brazier we're talking about?

A Yeah, Odell, the old man.

Q Did you see Officer McDonald stop Brazier?

A They was stopped at the car at the time.

Q Where was the officer's car?

A It was behind his.

Q Was Mr. McDonald on the ground?

A Yes.

Q Was he over at the car of Odell Brazier?

A Yeah.

Q He was at Odell Brazier's car?

A Yes, trying to get him out of the car.

Q Trying to get him out of the car; what did he do to try to get him out of the car?

A Had the door open and trying to get him out of Odell's car to take him back to his car.

Q In other words, he was trying to pull him on out, so he could put him in his car, is that correct?

A He was trying to get him out of his car.

Q I mean, did he have his hands on him?

A Well, at the present I couldn't tell because I drove on by.

Q You drove on by?

A Yes.

Q Well, you saw what you saw?

A Yes, I saw that.

A Q And you say he was trying to get him out of the car?

A Yes.

Q Well, how do you know he was trying to get him out of the car?

A I presume he was.

Q Well, why did you presume that?

A The way things looked.

Q Well, how did they look?

A He had the door open.

Q All right, the door was open?

A Yes.

Q Allright, one opens doors for many purposes?

A Sure.

Q What was he doing? I'm talking about Mr. McDonald;
what was he doing?

A I have told you.

Q I mean, you haven't told us anything; what was he
doing, if you know?

A He was trying to get him out.

Q In what way?

A I couldn't tell you.

Q Then, you don't know that he was trying to get him
out?

A I must have.

Q Well, tell me how?

A He had the door open.

Q Allright, he had the door open?

A And then, when I come back, he had got him out of
the car and started back to the police car.

Q And had started back to the police car?

A Yes, trying to get him back to the police car.

Q Trying to get him back to the police car?

A Yeah.

Q All right, now what did he do?

A What did who do?

Q What did Mr. McDonald do? Did he take him by the arm and start back there?

A Taken him by his arm; yeah he had him by his arm.

Q By which arm?

A I wouldn't tell you.

Q The right or left arm?

A I wouldn't tell you.

Q Did Odell Brazier have his glasses on?

A Have his glasses on?

Q Yes?

A I don't remember.

Q Did Odell Brazier have a knot on his head at that time when you came up?

A I don't remember.

~~Q You don't remember?~~

A Whether he did or not.

Q You don't know?

A No.

Q Did you see Mr. McDonald hit Odell Brazier?

A Did I see him hit him?

Q Yes; you didn't see him hit him, did you?

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

Q You don't know whether you did or not?

A I don't think I did.

Q You don't think you did?

A No.

Q He had already been hit when you got there?

A No.

Q He had not?

A No.

Q And you don't remember seeing him hit at all while you were there, isn't that right? Do you? You just said you didn't and that's the truth, isn't it?

A I don't remember seeing him hit him.

Q Alright, and you would have seen him if he did, in fact, wouldn't you?

A Not necessarily.

Q I mean, after you got up there?

A Not necessarily.

Q After you got up there?

A Not necessarily.

Q Not necessarily?

A Not necessarily.

Q I see; alright, and when you came up, then what did you do?

A I walked up and asked Mac could I help him.

Q Why did you want to help him? Are you a police officer?

A No.

Q Why did you come back in the first place? The man didn't hurt you, did he?

A No, but he liked to have run over me.

Q He liked to have run over your car?

A Yeah.

Q He didn't hit your car?

A No, he didn't hit me.

Q Did he?

A No, he didn't hit me.

Q And that's not the first time that anybody has hit you either, is it?

A Like that, it was.

Q The first time?

A Like that it was.

Q You've never been in an accident?

A No.

Q Never in your life?

A No, no.

Q How long have you been driving a car?

A Since I've been old enough to.

Q And how old were you when you got so you were old enough to drive a car?

A I don't remember.

Q You don't remember?

A Because I've been driving ever since we've had a car and actually I don't remember the first time I started driving one. I drove my mother's and then before I could take the car off myself.

Q And you caught hold of the man by which arm?

A I don't know as I caught hold to either one of them.

Q Well, don't you know you said you helped put him in the car?

A I was up there.

Q You were up there; did you or did you not help put him in the car?

A I was at the car around where it was going on.

Q Did you help put him in?

A Well, I opened the doors.

Q All right, what else did you do?

A What else did I do?

Q Yes?

A I was at the time there and what did I do, I was around the car and I got the handcuffs out of the pocket of the car and handed to Mr. McDonald to put on him.

Q Did he send you to get them?

A Yes.

Q And you went and got them out of his car; where in his car?

A Inthe pocket of the police car.

Q Whereabouts?

A In the pocket, the police car.

Q When you say the "pocket", you mean the glove compartment?

A Yeah, the glove compartment.

Q And you brought them back and gave them to him?

A Yeah.

Q And he put them on him?

A Yeah.

Q Would you be able to identify or to describe the particular -

A Pistol-grip handcuffs.

Q They were pistol-grip?

A Yes.

Q How do you know they were pistol-grip?

A They was shaped that way.

Q How are they shaped?

A Like a pistol with a cuff on the end of it.

Q What on the end of it?

A A hand-cuff, with a cuff on the end of it.

Q Did he put it on him?

A At the time he did.

Q And then, what did he do?

A At that time Brazier's boy come up and threatened McDonald, and told Mr. McDonald -

MR. HOLLOWELL: Well, I object to the language "threatened McDonald", Your Honor, and ask that it be stricken.

THE COURT: Well, we've been through that before.

MR. HOLLOWELL: I mean, it's going into the record.

THE COURT: Well, it's stricken, the word "threatened" is stricken.

A The Witness: Well, he come up and told Mr. McDonald, "You're going to get hurt."

Q Mr. Hollowell: He didn't say how?

A He said "I'll get you".

Q He didn't say how he was going to get hurt?

A He didn't say how he was going to get hurt or -

Q And he didn't say when he was going to get hurt?

A No, he didn't say when he was going to get hurt.

Q He didn't put his hands on him?

A No.

Q He didn't have a gun with him?

A I didn't see it.

Q He didn't have a knife with him?

A I didn't see it.

Q He didn't say he was going to knife him?

A He didn't say it.

Q He didn't say he was going to shoot him?

A No.

Q He didn't say he was going to do anything to him, did he?

A He said he was going to get him.

THE COURT: Just a minute, let him answer the question.

Q Mr. Hollowell: Allright, go ahead?

A He said "you're going to get hurt".

Q He didn't say -

THE COURT: Just a minute!

MR.HOLLOWELL: Well, he just finished.

THE COURT: You cut him off. He said what now? You say exactly what he said?

A The Witness: He said "You're going to get hurt and I'll get you."

Q Mr.Hollowell: He said, "You're going to get hurt and I'll get you"?

A Yeah.

Q He didn't say that he was going to hurt him, did he?

A That's about as good, to say "you're going to get hurt and I'll get you." I don't know much better than that.

Q I'll ask you whether he said that he was going to hurt him, yes or no? Yes or no?

A He said "I'll get you."

MR. HOLLOWELL: If it please the Court, I'll ask

Mr. Hollowell:

the Court to direct the witness to give a categorical answer and then explain it.

THE COURT: Well, I think it's obvious. Of course, if you want to insist on it, we'll have him give a categorical answer; but he's stated specifically what was said. Now, having stated specifically what was said, what counsel wants you to do is to say yes or no to whether he said something else which is different from what you said. So, go ahead and repeat it, counsel.

Q Mr. Hollowell: The question is, did you hear Brazier say to Mr. McDonald that "I'm going to hurt you"? You did not, did you? Yes or no?

THE COURT: In other words, Mr. Witness, what counsel is asking you, were those specific words stated, did he say "I'm going to hurt you"? Did he use those specific words?

A The Witness: I would presume that's what he was talking about.

THE COURT: Well, that's not the question. The question is, did he use the specific words that counsel has just used, "I'm going to hurt you"?

A The Witness: Yes.

Q Mr. Hollowell: He used those words?

q A Yes.

Q That's what he said?

A Yes.

Q Well, how do you account for the fact that you just said a few minutes ago that he said "You're going to get hurt"? Isn't that what you said?

A Yeah.

Q So, he said both, is that right?

A Yeah.

Q He said both things?

A Yeah.

Q Now, what else did he say?

A What else did he say?

Q Yes?

A Well, that was enough, wasn't it?

Q I'm asking you, what else did he say, if anything?

A I didn't hear nothing else.

Q You didn't hear anything else?

A No.

Q Have you ever told anybody else that you heard him say that "I'm going to hurt you"?

A Well, I hadn't put it that point blank question, and brought it out to that decimal point and brought it down like that.

Q Now, you know that you have a contradiction, don't you, that you have said one thing and at another time you've

said another thing: Now, what did he say?

A I have told you.

Q You've told me; he said both?

A Yeah.

Q Did he say it one time after another?

A He said it all in one sentence.

Q He said it all in one sentence?

A He said "You're going to get hurt and I'll get you."

Q Now, is that what he actually said?

A He said that.

Q He didn't say anything about "in the dark" did he?

A He didn't place no special place.

Q And he didn't place any special time?

A The truth about it, I thought McDonald was going to have to get him to keep him off of him at that time.

MR. HOLLOWELL: May it please the Court, we object to what he thought and we ask that it be stricken.

~~THE COURT: It is stricken.~~

Q Mr. Hollowell: Are you in the habit of coming to the aid of police officers ?

A When it becomes necessary, whenever I see one of them around.

Q Well, at the time that you passed this officer doing nothing but standing there at the door and the driver sitting in the car, isn't that correct?

A I haven't been in the habit of being run over before one was stopped either.

Q You're not answering my question: Isn't it true that all you saw was that the man, Odell Brazier, was sitting in his car and Mr. McDonald was standing on the outside of Brazier's car with the door open; that was all you saw when you passed, isn't that right? Is that right?

A When I passed?

Q When you passed his car?

A I saw Brazier sitting there under the steering wheel of his car.

Q Right, and you saw Mr. McDonald standing on the ground -

A He was at the car.

Q Is that right?

A He was at the car, the door.

Q Is that right?

A That's what I told you.

Q Now, what about that situation, that caused you to think that the officer needed your presence to assist him in making the arrest?

A From what happened back up the road.

Q Well, what was it that caused you to think that the officer could not perform his function?

A I didn't know whether he could or not but that's what I stopped for to see, with what had happened back up the road.

Q I see. You stopped to help him arrest this man, is that right?

A Yes, if it was necessary.

Q And you say that you always, I think your language was, you generally do that?

A I do.

Q You generally come back and try to help some officer?

A You can ask any officer in -

Q Excuse me?

A You can ask any officer.

THE REPORTER: I cannot report counsel and the witness at the same time.

Q Mr. Hollowell: That's right. Now, go ahead; you can do what?

A You can ask the officers there in town if I don't.

Q This is what you usually do?

A If they --

Q Have you ever been a police officer?

A No.

Q You know all of the officers on the police force, don't you?

A Most of the time I do.

Q And you've been with them from time to time when they make arrests?

A When they made records?

Q When they made arrests?

A No.

Q I mean, you say you generally go and help them arrest folks?

A At times I have.

Q Yes, voluntarily?

A Yeah.

Q Sometimes you go with them on pick-ups, I mean at night, when you have nothing to do?

A No, not at night.

Q Well, in the day time, when you have nothing to do?

A Well, I don't ever be that way. I always stay busy.

Q I see; well, you have time to stop to help them make arrests?

A If it becomes necessary.

Q And you have done this; how many times would you say this has been done; how many times over this period of years?

A Well, not too many but at times when it become necessary, I have.

Q Well, about how many? About how many?

A About how many?

Q Yes, roughly?

A Some 8 or 10 times.

Q And these are occasions - Had the officers on these

8 or 10 times asked you?

A No.

Q You volunteered?

A Yes, when it come necessary, just like this time here did.

Q And these officers would be able to verify that, wouldn't they? They could say that you in fact have done this?

A I feel like they could.

Q And you feel like they would if you asked them?

A Well, I think I wouldn't have to ask them.

Q You think they would volunteer that?

A I think you could ask them and they would.

Q And you think they would say the same thing?

A And they would say the same thing.

Q Now, have you told me everything that you remember about the incident from the time that you saw Odell Brazier pass?

A As necessary.

Q Just a moment, sir, I haven't finished the question. I say, have you told me everything that you remember about the incident on a Sunday, on a date and a year that you don't remember?

A I said I wouldn't try to remember it.

Q When you saw Odell Brazier go past you and you

followed him until the time that he was apprehended, and everything from that time until the time that Odell Brazier was secure in Mr. McDonald's car and had taken off for the police station; is that right? You've told me everything that you remember about it?

A I think so.

Q Well, I want you to think just a second and see if there is anything that you haven't told us? Is there anything that you haven't told about what happened at Odell Brazier's car after you came up? Is there anything at all?

A Well, the boy was drunk, drinking, drinking heavy. Odell's boy was drinking heavy when he come up.

Q How do you know he was driving heavy? You didn't see him drinking, did you?

A No, I didn't see him drinking.

Q You didn't smell anything?

A Well, I didn't have time; things were happening too fast.

Q And you saw him being taken over to the car by Mr. McDonald, didn't you?

A Yeah.

Q And Mr. McDonald had hold to him and then you helped put him in the car, you said, isn't that right?

A Yeah, I was at the car when he was putting him in.

Q You were at the car where he was putting him in.

And Mr. McDonald pushed him on in there?

A Yeah, and he kicked McDonald, Mr. McDonald when he was putting him in the car.

Q I see, and you saw that?

THE COURT: What was that?

A The Witness: I said the old man kicked Mr. McDonald when he was putting him in the car.

THE COURT: Kicked him?

A The Witness: Yes sir.

Q Mr. Hollowell: Where were you at that time?

A Side of the car.

Q Outside of the car?

A Yes.

Q Where outside of the car?

A On the ground.

Q I mean, where in relationship to the car? Were you on the driver's side or were you on the other side?

A On the driver's side.

Q On the driver's side; how did he kick him?

A With his foot.

Q Which foot?

A I didn't count the feet.

Q Where did he kick him?

A In the stomach.

Q Whereabouts in his stomach?

A I wasn't - it wasn't my stomach and I couldn't tell you where abouts but it was in his stomach.

Q You were on the driver's side?

A Yeah, we was all on the driver's side.

Q All on the driver's side?

A Yes.

Q Were you to the front or the rear of the car?

A I was on the side, on the front side and he was putting him in the back seat.

Q You were on the front side?

A I was at the side where he was putting him in the back seat.

Q Well, you said you helped him put him in?

A I said I was at the car where he was putting him in.

Q Well, didn't you help him? You said you helped put him in?

A I got the handcuffs out.

Q Then, you opened the door, didn't you?

A Yes.

Q And then, after you opened the door you stood back?

A I was holding the door for him.

Q You were holding the door for him?

A Yeah.

Q And then, you went and got the handcuffs after that?

A At the time, in the meantime.

Q In the meantime, well, what were they doing in the meantime?

A They was putting - he was holding him and trying to put him in the back of the car.

Q Wasn't he already in the back of the car?

A No, he hadn't ever got him in there.

Q He never had gotten him in there?

A He got him in there and he kicked back out.

Q And he kicked back out, how did he kick back out?

A He come back out; whether he kicked back out or pulled back out or what, he got back out; and then he put him in there again.

Q You don't know whether he fell out or not, do you?

A I wouldn't swear he fell out or he jumped out.

Q He jumped out?

A I said I wouldn't swear whether he fell out or he jumped out. He was out.

Q You don't know?

A No.

Q Then, after that - now, this is all you saw at any time ?

A As far as I remember right off-hand it is.

Q This is everything now?

A At the present it is.

Q Think again now; was there anything else? . . . Sir?

A I don't believe right now there was anything else.

Q Do you think there will be something later?

A I don't think so; there might and might not.

I don't remember fresh on my mind right now that there is.

Q Where was Mr. McDonald at the time that you say Odell kicked him?

A He was on the ground, side the car.

Q You mean standing on the ground?

A Yeah.

Q And he was standing on the ground at all times, was he not?

A Who?

Q Mr. McDonald?

A He was when I saw him. He was on the ground.

Q Standing on the ground?

A Yes.

Q And he was at all times standing on the ground?

A Except when he got in the car to leave.

Q He never did fall down?

A Who?

Q Mr. McDonald?

A I didn't see him if he did.

Q Do you remember how he was dressed?

A Who?

Q Mr. McDonald?

A In his uniform.

Q With or without a shirt; I mean with or without a coat?

A I assume he had a shirt on.

Q A coat?

A A coat? I wouldn't say.

Q You wouldn't say?

A No.

Q Do you know what color his coat and his shirt were?

A I wouldn't say.

Q You don't remember?

A No.

Q But he was standing at all times?

A Yes.

Q He was never on the ground, he was never on the ground; I mean other than standing on the ground?

A Not as I know of.

REDIRECT EXAMINATION

BY MR. COLLIER:

Q Did you see Odell kick Officer McDonald?

A Yes.

Q What sort of blow was it?

A Well now, I tell you the truth, how hard it was I couldn't say, but he kicked him in his stomach. Now, I would say, as I told him, I wouldn't say how hard or where he

hit him because he kicked him.

Q Did he kick him off of his feet?

A Well, he jumped back. Now, whether he kicked him off of his feet or whether he didn't; but seemed like it was a mighty blow because he moved back when he kicked him.

Q Now, what day was this, you say?

A It was on Sunday.

Q Have you ever seen Officer McDonald arrest Odell on any other Sunday?

A No, I haven't.

MR. HOLLOWELL: If it please the Court, whether he had been seen arrested any other Sunday would not be applicable here.

THE COURT: Well, he said he hadn't; never saw him arrested any other Sunday. All right, you may go down.

RE CROSS EXAMINATION

BY MR. HOLLOWELL:

Q One other question, sir: What you really saw was Odell kick at Mr. McDonald because he jumped back, as you say, didn't he, and he kicked at the stomach area, isn't that right?

A He kicked him.

Q Did you see the foot in the stomach or in the direction of the stomach?

A I wouldn't say - he kicked him in the stomach.

Q Did you see his foot in his stomach?

A He moved it back.

Q He moved it back?

A He moved his foot back when he kicked him.

Q Well, I mean, didn't you say that Mr. McDonald jumped back?

A I didn't say he jumped back.

Q Didn't you say he jumped back?

A I said he was back. Now, whether he kicked him - he kicked him back, I reckon.

Q Don't you know that you just testified to the question that was just asked you by Mr. Collier, that Mr. McDonald jumped back? Don't you know you said that?

A He jumped back to keep him from kicking him any more, I reckon.

Q You reckon?

A The reason he jumped back; he had done kicked him a time and I reckon he jumped back further to keep him from kicking him any more.

Q What kind of shoes did he have on, do you know?

A Police shoes, I imagine.

Q No, I mean Odell?

A I don't know what he had on.

Q You don't know what he had on?

A No.

(Witness excused)