

VOLUME 1 (Pages 1 to 320)

<u>WITNESS or PROCEEDING</u>	<u>DIRECT</u>	<u>CROSS</u>
Preliminary: Qualifying jury panel	1	
Striking jury	12	
Witnesses sworn - sequestered	14	
Opening Statements: Plaintiff	17	
Defendants	20	
<u>PLAINTIFF PROCEEDING</u>		
RANDOLPH E. McDonald, adverse		27
		119
	178	179
	762	775
	996	999
	1019	
B. F. COCHRAN, JR.	100	111
	116	
W. B. CHERRY - adverse		183
		238
	843	678
		864
Dawson Code: Secs. 230-31		235
	542	632
Exhibit P-17, Slap-Jack	241	
DR. JOE M. WEBBER	242	267
	283	
Plaintiff's Exhibits tendered	286	
SHERIFF Z. T. MATTHEWS, adverse		287
	1020	

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 HEARING BEFORE

HONORABLE J. ROBERT ELLIOTT,  
United States District Judge

AT: Americus, Georgia,  
FEBRUARY 4-8, 1963.

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

For Plaintiff: MR. DONALD L. HOLLOWELL,  
859 $\frac{1}{2}$  Hunter St. N. W.,  
Atlanta 14, Georgia.

MR. C. B. KING,  
221 S. Jackson Street,  
P. O. Box 1024, Albany, Ga.

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

MR. JAMES M. COLLIER,  
Bank of Dawson Building,  
P. O. Box 526, Dawson, Ga.

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

R e p o r t e d B y

CLAUDE JOINER, JR.,  
Official Reporter, U. S. Court,  
Middle District of Georgia,  
P. O. Box 94, Macon, Ga.

AMERICUS, GEORGIA,  
9:30 A. M.,  
FEBRUARY 4, 1963:

THE COURT: All right, Mr. Clerk; call a list of the jurors.

(Jurors called by Clerk)

THE COURT: All right, Mr. Marshal, call the names of the absentees now in the hall. . . .

THE MARSHAL: Your Honor, they donot answer in the hall.

THE COURT: All right, take such action as is necessary to bring them into court.

Now, members of the jury panel, I am going to ask if any of you have any legal reason why you should not serve on the jury panel; but before I do that, I want to make this general statement to you. We anticipate, and it is only an anticipation, nothing definite about it, but we anticipate that the business of the court will probably be concluded this week. It's possible that it may not be. It's possible that we may have to run into the first part of next week. If so, we would need your services into the first part of next week. But the present prospect is that we will not. The present prospect is that we will get through by the end of this week. I say that, so that you may have some idea about the length of your service.

Also, I will say this to you, that we have only two

The Court:

cases left on the calendar to be tried. We have been in session here two weeks already and we have two cases left on the calendar to be tried.

A jury will be selected in a moment to try the next case to be tried, and it is anticipated that it will probably take about three days to try this case. When the jury is selected in the trial of this case, we will excuse the remainder of the panel until probably Thursday Morning, and then ask you to come back in order that a jury may be selected for the last case on the calendar.

I make this statement to you, so that you will have some idea about what to anticipate. Now, with that explanation, does any member of the jury panel have any legal excuse to offer why you should not serve? Of course, it must be a legal excuse. Purely business reasons do not constitute a legal excuse. If any of you have any reason to offer why you should not serve, will you stand, identify yourself and state the reason?

LOUIS K. HAYS: I have a heart condition and I am 70 years old and I have to take medicine.

THE COURT: All right, does any other member of the jury panel have any excuse to offer?

HENRY P. JONES: Your Honor, I don't know whether



Henry P. Jones:

this would be classified as a legal excuse or not.

THE COURT: What is your name, please sir?

JUROR JONES: Phil Jones. I'm a member of the County Board of Commissioners of Sumter County and we have a very important meeting tomorrow scheduled and I need to be in attendance upon that meeting. If I could be excused for tomorrow only, I would greatly appreciate it; otherwise, I could serve without any great inconvenience.

THE COURT: All right, any others?

ROBERT A. CLAY: Your Honor, I'm on the Lee County Board of Education and we have an important meeting tomorrow. I don't know whether that constitutes a legal excuse or not?

THE COURT: No, neither of those constitutes a legal excuse. Any one else? . . . We always like to excuse jurors, if we can and when we can, but if we adopted the practice of excusing for reasons of the type which you gentlemen have offered, there would be no end to it, because everybody on this panel are busy people and important people, or you wouldn't be here. And for that reason, I'm not going to excuse the last two gentlemen who stood, but I am going to excuse Mr. Hays. I am going to excuse you, Mr. Hays.

Qualifying Jury

THE COURT: Now, members of the jury panel - but before propounding these questions, I call for trial at this time the case of Hattie Brazier, as widow of James Brazier, deceased, versus W. B. Cherry, Randolph McDonald, Zachary T. Matthews, Shirah Chapman, Howard Lee and Fidelity Casualty Company of New York, Civil Action No. 475. Do counsel for the Plaintiff in this case announce ready?

MR. HOLLOWELL: Plaintiff is ready, Your Honor.

THE COURT: Do counsel for the Defendants announced ready?

MR. BLOCH: May I call the witnesses, please?

THE COURT: Well, I'm simply asking if you announce ready. Do you announce ready?

MR. COLLIER: We're ready, Your Honor.

THE COURT: All right. Members of the jury panel, will you pay attention to certain questions that I am going to propound to you and, if any of these questions affect you in a manner that you should answer them in the affirmative, let it be known.

Is any member of the jury panel related by blood or marriage to Hattie Brazier, plaintiff in this case? ...

Is any member of the jury panel related by blood or marriage to W. B. Cherry, one of the Defendants in this case? . . .

The Court:

Is any member of the jury panel related by blood or marriage to Randolph McDonald, one of the Defendants in this case? . . .

Is any member of the jury panel related by blood or marriage to Zachary T. Matthews, one of the Defendants in this case? . . .

THE COURT: What is your name, please sir?

JUROR: ALBERT F. MARTIN: Albert F. Martin.

THE COURT: What is your relationship?

JUROR MARTIN: Mr. Matthews is my wife's uncle.

THE COURT: All right, you may be seated.

Is any member of the jury panel - the next two defendants, Shirah Chapman and Howard Lee, are deceased; they have died since this suit was filed. Was any member of the jury panel during the life of Shirah Chapman related to the said Shirah Chapman by blood or marriage? . . .

Was any member of the jury panel during the life of Howard Lee related to the said Howard Lee by blood or marriage? . . .

Is any member of the jury panel a stockholder in The Fidelity and Casualty Company of New York, or are you employed by that Company? . . .

Is any member of the jury panel related by blood or marriage to Mr. Donald L. Hollowell, an attorney of Atlanta, Georgia? . . .

The Court:

Is any member of the jury panel related by blood or marriage to Mr. C. B. King, an attorney of Albany, Georgia? . . .

Is any member of the jury panel related by blood or marriage Mr. Charles J. Bloch, an attorney of Macon, Georgia . . .

Is any member of the jury panel related by blood or marriage to Mr. H. B. Williams, an attorney of Americus, Georgia? . . .

Is any member of the jury panel related by blood or marriage to Mr. James M. Collier, an attorney of Dawson, Georgia? . . .

JUROR: CHARLES L. JEWETT: Your Honor, I don't know whether I'm kin to Jimmy Collier or not; am I, Jimmy?

THE COURT: What is your name, please sir?

THE JUROR: C. L. Jewett. I married - my wife and his mother are First Cousins, I believe.

THE COURT: Your wife is his mother's First Cousin?

THE JUROR: Or Second Cousin; I don't know exactly.

THE COURT: All right, anyone else.

Now, members of the jury panel, this is a suit - I will state briefly what the nature of this case is - this is a

The Court:

suit brought by the widow of a party deceased, the deceased being James Brazier, seeking damages from the Defendants whose names I have previously called.

The Plaintiff in this case is a member of the Negro race. All of the defendants in this case, that is all of the individual defendants in this case, are members of the white race.

Does any member of the jury panel entertain a feeling of bias or prejudice by virtue of the fact that the Plaintiff is a member of the Negro race, that would make it impossible for you to render a fair and impartial verdict as between the parties in this case, by virtue of the fact that the Plaintiff is a member of the Negro race? . . .

And I'll put the same question conversely: Does any member of the jury panel, by virtue of the fact that the Defendants, that is the personal defendants, are members of the white race, does that fact cause you to have such prejudice and bias that you could not render a fair and impartial verdict as regards the Defendants in this case, or as between the Defendants and the Plaintiff in this case? . . .

Does any member of the jury panel feel that, by virtue of the fact that these individual defendants are

The Court:

law enforcement officers, would that fact make it impossible for you to render a fair and impartial verdict in this case? . . .

Does the fact that the Defendants, the personal defendants, are law enforcement officers, would that fact cause you to disbelieve the testimony that the Defendants might give, if the Defendants testify? . . .

Would the fact that they are law enforcement officers cause you to be inclined to believe what they say, because they are law enforcement officers, in preference to believing what somebody else might say who is not a law enforcement officer? . . .

Does any member of the jury panel, by virtue of having any feeling concerning race, do you have any such bias in your mind or prejudice in your mind that would cause you to disbelieve what a witness might testify, simply because the witness was a member of any particular race, cause you to disbelieve a witness because the witness is a member of the Negro race; would it cause you to disbelieve a witness because the witness is a member of the white race; or would it cause you to believe a witness because the witness is a member of the Negro race, or to believe a witness because he is a member of the white race? . . .

The Court:

And, finally, does any member of the jury panel feel that he or she, by virtue of anything you've read, heard, seen or have personal knowledge of in any way, as a result of that do you feel that you have such prejudice and bias in your mind for any reason that you could not render a fair and impartial verdict in the case which is about to be tried? . . .

THE COURT: The Court feels that the Juror, Mr. Martin, the Court feels that Mr. Martin's name should be stricken from the list of jurors.

Let the record show, Mr. Reporter, that we will select a jury of 12 for the trial of this case and we will select one alternate juror, a 13th juror. Counsel for the parties have stipulated that, if it becomes necessary during the course of the trial of this case, in the Court's discretion, to excuse more than one juror, counsel agree that the case will proceed to its termination with a lesser number than 12, that being left entirely in the discretion of the Court, as to whether it becomes necessary to excuse a juror.

Now, at this point I ask counsel for the Plaintiff, in view of the qualifying questions which I have propounded to the jury panel, are counsel for the Plaintiff satisfied in all respects concerning the qualification of the jury panel?

MR. HOLLOWELL: May we have a jury list? . . . May it please the Court, I think Your Honor, in the propounding of the questions, used the language whether or not it would be "impossible". It occurred to me that if it substantially or in any way influenced the decision, I think perhaps this might be sufficient; and I would respectfully request that perhaps the Court clarify to the jurors that particular aspect of the instruction to them or the questions on voir dire propounded by the Court.

THE COURT: All right. Now, members of the jury, possibly I did during the course of questioning you use the term "impossible", maybe once or maybe more than once. I again, without propounding each specific question again, does any member of the jury panel entertain such prejudice or bias because of the race of any of the parties in this litigation who have already been identified to you, or because of the race of any witness who may testify, or because of the fact that the Defendants, some of them, are law enforcement officers, do you entertain such prejudice or bias as a result of any of those things as would influence your verdict; not only make it impossible for you to render a fair and impartial verdict, but that would influence any verdict which you might reach upon the termination<sup>tion</sup> of the



The Court:

trial of this case? . . . Apparently not.

And now, I ask again, are counsel for the Plaintiff satisfied in all respects with the qualification of the jury panel?

MR. HOLLOWELL: We are, Your Honor.

THE COURT: And are counsel for the Defendants satisfied in all respects concerning the qualification of the jury panel?

MR. BLOCH: We are, sir.

THE COURT: All right, give counsel a list of the jurors and we'll proceed to strike the jury.

THE CLERK: You understand that you are to strike from the new list that was just handed to you by numbers? . . . Plaintiff has the first strike . . .

THE COURT: While counsel are considering the jury list, the Clerk will swear the jury panel.

THE CLERK: Will all of the jurors whose names have been called, including Mr. Gillespie, please stand and raise your right hand and be sworn: You and each of you do solemnly swear that you will well and truly try all writs of inquiry that shall be submitted to you at the present term of this Court, and a true verdict make, according to the law and the evidence; so help you God. Be seated.

MR. BLOCH: Your Honor, would it be all right if the Clerk called the first 23 again and let them stand, so we may see them?

THE COURT: Yes, that would probably be of benefit to everybody. Suppose you do that, Mr. Clerk, so that counsel will know exactly the list from which they're striking.

THE MARSHAL: When your name is called, please rise and remain standing.

(First 23 jurors called again) . . .

THE CLERK: Do you want them to remain standing?

THE COURT: Yes, remain standing.

(Clerk continuing call of jurors)

MR. HOLLOWELL: Just one moment, sir. I notice Mrs. Rhodes is with the ASC?

JUROR: MRS. RHODES: Agricultural Stabilization and Conservation Service.

MR. HOLLOWELL: Thank you.

(Clerk continuing call of jurors) . . .

(COUNSEL STRIKING JURY) . . .

THE CLERK: That makes the jury.

THE COURT: All right, let me strike for the alternate now.

(COUNSEL STRIKING for 13th JUROR)

THE COURT: All right, as your names are called,

The Court:

3 names will now be called and as your name is called, please stand and remain standing for a moment.

THE CLERK: Luther Ivey, Jr.  
Walter G. Mercer - excused earlier  
Clarence H. Middlebrooks  
John W. Shiver

THE COURT: All right, you may be seated, gentlemen.

All right, Mr. Clerk, call the 12 names who will constitute the jury and have them take their seats in the box, and then call the one name who will be the alternate.

THE CLERK: Curtis H. Hobbs, Andrew W. Luke, Morris M. Cheek, George C. Gilbert, Henry P. Jones, Herman D. Mitchell, Edgar H. Hart, Jr., Thomas E. Castleberry, Jr., James M. Bentley, Walter L. Young, Johnnie N. Sirmons, Henry Q. Scott, Sr.

Luther Ivey, Jr., the alternate juror.

THE COURT: Now, members of the jury panel, who have not been selected for the trial of this case, you are excused until Thursday Morning at 9:30 o'clock, Thursday Morning at 9:30 o'clock. You may retire at this time, if you wish to do so. . . .

Now, counsel for the Plaintiff will call your witnesses and Defendants will do likewise, so we can swear them all.

MR. HOLLOWELL: Mr. Ragan Arnold . . . (not present)  
Mrs. Brazier is here, of course; Mrs. Annie Petty,  
Mrs. Grace Gibson, Odell Brazier.

THE COURT: All witnesses will please stand  
within the rail.

MR. HOLLOWELL: James Lattimer, Lucius Holloway,  
Jacob Minter, Mary Carolyn Clyde, V. L. Singletary,  
James Lewis, Mrs. Mary Hylick (not present), James  
Reynolds, Bill Roberts, Lonnie Greer --

Now, Your Honor, there are some physicians that  
are involved who are on call and we will swear them when  
they come in.

THE COURT: All right. Now, I want to make this  
comment about that, Mr. Hollowell: I'm making this a  
practice all around through the District everywhere I  
hold court, and I don't remember you being present or  
Mr. Bloch being present at any time that I have made  
this announcement before; so, I will say this for your  
benefit.

It is perfectly agreeable with the Court for parties  
to have witnesses on call. I realize frequently you  
like to do that with doctors. But when we get to the  
point to go ahead with the trial and the witness is  
needed, if the witness is not here, we will not delay  
the proceedings. If you want this Court to exercise its

The Court:

subpoena power, to see to it that you have your witness here when you want him, we'll do that; but when counsel for either side - and I'm saying this all around through the District so everybody will understand it - when we begin the trial of a case and if they voluntarily let witnesses come in later and so on, they do that at their peril. We won't hold up the trial of the case, the progress of the case. And I'm saying it now, so that everybody will understand.

THE COURT: All right, Mr. Bloch, do you wish to call your witnesses?

MR. BLOCH: Dr. Charles Ward, Mrs. Mary Radford, Elton Herrington, Gene Ellington, Eugene Magwood -

Do you want the Defendants sworn at the same time?

THE COURT: Yes.

MR. BLOCH: W. B. Cherry, Mr. Randolph McDonald, Sheriff Matthews. . . That's it.

THE COURT: All right. -

MR. HOLDWELL: If it please the Court, we left off a couple of names: Mrs. Hattie Williams, James Brazier, Jr., B. W. Cooper.

THE COURT: Now, Mr. Clerk, will you swear all of the witnesses at this time?

(Witnesses sworn by the Clerk)

THE COURT: Now, I presume counsel desire the

MR. BLOCH: Yes sir.

THE COURT: All right, all witnesses who have been sworn, with the exception of the parties to the case, will withdraw from the courtroom and be available when counsel wish to put you on the stand. You will withdraw at this time.

(WITNESSES SEQUESTERED)

THE COURT: Now, Mr. Marshal, we have kept everybody out of the courtroom until we got through with the selection of the jury and swearing of the witnesses, because of the size of this courtroom, and there is simply not room enough. Now that all of the witnesses have been sworn and the jury has been selected and other jurors dismissed for the time being, you may allow anybody else who wants to come into the courtroom. However, I want this understood now and this will be the rule for the duration of the trial of this case, that we will allow people to come in and go out at the time that we take a recess. In other words, we don't want people coming and going all the time. So, anybody who wants to come in and be seated in the courtroom now, except the witnesses, of course, they may do so; but whenever we take a recess they can come and go. At other times we won't admit anybody except people who are called as witnesses or counsel, somebody attached to the trial of the case.

THE COURT: All right, do counsel wish to make an opening statement?

MR. HOLLOWELL: Yes, Your Honor.

THE COURT: All right, Mr. Hollowell.

OPENING STATEMENT: PLAINTIFF

MR. HOLLOWELL: Thank you, sir. Gentlemen of the jury, my name is Donald Hollowell. I live in Atlanta. I am one of counsel with C. B. King, who lives in Albany. We are the only counsel present at this time in the case .

This is a somewhat difficult case and I want to indicate to you what we shall seek to prove and what this case is about.

The pleadings will show you, gentlemen, that on or about the 20th of April, 1958, the deceased's father was arrested; that his son came along, that is the deceased, and spoke with the officer making the arrest, had a few words and was permitted to drive the father's car on to the son's residence; that this was permitted by the arresting officer, the one who was arresting the father, to drive the father's car to his, the deceased son's home.

That some 20 minutes later, two of the Defendants, namely, Defendant W. B. Cherry and Defendant Randolph McDonald, came to the deceased's home and placed him

Mr. Hollowell;

under arrest; and in the process of arresting him, hit him several times with a hard, blunt object about his head;

That he was taken to the Terrell County jail. That jail is used by both the City of Dawson and by the County of Terrell; that there he was incarcerated in the jail; that during the course of the night at some time he was visited by the County Doctor; that after the time of his arrest and prior to the time that he was taken to jail on the next morning, he was further beaten, while in the custody, under the custody, supervision and control of the Defendants, or their agents, either individually or collectively, or at their behest or with their acquiescence.

The incident happened, as I said, on the 20th, which was on a Sunday evening. That on Monday Morning, the 21st, the deceased was taken to the Mayor's Court, had to be assisted before the Court; that the Mayor, seeing the condition of the man, told his wife to bring him back a week later, that he was not in condition to stand trial;

That he was immediately taken to the doctor at the Terrell County Hospital by his wife and others; and after some examination, was told to take him to the Columbus



Mr. Hollowell:

Medical Center, because they did not have the facility for handling the type of injury that was involved, there being a fracture of the deceased's head.

That the deceased was operated on at approximately 6 o'clock on that Monday evening, had what is known as a craniectomy, in which small holes are bored into the skull, in order to permit drainage to relieve the pressure on the brain; that the Defendant was unconscious and from the time that he was at the local hospital and from that time - when I say the local hospital, I mean when he was first taken to the Terrell County Hospital - from that time until he died on that Friday night, having never regained consciousness;

That he had a wife and four small children, who were left to grieve and to be without his support; that he was gainfully employed, made a decent living for his family; only 31 years of age; that he had a life expectancy of over 25 years.

We will also seek to prove, gentlemen, that it was the acts of the Defendants, individually or collectively, which proximately caused the injury and death of the deceased; and we will ask you to bring in a verdict to this effect, and to grant the damages for the value of this man's life, in order that his family will not have

Mr. Hollowell:

to suffer because of the acts of the Defendants, directly and indirectly, which resulted in his death.

This is what this case is about, gentlemen. We expect it to be fairly long. Some of the issues will be rather complicated, sometimes will slow down to a rather slow pace and, if it gets a little tiresome, we shall ask you to bear with us in the presentation of this case; and, in looking at the jury list, I see that all of you gentlemen are men of the world and experience and will be in a position to look at the direct as well as indirect evidence and to make the proper assumptions and draw the proper conclusions based upon the facts which are elicited in this case.

I will not take more of your time at this time, gentlemen, but we ask you to give careful attention and we know you will to the facts in this case. We have confidence that, having heard them, you will bring in a proper and a just verdict. Thank you.

MR. BLOCH: May it please the Court and you gentlemen of the jury. I am, by way of introduction, Charles Bloch of Macon, and along with Mr. Williams of the Americus Bar, and Mr. Collier of the Dawson Bar, represent the Defendants in the case that you are about to start trying.

Mr. Bloch:

The Defendants originally named in this suit, when it was brought in April of 1960, three years ago, were Mr. Cherry, presently Chief of Police in Dawson; Mr. McDonald, sitting there at the end of the table, who was a police officer at that time; Mr. Howard Lee, who was Chief of Police at Dawson at that time; and Mr. Shirah Chapman, who at that time was a member of the police force of Dawson; and the fifth Defendant, Sheriff Matthews, who has been for about 16 years Sheriff of Terrell County, Georgia.

Since the institution of the suit, two of those Defendants, Mr. Lee and Mr. Chapman, have passed away, from natural causes I assume; so that, there are left the three Defendants, Chief Cherry and Mr. McDonald and Sheriff Matthews.

Now, the incident, which counsel has somewhat described to you, took place, the first of the incidents out of which this suit arises occurred on a Sunday afternoon, April 20, 1958, almost four years ago. The case has taken various courses during that time, with which we are not presently concerned, and there have been various investigations, which may or may not be admissible; so, I will pass over them for the present.

But on that afternoon Odell Brazier, O-d-e-l-l (spelling) Brazier, who is the father-in-law of the Plaintiff

Mr. Bloch:

here, and the father of James Brazier, was driving an automobile around the streets of Dawson on that Sunday afternoon in such manner that Mr. McDonald, the police officer, formed the opinion, along with at least one citizen of Dawson, that Odell Brazier, in driving that automobile about the streets of Dawson, was endangering the people of the City of Dawson who might be wanting to use their public streets and highways for driving purposes on that Sunday afternoon.

So, Mr. McDonald, as an officer of the law, as was his duty as an officer of the law, seeing Odell Brazier driving that automobile around the streets there in mid-afternoon, a spring afternoon, with traffic fairly heavy, stopped him by blowing his siren and had him stop. Odell Brazier - now, Odell is the oldest, you remember - resisted Mr. McDonald, to the extent that Mr. McDonald, who is rather slightly built, was then and is now, seemingly was having some difficulty in putting him under arrest. So that, a bystander, Mr. Herrington, came to the assistance of Mr. McDonald in arresting Brazier, Odell Brazier, who had already driven at least one other automobile off of the road, with his driving; and while they were putting him under arrest on that Sunday afternoon, his son, James Brazier, who

Mr. Bloch:

was the husband of the Plaintiff here, came up and remonstrated with the officer of the law, who was doing his duty in using no more force than was necessary in making the arrest of Odell; but James Brazier remonstrated with him and made threats against him as to what he was going to do about it. The exact nature of those threats will doubtless come to you from the stand.

So, after Officer McDonald, with the assistance of Mr. Herrington, had gotten Odell Brazier into the jail, which is used by some arrangement between the City and the County, is used for City prisoners as a police barracks, after Odell Brazier had been put into the jail, what they call the run-around there, Mr. Cherry arrived on the scene. It was about 5 o'clock then in the afternoon, and Mr. McDonald told Mr. Cherry what had happened. I believe they were the only two members of the police force on duty at that time. But at any rate, they too, Mr. McDonald and Mr. Cherry, with the Sheriff nowhere around, went to the Justice of the Peace, Judge English, and swore out a warrant against James Brazier; and, armed with that warrant, they went to James Brazier's house, his home, where he had gone after they arrested his father.

Mr. Bloch:

Armed with that warrant, they placed James under arrest and, as they were taking him to the automobile which they were using, James Brazier apparently going along peaceably, all of a sudden he struck at least twice at Officer McDonald; and when he did, in order to effectuate the arrest which they were legally making, Mr. Cherry struck him once or twice (pointing to head.)

He continued to resist but there was no more striking; they put him into the automobile and then took him into the City jail, into the County jail which was used by the City.

It was requested by his wife and his employer that Dr. Ward see him. Dr. Ward came down and saw him and I think will testify to you here before you as to his intoxicated condition and as to the nature of the wounds that he had on his head. On one of them he put a Band-Aid. He didn't consider either one of them necessary to be sutured or closed by stitches, but he did tell Mr. Cherry and the other officers to keep a watch on him during the night, to see that he had no untoward effects from the lick on his head, on his forehead.

And Dr. Ward himself came down during the night, not for the purpose of seeing James Brazier, but for the purpose of seeing a white man, who was in jail as an

Mr. Bloch:

alcoholic, and saw him, Dr. Ward saw James Brazier at least once during the night. He had instructed the police officers to keep an eye on him during the night, and they did; and never at any time during the night was Brazier struck or otherwise harmed, either by police officers or by the Sheriff; and never at any time, from the time he was put in jail after his assault on Officer McDonald and his threats to him, never at any time during that whole night did anybody harm him, so far as these Defendants know; never at any time during that night was he removed from the jail, as alleged in this petition; and never at any time did Sheriff Matthews know anything about the occurrence at all until about 9 o'clock on Monday Morning, he saw Brazier coming out of the jail going to the Mayor's Court. That was the first time that the Sheriff knew anything about the arrest at all or any difficulty with Brazier.

And I stand before you and assert unqualifiedly that the allegations in this complaint in paragraph 7 of it, that these gentlemen and the two gentlemen who are gone to face a higher court, have never at any time inflicted any wounds whatsoever upon Brazier; and that the averments of the petition in that respect are absolutely and unqualifiedly false.

Mr. Bloch:

We expect to show as the evidence develops that these two gentlemen who made the arrest, Mr. Cherry, who is now Chief of Police of Dawson, and Mr. McDonald, were both acting in the line of their duties as sworn police officers of this State and of the City of Dawson, doing what they honestly thought was their duty as police officers in the protection of the people of Dawson, white and black, whom they were sworn to protect; and that in making the arrest of James Brazier around 7 o'clock on the Sunday afternoon, April 20, they used no more force than was necessary to do their duty and put him in jail and put him where the people who they are sworn to protect would be free from any possible injuries from him or his father.

Now, that's how it was and we will expect the evidence to show you just what I have tried to tell you briefly and succinctly.

THE COURT: All right, we will take a recess at this time of about 10 minutes, after which Plaintiff may proceed to call his first witness.

MR. HOLLOWELL: Thank you.

RECESS: 11:05 AM to 11:15 A. M.,  
FEBRUARY 4, 1963.

THE COURT: All right, who do you have as your witness for the Plaintiff?



11:15 A. M., February 4, 1963.

MR. HOLLOWELL: The Plaintiff calls for cross examination under Rule 43 (b) of the Federal Rules the Defendant, Officer McDonald.

THE COURT: All right, take the stand, Mr. McDonald.

MR. RANDOLPH E. McDONALD

Witness, being first duly sworn,  
testified on

CROSS EXAMINATION

BY MR. DONALD L. HOLLOWELL:

Q Would you give your full name for the record?

A Randolph E. McDonald.

Q Mr. McDonald, I ask you for the benefit of the jury and counsel to speak right up so that they might be able to hear you and that we might be able to hear you. Where do you live, Mr. McDonald?

A Edison, Edison, Georgia.

Q Where is that?

A About 30 miles below Dawson.

Q How long have you lived there?

A Three years.

Q I believe you were a police chief of Edison at one time; is that correct?

A That's correct.

Q What period of time?

A I was police chief there for about  $2\frac{1}{2}$  years.

Q What  $2\frac{1}{2}$  years?

A From May, '59 up until '61.

Q Prior to that --

A '62.

Q I am sorry.

A Up until the first of '62.

Q Where do you live now?

A I live in Edison.

Q Do I understand that you were the chief of police in Edison up until the first of '62?

A That's right.

Q Did you resign at that time?

A That's right.

Q At one time you were a police officer of the City of Dawson, were you not?

A That's right.

Q Prior to the time you became chief of police of Edison?

A That's right.

Q Give those years, please?

A Well, I went to work in Dawson as a policeman in 1950, and I worked there until sometime in '56 or '57, I don't remember, but anyway I left and went to Florida and when I come back I went back to work on the police force in Dawson

of '58.

Q '58?

A That's right.

Q When in '58?

A I don't remember exactly what month, March I think it was of '58.

Q Prior to April of '58?

A Well, that's right, it was before April of '58.

Q You had a new status when you became the policeman again for the City of Dawson?

A How was that now?

Q Your longeviety continued when you went back to the Police Force or did you start as a new recruit?

A I was just hired as a policeman. I don't know whether you would call it a new recruit, just like I was.

Q Was your pay the same when you went back as when you had left?

A Same thing.

Q Is it still the same?

A Say what?

Q Is it still the same?

A Is it still the same now?

Q Yes.

A I don't know what they pay up there now.

Q You don't know what they pay in Dawson?

A I am not a police officer, I don't know what they pay the policeman now.

Q What do you do now?

A I am an insurance salesman.

Q For what insurance company?

A Colonial Life and Accident.

Q Did you leave the patrolman service for the City of Dawson at the time that you went to take the office of the Chief of Police of Edison?

A That's right.

Q What training had you had for this office, if any?

A For what office?

Q The office of patrolman for the City of Dawson?

A I went to Police School.

Q Where?

A There in Dawson.

Q Who was the person or persons who conducted that school?

A I can't think of the head men's name, that was conducting it right now.

Q What did he do?

A What did he do?

Q Yes, what office did he hold, what was his employment?

A I don't remember.

Q You have no idea what he did?

A He just goes and conducts schools for police all over the state. Now, what his office, I didn't remember.

Q How long was the school?

A 10 days or 10 nights. It was at night.

Q How many hours a night?

A Oh, about four hours or something like that.

Q Was this while you were also employed as a police officer?

A That's right; I was also employed as a peace officer.

Q How long had you been employed prior to the time that you attended the school?

A Well, I was employed as a police at Edison at the time I went to school.

Q Do I understand that you had been a police officer in Edison prior to the time you became a police officer in Dawson the first time?

A No.

Q Then, if I understand your testimony correctly, it was after you had served on the force in Dawson and had become a police officer for Edison that you went to the school; is that correct?

A That's correct.

Q All right, what training had you had prior to the time you went on the police force at Dawson?

A When I first went on the police force in Dawson, I

didn't have any training. They trained me there under the other men.

Q Who is they?

A The othermen that was on there, the chief of police and the assistant chief and men like that.

Q Who were they?

A The chief when I first went to work there was Mr. L. F. Cummings, and the assistant chief was Shirah Chapman.

Q And you took your training under them on the job?

A That's right.

Q What books did you study?

A I didn't study any books.

Q What they would do then, they would just take you out, and they would tell you what to do and what not to do in the process of carrying out function; is that correct?

A That's correct.

Q How long did this go on?

A Until I went to work in Edison, that is when I went to school after I went to work in Edison.

Q The only training you had, formal training you had was the school which you attended at night for four hours for 10 days during the time you were in Edison, and the only other training you had would be on the job training by Chief Cummings, Chief Chapman and the Captain; is that correct?

A Correct and through the City Code, the City Code we

had to learn that.

Q Learn the City Code?

A The Rules and Regulations of the City Code.

Q As a part of your function in the office of patrolman, did you have the occasion to learn how to handle prisoners?

A That's right.

Q Were you taught to strike them?

A Taught to strike them?

Q Yes.

A Not without it was necessary, if he resisted, no other way to put him under arrest, then use whatever force necessary to put the man under arrest.

Q Do you remember the names of the persons who were on the police force in April of 1958?

A Let's see, it was Chief Lee, Mr. Cherry, Harold Jones, Shirah Chapman, and myself, and I don't remember any more.

Q Beg pardon, sir?

A I don't remember any more, there could have been another one, but I don't remember.

Q Now, who were those who were in the sheriff's department?

A In the sheriff's department?

Q Yes sir.

A The sheriff and his deputy.

Q Who was the deputy?

A Mr. Mansfield Matthews.

Q That is the nephew of the sheriff?

A That's correct.

Q Are those the only persons that you recollect as being a part of the sheriff's department at that time?

A Except his secretary.

Q Who was the secretary?

A Mr. Mansfield's wife.

Q Was she on the county payroll?

A I wouldn't know about that.

Q Now, on the date of April 20, 1962, 1958 rather, were you on duty that day?

A Was on duty that afternoon and night.

Q Excuse me.

A What?

Q You were on duty when?

A Went to work in the afternoon, I worked at night.

Q What time did you go on?

A I went to work at 5 o'clock in the morning, I mean in the afternoon and got off at 5:00 in the morning.

Q Did you have a partner?

A That's correct.

Q Who was your partner?

A Mr. W. B. Cherry.



Q Did you see him at the time he came on?

A I did.

Q Was that the first time you had seen him that day?

A Correct.

Q Where did you usually stay during the course of the period between 5:00 and 7:00 when you first go on duty?

A Say where did I stay?

Q Yes.

A Mostly in the car, patrolling.

Q Where would the car be usually, the police car?

A Mostly in the car patrolling the streets.

Q How many cars did you have?

A One.

Q Was this a police car?

A Correct.

Q Did it have a red light on top?

A No.

Q Did it have a siren?

A Had a siren and a red light in front.

Q Red light in front?

A Two of them.

Q Down in the vicinity of the parking lights?

A At the front of the grill.

Q This car was furnished for you by the City?

A Correct.

Q Who usually drove the car, you or Mr. Cherry?

A First one and then the other one.

Q On the 20th of April of 1958, were you patrolling between the hours of 5:00 and 6:00?

A Correct.

Q You had the occasion to see one Odel Brazier, did you not?

A I did.

Q You were parked at the time you first saw him, were you not?

A I was parked at the Chevrolet place.

Q Did you see him more than once prior to the time you stopped him?

A More than once?

Q Yes?

A No.

Q Did you see him for the first time on that day at the same time you stopped him?

A My first time.

Q You don't know where he was coming from?

A I don't know where he was coming from.

Q How far away was he from you at the time you first saw him?

A Like from here to you.

Q And that is the first time he came into your view?

A He was driving along the street.

Q What did you do at that time; you turned on your siren, didn't you?

A I pulled in behind him and turned on the blinker, red lights and the siren, and stopped him.

Q Now, Mr. Randolph, or rather Mr. Randolph McDonald, isn't it?

A That's right.

Q Mr. McDonald, at the time you stopped him, was your car headed in the same direction as his?

A Sure, it was in the same direction as his.

Q At the time you first saw him, was he in the same direction that you were going?

A No, he was going this way, and I was parked facing the street.

Q He was going in what direction?

A He was heading north.

Q And you were parked at that intersection?

A No, I was parked at the filling station, the Chevrolet place there, and the filling station.

Q Were you parked along side the tank?

A No, it was out from the tank.

Q Were you adjacent to the tank?

A What?

Q Were you adjacent to the tank?

A The tanks was over here, and I was parked over here (indicating).

Q Were you parked with the side of your car toward the tanks?

A One side of it toward the tanks that way, and the other side was toward the south part of the street.

Q And so your car was parked and Odel Brazier came along perpendicular to your car?

A That's right.

Q Moving from your left to your right?

A Correct.

Q And you saw him about 35 feet, the distance between your cars?

A He passed that close to me, but I saw him coming up the street before he got to me, but he passed that close to me.

Q How far did you see him, you said you saw him a distance of about from me to you?

A Well, when he passed is what I meant, he passed that close to me. I saw him when he crossed the railroad which was I imagine say 75 or 80 feet or maybe more, 100 feet, something like that.

Q Did he cross the railroad at an ordinary speed?

A Say what?

Q Did he cross the railroad at an ordinary speed?

A An ordinary speed.

Q Was he going at an ordinary speed at the time that he passed in front of you?

A He wasn't speeding.

Q How long did it take him to come from the railroad to the point where you were?

A Well, now, I don't know about that.

Q Just estimate it?

A It wasn't but just - well, say that he was driving 25 or 30 miles an hour, it wouldn't take but just a fraction for a person to go that many feet.

Q That is a rough railroad, is it not?

A It is not all that rough, no.

Q I mean one has to go down pretty slow?

A You don't have to, no.

Q That is if he does not want to have some considerable jar?

A ~~He can go across it at a high rate of speed, and he~~  
won't get no considerable jar.

Q Now, at the time that you saw him and you say he was about 80 feet from you, about 80 feet?

A Well, I don't know exactly.

Q Well, approximately?

A From the Chevrolet place down to the railroad, it could

be 80 or 100 or more, I don't know. I haven't never measured it.

Q How far had he gone past you when you pulled in behind him?

A Just as he passed, I pulled in behind him.

Q How long was it before you stopped him?

A About, say, 30 yards down the street.

Q Did he stop immediately?

A Yes.

Q Where did he stop?

A He pulled over and stopped when I sirened him.

Q Was he on the right side of the road?

A When he stopped, he was on the right side of the road.

Q How wide is the street along there?

A I don't know.

Q How wide would you estimate it to be?

A It is just an ordinary street.

Q Is it as wide as the next street that goes around Dawson?

A Well, it's the same thing all except it don't have the - yeah, let's see, at that time, I don't think it had the curb and gutter along there. I don't remember.

Q It is a comparatively narrow street?

A Narrow street, no.

Q A comparatively narrow street?

A Let's see, from curb to curb I imagine it is 60 feet.

Q You say it has no curb?

A I don't remember whether it had curbs and gutter at that time, but I think it did, gutter and curbs along there.

Q Your best recollection is it did?

A That's right.

Q You wouldn't say for certain that it did?

A I don't remember whether it did or not. That has been a long time.

Q He came to an immediate stop at the time he saw your siren or heard your siren?

A He pulled over and stopped.

Q At that time what was he doing?

A Well, I told him that he was under arrest. He said, "For what?" I said, "For driving under the influence of intoxication."

Q What was he doing at the time you told him that?

A Standing beside his car, and he was under the wheel.

Q Who else was with him, anyone?

A There wasn't anybody with him.

Q At that time, in fact when you placed him under arrest, immediately when you came up and said, "You are under arrest," he said, "What for?" you said, "For driving under the

influence;" is that correct?

A Correct.

Q This was the first thing you said when you got out of the car?

A Told him he was under arrest, and he said "For what?" and I told him for driving under the influence.

Q At that time you didn't know, did you?

A I sure did. I could look at him and tell it no quicker than I walked up there.

Q You could look at him and tell?

A And not only that I could smell it.

Q You could smell it on him?

A That's right.

Q Did you get down and get into the car?

A I didn't have to get down.

Q You didn't; was it an open car?

A It was a Chevrolet, it wasn't no open car, but the windows was down.

Q So, you knew just from your observation that he was driving under the influence?

A My height, I could walk right up there to the window. I didn't have to bend down and put my head in the window to stick my face up to him to smell it. I could smell it.

Q How did you know what it was?

A I have been around liquor a lot, and I could tell



what it is.

Q Well, you didn't know whether it was on him or whether it was in the car or whether it was in the seat?

A Well, when he was talking to me, it was coming right in his face, and then too the way he was driving, I knew there was something wrong with him; and, when I got out and went up there, I could smell the liquor, and I knew he was under the influence.

Q I see, did you have him get out of the car?

A Sure did.

Q As a matter of fact, you jerked the door open for him to get out, didn't you?

A No, I didn't jerk the door open.

Q Did he fall when he started to get out of the car?

A No, he didn't fall.

Q Did he almost fall? Who else was there at that time?

A Nobody but me and him.

Q You opened the door?

A Yeah, I opened the door, and told him to get out.

Q Did he get out?

A He got out.

Q What did you do then?

A I searched him and started to the car with him and told him to get in the car and that is when he started resisting.

Q What did he do?

A He said he wasn't going, and I opened the door and told him to get in anyway. He sat down in the car door.

Q Sat down in the car door?

A In the seat of the car with his feet out like that.

Q Which car seat?

A What?

Q Which seat?

A The back seat of the police car.

Q Was that a four door or a two door car?

A It was a four door.

Q Which door was open?

A The left back door, the left rear.

Q Had you opened it before you went up there?

A No, I opened it after I got up there with him.

Q And he got in and sat down?

A He didn't get in, he just turned and sat down in the seat with his feet out, and then he caught the door and got back out and stood back up, and I told him to get on in over there, so he sat back down again, but he wouldn't put his feet in. So, I reached down and picked up his feet to put them in there, and he kicked me in the stomach; and, when he kicked me in the stomach, I hit him with the blackjack.

Q Did he kick you with both feet?

A One.

Q Which foot?

A I don't remember which foot.

Q Did he damage your stomach?

A No, he didn't damage my stomach.

Q Did he tear your shirt?

A No, he didn't tear my shirt.

Q Did it dirty your shirt?

A Why, sure, it dirtied it. If you put your foot in a white shirt --

Q Excuse me, did you ever go around and show to anybody that your shirt was damaged when he kicked you in the stomach?

A Show it to anybody?

Q Yes?

A Why would I want to show it to anybody?

Q That's my question, sir?

A No, I didn't show it to nobody.

Q Well, you hit him with what?

A My black jack.

Q Where did you hit him?

A There.

Q Beg your pardon?

A Just above his eye.

Q Is that when you broke his glasses?

A I reckon it broke his glasses. I don't remember whether it broke his glasses or not.

Q They fell off, didn't they?

A I don't remember whether his glasses fell off or not.

Q You don't deny that his glasses broke, do you?

A If they were broken, I don't know.

Q Did you ever charge him with resisting arrest?

A Charge him with resisting arrest?

Q That's right.

A I charged him with driving under the influence. I don't remember whether there was resisting arrest put to it or not. It has been a good many years ago.

Q Well, you would have records to show that, would you not?

A If he was charged, it would be on the books.

Q Beg your pardon?

A I say if he was charged with resisting arrest, it would be on the book.

Q But you don't remember whether or not you did?

A That's right, I have made a lot of arrests since then and that has been a long time, I don't remember.

Q All right, so you hit him on the head. Did he fall?

A No, I didn't hit him that hard. I just tapped him.

Q What do you mean you tapped him?

A Like that (indicating).

Q And this was with a black jack?

A That's right.

Q Did it break the skin?

A It didn't break the skin.

Q Are you sure about that?

A I know it didn't break the skin.

Q What did he do when you hit him?

A He got on in the car.

Q Did you shut the door?

A Yes.

Q And you took on off to the station with him?

A No, about the time I put him in and shut the door, James come from across the street, his boy.

Q Was he walking?

A He got out of his car. He was walking when he was coming toward me.

Q So, James came over, and you don't know whether he saw it when you were hitting his father or not?

A I don't know whether he saw it or not.

Q As a matter of fact, he came up to you and said, "Don't hit him, I will put him in the car"?

A No, he didn't say that.

Q He did not?

A He didn't say, "Don't hit him," no.

Q Is that right? Did he say, "I will put him in"?

A No, He didn't say that.

Q He did not?

A Because I already had him in the car when he come across there.

Q What did he say?

A He said, "That was my daddy you hit." Said, "You are going to get hurt." I told him he had better go ahead on because if he didn't want his daddy hit, if he was looking at him, why didn't he come help me. I didn't want to hit him. He said, "That's all right, I am going to get you if I have to steal you."

Q And so you left? What did you do then?

A I told him that I would be back after him, when I got his daddy locked up, get a warrant and be back after him.

Q Did you tell him at that time that you would be back after him?

A I sure did.

Q Who was present at that time and heard that?

A Mr. Herrington.

Q Where did Mr. Herrington come from?

A He had stopped there, he saw him giving me trouble, and he stopped to help me.

Q Did he help you?

A In a way, yes.

Q What did he do?

A When Odel was giving me trouble there, he come up

and about the time I hit him and put him on in the car.

Q You just got through saying you put him in the car?

A Well, me and him together. It is all the same difference.

Q Well, you had some help in putting him in the car; is that right?

A Well, he was there with me, Mr. Harrington was.

Q When did he come up?

A Oh, during the time that Odel was giving me trouble.

Q How long after you stopped did Herrington come up?

A I don't remember how long it was. I didn't look at no watch to see how long I was there or how long I wasn't there.

Q He just came by? Would you repeat that please?

A I said I didn't look at the watch to see how long it took me to stop him and put him in the car, I didn't pay no attention to the time.

Q And so he came over and helped you put him in?

A He came along and parked his car and come up there to where I was at and was there with me to help me.

Q I see, what was it now exactly that he did?

A He stopped to help me.

Q I mean what did he do when he stopped?

A I don't remember what he did, whether he ever even put his hands on the man or not, I don't know. Five years ago

is hard to remember every little detail.

Q Was it before or after Brazier had kicked you; that is, Odel Brazier, that Herrington came up?

A Was it what now?

Q Was it before or after?

A Well, Herrington, I don't remember whether he was there, where he had walked up there when he kicked me or after he kicked me when Herrington walked up. I don't remember.

Q You said that you told Brazier that you were coming back to get him?

A I sure did.

Q Was this the first time you had ever indicated this when you were being examined?

A I don't remember.

Q Let me call your attention to October 10, 1962 and ask you whether or not you recall or you were asked this question in a deposition at the courthouse in Albany, Georgia.

A Say what?

Q At Americus, Georgia, yes, right here.

A I was fixing to say I hadn't been in Albany.

Q This was after we had had a discussion concerning what you had said at that time, question: I will ask you whether or not you were asked this question: "Said he was going to get you?" You answered: "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." Question: "He said he would get you?" Answer: "That's right." Question: "So, then you drove on off?" Answer: "Drove on off." Question: "And did you leave him standing there?" Answer: "yeah, I left him standing there." "And you drove on then with your siren on?" "No siren on, no." "Did you drive on to the police station?" "That's right." I ask you whether or not you were asked those questions and whether or not you gave those answers?

A Yeah, I left him standing there.

Q But I mean that isn't the question, Mr. McDonald. I ask you whether or not you were asked those questions on a deposition and you gave those answers?

A I don't remember what you asked me on deposition.

Q You don't deny that they were asked you, do you?

A I don't deny it, because I don't remember whether they were or not.

Q Let me read, show this to you, page 213 and have you read from the question, said he was going to get you down to the point where you say "no siren"

A "Said he was going to get you? That's right. Did he say what he was going to do? Well, he said he would get me if he had to get me in the dark."

Q What else does it say there?

A Say what?

Q What does it say after that?

A "He said he would get you? That's right. So, then you drove on off? Drove on off. And did you leave him standing there? Yeah, I left him standing there. And you drove on then with your siren on? No siren on, no."

Q You didn't say anything there about Mr. Herrington being present, did you?

A No, I don't reckon I did.

Q Do you think that you would have remembered if there had been somebody there to help you?

A How was that now?

Q I say don't you think that it would be important for you to relate if there had been somebody there assisting you?

A You didn't ask me was there anybody there, and I didn't think to bring it up. I didn't think it was important.

Q You didn't think it was important, the fact that you had somebody helping you to make the arrest; is that correct?

~~A He stopped to help me.~~

Q You knew it at that time, did you not?

A Yeah, I knew he was there at the time.

Q You remember the answers you gave in your deposition, whether or not you had told me all that you knew about the arrest of Brazier, the son, James, and Odel, the father?

A I can't keep all of that stuff and things like that --

Q You are not answering my question, Mr. McDonald.

A I don't remember.

Q You don't remember my asking you that?

A No.

Q I will ask you whether or not on the occasion we mentioned of the deposition you were asked: "Is there anything else which you know about the conduct of Brazier on this occasion or the conduct of yourself or the conduct of Officer Cherry or any other police officer, who was a police officer of Dawson, Georgia, at that time, or the Sheriff or Deputy Sheriffs at that time?" And your answer was: "What do you mean?" My question was: "What I'm asking is, is there anything else about the conduct of Brazier or yourself or any other police officer, who was a police officer in the City of Dawson at that time, or Sheriff or Deputy Sheriff of Terrell County at that time that you have not told us about?" And your answer was: "I don't know anything about it." Question: "I mean, have you told us everything that you know about it?"

Answer: "As far as I know, I've told you all I know about it."

~~"You don't know anything else at all about it?"~~ Answer: "No." Question: "You say 'no'?" Answer: "That's right."

Do you recollect having been asked those questions and having given those answers?

A Yes sir.

Q You took Odel Brazier on to jail?

A Yes.

Q What door did you go in?

A What door did I go in?

Q Yes, what door of the jail; did you go in the back or in the front?

A I went in the back with Odel, went through the gate and through the yard and went in the back door and put him in the bull pen.

Q Would that be on the right hand side as you were standing back of the courthouse facing the jail?

A Back of the courthouse facing the jail this way, you go in the gate and it is on the right.

Q When you took him in, did you write him up at that time?

A Did I write him up at that time?

Q Yes.

A I didn't write him up over there. I wrote him up at the office.

Q This is after you had arrested him or before, after you had put him in jail or before you put him in jail?

A After I had put him in jail.

Q Where did you go to write him up?

A Over in the courthouse in the office.

Q Beg your pardon?

A Over in the courthouse where the police office was.

Q This is the City police office?

A City police office and the sheriff's office was all together at that time.

Q Pardon me, Mr. McDonald, if you would be kind enough to move your hand, sir?

A I said the sheriff's office and the city police office was all in one at that time. We all used the same office.

Q This was inside the courthouse?

A Inside the courthouse.

Q As a matter of fact, they had a radio in there that both used; isn't that correct?

A Two way radio, yes.

Q The city used it and the county used it; isn't that correct?

A Correct.

Q And that was the only office that the City had and the only office that the county had; isn't that correct?

A The County had another office just on the outside of that door, had another office built out there.

Q On the outside of what door?

A Outside of the office where the police was, where they used for tags and things like that.

Q No, I mean the office for the handling of matters pertaining to the sheriff's office directly was the same office that was used by the City; is that not correct?

A Same office.

Q And that was where the radio was?

A That is where the radio was.

Q This radio was used by both the city and the county; is that right?

A That's right.

Q And you answered the telephone for each other?

A Answered the telephone for each other?

Q Yes, sometimes the City answered the telephone, the city officer answered the telephone with calls coming into the sheriff's office, and they would relate them and vice versa?

A Well, see, we had a radio operator at night.

Q Who is he?

A The policeman had a radio operator at night, and he answered both phones, the sheriff's and the police. Well, in the day time, if there was a call come into the office, we had phones on the street, police did; and, if the phone rang a few times and nobody didn't answer it, then if there was anybody in the sheriff's office, they would answer the phone for the police and relay it through the two-way radio.

Q Let me show you PLAINTIFF'S EXHIBIT FOR IDENTIFICATION NO. 9 and ask you if you might identify it.

A Identify what now?

Q Do you identify the building that is shown in there?

A The courthouse in Dawson.

Q What side is that on?

A This is on the Lee Street.

Q Now, would that be on the side of the jail or in the back of the jail or in the front of the jail?

A The way it is here is the front of the courthouse here. This is the front part. It is not even facing the jail at all.

Q This is the front of the courthouse?

A Yes. I can't --

Q Sir?

A I can't tell you exactly here.

Q You don't know whether that is the front or the side; do you see the jail in there?

A Yeah, this is on, looks like it is on that little street coming out from Lee going up toward the jail.

Q This is as best you can recollect?

A Yeah, it is on the side.

Q Which side?

A This part of the courthouse here would be facing west.

Q You are saying --

A This part here would be facing west, yes (indicating).

Q The courthouse as it is viewed here in the middle of

this photograph faces the west; is that correct?

A That is what it looks like to me.

Q I see. I am wondering, Your Honor, if I might have this witness step down just a moment in front of the jury in order that they might be able to see. You say this is the side of the courthouse?

A That is what it looks like.

Q In Plaintiff's exhibit for identification No. 9, and will you point out the jail?

A This is the jail right in here.

Q Step down, please, and will you point out where the jail is?

A It looks like it right here.

Q Point it out clearly where my finger is as the jail, and let me show you one of the other pictures. Let me show you PLAINTIFF'S EXHIBIT FOR IDENTIFICATION No. 10 and ask you if you identify that photograph?

A This is the jail.

Q This building is the jail?

A Yeah.

Q All right. Face this way, sir. Now, I point out here what appears to be a wing of the jail. What is in the right wing?

A That's the colored bull pen and cells over on this side.



Q When you say "on this side," you mean over on the right side?

A On the right side going this way.

Q When you say "going this way" you mean if you were standing at the back of the courthouse looking to the rear of the jail?

A That's right.

Q That the wing on the right would be the colored bull pen?

A That's right.

Q And what is this, the tall structure that is in the back?

A That's the sheriff's residence.

Q That's the sheriff's private residence?

A Yes.

Q Is this part of the jail facilities; that is, are these buildings all connected up?

A The buildings are all connected.

Q And what is this right in this center that seems to connect the two wings?

A This is a porch.

THE COURT: We can't hear him. A little louder.

A The Witness: I say that's a porch. When you go in here, you go up on a porch and go in here. You go in here, and you <sup>go</sup> into the colored bull pen, and you go over there and it

is cells over here that we sometimes keep colored men and women in and the white bull pen is back here in this wing.

Q So that on Plaintiff's exhibit No. 10 for identification, you are saying that the right and the left wings are connected by a screen porch?

A That's right.

Q And that you go in the door from the rear off that porch and make a right turn and come around into the bull pen for the colored people?

A That's right.

Q If you go in and make a left turn, you would come, actually you come through the sheriff's office first or not?

A No.

Q You could go straight on over into the --

A Make a turn to your left, you would go to the cells.

Q If you make a left turn off the porch, you would go to the cells; is that right, in the left wing?

A That's right.

Q As you face it from the rear; is that correct?

A That's correct.

Q And then in the rear most portion?

A The rear portion of this --

Q Of the left wing is the --

A White bull pen.

Q I --white bull pen in the portion that is nearest the

street; is that correct?

A Yes.

Q So that one going to the white bull pen would go on the porch, make a left turn and walk down the porch and then make another left turn and come down the corridor of the left wing all the way to the end, and that is where the white bull pen is; is that correct?

A That's right.

Q All right, PLAINTIFF'S EXHIBIT FOR IDENTIFICATION No. 15, will you recognize that?

A This over here is the courthouse.

Q The building that one sees when he looks directly into the photograph which is Plaintiff's exhibit for identification 15 is the courthouse; is that the front or the rear?

A The rear.

Q And what is the area in the foreground, the ground area in the foreground?

A This here here is the jail yard.

Q Let's look back at P-10 and what you are describing as the jail yard is the court between the two wings of the jail as shown in Plaintiff's exhibit 10; is that correct?

A Now, the gate where you go in --

Q This gate that you see in 15 is the same gate that you see here in 10; is that correct?

A Well, the --

Q Except the one in 10 you are looking into the gate from the courthouse and toward the jail; whereas, in 15 you are looking --

A From the jail toward the courthouse..

Q -- from the jail toward the courthouse; is that correct?

A Correct.

Q PLAINTIFF'S EXHIBIT FOR IDENTIFICATION 12, will you recognize that that is shown in that photograph?

A This, what it looks to me like, now, it has been a good while back since I have been there, and things could have changed, but this looks like over on the porch here. On this porch here, turn and go down through there and go down and you will be facing this door.

Q In other words, are you saying that P-12 shows a portion of the porch which connects the two wings?

A Correct.

Q And this door that is seen immediately in front is going where?

A To the storage room.

Q The storage room?

A Yes.

Q Now, if you were going into the left wing?

A If you went into the left wing, you would go right here

and turn left.

Q You would turn left just in front of the door that is seen in P-12; is that right?

A That is what it looks like. It has been a long time since I have been in there.

Q Look at P-8 and see if you can identify that?

A Now this is the --

THE COURT: Mr. Joiner, the court reporter is having considerable difficulty hearing.

MR. HOLLOWELL: Excuse me, Your Honor. Mr. McDonald, turn a little more this way and just a little louder, sir.

A The Witness: That looks like, I can't be positive, but as you go in there.

Q From where?

A From the back.

Q Are we on the porch side?

A Yes, on the porch, this is, this could be either one.

Q Either one of what, sir?

A You could, it looks like maybe you went to the colored bull pen, there is a door there that you go in; and, if you go to the left, there is a door there. It looks like the door that goes into the part where the white bull pen is.

Q You can't tell which it is?

A No.

Q Well, let me show you PLAINTIFF'S EXHIBIT No. 2 for identification and ask you to look at it.

A This is the inside of the sheriff's office in the jail is what it looks like.

Q The inside of the sheriff's office in the jail?

A Yes.

Q Now, this is distinguished from your office, the joint office which is out in the courthouse, the city and the county?

A He has an office in the jail as well as in the courthouse.

Q And that office is used only for the purpose of handling prisoners and bringing them in and out; is that not correct?

A Yeah, in and out of that office. Sometimes they make fingerprints, take fingerprints in that office.

Q Now, are keys kept in that office?

A Keys kept in that office.

Q Do you see any item of furniture in that photograph where any keys are kept?

A I don't see any desk that particular keys are kept in, not in that photograph.

Q Where does this door lead to?

A This door here?

Q Yes.

A This is the door that leads out to the rear if you are going in the office this door, this door leads out the rear out on the street.

Q It goes out on the street?

A Out on the street.

Q Can you go directly into the jail from this office?

A You can come out of this office and go on the street, and you can come out onto the porch and go into the right side and go down the porch and go in the colored section.

Q So that this is the jail office and the door which the standing majority use this door going out to what street?

A It could be going out to the street.

Q You can't tell?

A I can't tell.

Q Let me show you PLAINTIFF'S EXHIBIT FOR IDENTIFICATION No. 14 and ask you to identify that?

A This is the inside of the colored bull pen.

Q Inside of the colored bull pen?

A Yes.

Q This is in the right wing?

A Right wing.

Q So that if we make up, this being the right wing, this being the walk to the sheriff's residence directly to the front, and the left wing is down the side here on my left, you walk up on the porch and make a right turn and then a right

turn coming back into the right wing, the complexion of the cell which constitutes the bull pen or the colored pen is as shown in Plaintiff's exhibit 14?

A That's right, the colored bull pen.

Q All right, you may have your seat, sir. Now, does that porch also lead you into the kitchen?

A Lead you into the kitchen?

Q Yes.

A You can go off the porch into the kitchen.

Q Is that the kitchen where the food is prepared for the prisoners?

A I don't know.

Q How long were you there on the police force?

A I was there from '50 until, well, off and on from 1950 to '59.

Q You don't know whether or not that was where the food was prepared?

A I didn't have nothing to do with preparing the food or feeding the prisoners.

Q You didn't have anything to do with that at all?

A No.

Q Who fed the prisoners?

A The sheriff.

Q He fed the city prisoners too?

A That's right.



Q And the county prisoners?

A That's right.

Q As a matter of fact, that kitchen is accessible from the sheriff's house, is it not?

A It is what?

Q That kitchen is accessible from the sheriff's home?

A Accessible?

Q Yes, he can enter it?

A Who can?

Q The sheriff?

A Sure, he can get in there.

Q How do you know that?

A Well, it is on to his house. I reckon he can get into it.

Q The kitchen is a part of the sheriff's house?

A That's right.

Q Now, you had arrested Odel Brazier and gone and written it up, is that correct, up at the office; that is the first thing you did when you got Brazier locked up over on that right wing; is that not true?

A That's right.

Q What time was this?

A It was between 5:00 and 6:00 o'clock.

Q You had come on at 5:00, had you not?

A Come on at 5:00.

Q How long had you been there before you stopped Brazier?

A I don't remember.

Q Beg pardon?

A I don't remember, not but a very few minutes.

Q Very few minutes. Was the location in which your car was parked when you first saw Odel Brazier, was this the first stop you had made after leaving the office upon coming on duty?

A I don't remember whether it was the first stop or not.

Q When you come on duty, to whom do you report?

A I don't report to nobody.

Q You just come on and start working?

A That's right.

Q Who had the car before you got there?

A I don't know. The car was parked when I got hold of it.

Q I am sorry.

A I say the car was parked when I went and got in it.

Q You don't know who --

A I don't know who had been driving it during the day.

Q Did you see any other police officer at the time you came on?

A Mr. Cherry.

Q Where was he?

A There on the street or in the office, I don't remember which one.

Q As a matter of fact, you went immediately together after you came on?

A I don't know what time he came on.

Q You don't know?

A He could have come on early and let some other man off, I don't know. A lot of times that happens.

Q You didn't see - I am sorry, were you finished?

A I said sometimes that happens, a man will want to get off early and the night man will come on early and relieve him.

Q But you don't know that that happened on this occasion, do you?

A I don't know.

Q You didn't see him when you came on?

A Do what?

Q I say you did not see him when you came on?

A I saw Mr. Cherry, yeah.

Q At the time you came on? Where did you see him?

A I don't remember whether it was on the streets or in that office.

Q Did you go separate ways from there immediately?

A Did I do what?

Q Did you go separate ways immediately after first seeing him?

A I don't remember whether we did or not.

Q He wasn't with you when you parked your car on the street at the service station?

A No, he wasn't with me.

Q Do you know where he went?

A He went home to lunch or to supper.

Q I thought you said you didn't know where he went?

A I didn't say I didn't know where he went.

Q Now, did he or did he not go home to dinner?

A Do what?

Q Did he or did he not go home to dinner?

A That is where he said he was going.

Q And you went on and parked your car at the service station?

A I didn't go up there and park. I was fixing to turn around. I was stopped and letting the traffic go by when Brazier come by. I wasn't parked, but I wasn't just sitting up there with the motor switched off.

Q So, you went around there and as soon as Officer Cherry came back, you then went on down to Brazier's house; is that correct?

A At the time that I got Odel locked up and wrote up, Mr. Cherry, Mr. Cherry came up, and I explained to him what

happened, and we went and got a warrant for James and then went immediately after James.

Q Now, what time approximately was this?

A I don't know, somewhere around between 5:00 and 6:00. I can't keep up with time.

Q As a matter of fact, it was about 7:00, wasn't it?

A I don't remember. I don't think it was exactly 7:00. It could have been between 6:00 and 7:00, I don't remember.

Q How long do you have for dinner when you go?

A That is up to you. You can take 30 minutes or an hour.

Q An hour is the standard time, is it not?

A That's the standard time.

Q Did Mr. Cherry take about that length of time?

A I don't remember whether he was gone that length of time or 30 minutes.

Q Was he gone about the usual time?

A Gone what?

Q About the usual time?

A Well, sometimes he wouldn't be gone maybe 20 minutes before he would be back. There is no regular time. It is kind of how a man feels about it.

Q And so you went to Mr. English; where does he live?

A Went where? What was the question?

Q When you left the jail with Mr. Cherry, you went where?

A To the justice of the peace.

Q Where does he live?

A I don't know where he lives now.

Q Where did he live at that time?

A He lived out - well, to tell you the truth, I couldn't tell you. I don't remember whether he lived right there in town or out in the edge of town. I don't remember.

Q That is the first time you had ever had the occasion to take out a warrant?

A No, most of the time he was up in the office.

Q Where is his office?

A Around the courthouse.

Q Beg your pardon?

A I say, he was around the sheriff's office at the courthouse.

Q That is where he would normally come up and write the warrants out?

A If I ever got one from him, that is what he did if I called him in the daytime or anything.

Q Did you call him on this occasion?

A I didn't call him. We drove out there. Mr. Cherry was driving.

Q You don't recollect where this was?

A I don't remember where he lived because I have been left from there, and a lot of people that I knew right exactly where to go to their house, I couldn't go to them today.

Q Well, at that time you had been there for, oh, 5 or 6 years, 6 or 7 years?

A That's right.

Q Is that not correct?

A Correct.

Q And you had never been to his house before to get a warrant?

A If I had ever been to his house before, I don't remember it.

Q Is that right?

A Mr. Cherry, he went down there.

Q Did you ask Mr. Cherry to take you?

A Mr. Cherry was driving.

Q Did you ask Mr. Cherry to take you?

A I told him what happened and he said we would go get a warrant.

Q He said that we would go get a warrant; is that correct?

A Yes.

Q Who witnessed the warrant?

A Who witnessed it?

Q Yes.

A Are you talking about me or Mr. Cherry?

Q No, I asked you who witnessed it?

A Mr. Dan English wrote the warrant, and I signed it.

Q Is that all that happened?

A I don't remember what else happened. It has been a long time ago. I know we went and got Brazier after then.

Q That would have made the warrant proper; is that correct?

A As far as I know, legal.

Q That would have made it legal, this is your opinion?

A Yes.

Q And then where did you go?

A Went to James Brazier's house.

Q How long did it take you to get out to where Mr. English lived?

A I don't remember.

Q Approximately?

A I don't know.

Q Would you suggest that Mr. English lives as much as three miles from the heart of Dawson? He can't hear you shake your head.

A No, I don't know where he lives, I don't think he would live no three miles. I know he didn't. It was inside



the city limits.

Q Did he live as far as two miles?

A No, I don't think so.

Q One mile?

A It could be. It could be a mile or it could be less, I don't remember.

Q How long would you suggest it was from the time that you left the courthouse going to Mr. English's until the time you got over to Brazier's?

A I don't have any idea.

Q All right, now, after you had arrested Odel, what did you do with his car?

A I left it sitting there where I took him out of it.

Q I see. As a matter of fact, you let James Brazier drive it on home, didn't you?

A No.

Q Beg your pardon?

A No, I didn't let James drive it nowhere.

Q You didn't tell him not to?

A I didn't give him no permission to drive it.

Q Did you tell him not to?

A I didn't tell him not to. He didn't ask me could he drive it.

Q Would you answer my question?

A I didn't tell him not to because he didn't ask me to.

Q You didn't put it in custody, did you?

A It was supposed to have been. I was going back after it.

Q Answer my question. Did you put the car into custody? Yes or no?

A Take it into custody, what do you mean?

Q That's right, in any way?

A Well, the car was in my custody, yes, whenever I taken him out of it.

Q Excuse me. Did you do anything to make anybody know that that car was under your custody?

A No.

Q Did you tell anybody not to move the car?

A I didn't tell nobody not to move it, no.

Q Well, why didn't you tell Mr. Herrington?

A What?

Q Would you read the question back?

The Reporter: "Well, why didn't you tell Mr. Herrington?"

A The Witness: Why did I tell Mr. Herrington what?

Q Why didn't you tell him to stay with the car?

A Mr. Herrington was --

Q What?

A Mr. Herrington was on his way somewhere else.

Q He stopped to help you, didn't he?

A Oh, yeah.

Q You accepted his help, didn't you?

A Yes.

Q You didn't deputize him, though, did you?

A Deputize him?

Q No, you didn't tell him to help?

A I didn't ask him to, no.

Q You didn't tell him notto help you either, did you?

A No, I sure didn't.

Q At no time did you ever seek to take the car into your custody and to have it put over into the yard where cars would normally be taken?

A No.

Q Where a person was charged with drunk driving or driving under the influence, did you?

A I didn't put it in the yard, no.

Q At that time or any other time, did you?

A I didn't.

Q Did anybody else at your instance; are you shaking your head no?

A No, if anybody put it in there, I don't remember it.

Q And you didn't direct anybody to put it in there?

A No, I didn't. I didn't direct anybody to move it at all.

Q Isn't it customary that when one is charged with

driving under the influence that the car is impounded?

A Yeah, it is customary.

Q Well, why didn't you impound that one?

A Well, I just didn't.

Q Why didn't you arrest Brazier at that time?

A Say what?

Q James Brazier, why didn't you arrest him at that time?

A Why didn't I arrest him at that time because I had his daddy, and he was already trying to give me trouble, and I didn't want any trouble with both of them. I didn't want to hurt either one of them, and I figured if I tried to arrest James at that time there would be trouble, and I didn't want to have to hurt him.

Q I see, so you didn't say anything to him at all?

A Yeah, I told him I would be back after him with a warrant.

Q But you didn't say this when we took your deposition, did you, sir?

A I don't remember.

Q And Mr. Cherry didn't say that either, did he?

A I don't remember.

Q When you went down to Brazier's house, did you say anything to him about where his father's car was?

A No.

Q How long had you known James Brazier?

A Well, I had known James Brazier practically all of the time I was around there.

Q As a matter of fact, sometimes you worked for the same people, isn't that right, on the same job?

A Worked there at Stevens Chevrolet, that's right.

Q You worked there too?

A I worked at the paint and body shop and he worked up there at the gas place.

Q Do you remember when he got - excuse me - ?

A At the gas place.

Q Excuse me, were you finished?

A Remember what now?

Q Do you remember when he got that '58 Impala that he had at the time he was deceased?

A I remember when he bought the '58 Impala.

Q As a matter of fact, you spoke to him about it, didn't you?

A Say I done what?

Q You spoke to him about the fact that he was able to buy a new car and you weren't able to have one?

A No.

Q Isn't that right?

A I didn't say nothing to him about it.

Q And that was the time when you told him "Well, you

"will never see the - you'll never be able to get paid for",  
is that right?

A No, I never told him that. Why should I want to tell  
him that?

Q Are you denying that you said it?

A Yeah, I'm denying that I said it, because I didn't  
say it.

Q What route did you take in going from Mr. English's  
house down to that of the deceased, James Brazier?

A Oh, I don't know which way we went from English's  
but I know we come back up town and went down either Stonewall  
or Main, I don't remember which one, exactly which road we  
went, which street.

Q Did you turn on your siren?

A No.

Q You were driving at a fast clip, weren't you?

A No.

Q You just took your time?

A Wasn't any rush.

Q Wasn't in no rush?

A No.

Q Now, when you got there, who was driving the car  
then?

A Mr. Cherry.

Q Beg pardon?

A Mr. Cherry was driving.

Q Did you see Brazier at that time?

A Yes.

Q Where was he, James Brazier now? Odell is in jail?

A Standing at the back of his, kind-of at the back of his house and yard, him and his wife and children.

Q What was he doing?

A Just standing up there.

Q Was he dressed?

A Dressed?

Q Yes?

A Sufe he was dressed.

Q Was he fully clothed?

A Had on a suit.

Q Tie?

A That's right.

Q Hat?

A I don't remember whether he had on a hat or not.

Q What did he appear to be doing, just talking?

A That's all he was doing, just talking; just him and his folks standing around there.

Q Did you see his father's car?

A His father's car wasn't there.

Q You didn't see his father's car?

A It wasn't there.

Q How do you know it wasn't?

A Because it wasn't. There wasn't no car there but James' car.

Q That was the only car that you saw?

A His car.

Q Beg pardon?

A That's the onliest car I remember seeing there, was James' car.

Q Now, who else did you see in the vicinity besides these people that you've mentioned?

A Nobody.

Q You didn't see anybody at all?

A Wasn't anybody else there.

Q Is there a fence around the house?

A No, no fence around the house.

Q You drove right up to the point - did you come up to the house and drive with the car facing into the house or with the car being parallel to the street?

A We just stopped the car in the street, didn't turn up in the yard.

Q I say, was it parallel or facing into the house?

A It was parallel with the street, the street running north and south and the car was facing north.

Q Did you both get out of the car at the same time?

A Yeah, we got out of the car at the same time.



Q Did both of you go into the yard?

A That's right.

Q You went into the yard and you saw Cherry and told him what?

A Saw who?

Q I mean, you had Mr. Cherry with you?

A Yes, Cherry was with me.

Q You saw who, Brazer, and he was standing there in the back-yard, and what did you say to him?

A Mr. Cherry told him he was under arrest.

Q Why did he tell him he was under arrest?

A Why would he tell him?

Q Yes?

A Mr. Cherry was Assistant Chief at that time and I was a plain, just a plain patrolman, and he had - he was supposed to be over me and he was more in authority.

Q And Brazier asked you, "Well, what am I under arrest for", is that right? Is that correct?

A That's correct.

Q What did you say?

A We told him.

Q What did you say?

A I didn't say anything.

Q What did Mr. Cherry say?

A Mr. Cherry told him he was under arrest for interfering with an officer in making an arrest and threatening an

Q He told him that?

A The best I remember.

Q Beg pardon?

A I said, as far as I remember; I don't know, it's been five years ago and I don't remember every word that was said. I can't.

Q Is that all that was said and done at that time?

A All that was said and done at that time?

Q Up to this time and from the time that you arrived?

A That's all that was said right then, yes.

Q Who had the warrant?

A He had the warrant, Mr. Cherry.

Q Did he show it to him?

A I don't remember.

Q You don't remember whether he showed it to him?

A I don't remember whether he showed it to him or not.

Q Well, you know that you didn't testify to the effect that you showed him any warrant, did you?

A Say what?

Q I say, you didn't testify on depositions that he was shown any warrant?

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

Q Beg your pardon?

A I say, I don't think I did. I remember.

Q Did you say anything at all?

A No, not then.

Q I beg pardon?

A No.

MR. HOLLOWELL: (Addressing Mr. Bloch): Were you saying something then?

MR. BLOCH: Not to you.

\_\_\_\_Q All right, thank you. Now, at this time did Brazier walk on out with you?

A Walked on to the car.

Q And Mr. Cherry was leading him right on out to the car?

A We was both going along there with him to the car.

Q One on one side and one on the other?

A Somewhere along that way, I reckon. I don't remember how we was, whether one was ahead and one was behind or both on each side; I don't know.

Q You don't know?

A Don't remember.

Q You don't remember; well, you remembered pretty well before, didn't you? . . . . Sir?

A I don't know whether I did or not. Things that happened 5 or 6 years ago, you can't keep all of that, every little detail, in your head.

Q Well, this was just a couple of months ago, 2 or 3 months ago. Is it not true that you were asked on the deposi-

tion to which we previously referred, "Do you remember any of the conversation from the time that the two of you first went into the back yard of James Brazier and the time that he went to the automobile and was carried to jail? Answer: At Brazier's? Question: That's right. Between Brazier and Cherry? Answer: No." . . . Do you remember that question being asked you and you giving those responses?

A Now, it could be. I don't remember whether I give you that or not.

Q What I mean, you don't deny that those questions were asked you?

A I don't deny. You could have asked me; I don't deny.

Q I ask you whether or not you were asked, "You don't remember any of their conversation", and your answer was, "I don't remember the conversation." You read, don't you, sir?

A That's right. The only conversation I remember was what Cherry said, telling him he was under arrest and what for.

Q "Did you see James Brazier walking off to the car" and the answer was, "Walking right along behind me."

A Yeah. I said he was walking along beside us; I didn't remember whether one was in front of him and one behind him or not.

Q Well, I mean, you said he was walking behind you?

A Well, he could have been.

Q Well, didn't you just testify a moment ago that you were walking on one side of him -

A No.

Q - and Mr. Cherry was on the other?

A I said it could have been, one on one side and one the other, one in front and one behind, that I didn't remember.

Q Could you see him walking?

A Yeah, I could see him walking.

Q Don't you know that you were asked that same question, that you were asked the question, and "Could you see him walking?" And you answered: "Well, I didn't see him walking but he was coming along behind me because I know he was right at me"?

A Well, that's the same as looking at him. You can tell somebody is right behind you walking and you don't have to look back; you can tell they're right behind you.

Q But he can't be behind you and on the side of you at the same time, can he?

A I didn't say. I said I didn't remember whether he was on the side or behind me.

Q Did you have hold to him?

A No, I didn't have hold of him.

Q Did Mr. Cherry have hold to him?

A I don't know whether he did or not.

Q Weren't you there?

A Yeah, I was there but I wasn't paying no attention to whether he had hold of him or not.

Q Wouldn't you think that would be important in making an arrest?

A Sometimes it is and sometimes it's not. A man that ain't ever given you no --

Q Excuse me - Did he walk straight out to the car?

A Yes, he walked out to the car.

Q Did he say anything else at that time, during the process of walking?

A Not 'til he got to the car.

Q Until he got to the car, not until he got to the car? Did you say anything to him?

A No, I didn't say nothing to him but open the door for him to get in the car.

Q Did Mr. Cherry say anything to him?

A I don't remember what Mr. Cherry said.

Q As a matter of fact, you asked him what was that - when you first got there, you asked him what was that, that he said he was going to do to you, didn't you?

A No, I didn't say that to him.

Q You didn't say that at all?

A No.

Q And yet, you say that he threatened you up on the street?

A Yes.

Q And you told him - you say you told him?

A Say what?

Q You say you told him that you would get him later, even though now you don't have any recollection and didn't say this before, and yet you didn't ask him "What did you say you were going to do to me"?

A A No, I didn't ask him that, when he was there at his house.

Q Beg pardon?

A No, I didn't ask him.

Q You didn't ask him that?

A No.

Q All you're saying is that Mr. Cherry told him that he was under arrest, is that correct?

A As far as I can remember, that's correct.

Q But Mr. Cherry didn't tell him what he was under arrest for, did he?

A Yeah, I think he did; as far as I can remember, I think he did.

Q Now, do you think he did or do you know he did?

A I don't remember; it's been a long time ago.

Q As a matter of fact, isn't it true that on deposition you were asked, "You heard Mr. Cherry tell Brazier what he was under arrest", I mean "that he was under arrest, did you?"

"Answer: I did. Question: Brazier said what am I under arrest for? Answer: I don't remember what Brazier said. Question: And you don't remember him saying anything? Answer: He said something but I wasn't paying any attention to what he was saying." And the question was asked: "I see. You were about to make an arrest of the man but you didn't pay any attention to what he said?" And you answered: "Well, Mr. Cherry was doing the talking and you can't talk to two different people at the same time, so I don't interfere", is that right?

A He couldn't talk to both of us at the same time, so, I didn't interfere.

Q The Question was: "So, you weren't listening? Answer: Could have been." "Well, you don't remember whether you did or did not"?

A I don't remember what all was said, no.

Q You say, "That's been so long ago, I don't remember what was said." And that's still your testimony; it's been so long ago, you don't remember what was said, isn't that right?

A All I remember is Mr. Cherry -

Q Excuse me, sir, answer my question; is that right?

A What was the question?

Q Yes or no?

A What was your question?



MR. HOLLOWELL: Will you read it back to him?

THE REPORTER: "And that's still your testimony, it's been so long ago you don't remember what was said, isn't that right?"

A The Witness: All I remember that was said was Mr. Cherry telling him he was under arrest.

\_\_\_\_Q Mr. Hollowell: All right. Now, you say that Brazier walked straight out to the car?

A Yeah, he walked out to the car.

Q When he got to the car, did he say anything?

A I don't remember what he said; he just started swinging.

Q He started swinging?

A Yeah.

Q Who did he start swinging at?

A At me.

Q Where were you?

A When I opened the door.

Q The front door or back door?

A The back door.

Q Right side or left side?

A Right side.

Q Was that the side next to the house?

A That's right.

Q When you open the back door, does it open to the

front or the rear?

A To the front.

Q Opens to the front?

A Yes.

Q And where were you standing?

A I opened the door back to the side like that  
(indicating). . .

Q You opened the right rear door?

A Walked up to the car this way (demonstrating),  
I opened the door, pulled the door open and stepped over  
here, and Brazier come up there and that's when he swung at me.

Q Brazier swung at you?

A Yes.

Q And you were standing right by the door?

A Out from it, kind-of from the door -

Q How far?

A - where he'd have room to get in.

Q Just enough room to get in?

A Where he could walk between me and the door and get in.

Q Which hand did he swing at you with?

A With his right.

Q Did he hit you?

A No, he knocked my cap off.

Q Knocked your cap off?

A Yes.

Q How do you know he actually swung -

A If I was -

Q - or did he just appear to swing?

A If I was to swing at you and knock your cap off, wouldn't you know I was swinging at you?

Q Might and might not; it depends on what I was doing?

A Well, if you was just standing up there and I took a swing at you and knocked your car off, if you hadn't ducked, it would hit you in the head and knock your cap off, you'd know I swung at you, wouldn't you?

Q I see. I should think if you were on my left then, that instead of reaching over to try to hit you over here, I would have hit you with my left hand?

A I wasn't on the left. I was over here and he come around this way with his right (demonstrating).

Q Well, let's step down here a moment, if you want to, since you were using this in demonstrating. Let's say this is the car door. Now, which way does the car door open:

Does the car door open -

A The car door opens this way.

Q The car door opens back to the right?

A That's right.

Q And didn't you say you stepped across on the left?

A I stepped over here (indicating).

Q And left enough room for him to get through?

A And he walked up here and come around that way (demonstrating). . .

Q He walked up and come around and tried to hit you (indicating)?

A There you go.

Q Did he knock your cap off?

A Knocked my cap off.

Q And that's all he did?

A Say what?

Q That's all he did at that time?

A And he swung again and Mr. Cherry tapped him with a slap-jack.

Q He swung again; where were you during that time?

A Trying to get out of the way, to keep him from hitting me. I caught him by his right -

Q Who did he hit that time?

THE COURT: Let him finish.

Q Mr. Hollowell: I'm sorry; had you finished?

A Go ahead.

THE COURT: No, you go ahead with your answer and let him finish the answer before you asked him another question.

MR. HOLLOWELL: Judge, it's kind-of delayed action and I certainly don't want to cut him off.

THE COURT: Alright, go ahead and answer the question.

A The Witness: While he - when he swung at me, Mr. Cherry hit him with the black-jack; and then he swung again and I caught his right arm.

\_\_\_\_Q Mr. Hollowell: What did you do with his right arm when you caught it?

A I held to it and Mr. Cherry put a handcuff on the other one.

Q Now, don't you know you never said anything about that before either?

A Don't I know what?

Q Don't you know you never said anything about your getting and catching his right arm?

A I may have not said nothing about it. I don't know.

Q Is this another figment of your imagination?

A No imagination about him swinging at me.

Q Well, let me ask you this: On this same deposition to which we have referred, you were asked these questions and you gave these answers - strike that, just before I do that and let me ask another question: Now, is it your testimony that when Brazier came out, he walked up to the car and just as he was about to get in, he swung around and he tried to hit you, is that correct?

A Tried to hit me.

Q Is that right?

A That's right.

Q Was he facing the car at the time?

A Say what?

Q Was he facing the car at the time?

A Sure he was facing the car when he walked up to it.

Q When he walked up to it?

A Sure/

Q Was he walking right straight at the door?

A Walking to the door.

Q And where was Mr. Cherry standing?

A Mr. Cherry was over on the other side of him.

Q On which side?

A He was here (indicating).

Q Who was here?

A Brazier.

Q All right?

A Well, I stepped over here and Mr. Cherry come up over there (indicating).

Q When you say "over there", do you mean -

A And he was kind-of between.

Q - you mean he was on the right side, is that right?

A And James was between the two of us when he walked up to the door; when he walked up there and stopped, he was between us.

Q Did he walk all the way up to the car?

A Sure he walked up to the car.

Q - or did he try to hit you before he got to the car?

A Sure he walked up to the car, right up to it.

Q Beg pardon?

A Yeah, he walked up, right up to the car, just before getting in.

Q Well, was he three feet away at the time he swung at you?

A No, it wasn't three feet away.

Q Beg your pardon?

A No, he couldn't have been three feet away, I don't reckon.

Q He was right up to the car then?

A Right up to the car.

Q Right up to it?

A When he first walked up there, like you'd walk up to get in or anybody else.

Q Now, what did he do after Mr. Cherry hit him on the head?

A What did he do?

Q Yes?

A Well, when Mr. Cherry first hit him, he kept on resisting.

Q No, tell me what he did?

A And Mr. Cherry hit him again, and he throwed up his arm and, the best I remember, he caught most of the lick on

his arm; anyway, that's when Mr. Cherry put the handcuffs, hit him across the arm with that handcuff and tightened it up on him and he give up and we put him in the car.

Q I thought you said you caught the arm?

A I caught his right arm.

Q You caught the other arm, and -

A - and Mr. Cherry put the handcuffs on the left arm.

Q You remember this distinctly, do you?

A I know he put the handcuffs on him and tightened it up.

THE COURT: Maybe this would be a good place for us to take a recess at this time. We will recess at this time until 2 o'clock.

Now, members of the jury, when you come back from lunch recess, you go to the jury room and we will bring you in from there. Now, I want to give you this admonition and you will remember this every time when we take a recess, because we, of course, allow you to disperse any time we take a recess:

Don't allow anybody to talk to you about this case, nobody interested in the case on one side or another.

I'm sure they won't try to do it but, indeed, if anybody should try to talk to you about it, have no conversation about it; don't listen to anything on any radio or television broadcast about it; don't read anything in



The Court:

any periodicals or magazine or newspaper; and let all of your impressions about the case come to you from the witness-stand, from the evidence that's introduced, and not from any other source; and every time we take a recess you will remember that admonition without me having to repeat it in detail every time, because it looks like we might be taking a few of them before we get through with this case; and it will be appreciated by the Court if you simply remember that. So, we stand in recess now until 2 o'clock.

LUNCH RECESS: 12:45 PM to 2:00 PM FEB. 4, 1963

-----

MR. HOLLOWELL: May it please the Court, the photographer who took the photographs is here and I have spoken to Mr. Bloch - we were not through with Mr. McDonald - but he says that we could put him on and let him identify all of them and then let him go on about his business.

THE COURT: Allright.

MR. HOLLOWELL: If the Court has no objection?

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

DIRECT EXAMINATION

BY MR. HOLLOWELL:

Q Would you give your name, sir?

A B. F. Cochran, Jr.

Q Where do you live, sir?

A Albany.

Q What is your profession or employment?

A Commercial photographer.

Q How long have you been in that work?

A 17 years.

Q I ask you what training you've had to take photographs?

A I've had training in the Service, in the Army and  
at New York Institute of Photography in New York.

Q For what number of years, sir?

MR. BLOCH: I admit his qualifications.

MR. HOLLOWELL: Thank you.

Q Let me show you - let me just get them in order. . .  
Mr. Cochran, I show you PLAINTIFF'S EXHIBIT for identification  
No. 1 and ask you to look at it and see if you can identify  
it, and indicate whether or not you took the photograph?

A Yes, I did. I can identify it.

Q Would you indicate what it shows?

A It shows looking into the, I guess you would call  
it, the corridor of the east wing, I believe, the east wing it

is, and you're looking north.

Q When you say the "east wing", is that the wing to the right or to the left?

A To the right.

Q From which direction?

A Facing north; if you were facing north, it would be on the right.

Q If you were facing from the courthouse toward the rear of the jail, which wing would that be?

A Be on the left.

Q On the left-hand side?

A Yes.

Q This is the corridor in the east wing looking north?

A Looking north.

Q Maybe if you would step down here, it might be a little more helpful, but speak up so that Mr. Joiner can hear you. You have indicated that this is looking as if you would go into the little passageway, the porch, make a left turn and go to the end, and then make a left turn and you would be going through the left wing, which would be carrying you back north; and he says this is looking north toward the east end or in the east wing.

I hand you PLAINTIFF'S EXHIBIT #2 for identification:  
Indicate whether that was taken by you?

A It was.

Q When was it taken?

A It was taken by me 2-1-63, February 1.

Q And what does it represent?

A It represents an office. I was standing in the door on the east and looking across through to the corridor.

Q Did you notice whose office it was?

A I did not.

Q Let me show you PLAINTIFF'S EXHIBIT for identification No. 3 and ask you to identify it and indicate when it was taken?

A This was taken on the same date, February 1, '63 and it was taken from the third cell down; that is going north as you came in the corridor.

Q In which wing?

A In the east wing and through the bars.

Q Looking in what direction?

A Looking in the direction of the corridor.

Q That would be what?

A That would be looking south.

Q Let me see if I understand you: If you came down the east wing to the third cell, was it taken from the inside?

A It was taken from the inside.

Q From the inside, was the door locked?

A The door was locked.

Q And it was taken through the window?

A Through the bars.

Q Through the bars back towards the Sheriff's office?

A Back toward the Sheriff's office.

Q PLAINTIFF'S EXHIBIT #4 for identification, indicate please when you took it and where and what it represents?

A This was taken February 1. I was in the east wing looking south in the direction of the corridor.

Q When you say in the direction of the corridor, do you mean the corridor running down through the wing, or do you mean the screen porch?

A The screen porch. That's what I'm calling a corridor.

Q Maybe for identification, if you would refer to the screen porch as screen porch and then use the areas of the wings walking up and down the wings as corridors? Okay?

A This was in a corridor in the east wing and you're looking south in the direction of the screen porch.

Q Was this near the front? Was this near the entrance to the corridor or was it further downtowns --

A It was the last cell.

Q The last cell?

A The last cell down.

Q Now, when you say the "last cell", is there anything that would be further to the north in the left wing than that

particular cell?

A Yes, there is.

Q What is that?

A I don't recall what it was, except it was just an opening that I stood in. I did not look around to see whether there was another cell or not.

Q In other words, there was something immediately to your rear?

A To my rear.

Q But this was the last cell along the wall?

A Along the wall.

Q Let me show you - You see, there appears to be some offset there; would you be able to tell me whether this particular cell is flush with the other cells or is it offset to some extent?

A This particular cell is offset.

Q Where is the offset?

A The offset - this is the offset here (pointing on P-4). . . This is a flush section running straight down; in other words, it makes an "L" there.

Q You are referring to this light section here as the offset?

A The light section as the offset.

Q And that was on?

A February 1.

Q Now, P-5, would you identify it, indicate when you took it and what it represents?

A P-5 was taken from cell No. 3, I believe. I'm referring to these cells as 1, 2, 3, 4, down the line.

Q Now, when you say, 1, 2, 3, -

A To the east.

Q - excuse me - when you say 1, 2, 3, 4, are you referring to 1 as the first cell on your right as you would into that east wing?

A One is the first cell on the right as you come into the east wing. And this was taken from the third cell in the east wing; I was on the inside; the doors were locked and I was looking out toward the west wing.

Q When you say toward the west wing, would you indicate what the lighter surfaces are?

A The lighter section here is the west wing.

Q And you were looking across from the inside of that third cell across the court to the west wing, is that correct?

A That's correct.

Q PLAINTIFF'S EXHIBIT 6 for identification?

A This is the second cell in the east wing. I was standing on the outside looking in to the cell. It was likewise taken February 1, 1963.

Q So, in this you were standing out in the corridor, looking into the particular cell, is that correct?

A Correct.

Q As to P-7 would you relate the same information, sir?

A This particular picture here is one that was taken by me February 1, '63. It's the first cell in the east wing. I was standing on the outside looking in to the cell.

Q Let me go back for just a second to PLAINTIFF'S EXHIBIT No. 3, and ask you why the gradations in shade and what this cylindrical looking object here and here are, and why you get your gradations there?

A This was a time exposure. I believe mytime on it was 1/25 of a second F-63 lens opening - F-35, I'm sorry.

Q Go right ahead?

A And these cylindrical objects here are bars. The reason for the distortion is I was so close on them. The camera was directly on the bars actually, looking north. And this is the portion of the cell or section of the cell door and there's a little door there.

Q Are you referring to the door that covers the window that you see as distinguished from the full door?

A I am referring to the door that covers the window, and not the full door.

Q And that's what you're referring to as this dark portion here?

A Yes, that's right.

Q And you say that these two cylindrical objects which



show here as sort of a light gray are bars?

A Bars.

Q And that the camera was directed against the bars, virtually?

A Correct.

Q PLAINTIFF'S EXHIBIT for identification No. 8, sir?

A This photograph was taken by me. It is looking west in the screen porch area that connects the east wing with the west wing.

Q Does this door lead, the door that you see that's prominent with the bars about three-quarters of the way up, does that door lead to the right wing or the left wing; that is, the east wing?

A From the courthouse it would lead to the right wing.

Q Could you indicate what this is, what looks like a door?

A That's an opening; that's a door.

Q That's a door?

A Yes.

Q Do you know to where it went?

A I believe it goes to the kitchen.

Q PLAINTIFF'S EXHIBIT #9?

A Exhibit #9 is a picture, this is the courthouse and this is the jail section. I was standing northeast of the courthouse and shooting southwest, diagonally.

Q Is this the side of the courthouse or the front?

A This is the side of it.

Q What side?

A The east side.

Q This is the east side?

A Yes.

Q Is this the same side that the left wing of the jail is on, when viewed from the courthouse?

A That's right, it is the same side.

Q Would you identify PLAINTIFF'S EXHIBIT No. 10 for identification?

A This particular picture was taken by me February 1, 1963 and it's looking south from the courthouse to the jail court.

Q Now, sir, referring again to No. 3, I'll ask you if you can tell me what this portion is here through that opening?

A It looks like a window.

Q Do you know what window that was?

A It looks like the window out of the office.

Q The office to which you refer, is that the office which was shown in Plaintiff's Exhibit #2, the Sheriff's office there on the porch?

A Correct.

Q Is No. 11 the same as No. 9, sir?

A Yes, No. 11 is the same as No.9.

Q We will take one of them out; I just wanted to be sure myself that they were. Now, PLAINTIFF'S EXHIBIT No. 12 for identification?

A No. 12 is in the screen porch area. The photograph was taken by me February 1, '63 and you're looking east.

Q Would you indicate what that door is there?

A I believe that's a utility closet.

Q So that, you were facing east in the corridor as of the time that you took that one?

A Correct.

Q PLAINTIFF'S EXHIBIT No. 13 - can you gentlemen see here? Mr. Cochran, please stand this way.

A No. 13 is photograph taken by me, looking south in the corridor of the east wing.

Q Looking south in the corridor of the east wing; now, would that be looking back toward the Sheriff's office or looking away from the Sheriff's office?

A Looking away from the Sheriff's office.

MR. BLOCH: What number is that?

A The Witness: No, I'm sorry. This is looking back towards the Sheriff's office, looking south.

MR. BLOCH: No. 13.

A The Witness: This is looking toward the Sheriff's office.

Q In other words, you were down into the corridor looking back toward the entrance, is that correct?

A That's right.

Q Now, let me show you PLAINTIFF'S EXHIBIT for identification No. 14 and ask you to identify it, and then state whether or not you took it and when?

A This was taken on February 1; it was taken by me. It is in the west wing looking north.

Q In other words, how would you get to the position that you were when you took that photograph?

A Coming from the screen porch area?

Q Yes?

A Coming from the screen porch area.

Q Well, let's say - excuse me - coming from the court, from the court there between the two wings?

A Coming from the court, you would go in the right-hand side of the court into the screen porch area, turn right, and then again you would turn right and you would be facing back north.

Q And this is looking down that corridor on what would be the right wing coming in from the rear, is that correct?

A That's right.

Q PLAINTIFF'S EXHIBIT No. 15 for identification?

A No. 15 is standing in the court looking north at the

courthouse.

Q Would that be the front or the rear of the courthouse?

A That would be the rear.

Q All right, sir, you may have your seat. (Witness returning to witness-stand) . . . Is it your testimony that you took all of those photographs numbered PLAINTIFF'S EXHIBITS 1 through 15, inclusive?

A I did.

Q And they represent as has been explained by you in your testimony, is that correct?

A Correct, sir.

Q No further questions.

CROSS EXAMINATION

BY MR. BLOCH:

Q Would you mind coming down again, please . . . I show you this PLAINTIFF'S EXHIBIT #3, about which you have just testified, looking south in the third cell in the east wing: What makes that so blurred?

A This is a portion of a bar. Actually, what makes it blurred, it was shot at a very slow shutter speed and had a <sup>re</sup>fraction of light coming from this window and you get constant refraction of light backwards and forwards.

Actually, the lens was very poor.

Q Now, in this No. 3, it says "looking south from

"third cell" and No. 13 says "looking south in corridor of the east wing". Is that window there the same as this one here, this window here?

A No, this is another window.

Q Those two windows are not the same. Now, where in No. 3 it says "looking south from third cell"; now, look at #13 and tell me which is the third cell? . . . That one where the door is closed?

A The door is open -- the door is closed and the window is open.

Q The door is closed but the window is open?

A Right.

Q That's where I'll put an "X". Do you mind my marking on that one? That's the third cell. (Marking on P-13) . . .

Now, when you took this picture, and by this, I mean No. 3, where was your camera?

A In the corner.

Q With that door open?

A That door was closed.

Q That door was closed and the camera was standing in the corner where that handle is?

A In the corner where the handle is. It was shot from up here, not down here but standing right here (pointing on P-3). . .

Q All right. Now, one other thing, while we're

talking about this = it may shorten it some - I show you what purports to be a plat, prepared by Mr. Paul W. Hart of the Prison Section of the Terrell County Jail. Now, with this being the east wing and that being the west wing, this cell No. 3 right there would be the one that's marked "3" here, wouldn't it?

A That's correct.

Q And cell No. -- the jail office would be what is marked "office" on this plat, wouldn't it?

A Correct.

Q And the east side, what does that say "courthouse"?

A "Courthouse".

Q Looking east on screen porch. This where it says 30x6 feet, is that the screen porch?

A That's the screen porch.

Q And looking east would be looking toward that marked "storage", is that right?

A Correct.

Q And looking south from the courthouse to the jail court would be looking in this way the way I put an arrow there?

A That's correct.

Q And the first cell on the east wing, would that be where that No. 1 is?

A That would be No. 1.

Q And the second cell in the east wing would be

where No.2 is there?

A Correct.

Q And the first cell in the east wing, is that another one of the same thing?

A (No answer) . . .

Q Where would that be, this No. 1 here?

A This is the first cell?

Q The first cell in the east wing? All right. Now, as you look out that window there from the first cell in the east wing, what do you see out there?

A Well, you see some light out there.

Q Just some light, what's out there, do you remember?

A I don't recall.

Q Isn't there a street out there?

A There's a street there.

Q And I notice in that cell there's an upper berth, upper bunk?

A Correct.

Q EXHIBIT No. 4, the last cell on east side before the bullpen, where is that?

A That's No. 4.

Q Right there, No. 4?

A No. 4.

Q And No. 14 is looking north in the west wing? This is the west wing over here?



A That's the west wing.

Q Right here where I write "west"?

A Correct.

Q And looking north would be the way that arrow is pointed, is that right?

A Correct.

Q Now, on No. 5, it says "looking through third cell door of east wing toward the jail court": Where did you have your camera then?

A Right here (pointing) . . .

Q Where is any window on this diagram? Where is that window on this diagram?

A How many windows does it show?

Q Doesn't this No. 5 indicate that there is a window directly opposite the door of No. 3?

A It does.

Q That's what that indicates? In the east wing?

A It does. That's what it shows.

Q Have you got a picture of the inside of No. 3?

A I do not have a picture of the inside of No. 3.

Q ~~These doors that are shown here, what are they? Of~~  
what material are they?

A Iron. You mean this one?

Q Yes?

A Oh, it's iron.

Q Iron or steel?

A Or steel.

Q The heaviest sort of construction, is that it?

A Heavy construction.

Q You would characterize it as battleship construction, does that sound right?

A It does.

Q And the walls, between the cells, are of what construction?

A Iron, the same material.

Q The same?

A The same, approximately the same. I didn't notice really. It looks like brick here; this is brick.

MR. BLOCH: I think that's all for the witness.

That will do; we've got some more pictures.

REDIRECT EXAMINATION

BY MR. HOLLOWELL:

Q I have one other question, sir: Now, sir, did I understand you to say that at the time that you took the photograph in PLAINTIFF'S EXHIBIT No. 3, which is the one that you indicated you took when your camera was right up close, was the door to the window --let me rephrase that, Mr. Joiner -

Was the little window door of the main door to the cell - do you follow me - in other words, this door up here,

as distinguished from the door itself, open or closed?

A Closed.

Q That door, when you took this photograph, that is the photograph which is PLAINTIFF'S EXHIBIT #3, was this door, which is the door that covers the bars, was that door open or was it closed?

A It was just as it is here, approximately. It was open.

Q Did you at any time have the occasion to have the door which covers the bars closed? Well, let me just withdraw that question and ask you this:

Can you tell me whether in PLAINTIFF'S EXHIBIT for identification No. 1 the door there to the bars is open or closed?

A Let me turn my head . . . It was apparently closed.

Q Do you see any gap along the edge where the hinges are?

A Yes, I do.

Q I'll ask you whether or not you had the occasion to observe that unless the window which covers the bars was actually fastened, that one could see through the area between the hinges; did you have the occasion to see that?

A Not that I recall.

MR. HOLLOWELL: I don't believe I have any further questions for him.

MR. BLOCH: I have none.

MR. HOLLOWELL: May the witness be excused?

THE COURT: Do you want to tender these now in evidence?

MR. HOLLOWELL: Yes sir, that's right.

THE COURT: While he's still here.

MR. HOLLOWELL: We would like to tender PLAINTIFF'S EXHIBITS 1 through 15, with the exception of No. 11, which is a duplication, Mr. Pantone, of No. 9; so, it will be 1 through 10 and 12 through 15.

THE COURT: All right.

MR. BLOCH: What is #11?

MR. HOLLOWELL: #11, there are two pictures of the courthouse. One is #9 and the other is #11, apparently a duplication of No. 9.

THE COURT: Any objection, Mr. Bloch?

MR. BLOCH: q No objection.

THE COURT: All right, they are admitted. May this witness be excused?

MR. BLOCH: Yes sir.

MR. HOLLOWELL: We have no objection.

THE COURT: All right.

MR. HOLLOWELL: Now, we call Mr. McDonald back to the stand and express our appreciation to the Court and counsel for permitting us to put this witness on out of order.

party Defendant, now resumed witness-  
stand on Plaintiff's call as adverse  
witness on

CROSS EXAMINATION

BY MR. HOLLOWELL:

Q Now, Mr. McDonald, you will recall at the time that we adjourned for lunch that you had - Mr. Cherry had, I believe you said, hit the deceased, James Brazier, two times, is that correct, one time on the front of the head and one time on the back of the head, is that correct?

A No, not correct. I didn't say that.

Q Where was he hit?

A Hit him one time up there on the forehead and he hit at him again and he caught the most of the lick on his hand right up there (pointing). He didn't hit him but one lick right up there.

Q Only one lick?

A Yes.

Q One lick that you saw, is that correct?

A That's all I saw.

Q What kind of car were you driving?

A What kind of car?

Q Yes?

A 1957 Ford.

Q What color was it?

A Gray.

Q Sir?

A Gray.

Q What color gray was it? Was it a dark gray or light gray or pearl gray?

A It was just a gray. I don't know what color gray.

Q What color were the letters which indicated the designation of "Police" on it?

A I don't remember.

Q Were there any letters on it?

A Yeah, there was letters on it.

Q You just don't recollect at this time?

A I don't remember what color they was but it was marked, 6-inch letters.

Q Calling your attention, if I might, to the deposition that we referred to this morning, I will ask you whether or not these questions were asked of you and whether or not you gave these answers: "Question: All you know is that he hit him on the head with this slap-jack? Answer: Yes.

How many times did he hit him? Answer: Twice"?

A That's what I said just now, twice. He hit at him; he didn't, to say, hit him because he caught the most of the lick on his hand.

Q Maybe you didn't hear it, Mr. McDonald, let me read it to you again: "Question: How many times did he hit him? Answer: Twice."

A If that's what's down there, that's what I said.

Q Now, is it now your testimony that this second blow was on the arm?

A Most of it.

Q Was it on the head at all?

A Say what?

Q Was it on the head at all?

A Couldn't tell. He caught the most of it on his arm when he hit at him up there; went to hit him up there and he throwed up his arm and most of the blow was caught on his arm.

Q Allright; now, are you saying now most of the blow was caught on his arm? Where was the rest of the blow caught?

A It might have hit him on the head, I guess.

Q Whereabouts on the head?

A Along up here (pointing) . . .

Q Now, you say the first one was the right forehead and the next, the second one was the left forehead, is that right?

A I didn't say that --

Q Well, along up here (pointing), what do you mean?

A Right up here on the left (pointing).

Q All right, is that the left forehead?

A The left.

Q Is that your forehead?

A That's right.

Q Is it not true that you said, "You hit him the second time" and you said "yes"?

A Well, that was the second time. I told you that just now.

Q And then, as I recollect your testimony, you say that Mr. Cherry took out the pistol-grip cuff-links and hand-cuffs?

A Pistol-grip hand-cuffs.

Q And threw it on which of Brazier's arms?

A I don't remember whether it was right or left. I know I had one hand myself and he put the handcuffs on the other one. I don't exactly remember whether I had his right-hand or left hand but I had one of them, and he put the handcuffs up on the other one.

Q Now, have you told us everything that happened right there within the period of time from the time that Brazier arrived at the car until the time that he had the hand-cuffs on him?

A As well as I remember, when we put the handcuffs on him, he gave up and we put him in the car and carried him on to the jail.

Q Did you carry a gun on that day?

A Sure, I carried a gun.

Q Did you have it on at that time?



A Sure I had it on.

Q Did Mr. Cherry carry a gun that day?

A That's right.

Q Did he have it on at that time?

A Sure, he had a gun.

Q As a matter of fact, he took it out and put it right at the man's head, isn't that right?

A No.

Q What did he do with it?

A The gun was in the holster.

Q He never did take it out?

A If he did, I didn't see him. All I saw him with was the pistol=grip handcuffs, that look like a pistol.

Q Well, let me call your attention again to this deposition, Mr. McDonald, and ask you whether or not you were asked this question, and whether or not you gave this answer: It says "After he did that, what happened?", which was the question. Answer: "Mr. Cherry pulled his gun."

A No, I didn't say that.

Q You're saying that you didn't say that?

A I didn't say he pulled his gun.

Q And the question then, was, "He pulled his gun on him? Answer: That's right."

A No.

Q Is it your testimony that you didn't say?

A If I said that, I don't remember saying it.

Q Well, now did you or did you not say it?

A I don't remember it.

Q You don't remember saying it?

A No.

Q You don't deny that you said it?

A I don't remember it.

Q Do you deny that you said it?

A I don't deny it and don't remember it.

Q And then, the question was, "Which hand did he have the gun in", and the answer, "In his right hand": Did you say that?

A I don't remember saying that.

Q "Question: Did he still have the black-jack? Answer: He got a hand-cuff. Question: Beg pardon? He got a hand-cuff and put it on him with his left hand. What had he done with the black-jack at that time? Answer: Stuck in his pocket." You don't remember saying that?

A I don't remember saying he pulled no gun on him or nothing like that, no. The gun was in the holster.

Q Is that the way you spell your name right there, M-c-D-o-n-a-l-d (spelling)?

A That's right.

Q Is that your name on the front of this paper here,

which say s "Randolph McDonald, 204"?

A That's part of it.

Q I mean, is that the only name you have?

A I have Randolph E. McDonald.

Q Randolph E. McDonald?

A Yes.

Q Do you know Mr. Joiner?

A What Joiner?

Q Do you know Mr. Claude Joiner?

A I have met him.

Q Where did you see him?

A Up here.

Q When was that?

A Back here some time during the summer.

Q Wasn't that in October, on the 10th of October, '62?

A It could have been.

Q Did you answer some questions before him?

A I did.

Q The questions that were being asked by the same person who's asking you questions now?

A It could have been.

Q Was he sitting down taking the information that was being elicited at that time in the same way as he is now?

A Well, he was sitting down there running a tape recorder.

Q Did he have a tape recorder?

A Yes.

Q Does that look like it right back over there by him?

A That's one. It could be the same one or it could be another one.

Q Now, did you notice the color of Brazier's clothes?

A No.

Q You said he had on a tie and shirt and a coat, trousers?

A He had on a suit.

Q A suit just like I'm dressed generally?

A I don't know what color it was. I didn't pay that much attention to it.

Q But he did have on a tie?

A He had on a tie and all.

Q Now, these two blows that you make mention of, one being on the right forehead -

A No, I didn't say no right forehead.

Q Now, would you point on your head where it was?

A (Witness pointing) . . .

Q All right, on the left forehead, now where was the other?

A Well, it was similar in the same spot.

Q You're saying that both blows were in approximately the same spot and that spot was the left forehead?

A That's the only place.

Q This is the only place you saw?

A Yes.

Q Was there anybody else who hit James Brazier while you were present in his yard, in James Brazier's yard, on the afternoon of April 20, 1958?

A Nobody else hit him.

Q Now, what was it you say that he was hit with by Mr. Cherry?

A You say, what he did with?

Q Hit with?

A A slap-jack.

Q What does a slap-jack look like?

A It's a flap leather outfit.

Q Did you ever carry one?

A I never carried a slap-jack.

Q You've seen one?

A Saw plenty of them.

Q Is it all leather?

A Well, I don't know what's inside of it. I've never tore one up to see.

Q Does it appear to be all leather?

A That's what it appears to be.

Q About how thick is it?

A Oh, about that thick (indicating).

Q Are you saying about 2/5 of an inch?

A I'll say about that thick (indicating). I don't know whether it's 2/5 or what it is.

Q Do you know how much a half inch is?

A Yeah but it wasn't a half inch thick.

Q It was not a half an inch thick?

A No.

Q Was it as much as a quarter of an inch?

A I doubt if it was a quarter of an inch, don't think so.

Q You don't think so; maybe about 1/5 of an inch?

A Could be. I've never measured it to see. I know it was just a thin outfit.

Q Would it be as thick as this pencil?

A No.

Q Would not?

A No.

Q Would it be half as thick as a pencil?

A Might; something about like that.

Q In other words, about 1/8 of an inch; about an eighth of an inch?

A I don't know; I never measured it but I know it ain't very thick. It's just a thin leather outfit that he was carrying.

Q Is it made double, that is, is there more than one

elongated portion of it above the handle or not?

A Well, it's, I'd say about that long (indicating) maybe 10 inches long or something or another like that, a little wider at one end than it is at the other one, where you hold it with your hand.

Q Has a handle on it?

A It's all made together.

Q All made together; I mean is the handle part of it rounded?

A It's tapered off. All of it is flat but it's just tapered off to think part, down here where you hold it in your hand.

Q Does it have just one leaf to it?

A That's all I know of, is one.

Q As distinguished from, say a handle and having maybe a leaf there, a left there, maybe 2 or 3, so that you would get a slapping action from 2 or 3 leaves as distinguished from just one?

A No.

Q Just one single -

A Just one thing.

Q - single instrument?

A Just one flat leather slap-jack.

Q And this is what you say Mr. Cherry hit him with on these two occasions?

A That's what he had.

Q Did it break the skin?

A Break the skin? Let's see, I think there was one little place up there, oh just a small little place, just a scartch-like; wasn't enough to -

Q What do you call "small"?

A Oh, just about little place about that long (indicating), about maybe where you could put a band-aid on or something or another like that.

Q Well, I mean -

A It wasn't long enough place to have to take no stitches.

Q Was it maybe about the size of your little finger-nail there, would that be about right?

A I don't remember. It could have been. I know it was just a small place.

Q Was it larger than that?

A I don't remember.

Q Was it as large as your thumb-nail?

A No.

Q Wasn't that large; maybe half the size of your thumb-nail?

A Just a little scratch.

Q Just a little scratch. Was it bruised or lacerated?

A Was it what?



Q Was it cut or was it a bruised place?

A Well, he had a bruise on his head.

Q Only one?

A Only one.

Q On the left side?

A On the left side.

Q Right up here about on the temple?

A On the left side along up there (indicating) just above his eye like, kind-of in the hair-line like.

Q Just below the hair-line?

A Along in there somewhere.

Q It wasn't up in the hair-line?

A No, it wasn't up in the hair line.

Q Did you have the occasion to see him when he was right up close to you?

A Did I have occasion to see him when he was right close up to me?

Q Yes?

A I guess I did. We put him in jail.

Q Did you see -

A And he rode in the car with us from there to the jail.

Q You didn't hit him at any time between the house and the jail, did you?

A I never hit him.

Q You never hit him at all?

A I never hit him -

Q Who drove the car to the jail?

A Mr. Cherry.

Q Did Mr. Cherry hit him at all?

A No.

Q Going to the jail?

A No.

Q Did you see any other indications of bruises or contusions or lacerations?

A None whatsoever.

Q On him at all?

A Not whatsoever.

Q None whatsoever, and you were in a position to see?

A I reckon I was.

Q You were as close to him as I am to you or closer, because you actually had hold of his hand, didn't you?

A I had hold of him, of the handcuffs when I carried him to the jail.

Q And the only place that you saw at any time from the time that you arrived at his house until the time that you arrived at the jail and put him in the jail was one little scratch up on the left temple, is that correct?

A On the left.

THE COURT: Mr. Hollowell, suppose you stand back further and give the witness a little more opportunity -

MR. HOLLOWELL: I was just trying to make a comparison, Your Honor.

Q Now, when you put him in the car, there were a number of other persons who had gathered by that time, had there not?

A His wife and children were there.

Q Did you see anybody else around?

A I didn't see anybody else.

Q Did you look for anybody else?

A I didn't look for them because there wasn't anybody around there.

Q Now, how do you know?

A We got in the car and drove off and I didn't see anybody else.

Q But you don't say that there wasn't anybody else around?

A If there was, I didn't see them.

Q Now, going back to Odell for just a moment, did you have the occasion to notice whether his eye - which eye was it that you hit him over?

A I don't remember. I just hit him. When he kicked me, I hit him.

Q You hit him; where was he sitting at the time?

A With his feet, sitting in the seat of the car with his feet out like that (demonstrating); and I went to

pick up his feet and he picked up one of his feet and kicked me in the stomach.

Q All right, now you were directly in front of him, were you?

A Sure I was in front of him.

Q Did you hit him down an over-hand blow?

A I hit him like that (demonstrating), flapped him kind-of with the black-jack.

Q With a black-jack; did you do that with your right hand or your left hand?

A I hit him with my right hand.

Q Which side were you standing on, the right side or the left side of the door at the time that you hit him?

A I was in front of him.

Q You were directly in front of him?

A And I pulled the black-jack down like that (demonstrating) . . .

Q And you pulled it back like that, that is, using your right arm and take the end of it back over your left shoulder?

A No.

Q I'm saying in this direction; I'm not saying that you had this much force, but pulled it in the direction of your left shoulder and hit him a back-hand lick, is this your testimony?

A I didn't pull it back over my left shoulder.

Q I say in the direction -

A I just pulled the black-jack and just done like that (demonstrating), just a little slap.

Q You mean just sort of right here at the waist?

A That's right, just slapped him like that with the black-jack (demonstrating).

Q In other words, if I take my left hand - my right hand and move it toward my mid-section here, and then made a quick sort of sudden venture with it outwardly, that was the manner in which you hit him?

A That was all, that's right.

Q And this was over which eye?

A Was what?

Q I say, this was over which eye?

A I don't remember.

Q Did you have the occasion to see whether there was any laceration there?

A I didn't notice.

Q You didn't care, did you?

A I just didn't notice. I know I didn't hurt him.

Q Did he have to have the doctor?

A No.

Q Did his eye swell up?

A Very little.

Q What do you call "very little"?

A Oh, it just was a little-bitty knot up above his eye on one side or the other, I don't remember which it was. It wasn't enough to even require medical attention.

Q You mean this was your determination?

A That's the way I felt about it, yes.

Q Did you ask him?

A Didn't ask him.

Q Now, what did you do with your slap-stick when you left the car of Odell Brazier and went to the jail, did you put it back in the glove compartment or down by your side or in your pocket?

A It was in my pocket.

Q It was in your pocket?

A Yes.

Q Did you keep it there from that time until the time that you went to Brazier's, James Brazier's home?

A Sure, it was still in my pocket.

Q It was still in your pocket?

A That's right.

Q I ask you whether or not you were asked this question on deposition and you gave this answer: Says "I hardly ever use a black-jack hardly ever, nobody. Question: Or a slap-jack either? And you said" "I ain't never carried a slap-jack"?

A I haven't, not a slap-jack.

Q What do you distinguish between a slap-stick and a slap-jack?

A A slap-jack and a black-jack is two different things.

Q Describe them to me?

A I described the slap-jack to you a while ago.

Q All right, a black-jack?

A A black-jack is a leather outfit, with a spring in it and it's loaded with shot.

Q Now, do you construe a slap-stick and a slap-jack to be the same thing?

THE COURT: Just so we can clear it up and try to expedite it. I don't remember the witness ever using the term "slap-stick".

The Witness: I haven't.

THE COURT: He used the term "slap-jack" and "black-jack" and I think maybe counsel suggested that he used the term "slap-stick". I haven't heard him use that expression at all. Maybe we can expedite it if you ask him about the difference between a black-jack and a slap-jack.

MR. HOLLOWELL: Well, I might have questioned him as to that, sir, but I wanted to ask him whether or not there was any distinction between a slap-stick and a slap-jack, because my -

The Witness: I don't know what a --

MR. HOLLOWELL: Excuse me, sir. So, in that connection, sir -

THE COURT: He has already said he doesn't know what a slap-stick is. He hasn't used that term at any time.

MR. HOLLOWELL: Well, if I'm not mistaken, Your Honor, he gave a definitive answer as to whether he had carried one.

BY THE COURT:

Q Well, let me ask the witness: Mr. Witness, do you know what a slap-stick is?

A No sir, I don't have any idea.

THE COURT: He doesn't know what a slap-stick is; so, let's pass on to something else.

Q Mr. Hollowell: I believe you had your gun but you didn't shoot it on the occasion of the arrest of James Brazier, is that correct?

A That's correct, I didn't shoot the gun, and didn't pull the gun.

Q And you don't remember Mr. Cherry pulling a gun now?

A I don't remember Mr. Cherry pulling a gun.

Q Now, how long were you at the James Brazier residence?

A Oh, I'd just say 5 or 10 minutes, something;

I don't know. It was very long.

Q 15 minutes?



A I don't think it was that long.

Q Somewhere between 10 and 15?

A Well, somewhere in the neighborhood, I don't know.

I didn't look at my watch to see.

Q Did you go directly to the jail?

A When we left there, we went to the office.

Q To the jail office?

A That's where we had the doctor.

Q I beg your pardon?

A That's where we carried him, in the side door into the office.

Q What side door?

A Off of Stonewall Street into the Sheriff's office.

Q Well, let me or maybe without looking at the photograph, did you come in through the court or did you come in from the street?

A Come in from the street.

Q And that entrance from the street is off of Stonewall and leads you right into the corridor that leads to the jail office, is that correct?

A Go off of the street right up, walk right into the sheriff's office, to the jail office.

Q Now, this is not the courthouse jail office, I mean the courthouse office?

A No.

Q This is the little office that we have identified here in the photographs, which I showed you this morning, is that correct?

A The office in the jail, at the jail.

Q And who was in there at the time that you arrived?

A Nobody.

Q Whom did you call, if anyone?

A Called the doctor.

Q Sir, move your hand, sir?

A Called the doctor.

Q You did?

A Mr. Cherry, I think.

Q How long had you been there before the doctor was called?

A I don't remember. How long was we there before the doctor was called?

Q Yes? 5 minutes?

A Called the doctor when we got in there.

Q I beg your pardon?

A I say, the best I remember, we called the doctor when we got there.

Q When you say "we", you mean Mr. Cherry, is that correct? Or did you -

A Well, we was both together and, when we're together, I say "we" because we were both together.

Q Had anyone directed you to call him, the doctor?

A Well, the best I remember, Mr. Ragan Arnold had phoned in and wanted the doctor to examine him.

Q Phone in to whom?

A Radio operator.

Q Who was on at that time?

A If I remember right, Mr. Hooper.

Q You wouldn't be sure about that?

A Well, he was supposed to be, anyway.

Q Don't you know you testified that there wasn't any radio operator on when you came to work?

A Well, if I testified to that, maybe there wasn't one on there. I don't remember.

Q And so, you really don't know where you got the information concerning calling a doctor, do you?

A Well, I couldn't say; it's been five years and there's a lot of things can slip a man's memory from that length of time.

Q Why didn't you lock him up?

A We did after the doctor examined him.

Q After the doctor examined him?

A That's right.

Q How long was it from the time that you arrived at the jail office until the time that the doctor arrived?

A Just a few minutes.

Q Do you know where the doctor was as of the time that you called him?

A I don't know where he was at.

Q Do you know where Mr. Cherry called him?

A I don't remember whether he called the hospital or called his house.

Q You just don't remember?

A I don't remember which one he called.

Q When you have the occasion to book a man, where do you usually book him, over in the courthouse office or over in the jail office?

A The courthouse office.

Q Beg pardon?

A The courthouse.

Q At the courthouse?

A In the police office.

Q But in this instance you took him to the jail office from the Stonewall Street side and you had him to wait there until the doctor came, is that correct?

A Well, a lot of times we carry them -

Q Excuse me, sir, not a lot of times, but on this occasion?

A I carried him in the side door to the office and set down there and waited until he got there, until the doctor got there.

Q Now, let me call your attention to the deposition again, Mr. McDonald, and ask you whether or not you were asked these questions and whether or not you gave these answers: "When you got to jail, did you put him in jail or did Officer Cherry put him in jail? We both put him in jail"?

A Well, we did.

Q "Question: You took him directly and put him in jail at that time? Answer: That's right. Question: Did you book him before you took him in and arrested him? Book him before we took him in and arrested him? Question: Yes? Answer: No, we arrested him and locked him up and then we booked him"?

A Well, we arrested and when we locked him up, we booked him.

Q So that actually --

A You don't book a man before you lock him up.

Q Did you - the first thing you did was not to take him into the cell but actually was to take him into the office, isn't that your testimony now?

A We went into the office.

Q And there you stayed until the doctor came?

A The doctor examined him right there in the office.

Q So that, that which you testified to on page 238 of the deposition, indicating that you took him directly to

jail is in error?

A Well, I don't know, what I told you there --

Q Do you deny, you can read it?

A I'm not denying anything. If it's down there and if that's the way I said, that's what I said.

Q Well, I mean, you don't deny it's down here?

A I don't deny it.

Q What doctor was it that came?

A Dr. Ward.

Q Is he the County doctor?

A He's a doctor, all I know. I don't know whether he's County doctor or not.

Q Were you there in the room with the doctor as of the time that the doctor was examining the deceased?

A I was right there with him.

Q You were right there?

A Yes.

Q And Mr. Cherry was there?

A That's right.

Q And the Sheriff was there?

A No.

Q Well, who else was there?

A Mr. Cherry and the doctor, myself and James Brazier.

Q Well, did you see the Sheriff?

A Didn't see the Sheriff.

Q Did you see the Sheriff all evening?

A Don't remember seeing him all evening.

Q You don't say that you didn't see him?

A I didn't see him or, if I seen him, I don't remember it.

Q And the only place that was visible insofar as injury is concerned to Brazier's head as of the time that he was put in the cell or rather put in the jail office was this little skinned place on his head, is that right?

A That's all I saw on him.

Q Was there any swelling about it?

A Yes, it swelled a little bit.

Q What do you call a little bit, 1/64 of an inch?

A A what?

Q 1/64 of an inch?

A 6/4 of an inch?

Q 1/64?

A I don't know much a sixty-fourth of an inch is.

Q Well, let's see, was it raised as much as the thickness of a penny?

A It could have been or maybe more.

Q Maybe more, two pennies?

A I don't know. I didn't measure it. He just had a little knot up there on his head.

Q Oh, it was a little knot. Was it raised as much as

those 3 pennies together?

A I didn't measure it, I don't know.

Q Well, I mean approximately?

A It could have been.

Q Could it have been more?

A It could have been more or it could have been less.

Q Well, you know it could have; do you know?

A I don't know.

Q All you know is there was a little knot there?

A Little knot.

Q Was it discolored?

A Was it what?

Q Discolored?

A I didn't see no discolor about it.

Q What did the doctor do to him?

A He examined him, is all I know.

Q Did he put anything on any bruises or contusions or lacerations or anything?

A I don't remember; seems like he put a little band-aid on that little place that was on his head there.

Q You wouldn't be sure about that? Would you?

A I wouldn't be sure about that.

Q How long was the doctor there?

A I don't remember, whether he was there 10 minutes or 15 minutes or 30 minutes or how long. 5 years ago, I don't



remember how long he was there.

Q I beg your pardon?

A I say, 5 years ago, I couldn't remember how long he was there, whether it was 5, 10 or 15 or 20 minutes.

Q But you know it was less than 30 minutes?

A Could have been 30 minutes, for all I know. Don't remember.

Q Did you talk with Mr. Ragan Arnold?

A No, I didn't talk with Mr. Ragan Arnold.

Q Did Mr. Cherry talk with him in your presence?

A If he did, I don't remember it.

Q Beg pardon?

A If he did, I don't remember him talking to him.

Q You had never had a minute's trouble with Brazier before, had you?

A I had locked Brazier up a good many times.

Q That wasn't the question; I said, had you ever had a minute's trouble with Brazier?

A No, I hadn't had any trouble with him; he had never resisted me before.

Q As a matter of fact, in answer to a question here, you said "Never had given me a minute's trouble before that" is that right?

A That's right.

Q Now, after the doctor left, where did you go?

A Where did we go?

Q Yes?

A Got in the car and went to patrolling around.

Q What cell was Brazier put in?

A No. 2.

Q No. 2?

A I think that's right. I think it was No. 2.

Q No. 2 on the right or left?

A On the right. There ain't none on the left, not -

Q Beg pardon?

A It was on the right in the east side.

Q Now, when you say "on the right", you mean on the right as you come from the jail office or on the right as you look from the courthouse into the back of the jail?

A If you was coming from the jail office, it would be on the right; and if you were going from the courthouse to the jail, it would be on the left.

Q In other words, looking at PLAINTIFF'S EXHIBIT #10, on this side right here, is that correct?

A Let me be sure . . . Yes, this is looking towards the jail. Well, he was on this left-hand side over here (pointing on P-10)

Q I see; is that where you put him at that time?

A That's where I put him.

Q All right, did you have the occasion to see him at

any other time during the course of the evening?

A The doctor give us orders to check on him about every hour or hour and a half or two hours, something like that, which we did.

Q Did you make any of the checks?

A Yeah.

Q When did you make your first check?

A I don't remember whether - when I made the first one.

Q I beg your pardon?

A I don't remember when I made the first one.

Q About what time did the doctor leave?

A I don't know. It was - I don't know what time it was, don't remember. I told you I didn't even look at a watch to see what time it was.

Q Well, you know you were-

A I was up there to make 12 hours and I didn't look at the watch to see what time it was.

Q Well, you know you came on duty at 5:00, is that correct?

A Say what?

Q I say, you know you came on duty at 5:00 P . M.?

A That's when I was supposed to come on duty at 5:00, and get off at 5:00.

Q And you did come on that evening, did you not?

A I come on, yes.

Q And maybe 10 or 15 minutes later you were up at the service station, where you stopped Odell Brazier, isn't that correct?

A I don't know whether it was 10 or 15 minutes later or 5 minutes later or 20 minutes later. I didn't pay any attention to what time it was. I was just out patrolling around.

Q Well, don't you know you said you hadn't done any patrolling, that you went and parked; now, isn't that correct or not?

A I don't remember saying that.

Q I see. Well, you arrested the man and had to take him from the service station over to the jail, had to unlock the jail, put him in and lock him up; then you -- Did you wait around for Mr. Cherry to come?

A Mr. Cherry come up right after I got him locked up.

Q I see; and then you had to go out to Mr. English's, according to your testimony and have some papers written up out there. Would you say that at least an hour had passed from the time that you had come on duty by the time you went to Mr. English's?

A Could have been; I don't remember.

Q Well, let's make that 6 o'clock; so, you went out to Mr. English's, you had some papers made up, and then you went out to Brazier's house: Would you say that took another

30 minutes or thereabouts, approximately?

A I don't remember.

Q Approximately?

A I don't remember how long it took.

Q Well, would you say approximately 30 minutes?

A It could have been or it could have been 20.

Q All right, let's make it then between 6:20 and 6:30, 20 to 30 minutes; then, you went out to Brazier's, to James Brazier's house; and you say you were there maybe 10 or 15 minutes; let's make it roughly quarter to 7:00 or 7 o'clock; is that about right?

A I don't know. I told you I didn't keep up with the time.

Q Well, I mean you're keeping up with the schedule that we are going here on, are you not?

A I don't know whether you're adding things up to make it this or that or the other. All I'm doing is telling you what I know and what I don't know, I don't know.

Q I see. Well, let's suppose that it was, say roughly 7 o'clock by the time that you say that you put Brazier in the Sheriff's jail office, this office which is jointly used by the City and the County police officers, then, as I understand it, you went -- Well, let's say first the doctor came and say we took 15 or 20 minutes for him, roughly; is that right?

A Could have been.

Q All right, so it's about 7:20 now; and then you went and wrote him up, is that correct?

A Sure, I wrote him up.

Q Did you go directly and write him up?

A I don't remember whether we did or not.

Q You just don't remember?

A That's right.

Q Who wrote him up? Did you write him up or Mr. Cherry?

A I don't remember whether I did it or Cherry -

Q Do you know -

A - I think he did.

Q Excuse me - do you know anything else that you did that night?

A We patrolled around in regular routine police work as usual.

Q Allright. Now, the doctor has gone now, it's about 7:20; when was the next time that you saw Brazier, James?

A I don't remember whether it was an hour after that or an hour and a half.

Q Did you see him between 7:30 P. M. on the evening of April 20, '58 and midnight?

A Oh yeah.

Q How many times?

A I saw him once and I think Mr. Cherry went in there once.

Q Now, the time that you saw him, did you go to see him before Mr. Cherry did?

A Don't remember.

Q You don't remember?

A I don't know whether I went in there first or he went in there first.

Q Now, did you go from your automobile or from the office over in the courthouse?

A Parked the car out there at the side and walked in there and would speak to him and see how he was doing, turn around and walk on back out, get in the car and leave.

Q All right, now on the occasion that you went in, you went in by yourself?

A Sure.

Q Was there anybody else there, any other police officer there at that time? Was it dark?

A Dark? No, there's a light in there.

Q No, I mean was it night time?

A Of course, it was night.

Q It was night time actually when the doctor had examined Brazier, wasn't it?

A No.

Q You didn't have a light on?

A Yes, there was lights on in the office, late in the evening; they turn them on late in the evening, because it's dark inside of the cells and things; they have to turn the lights on.

Q All right, it was night time at the time that you first came back to make a visit, is that correct?

A Of course, it was night.

Q Sir?

A Of course, it was dark.

Q Now, would you say then it was more than 2 hours before you came back?

A It wasn't two hours.

Q It wasn't two hours; was it less than an hour?

A No, it wasn't less than an hour. I'd say it was about an hour and a half, something or another like that.

Q About an hour and a half; so, about 9 o'clock -

A I don't know whether it was 9:00 or 8:30 or when it was.

Q Well, let's say, around 9 o'clock you came back; now, who went in with you?

A Nobody.

Q Where was Brazier at the time?

A Where was what?

Q Where was James Brazier at the time?

A In the cell.



Q In this same cell which you say was cell No. 2 in the left wing, if you look at the jail from the courthouse, is that correct?

THE REPORTER: Was there an answer?

Q Mr. Hollowell: What was he doing?

A You say, what was he doing?

Q Just a minute, was your answer to that "yes"?

A Sure, he was in the same cell.

Q Now, what was he doing at the time that you were there?

A Laying on the bunk.

Q Laying on the lower bunk?

A He was on the lower bunk.

Q Was the light on?

A Sure the light was on.

Q Was the light on in his cell?

A The light was on in his cell.

Q Did you see anybody else around?

A Nobody around.

Q Did you look through the - strike that -

~~Was the door where the bars are, the windows,~~  
you know the little windows oh maybe a foot square or there-  
about, that's up about three-quarters of the way of the cell  
door, that little steel door that covers the bars, was it  
open or closed?

A It was partly open and I pulled it on open and looked in there and called him, and he got up.

Q Did he stand up?

A Stood up; and I asked him how he was getting along. He said "All right but his head hurt a little bit"; went on back and lay down. So, I left.

Q Was there any blood on him?

A I didn't see any blood.

Q How close were you? Did he come up to --

A He come to the door, just a door between us.

Q Just the door between you; did he have on his clothes?

A No, he didn't; he'd done pulled off his clothes.

Q All of his clothes?

A He had on his underwear.

Q He got up and walked over to the door and you asked him how he was getting along?

A Yes.

Q And what did he say?

A He said he was all right but that he had a little headache.

Q Anything else?

A Didn't say nothing else.

Q Did he go back and lie down?

A Yeah, he went back and lay down.

Q Before you left?

A He went back towards the bunk and I walked on out-

Q This was the -

A - fastened the door and left.

Q This was the lower bunk?

A It was the lower bunk he was on then.

Q You understood him plainly?

A Sure.

Q And he looked right at you and told you that he was doing all right except he had a little headache, is that correct?

A Sure he did.

Q Allright; how long were you in there?

A Say what?

Q How long were you in the jail?

A Oh, just a minute or two, just long enough to go in there and see how he was getting along and walk out.

Q Now, did you have to open the door coming into the corridor, did you have to unlock that door?

A I had to open the door going from the corridor to the cell where he was at.

Q Now, that's a steel door, isn't it?

A Sure, it's a steel door.

Q Where was the key to that door?

A In the office, locked up in a -

Q - in a safe?

A In a safe thing.

Q And you had the key to that?

A I had it then, yes.

Q Was it your key?

A We all had a key.

Q Beg your pardon?

A All of the policemen usually kept a key to where they could get to the jail key when they needed it.

Q I see; and after you locked it, you took it back?

A And locked the key up.

Q Locked the key back up?

A It stayed locked up.

Q How do you know it stayed locked up?

A It's supposed to. Every time I got them, it was locked.

Q Was the door leading into the corridor secure as of the time that you arrived to make your inspection?

A It was locked.

Q And you locked it back?

A I locked it back. If I went in there and come out, I unlocked the door and when I come out, I locked it back.

Q Nobody came in with you? . . . Sir?

A If anybody was with me, I don't remember.

Q You have no recollection of anyone being with you?

A I don't have no - I don't remember whether anybody was with me. I know there wasn't - if there was anybody, it was Mr. Cherry and I don't remember whether he was with me or not.

Q So, when you left, you went on another tour?

A That's right.

Q Do you remember any specific place that you went?

A No.

Q Well, how long was it before you came back for another visit to Brazier?

A Well, hour and a half or two hours, something like that.

Q Somewhere then in the vicinity of 10:30 to 11 o'clock?

A Could have been.

Q Now, did you go in on that occasion?

A I don't think so. I don't remember. I think Mr. Cherry went in.

Q Did you see him when he went in?

A He got out of the car to go; that was his business.

Q Did he actually go into the building?

A I don't know whether he did or not; I didn't follow him.

Q You didn't follow him?

A No.

Q Had you parked in the same place that you had

parked before?

A I don't remember whether it was in the same place or whether we had parked at the office or around at the side or in the back of the courthouse or where. We didn't have no certain place to park. We could go in anyway we wanted to.

Q So, you didn't see him inside the jail at all on that occasion?

A I don't remember whether I went in with him or whether he went by himself.

Q Did he indicate to you whether he saw Brazier when he got back?

A Yeah.

Q Did he say he was all right?

A Said he was all right.

Q Did he say whether or not he locked the door?

A I didn't ask him.

Q Now, about 11 o'clock where did you go then; when was the next time that you had the occasion to visit the jail?

A Well, I told you we went in there about every hour and a half or two hours. Now, that was all during the night.

Q Well, I don't think that was quite your testimony, but let me ask you this: Do you recollect when was the third time - you said you know you went in there at least once and Mr. Cherry went once -

A Well, I know --

Q - that was before midnight?

A I know when the last time I went in there.

Q Well, if you will, tell me how many times during the night you went in?

A Oh, about 3 times, I think, 2 or 3; I don't remember.

Q When did you make your second visit, before or after midnight?

A I don't remember.

Q You don't remember?

A No.

Q On your second visit was it close to the time for you to depart, or leaving your job?

A My last visit was just before I got off.

Q All right, now the one before that?

A I don't remember whether it was 10 o'clock, 2 o'clock, 3 o'clock or 11:00 or what it was.

Q Well, was it after midnight?

A The second visit could have been after midnight or it could have been around midnight; I don't remember.

Q You don't remember that; you don't recollect?

A No.

Q Now, you went in by yourself on that occasion?

A I don't remember. I think Mr. Cherry was with me.

Q Who unlocked the door, do you remember?

A I don't remember whether I did or he did. I think he did though.

Q Did you get the same key from the same box?

A We had to get the key.

Q Was the door secure as of the time that you came up to it; was it locked?

A Sure it was locked.

Q The door leading into the corridor in the east wing, and it was unlocked then for the two of you or one of you to go in, as the case may be, you don't remember?

A It had to be unlocked to get in there.

Q Allright; now, where was Brazier on that occasion?

A He was still in the cell.

Q Was he still in the same general place that he had been?

A I didn't - I don't remember whether I went in and looked at him or whether Mr. Cherry went in and looked at him. I don't remember.

Q Well, there was no indication - excuse me?

A But he was still in the cell where we put him.

Q Was there any indication to you by Mr. Cherry to the effect that his condition, that is Brazier's condition, was anything other than it had been when last checked?

A It was all right.

Q It was all right. Now, Didn't Dr. Ward have the occasion to come again during the course of the night?

A That's right.



Q About what time was that?

A I don't remember; somewhere after midnight.

Q Who let him in?

A Mr. Cherry, I think.

Q Don't you remember?

A I don't remember. I didn't go in there. I know it wasn't me.

Q Where were you?

A In the police car.

Q Did you see the doctor when he came?

A I saw the doctor but I didn't go in.

Q Did you ever report this to the Sheriff?

A No.

Q Did you ever report it to the Deputy Sheriff?

A No.

Q Did you ever get Gene Magwood up, in order to have him to open the door for you?

A No.

Q He has a key, doesn't he?

A He has a key; he keeps a key, where he can get in and out himself.

Q But you never had him to open the door?

A I didn't have no reason to call him to open the door.

Q But you have had him to put prisoners in and out, have you not?

A I've had him at sometimes in the day time, when he'd be out there in the yard working and I come in with somebody or something like that, I would say, "Gene, unlock the door for me" and he'd unlock the door for me.

Q And sometimes you'd have him to go get a prisoner and bring him out?

A No.

Q You never did do that?

A No, I never have.

Q You never have?

A Had him to go get a prisoner and bring him out.

Q Now, as of the time that the doctor came, he came to see some alcoholic, not James Brazier; this was some time away after midnight, is that right?

A It was some time after midnight.

Q Now, who came with the Doctor?

A I don't know. I didn't go in there, I told you.

Q You were out in the car?

A (No answer) . . .

Q Where was the car parked?

A The car parked?

Q? Yes?

A When Mr. Cherry got out and went in there, I drove off.

Q You drove off completely?

A Went on patrolling around.

Q When did you next see Mr. Cherry?

A In just a few minutes I come back.

Q What do you call a "few minutes"?

A Oh, maybe 10 minutes or something or another like that.

Q Was the doctor standing on the outside then talking?

A No, they was still in there, but now, what they was talking or what they was doing was none of my business and I parked out there and waited for Mr. Cherry. And I don't remember how long it was that he was in there or what time it was.

Q And did you see them both when they came out?

A Did I see them both when they came out?

Q Yes?

A Sure.

Q You saw them; where were you parked at the time?

A I was parked in Stonewall Street out there.

Q The same general place that you had been parked when you had brought Brazier the first time, is that correct?

A Not right exactly in the same spot.

Q Well, I say generally?

A On that street.

Q You don't know whether they locked the door or not?

A I didn't go in there to see but I know Mr. Cherry

locked the door if he went in there and come out, he locked the door.

Q Now, when was the last time that you had the occasion to visit that you can actually recollect?

A It was before 5 o'clock.

Q Well, I mean 12:00 is before 5 o'clock; how long before 5 o'clock?

A I don't know; some -

Q Within the hour?

A Say around 4:30 or quarter to 5:00, something or another like that.

Q Was it daylight?

A No, it wasn't daylight.

Q Was it dawn? It was still dark, wasn't it?

A It was still dark.

Q Who went in with you?

A Went in by myself.

Q Where was Mr. Cherry at this time?

A In the car.

Q Was the car still parked out there on Stonewall?

A Yeah, he was sitting out there in the car.

Q And you went in and you got the key in the same general manner, unlocked the safe, got the key, opened the main door to the corridor and went in, is that correct?

A The best I remember that's correct.

Q Now, where was Brazier at that time?

A Still in the cell.

Q Was he still lying down?

A Yeah, he was lying down.

Q Still on the lower bunk?

A Yeah, he was on the lower bunk.

Q Did you get him up?

A I called him and he set up.

Q Was the light on?

A The light stays on all night.

Q Stays on in the cell all night?

A They stay on all night.

Q A prisoner can't turn the light off if he wants to?

A He can get up there and screw the bulb out.

Q Was there anybody in this cell with him?

A Nobody with him.

Q Was his face in the same general condition that you had seen it when you were visiting him?

A Say what?

Q His face, this place up here on his head that you made mention of?

A I didn't see no difference in it.

Q Looked the same; did he look the same?

A Looked the same to me.

Q Did you talk with him?

A I just asked him how was he doing and he said "All right".

Q He said "All right"?

A That's all that was said and I turned around and walked out.

Q Was he still there in his underwear?

A Sure, he hadn't got up and dressed.

Q Did he lie back down before you left?

A I reckon he did. I left. He wasn't laying down when I walked out -

Q This was about -

A - he turned back to the bunk.

Q Excuse me - had you finished, sir? This was about 4:30 in the morning on the 21st?

A 4:30 or quarter to 5:00, somewhere in that neighborhood.

Q And what did you do when you left there?

A At 5 o'clock I went home.

Q Did you check out anywhere?

A Do what?

Q Did you check out anywhere on any report back?

A No, I didn't have to.

Q I mean, this wasn't part of the schedule; this wasn't required, is that right?

A Didn't have to sign nothing to go out and nothing to

come on. When your time was off, you got out and went home.

Q Now, did Mr. Cherry leave at the same time you left?

A No.

Q Where was he when you left?

A In the car.

Q Where was the car?

A Parked there side of the courthouse.

Q And it was still dark?

A Yes.

Q And you drove your personal car home?

A No, I don't remember whether I drove my personal car home or I walked home. I didn't have but about two blocks to go.

Q But at any rate you left the immediate vicinity of the courthouse at that time, is that correct?

A Yes.

Q And during all of that time, you say you'd never seen the Sheriff, in all the time, and I'm talking about -

A No, I hadn't seen the Sheriff.

THE REPORTER: One at a time, please.

Q Mr. Hollowell: Let me re-ask the question: From the time that you had come on duty until the time that you went off duty, that is 5 o'clock on the 20th of April, '58 to 5 o'clock on the 21st of April, '58, you had not seen the Sheriff?

A If I had seen the Sheriff, I don't remember it.

Q You don't say that you didn't?

A If I seen him, I don't remember seeing him. Maybe -  
I don't remember meeting him anywhere on the streets.

Q You hadn't talked to him by telephone?

A No, didn't have no cause to talk to him.

Q Excuse me, you hadn't made any reports to him?

A Wasn't supposed to make reports to the Sheriff.

Q You hadn't made any reports to Chief Lee?

A Didn't supposed to make any reports to Chief Lee;  
put it on the book.

Q Just put it on the book?

A And he got it off of the book.

Q Do you know what time Mr. Cherry did leave?

A No, Mr. Chapman was supposed to look - to relieve.

Q Who was to relieve you?

A Well, I got off and Mr. Chapman was supposed to  
take on after Mr. - come up and relieve Mr. Cherry around  
5:00 or little after 5:00.

Q You don't know whether or not he in fact did this?

A I don't -

Q Now, how many officers work in the day time,  
at that time, how many worked, were scheduled to work,  
coming on at 5:00?

A Two. One come on at 5:00.



Q And what time did the other one come on?

A Chief Lee come on when he got ready, if it was 6:00 or 7:00; he come on when he wanted to. He was the Chief.

Q The Chief and Mr. Shirah Chapman were the two that were working the day shift, is that correct?

A Yes.

Q And then, that would have been from 5:00 until what time, generally?

A From 5:00 in the morning until 5:00 in the afternoon.

Q I see. You didn't have any swing shift?

A No between shifts.

Q No between shifts. Did you have an officer by the name of Officer Hancock?

A I don't remember whether Hancock was on -

Q Beg pardon?

A I don't remember whether Hancock -- I think he was on at that time, yeah.

Q Excuse me - Do you remember an officer by the name of Officer Jones?

A Yeah, I remember him.

Q Were they working at that time?

A They worked on different dates, different days.

Q I beg your pardon?

A They worked on different days.

Q Do you know what days they did work?

A Different ones.

Q Were either of them supposed to relieve you?

A Well, say like Chapman relieved one morning, maybe Jones would relieve the next morning and maybe Hancock would relieve the next one, or something like that, you see. And then, on my day off or my night off, say one worked in my place and one would work in Mr. Cherry's place, worked it like that; wasn't no --

Q But to the best of your recollection, Mr. Shirah Chapman was to have come on?

A That's right.

Q How long did you say you had known James Brazier?

A 2 or 3 years.

Q Beg pardon?

A Maybe 2 or 3 years.

Q Beg pardon?

A Maybe 2 or 3 years.

Q Did he work 'most all of the time?

A As far as I know, he worked at the Chevrolet place.

Q I mean, you saw him frequently, didn't you?

A Yes.

Q Did he always seem to be able to do his work?

A I reckon so, just like any other man.

Q Did he appear to have good health?

A As far as I know, he did.

Q About what size man was he?

A WELL, I don't know, I'd say he was maybe 5 feet, 7 or 8 or something like that, and weigh around 150 or -55 pounds, something like that.

Q Was he as dark a man as I am?

A I don't remember but I don't think he was.

Q In other words, he was sort of light brown, wasn't he?

A I think so.

Q So that, if there were scars on his head and bumps on his head, it would have been comparatively easy for you to have seen them, as close as you were, is that correct?

A I could see a bump on his head; I didn't deny it.

Q Let me show you PLAINTIFF'S EXHIBIT #16 and ask you, do you recognize the persons who are on that photograph?

A That looks like James Brazier, the best I can remember.

Q Do you know the lady there?

A Seems like Hattie, looks like his wife.

Q We mentioned Gene Magwood a moment ago, how long have you known him?

A Not too long.

Q Sir?

A I say, I haven't known Gene too long.

Q Do you know when he came to the jail?

A I don't remember when he came there. From one to the other I don't remember when Gene came there.

Q He was the jailer, was he not?

A At that particular time, he was.

Q Carried the keys to the jail?

A Yeah, he had the key to the jail.

Q Fed the prisoners?

A Do what?

Q Fed prisoners?

A Sure, he fed the prisoners.

Q And let them in and out on the instructions of the Sheriff and other police officers?

A I don't know nothing about letting them out but letting them in.

Q All right, on instructions of the Sheriff and on your instructions and other police officers' instructions, is that not correct?

A If we went up there with a prisoner and asked him to unlock the door for us, he would unlock the door for us.

Q He carried the key to the jail?

A I just told you he had the keys to the jail.

Q This warrant that you got, was that for state offenses?

A The what?

Q The warrant that you testified about, was it for

State offenses?

A Was it for what?

Q State offenses?

A State offenses? It was for -

Q Or City offenses?

A It was City, I guess. We was City policeman and working for the City.

Q Well, didn't you know the difference between City offenses and State offenses?

A I didn't work for the State. I worked for the City.

Q Well, I'm asking you, were these State offenses or City offenses with which he was charged?

A City.

Q Beg your pardon?

A It was City offense.

Q These were City offenses?

A Yes.

Q Would you name me what you charged him with?

A Resisting arrest and threatening an officer, or interfering with an officer, threatening an officer.

Q Did you have any occasion to determine what City provision this was?

q A No.

Q Would you, please sir, remove your hand?

A No.

Q For the reason you don't know? Isn't that correct?

A The what?

Q You don't know whether it was City offense or State offense that you were locking him up for, did you?

A It was City offense when he threatened a police officer.

Q It was a City offense?

A City police.

Q What Code provision does that cover?

A I don't know.

Q You don't know?

A No.

Q What about the other one?

A Now, what other one?

Q The other charges you made against him?

A Listen! I'm not a lawyer. I was just a police officer. I got a warrant for him and that was it.

Q Who made the determination as to what the charge was?

A I did.

Q Well, you knew what you were doing?

A I knew what he did, yes.

Q I mean, you knew what you were doing in asking for a warrant on those particular charges?

A Sure, I knew what I was doing.

Q And these were the only charges that you felt that

he was guilty of, is that correct?

A Well, that's what he was guilty of.

Q Well, you're not the judge?

A I'm not the judge, no.

Q So, these were the only ones that you thought he was guilty of?

A I didn't think; I knew he was guilty of it because he did it.

Q I see, and if there had been any others, you would have charged him with them, wouldn't you?

A If there had been any more charges, I would have put them in there too.

THE COURT: All right, are you about through with this witness now, gentlemen?

MR. HOLLOWELL: I'm sorry?

THE COURT: Are you through with this witness?

MR. HOLLOWELL: Just one second, sir. . . . I do not believe there are any other questions at this time,

Your Honor.

THE COURT: All right, we will take a recess at this time of about 10 minutes.

RECESS: 3:45 PM to 3:55 PM - FEBRUARY 4, 1963.

THE COURT: All right, who do you have next, Mr. Hollowell?

MR. BLOCH: Your Honor, as I read Rule 43(b) -

Mr. Bloch:

I had better ask it as a question: Do I have a right at this time to ask a question or two of the witness?

THE COURT: You may, but I would suggest that you hold him until you get ready to present your side of the case; or, if you would prefer to examine him now, I will allow it now.

MR. BLOCH: Just one question and I mean one.

THE COURT: All right.

ADVERSE - CROSS EXAMINATION

BY MR. BLOCH:

Q I exhibit to you DEFENDANT'S EXHIBIT No. 1, that which the Clerk has marked as Defendants' Exhibit #1 for identification; it has on the back of it "Criminal Warrant, The State versus James Brazier, charged with "Threatening an officer and interfering with an arrest"; sworn to by R. E. McDonald before D. F. English, Justice of the Peace, 20th day of April, 1958: Is that the warrant?

A Yes sir.

Q That you've been testifying about?

A Yes sir, that's the warrant.

MR. BLOCH: May I lodge this with the Reporter or with the Clerk?

THE COURT: Is that all you wanted to ask him?

MR. BLOCH: That was all.

THE COURT: All right, you may go down.



MR. HOLLOWELL: I have a question concerning the warrant, Your Honor.

The Witness: Are you through with me?

THE COURT: No, he has another question he wants to ask you.

MR. BLOCH: I might state for the record, sir, that complying with direction, I furnished counsel with a copy of that on the 18th of January.

ADVERSE EXAMINATION - RESUMED

BY MR. HOLLOWELL:

Q Do you know who made this out, this warrant, this DEFENDANTS' EXHIBIT No. 1?

A Who made this out? I don't remember - I think Mr. Cherry made it out and Mr. English signed it. I think that's the way it was. I don't remember but I think that's the way it was.

Q Have you ever seen in the City Code a charge of threatening and interfering with an arrest?

A I don't remember whether it's in there or not.

Q Have you ever seen a State charge -

A I don't remember.

Q You admit that this is a State warrant?

A That's what it says.

Q Did you seek a State warrant?

A Did what?

Q Did you seek a State warrant or a warrant for City offenses?

A I just got a warrant for what it says there. I don't know whether it was City or State. I just asked for a warrant to that effect, for those charges.

Q As a matter of fact, as a matter of practice, where there were State offenses only charged or alleged, did you normally get those warrants or did you normally have someone in the Sheriff's office to get such warrants?

A If I wanted a warrant for something, I asked for it and they wrote it out and I signed it, and they give it to me.

Q Who is "they"?

A Justice of the Peace or Mr. English; or if I was in Edison, when I was police down there, I went to the Justice of the Peace down there, which is Mr. Webb, or to the Ordinary in Morgan. That's the way I'd get my warrants for what offenses, what charges; I'd ask them for a warrant to that effect.

Q But if there were State charges normally involved, did you as a matter of practice refer those matters to the Sheriff's Department?

A Refer them to the Sheriff? If it was a State case, yes, referred it to - turned it over to the Sheriff's Department.

Q You would do that initially?

A Initially? What do you mean by that?

Q In the first instance, Mr. McDonald?

A Well, I don't remember whether it would be the first thing or just a few days later or right on the spot, no definite time.

Q In other words, suppose you knew that they were State offenses involved, would you normally say "Sheriff, we have some State offenses here involved and I think we ought to get a warrant for the arrest of such and such a person" and ask his office to do it?

A No. If it was inside the City, I would do it myself; if it was outside the City limits, I would give it, turn it over to the Sheriff and tell him to do it.

Q Do you know who wrote these last few words out here, in which the ink is of a much darker texture than that in which the warrant is generally made?

A I don't know, don't remember who wrote it. I reckon the same man wrote it that wrote the rest of it. I didn't read it.

Q You did not read it?

A I just asked for the warrant to that effect and it was wrote out and I signed it, and that was it.

Q You can't even say that this is the same as it was as of the time that you signed it?

A That's the warrant that I signed, as my signature is

on it -

Q Your signature?

A Right here (pointing on warrant).

Q This is your signature?

A That is my own handwriting, my own signature.

Q Can you say that the language that is in the warrant is the same as it was as of the time that you signed it?

A The same thing.

Q How do you know if you didn't read it?

A Well, it had to be; ain't nobody changed it.

Q Has it been in your possession?

A No.

Q Then, you really don't know, do you?

A Been no erasing there where anybody could have changed it.

Q But you didn't read it, that's your testimony?

A I didn't have to read it. I knew what was supposed to be there, what the charges werer

Q - As the one who got the warrant, did you appear on the morning of the 21st in the Mayor's Court for the trial?

A No, I did not.

Q Why?

A They didn't call me. If they wanted me as a witness, they would call me.

Q Who would call you?

A The Mayor or the Chief, one of the two. If a person didn't - if we had a case against a person and if he wanted to contest it and didn't want to plead guilty, and they needed one of us officers for a witness, they would call us; but, otherwise, if he pled guilty, they wouldn't bother a night man about appearing in Mayor's Court, because he had to work at night.

MR. HOLLOWELL: All right, no further questions at this time.

THE COURT: All right, you may go down. Who do you have next, Mr. Hollowell.

MR. HOLLOWELL: The Plaintiff calls the Defendant, W. B. Cherry.

-----  
W. B. CHERRY

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

ADVERSE EXAMINATION

BY MR. HOLLOWELL:

Q Your name is W. B. Cherry?

A That is right.

Q You're the Chief of Police of Dawson, Georgia?

A That's right.

Q You were the Chief of Police since when?

A Since '59.

Q How long have you been with the Police Department in Dawson?

A Since October 1, '55.

Q What was your official capacity as of that time?

A As night police.

Q Did you serve in night police capacity from that time up through '58?

A Up through the first part of '59.

Q What training have you had for being a police officer as of the time you became an officer?

A None.

Q In '55? Sir?

A None.

Q Did you have any in '56?

A I worked as a police officer in '56.

Q Did you train - did you have any training, any formal training at all, in '56?

A Chief of Police trained me. I taken my orders from him and instructions from him.

Q From the Chief of Police?

A That's right.

Q You took your orders and your instructions from the Chief of Police?

A That's right.

Q But you had no formal training as a policeman?

A No.

Q Did you have any in '57?

A No.

Q Did you have any in '58?

A I would have to check back on that to see.

Q Have you had any at all?

A Yes.

Q Where did you have it?

A In Vocational School operated by State of Georgia  
and Peace Officers Association of the State of Georgia.

Q What kind of school, sir?

A Peace Officers Training School.

Q Where was that?

A In Dawson.

Q When was that?

A In '59 and also in '62.

Q Was this -

A Also, I've attended three days school at the University of Georgia.

Q What kind of school was that at that time?

A Police chief school.

Q And that was for three days?

A That's right.

Q And these others that you mentioned in '59 and '62

were these 10-day sessions?

A Run 2 weeks at the time.

Q 2 weeks at a time, and you attended 2 weeks in '59 and 2 weeks in '62, is that correct?

A Yes.

Q And this is all the formal police training you've ever had?

A Other than on the job, yes.

Q Other than on the job. Do you know whether or not Chief of Police Lee had had any formal training?

A No, I don't. I couldn't answer for him.

Q Do you know whether or not Mr. Cummings had? You had not served under him?

A I do not. I couldn't answer that, what Mr. Cummings had had.

Q Were you a police officer on April 20, 1958?

A Yes.

Q In the City of Dawson?

A Yes.

Q Were you on the day or night shift?

A On the night shift.

Q What time did you come on?

A 5:00 P.M.

Q The 20th was on Sunday, was it not?

A That's right.



Q Did you come on at 5:00 P.M. on that day?

A That's right.

Q And then, you went immediately to supper, is that correct?

A No.

Q Where did you go?

A WENT TO supper at 6:00.

Q You went to supper at 6:00; what did you do between 5:00 and 6:00?

A I worked.

Q Just patrolling?

A On the street.

Q Did you make any arrest?

A No.

Q Were you driving or were you in a car?

A I was on the sidewalks.

Q On the sidewalks, just walking?

A Yes.

Q In general, just walking?

A Just walking on the sidewalk.

Q And at 6 o'clock you went home?

A Went to lunch, yes.

Q Now, between 5:00 and 6:00, did you see Mr. McDonald?

A Yes.

Q Where did you see him?

A On the street.

Q What was he doing?

A Just walking.

Q Neither of you had made any patrols in the car between 5:00 and 6:00, as near as you can recollect?

A Not that I remember.

Q Then, you went home at 6:00 in your car or in the policemen's car?

A I went in my car.

Q How far do you live from the jail?

A At that time I lived, oh about a mile from the jail, from uptown.

Q Did you take anybody with you?

A No.

Q You returned at approximately what time?

A Approximately 6:30.

Q Only gone 30 minutes?

A As a usual thing, I very seldom ever take over 30 minutes for lunch.

Q To go to eat and to come back?

A That's right.

Q Is that correct, about 30 minutes?

A Yes.

Q So, about 6:30 -

A Yes.

Q Where was Mr. McDonald when you first saw him on your return?

A He was in the driveway back of the courthouse.

Q Was he in his car?

A He was in the police car.

Q Did you talk with him at the time?

A Yes, I talked with him.

Q Was that when you went out to the Brazier residence?

A That was when - I talked with him and with to Mr. Dan English's residence.

Q Who went with you?

A Mr. McDonald.

Q When we took your depositions, did you have the occasion to relate that you went to Mr. English's for a warrant at that time?

A I don't know. I'm not testifying to the deposition.

Q Are you testifying from your present recollection?

A That's right.

Q How long did it take you to get out there?

A Just a few minutes.

Q How long were you there?

A I couldn't say; long enough for the warrant to be filled out and signed.

Q Did you make up the warrant?

A I filled it out for Mr. English, yes.

Q And then, Mr. English signed it?

A That's right.

Q After Mr. McDonald signed it?

A That's right.

Q Did you make it out completely?

A As far as I remember, I did, yes.

Q Is this the warrant, which is marked DEFENDANT'S

EXHIBIT #1?

A Yes, that's the warrant.

Q Did you add those last three words there?

A They were put on there at the time it was filled out.

Q You didn't answer my question, sir?

A Well, if I filled it out, I added them.

MR. HOLLOWELL: Would you repeat the question, sir,  
Mr. Joiner?

THE REPORTER: "Did you add those last three words  
there"?

A The Witness: Yes.

Q Mr. Hollowell: You added them yourself?

A That's right.

QW With the same pen?

A No.

Q Why did you change pens?

A The only I had probably quit writing; ball points  
usually do.

Q I mean do you know whether or not it quit writing?

A I don't recollect.

Q You don't actually recollect?

A No.

Q Did you put this on all at the same time?

A Yes.

Q Was it before Mr. English had signed?

A Sure.

Q Do you recollect whose pen Mr. English signed with?

A No, I don't.

Q Then, you proceeded to the Brazier residence?

A That's right.

Q About how long did that take you?

A Oh, just a matter of minutes.

Q Did you get any calls during the time that you were at the jail or the courthouse or in making your rounds, between 5:00 and 6 o'clock?

A I don't remember any.

Q You don't have any recollection of any?

A No, I don't.

Q Now, where would you get calls? You would get them there in the joint office?

A From 5:00 until 6 o'clock, on the sidewalk, we would take calls on the street.

Q Now, does the same phone that rings on the outside

also ring in the jail - in the courthouse?

A That's right.

Q Excuse me just a moment please -Does the same phone, which rings on the outside, also ring in the combination Sheriff's office-City police officer in the courthouse?

A That's right, combination of extension.

Q And whoever happens to be present answers that phone, is that correct?

A That's right.

Q And whoever happens to be present to hear the radio calls will take those calls and relay the messages, be they for the Sheriff or for the City police, if Mr. Hooper is not there?

A Up until 6:00 P. M.

Q That is, from what time to 6:00 P.M.?

A Any time during the day from 4:00 A. M. in the morning until 6:00 P. M. in the afternoon.

Q You had no official operator?

A No.

Q And as a result, the policemen and the deputy and the Sheriff, whoever happened to be there took care of the calls coming in on the radio at that time, is that correct?

A That's correct.

Q Maybe, excuse me, Mr. Cherry, if you'll lower your fingers just a little better I think we'll hear you better.

And the same would be true, whoever happened to be closest, that's the one that would answer?

A That's right.

Q The City didn't pay any rent for the use of the office with the Sheriff did it, to your knowledge?

A As far as I know, they didn't.

Q And as the Chief of Police presently, they do not, do they?

A We do not use that office.

Q You don't use it; you have your own office? Now?

A Yes.

Q But as of April, '58, you had a joint office?

A That's right.

Q And used the equipment jointly?

A That's right.

Q Now, when you went to Brazier's house, you were driving?

A Yes.

Q And where was Brazier when you arrived?

A In his back yard.

Q What was he doing there?

A Standing back there talking to his wife.

Q Just carrying on an ordinary conversation?

A As far as I know, it was. I didn't hear it. I couldn't hear the conversation.

Q Who else was in the yard?

A 2 or 3 children.

Q You went in then and you told him that he was under arrest, is that correct?

A That's right.

Q Sir?

A Yes.

Q Did he leave immediately with you going toward the car?

A He left - yes.

Q Sir?

A Yes.

Q Where was his wife at that time?

A She was still standing in the same spot she was standing in when we drove up.

Q And that's all you asked, you said "You're under arrest, Brazier" and he turned around and started walking with you?

A That's right.

Q Had you seen him any more - had you seen him earlier that day?

A No.

Q That was the first time you had seen him that day, wasn't it?

A That's right.



Q You walked right on back to the car with him?

A Yes.

Q Did you have hold of him?

A I had placed one hand on his shoulder, yes.

Q Which shoulder?

A Left shoulder.

Q His left shoulder?

A That's right.

Q Which hand did you put on him?

A Right hand.

Q Where was Mr. McDonald at the time?

A He was close by. He could have been on the other side or he could have been behind.

Q You don't know?

A Don't remember.

Q And so, Brazier just walked right on out?

A Out as far as the car, yes.

Q Didn't even ask you what he was arrested for?

A He didn't say a word.

Q Just walked straight on out?

A That's right.

Q When he got to the car, was he fully clothed?

A Yes.

Q Do you remember the color of his suit?

A No, I don't.

Q If I said it was gray, would you recollect that perhaps that was true?

A I wouldn't say.

Q Beg your pardon?

A I wouldn't say.

Q Did you show him the warrant?

A He didn't ask to see the warrant.

Q You didn't answer my question, sir: Did you show him the warrant?

A No, he didn't ask to see the warrant.

Q Then, your answer is that you did not show him a warrant?

A No, he didn't ask for it.

Q Nor did you tell him what he was to be arrested for?

A Yes.

Q Didn't you say just a moment ago that you told him he was under arrest and that he turned around and started walking with you, isn't that correct?

A I told him he was under arrest for interfering with an officer.

Q You told him that?

A That's right.

Q What did he say?

A He didn't say anything.

Q Just started walking with you?

A That's right.

Q Did you tell him to "come with me"?

A I told him I would have to carry him in.

Q I beg your pardon?

A I told him I would have to carry him in.

Q And he went right on with you?

A As far as the car.

Q Then, when he got to the car, what happened?

A He started to putting up a fight.

Q Did he swing at you?

A He swung.

Q Did he swing at you?

A He could have been swinging at me or Mr. McDonald either one.

Q You don't know who he swung at; he just swung?

A That's right.

Q In other words, you saw his arm go around in the usual fashion of one swinging, is that what you're saying?

A Yes.

Q Did he hit anybody?

A Glancing.

Q Glanced who?

A Mr. McDonald.

Q What do you mean "glanced", glanced off of what?

A Knocked his cap off.

Q Then, he hit his cap then, you're saying?

A Well, I don't know whether it was his cap or his head. It could have been either one, to knock his cap off.

Q Then, as far as you know, you don't know whether he hit his head at all, is that correct?

A No.

Q Did you see Mr. McDonald go down?

A No.

Q Did you see him stoop down?

A Nothing other than except in the scuffle.

Q Did you see him - Did Brazier touch him?

A I couldn't say.

Q Did Brazier touch you?

A Yes.

Q Where did he touch you?

A When I had hold of him, he couldn't help but be touching me.

Q Is this the only time you have reference to?

A That's right. He was kicking back; when he kicked back from the car, he kicked back against me with his body.

Q He kicked back?

A Yes.

Q In what manner did he kick back?

A When we got him and tried to put him in the car,

kicking his feet against the car and pushing back.

Q Pushing back with his feet against the car?

A Yes.

Q He didn't kick you?

A Well, he was pushing back against us.

Q I see. He didn't kick at Mr. McDonald?

A I didn't say he kicked at anyone.

Q Sir, I didn't ask you that. I said he didn't kick at Mr. McDonald, did he?

A I couldn't say whether he did or didn't.

Q You didn't see him?

A No.

Q So then, what scuffle are you talking about? He didn't hit you, he didn't touch you, he didn't touch Mr. McDonald, by your own testimony: Now, what scuffle are you talking about?

A When he swung at me and put up a fight and wasn't going to get in the police car.

Q You said a moment ago he didn't swing at you?

A In a scuffle, one swinging his arms, he can be swinging at you or anybody else.

Q Now, what scuffle, what scuffle?

A I answered that one time, when we were trying to put him in the police car.

Q And what you mean by "scuffle" is when he had his

feet against the runner of the door?

A That was after the beginning of it?

Q Beg pardon?

A That was after the beginning of it, when he put his feet against the door.

Q Well, I mean, this is the only other thing that you've testified to. Let's see, let's review it for a moment: You come up, you say "you're under arrest for interfering with an officer"; this is what you say now that you said, though you don't deny that you did not say that as of the time that your deposition was taken on the 10th of October?

A I couldn't say; like I said once, I'm not testifying to the deposition.

Q As a matter of fact, you did not say it at that time, did you?

A I couldn't say.

Q And you say he never did hit you; that's what you did say?

A He hit at me.

Q Beg pardon?

A He hit at me.

Q Well, don't you know a moment ago you said all he did was swung and you didn't know whether he was swinging at you -

A He was hitting at both of us.

Q Beg pardon?

A He was hitting at both of us.

Q You say he was swinging; how many times did he swing?

A I couldn't say.

Q Which arm did he swing with?

A Both arms.

Q Where were you at the time that he was swinging?

A There next to him.

Q Next to him?

A Yes.

Q And what were you doing at that time?

A Trying to bring him under control.

Q And you say he was swinging with both arms?

A Yes.

Q Did you grab one of his arms?

A I couldn't say.

Q Now, did you grab one of his arms?

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

Q Did Mr. McDonald grab one of his arms?

A I couldn't say.

Q You hit him with your black-jack, didn't you?

A Yes, hit him with slap-jack.

Q Where did you hit him? Slap-jack?

A Yes, not a black-jack.

Q What is a slap-jack?

A It's a long, flat piece of leather.

Q Excuse me - is it as described by Mr. McDonald in your hearing earlier? Sir?

A It's practically the same as he described it. I would say that was a pretty good description of one.

Q Did you hit him with the flat surface of it or did you hit him only with the edge of it?

A Hit him with the flat surface of it.

Q How do you know?

A Because I hold it flat in my hand and when I swing, the flat part of it is down.

Q Oh, you use this often?

A If I have to, yes.

Q You've used it on many occasions, haven't you?

A If forced to, yes.

Q Where did you hit him on the head?

A On the forehead.

Q What part of the forehead?

A I couldn't say; it was on the forehead.

Q You don't remember?

A No; no, I don't.

Q How many times did you hit him with it?

A 2 or 3 times.

Q 2 or 3 times?



A Yes.

Q And you don't remember where any of them were?

A I said on the forehead.

Q All of them were on the forehead?

A That's right.

Q Then, you took out your pistol?

A Yes.

Q And what did you do with it?

A Held it on him until I put a one-hand, pistol-grip handcuff on him.

Q Which hand did you have your pistol in? Right hand or left hand?

A Right hand.

Q In your right-hand?

A Yes.

Q And you put the pistol-grip on which of his wrists?

A On his right wrist.

Q On his right wrist?

A That's right.

Q Since he was to your left?

A That's right.

Q Now, where was Mr. McDonald at this time?

A He was there.

Q And then, after you put the pistol-grips on him, then what did you do?

A Put him in the back seat of the police car.

Q And you shut the door?

A Yes.

Q That's when you shut the door on his leg, is that right?

A The door was not closed on his leg.

Q You didn't close it? Sir?

A No.

Q Now, did you hit him 2 times or did you hit him 3 times?

A I don't remember, 2 or 3 times. It was hit at 2 or 3 times, yes.

Q Well, let me ask you whether you recollect the deposition of the 10th of October, '62?

A No, I don't recollect what I said in the deposition.

Q Well, maybe - let's refresh your recollection: is this your name, is that the way you spell your name, C-h-e-r-r-y (spelling)?

A That's right.

Q I'll ask you whether you were asked the question, "How many times did you hit him" And you answered: Twice?

A I don't remember whether I was asked that question or not.

Q Do you deny that this is the record?

A No, I don't deny it.

Q And then, you were asked, or isn't it true you were asked, "In front of the forehead, right here (pointing)" - I'm sorry - the question was, "Where did you hit him?" Do you see that right there?

A Uh huh.

Q And your answer was, "In front of the forehead, right here (pointing on head)"?

A I don't remember.

Q "Question: On both sides", and you answered, "I couldn't say; I hit in the front of the forehead", is that correct?

A I don't remember.

Q You don't remember?

A No.

Q Is your name "Weyman B. Cherry"?

A Yes.

Q That's your name right there (exhibiting deposition)?

A That's right.

Q Did his head bleed when you hit him?

A I don't remember it bleeding.

Q Do you remember seeing any blood at any time?

A No.

Q At no time?

A No.

Q And after you got him to the car, in the car, where

did you take him?

A To the jail.

Q A number of people had assembled in the vicinity of the car as of the time that you were putting him in the car, had they not?

A Nobody could be seen present, other than his wife and children.

Q This is all that you saw?

A That's right.

Q You don't know whether anybody else was looking or not?

A If they were, they were not visible, no.

Q You mean if they were, you didn't see them?

A No.

Q Excuse me sir, I'll ask you if you will lower your fingers from your mouth; it's a little bit hard to hear you. Did Mr. McDonald help put him in the car?

A Yes.

Q Did he strike him?

A No.

Q As a matter of fact, Mr. Cherry, Brazier had told you in the center of the yard, when you had your gun out, said "Why don't you go on and shoot me", said "I haven't done anything", didn't he?

A Everything that happened, happened in the street and not in the yard.

Q At no time were you ever in the yard?

A I didn't say that.

Q Except --

A I said what happened, happened in the street and not in the yard. His resistance was in the street and not in the yard.

Q Now, excuse me, if I might, Mr. Cherry, if I'm trying to ask a question, if you would remain silent until I can finish and when you're trying to answer one, I'll try to keep still, so that Mr. Joiner will be able to hear us.

MR. HOLLOWELL: Mr. Joiner, would you be kind enough to read the last question that I stated about what Brazier said to him?

THE REPORTER: "As a matter of fact, Mr. Cherry, Brazier told you in the center of the yard, when you had your gun out, said "Why don't you shoot me, go on and shoot me", said "I haven't done anything", didn't he? Answer: Everything that happened, happened in the street and not in the yard."

Q Mr. Hollowell: At no time did you hear Brazier make such a statement?

A Not in the yard, no.

Q Did he make it at the car?

A I don't remember him making it, no.

Q You don't say that he didn't; you just don't remember

hearing him make it?

A Well, I don't see why he would have made it in the yard. My gun was in the holster in the yard.

Q You didn't answer my question?

MR. HOLLOWELL: Would you repeat the question, Mr. Joiner?

THE REPORTER: "You don't say that he didn't; you just don't remember hearing him make it?"

A The Witness: No.

Q Mr. Hollowell: By the way, you are not testifying that the statements that we have attributed to you, which were made in the - which I referred to your attention and called to your attention and had you read, and repeated to you, the questions and answers in the depositions, are not true, are you?

A No, I haven't testified to that.

Q Did you take Brazier on to jail?

A Yes.

Q Immediately?

A Yes.

Q By the closest route?

A That's right.

Q Was he in the back seat all of the time?

A Yes.

Q How many times did you hit him between the house and

the jail?

A He wasn't hit at all.

Q When you got to the jail, where did you put him?

A Put him in the second cell.

Q In the second cell on which side?

A The east side.

Q The east side?

A That's right.

Q Was that where he was at every time that you saw him from the time you put him in there until the time that you took him, off duty?

A That's right.

Q Now, when you say the east side, this is looking from the rear of the courthouse into the rear of the jail, as shown in PLAINTIFF'S EXHIBIT #10, is that correct?

A It would be the wing on the left.

Q Be the wing on the left?

AY Yes.

Q On the wing on the left in cell No. 2?

A That's right.

Q You immediately put him in jail?

A No.

Q You did not?

A He was kept in the office until the doctor arrived and checked him.

Q About what time was that?

A It was between - around 7 o'clock, between 6:30 and 7:00.

Q About what time did the doctor arrive?

A I don't recall off-hand.

Q Sir?

A I don't recall.

Q Did you docket the case while you were there?

A Docketed<sup>ted</sup> it on the jail log.

Q At that time?

A It should have been, yes; as a usual thing they are docketed at that time.

Q I'm sorry, sir?

A As a usual thing, they are docketed on the jail log at that time.

Q Do you recollect whether you docketed this one at that time?

A No, I don't.

Q Now, during all of the time that you were waiting for the doctor to come, were you in the jail office?

A That's right.

Q That office is the - Have you seen these photographs?

A No.

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



A Yes, that's part of it.

Q How long was it before the doctor came?

A It wasn't long.

Q About how long?

A I couldn't say.

Q 20 minutes?

A I couldn't say.

Q Was it dark when he got there?

A I don't remember off-hand.

Q You don't recall at all?

A No.

Q Could it have been as much as 30 minutes?

A I couldn't say how long it was.

Q Sir?

A I couldn't say how long it was. I did not time it.

Q Did you notice the condition of Brazier's head as of the time that he was sitting there in the Sheriff's office?

A Yes.

Q In the jail?

A Yes. <sup>Q-</sup> What was the condition of it?

A He had a little small, looked like, a knot-like on his forehead.

Q Whereabouts was it, on the right or left?

A I don't recall.

Q But it was on the forehead?

A That's right.

Q Did you notice any other lacerations or abrasions or contusions?

A Just a small skint place.

Q Where was it?

A On his forehead.

Q This is - then, there were two, is that correct?  
Then, there were two little skinned places?

A No, didn't say that.

Q Well, I ask<sup>ed</sup> you whether you noticed any other and you said just a little skinned place?

A There could be a small knot there and have a skint place on it.

Q Well, it could be; was there, was it?

A I couldn't say.

Q You don't know? Do you know?

A I don't remember off-hand whether it was the same one -

Q Do you know?

A No, I don't.

Q Did the doctor put anything on it?

A Band-aid.

Q What, if any, instructions did the doctor give to you?

A He instructed us to wake him every hour and a half

or two hours to see if he was all right.

Q Then, who put him in the cell itself?

A Myself and Mr. McDonald.

Q Both of you went in to put him in?

A That's right.

Q And this was in No. 2 on the left wing?

A The east side, yes.

Q On the east side?

A Yes.

Q Where did you go from there?

A Went back to work.

Q You mean by that, making patrols?

A That's right.

Q Did you have the occasion to see James Brazier's wife in the vicinity of the jail during the course of the evening?

A No.

Q Did you see the Sheriff at any time?

A No.

Q Did you see - did you know - strike that, Mr. Joiner - Did you know James Brazier's mother-in-law?

A No.

Q You wouldn't know her if you saw her?

A I wouldn't.

Q So that -- Now, when did you see the doctor, other

than at the time when he first came?

A It was some time around midnight or after.

Q Beg pardon?

A Around midnight or after.

Q Now, had you made any visits back to the cell of Brazier during that period of time?

A Yes.

Q How many times?

A I couldn't say.

Q Was it more than two?

A I couldn't say.

Q Do you know?

A I don't remember how many times it was, if it was 1, 2 or 3; I don't recall.

Q At the time that you went to visit him, did he appear to be in the same condition that he had been as of the time that you put him in?

A He talked to me each time, yes.

Q What did you say to him?

A Asked him how he was.

Q And what were his responses, what would his response be?

A He was all right.

Q Did you do this each time?

A Yes.

Q Was there any blood on him at all?

A None visible.

Q At no time?

A None visible, no.

Q How close were you to Brazier?

A The door, those steel doors are about that thick (indicating) and I was that close to him each time.

Q Then, you had him right by the arm; one time you had your hand on his shoulder?

A Now, what are you talking about now?

Q Brazier and the closeness of him?

A That was the time he was -

Q Excuse me, sir, and let me finish the question: I'm saying what was the closest point of contact that you ever had to James Brazier on the evening of the 20th of April, 1958?

A Nothing closer than the time that he was arrested and carried to jail.

Q Now, on those occasions, when you first arrested him, it was daylight, is that correct?

A It was late afternoon, yes.

Q Was it daylight?

A It was early part of the evening.

Q Was it daylight?

A It could have been dusk dark.

Q Was it dusk dark?

A I couldn't say. I said it could have been.

Q Do you know whether it was daylight or not?

A No, I don't.

Q Do you recollect whether you made any more visits than the number that you indicated on your deposition?

A No, I don't have no idea how many I indicated on my deposition.

Q Well, suppose we refresh your recollection for a moment: I ask you whether or not on your deposition on the 10th --

A Itold you --

Q Just a moment, sir - on the 10th of October, 1962, you were asked these questions on deposition and you gave these answers - just a moment, I haven't asked you yet:

"How many times then would you suggest" - and then we said "strike that. Question: Well, did you make one before midnight? Answer: Yes. Question: How many before midnight? Answer: I couldn't say off-hand. Question: At least one? Answer: Correct. Question: How many didyou make after midnight? Answer: 2, I believe 2 or 3."

Do you see that there?

A Yes, I see it.

Q Were these questions asked you and did you give those answers?

A It's possible. I couldn't say. I don't remember them off-hand.

Q "Question: Did you make one before you went off-duty? Answer: Yes. What time did you go off duty? Answer: 5 o'clock." Do you recollect those questions being asked and you having given those answers?

A No, I don't recollect those questions and answers.

Q Do you recollect -

A Could you ask me all the questions you asked me then without referring back to that?

MR. HOLLOWELL: If it please the Court, we would ask that the witness be instructed that the questions are to be asked by counsel.

THE COURT: Well, yes; it is the duty of the witness to answer the questions of counsel, if he knows the answers. If he does not know the answers, then it's appropriate for him to say he doesn't remember or doesn't know. That's the correct procedure and it's not proper for the witness to ask questions of counsel. All right, go ahead.

MR. HOLLOWELL: Thank you, sir.

Q You remember seeing the gentleman sitting there, Mr. Joiner, at the deposition, do you not?

A Yes, I know Mr. Joiner.

Q Was he taking down the testimony at that time in the same manner as he appears to be taking it down at this time?

A Yes.

Q Now, isn't it also true that you were asked at that time, "About how long before you made your last visit was it before you went off duty?" And your answer: "I would say approximately 30 minutes to an hour."

A I couldn't say because I don't remember whether I was asked that question or not.

Q You don't deny that you were asked?

A I do not deny it but I do not remember being asked that question.

Q Did you, in fact, make a tour of James Brazier's cell about 30 minutes before you went off duty?

A Yes.

Q With whom did you make such a visit?

A By myself.

Q Where was Brazier at that time?

A In Cell #2.

Q Is that the same place he had been as of the time that you had first locked him up?

A That's right.

Q Did you wake him up on each occasion?

A Yes.

Q Was he at any time in the right wing?

A No.

Q Did you at any time ever see anybody else wake him up?



A No.

Q As of the time that you went to visit him the first time, was he fully dressed?

A I don't recall.

Q What about the second time?

A I don't recall.

Q Do you recall what his dress was at any time?

A No.

Q Do you recall what his dress was as of the time that he was arrested?

A No, I don't.

Q You have no recollection about this at all?

A No.

Q Would you recognize his clothing if you saw it?

A No.

Q Would you recognize whether or not it was bloody?

A No.

Q Did you go with Dr. Ward as of the time that he made his visitation late during the course of the night?

A Yes, I did.

Q Did Mr. McDonald go with you?

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

Q You know Gene Magwood, don't you?

A Yes.

Q He was the jailer, I believe you said; is that correct?

A That's right.

Q He let prisoners in at your instance and at the instance of the other police officers?

A If he happened to be up or there at the door and we asked him to unlock the door, yes.

Q And you concur in the fact that he carried the keys?

A Yes.

Q He fed the prisoners?

A That's right.

Q You know where the kitchen was, don't you?

A Yes.

Q Did the kitchen run off of the porch there which connects the two wings?

A There's a door leaving the porch into the kitchen, I believe, yes.

Q Q And the food was furnished by the County?

A That's right.

Q For City and County prisoners?

A We pay the County board and turn-key for boarding our prisoners. They do not furnish it to the City.

Q Don't they furnish the food?

A They furnish the food; we pay them board for this furnished by the Sheriff.

Q By the Sheriff; the Sheriff is County officer, isn't he?

A (No answer) . . . .

Q This cabinet that is in the jail office, in which the jail corridor door is locked and secured, you had a key to it, didn't you?

A To the steel safe?

Q To the steel safe?

A Yes, I had a key to it.

Q And all of the officers had a key to it, is that correct?

A As a usual thing, yes, they do have.

Q Sir?

A As a usual thing, yes.

Q And so, Gene didn't have a key to it but he had a key to the door?

A He had the regular jail keys but no keys to the safe.

Q Well, he wouldn't need one, of course, he had the key that you would be going to get; that is, key which would do the same thing?

A That's right.

Q As the one that you would be going to get, is that not correct?

A That's right.

Q Did you at any time see the Sheriff during the course of your tour of duty?

A I don't remember seeing him, no.

Q Would you say that you did not see him?

A I would, yes.

Q You would say that you did not see him?

A Not that afternoon or that night, yes.

Q Nor early in the morning?

A No.

Q Did you see anybody else in the jail at all besides Dr. Ward and Brazier, James, and Mr. McDonald?

A Yes.

Q Who else did you see?

A I saw Mr. Hattaway when Dr. Ward came in to examine him.

Q This was the alcoholic person, prisoner, that was in jail?

A That's right.

Q That the doctor came to see very late, some time after 12 o'clock?

A That's right. That was the time that Dr. Ward examined Brazier the second time.

Q Did you go into the cell with the Doctor or did the Doctor go into the cell on this second occasion?

A I went into the cell with him.

Q Did you wake up Brazier at that time?

A Yes.

Q Did Brazier awaken?

A Yes.

Q Did he talk?

A Yes.

Q Did he get up?

A Yes.

Q Did he walk around?

A If he wanted to, yes.

Q Well, I mean, did he?

A He stood up, yes.

Q Did he walk around?

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

Q Did the Doctor take his temperature?

A I don't remember.

Q Did he take his blood-pressure?

A I couldn't say.

Q Did he leave any further instructions?

A Nothing other than wake him up every hour and a half or two hours.

Q Now, about what time was that?

A That was around midnight or after.

Q How long after midnight?

A I couldn't say.

Q Well, would you say a short or a long time after midnight?

A I couldn't say; I didn't time it.

Q You didn't time it at all?

A No.

Q And you have no way of knowing and you don't know, is that correct?

A Not the exact time, no.

Q Well, approximately, do you know the approximate time?

A Around midnight or after.

Q Well, I mean midnight or after, when you say after -

A It could have been around 12 o'clock or it could have been a few minutes after 12: o'clock.

Q I see; would you say it was some time between 11:45 P. M. and 12:15 A. M.?

A Around midnight or after, yes.

Q That wasn't the question?

A Well, that's the best that I can answer it because I don't know the exact time.

Q Was it before 12:30 A. M. on the 21st?

A I couldn't say.

Q Was it before 1 A. M., 1:00 A. M.?

A I couldn't say.

Q Was it before 1:30 P. M.?

A I couldn't say. It was around midnight.

Q Just around midnight?

A That's right.

Q Well, do you construe 11 o'clock to be around midnight?

A In the neighborhood, yes.

Q Do you construe 1 o'clock to be around midnight?

A Yes, in the neighborhood of midnight.

Q Do you construe 2 o'clock A.M. as being around midnight?

A No.

Q So then, you would say it was some time before 2 o'clock A. M.?

A That's right.

Q And after 12:00?

A I couldn't say.

Q After 11:30?

A I couldn't say.

Q After 11:00?

A I would say it was around 12:00 midnight, somewhere in that neighborhood.

Q How many persons have you interrogated pertaining to this particular case?

A I talked to James Lattimer, I believe, a few days after.

Q Sir?

A I talked to James Lattimer a few days after it happened.

Q Where did you talk with him?

A I talked to him at the courthouse.

Q Did you call him down there?

A I believe I went by where he was working and told him I'd like to talk to him about it.

Q Why?

A I wanted to get up a record of the witnesses.

Q Why?

A Why?

Q Yes?

A As a police routine.

Q What witnesses did you get?

A He was the only one I talked to at that time.

Q Well, which one--

A It was after Brazier's death that I talked to him.

Q Well, with whom did you talk after Brazier's death?

A I don't remember talking to anyone.

Q Are you saying that you didn't or that you just don't remember?

A I said I didn't remember.

Q Well, do you know whether or not you talked with any other witness thereafter?

A No.

Q Or any other person connected with the incident of the arrest of James Brazier and his incarceration on the night of the 20th or the evening of the 20th of April, '58?

A No, I do not.

Q You didn't take Brazier to jail the next morning?



A No, I didn't take him to jail the next morning.

Q Did you see him at anytime after you went off duty?

A No.

Q Did you see any other person in the vicinity of the jail, that is, the interior of the jail, between the hours of 7:00 P. M. on Sunday, the 20th of April, '58, and 5:00 A. M., Monday Morning, the 28th?

A None other than the ones that have been named.

Q None other than what?

A The ones that you previously named a few minutes ago.

Q Was the jail at all times under the custody and control of yourself and Mr. Cherry during the course of that night, as well, of course, as the Sheriff, who was at your call?

A Under the control of who?

MR. HOLLOWELL: Will you read the question, sir?

THE REPORTER: "Was the jail at all times under the custody and control of yourself and Mr. Cherry during the course of that night, as well, of course, as the Sheriff, who was at your call?"

MR. BLOCH: Your Honor, I object to that as calling for a conclusion of the witness.

THE COURT: Yes, the question of control does raise a question of where he would have to express an

The Court:

opinion. You can ask him who was there and who he saw and came in and who went out and all of that; but the question of control, I think, would be a conclusion.

\_\_\_\_ Q Mr. Hollowell: Who, if anyone, had any authorization to supervise prisoners other than the persons that we have named heretofore, during the time that you were on tour?

A There was no one there, other than myself during the time that I was on tour but Mr. McDonald.

Q Those were the only two?

A That's right.

Q Do you know whether or not the Sheriff was in his household?

A No, I do not.

Q You do not know it, as a matter of fact?

A I didn't visit with him; I couldn't say.

Q The Sheriff is the custodian of the total jail, is he not?

A That's right.

Q How was it that you had the occasion to go by and see Lattimer?

A What do you mean now? How was it I had the occasion?

Q You testified that you went by, I believe, the place where he worked, did you not, and told him that you wanted to talk with him about the incident, because you were

getting witnesses together, isn't that true?

A I went by and talked to him as a witness, yes.

Q How did you come to talk with him?

A I went by the place of business where he worked.

Q How did you know to go by there?

A I had heard and knew that he lived right close to where Brazier lived.

Q From whom had you heard such?

A I knew where he lived.

Q Did you know whether or not he had been present at that time?

A No, I did not.

Q You did not?

A No, I didn't know whether he was present or not present.

Q Do you know where he lives in relationship to the Brazier home?

A He lives 2 or 3 houses down on the west side of Ash Street and Brazier lives on the east side.

Q He lives across the street?

A He lived southwest of Brazier.

Q By 2 or 3 houses?

q A I would say 2 or 3 houses, yes.

Q And across the street?

A That's right.

Q Can you see the front of Brazier's house from his house?

A I couldn't say. I haven't beento his house and checked.

Q Are there any trees in front yard of the Brazier resident?

A I don't recall any.

Q Are there any on the street between - well, on what would normally be the City's portion of the street, that is between the curb and what would be the sidewalk?

A There are trees on the street. I d on't know the exact location of them.

Q Are there any in front of Brazier's house?

A A I couldn't say.

Q Your testimony is, you don't know?

A That's right.

Q Did you see Lattimer as of the time that Brazier was arrested?

A No.

Q You're not testifying that he was not in a position to see, are you?

A No, I haven't testified that he was not in a position to see.

Q Now, this jail log that was kept -- did you bring it along?

A Yes. (Handing book to counsel) . . . Page 90.

Q Have you seen this book that I am handing you before?

A Yes.

Q By whom is it kept?

A It's kept by the City.

Q This is the City book?

A Yes, City jail log.

Q Does the County have a similar log?

A I couldn't say. I don't run their City log or County log.

Q Do you always put the offense with which the individual is charged?

A As a usual thing, yes.

Q You will submit that the charge against Brazier in the warrant and the charge which is delineated on this book are not the same, are they?

A I couldn't say.

Q What does it say on the book? What does it say?

A "Interfering with an officer, threatening an officer and resisting arrest".

Q Now, let's look at this see - and we're referring to DEFENDANT'S EXHIBIT #1 - and see if they read the same way?

A It says "Threatening and interfering with an arrest."

Q That's all it says, isn't it?

A That's right.

Q They don't read the same, do they?

A No.

Q Who made the delineation in the book that you refer to as a jail log?

A That appears to be Mr. Lee's handwriting.

Q Did you give him the information?

A I imagine he got it from the office file.

Q What did you write it for when you came in?

A I don't remember.

Q What kind of file did you have?

A We had a regular log that we put names down in and the charge out by them.

Q Do you have that log here with you?

A No, I don't.

Q Did you have the occasion to ever see Brazier, James Brazier, at anytime after you left duty at 5:00 A. M. on the 21st?

A No.

Q At no time?

A No.

Q You were so close that, if there had been any other abrasions or lacerations or contusions on his head as of the time that he was arrested, you would have been able to observe them, were you not?

A Yes.

Q And you saw nothing other than, I believe you indicated, one little skinned place, which was small -

A A small band-aid the last time I saw him.

Q On a band-aid on his head?

A That's right.

Q Or forehead somewhere?

A Yes.

Q Only one?

A That's right.

Q And you were close enough to observe, so that you would have been able to tell if he were bleeding about the head and neck?

A Yes.

Q And you saw none?

A None.

Q At no time?

A No.

Q Do you know what became of his clothing when he went to jail or rather when he left the jail the following morning?

A No.

Q Did you see how he was dressed at that time?

A No.

MR. HOLLOWELL: We have no further questions for this witness at this time, Your Honor.

MR. BLOCH: Come down.

THE COURT: Are you indicating by that, that you are through with him?

MR. HOLLOWELL: As of this time, sir.

THE COURT: Well, if you have in mind putting him back on the stand in the morning, I had rather we would go ahead and conclude with this witness.

MR. HOLLOWELL: I do not have that in mind as of this moment, sir.

MR. BLOCH: I'm told that there's a witness in the courtroom.

THE COURT: Is there a witness subpoenaed by either the Plaintiff or the Defendant in this case sitting in the courtroom? . . . All right, you might make note of who it is. Of course, we have to leave it upto counsel to be sure that their witnesses understand that they are not supposed to be in the courtroom.

MR. HOLLOWELL: Yes sir.

THE COURT: And if they are present, of course, it might disqualify them from testifying later.

All right, at this time we will recess until tomorrow morning at 9:30. Now, members of the jury, you will remember the admonition that I gave you at the time we took our noon recess, about discussing the case, about not reading anything about it or listening to anything about it. Just put it out of your mind until we reconvene



The Court:

in the morning.

Now, Mr. Marshal, I want this jury to have an opportunity to go through the jury-room and get their hats or coats or whatever else they may have left in there and pass out of the jury room, have use of the elevator and be completely down and left this floor before anybody else leaves the courtroom, because they are the ones who have the burden of this trial. So, everybody, as soon as we have recessed, every one else will simply remain seated and give the jury time to retire. So, before we recess, we simply let the jury retire now. You may retire.

(JURY RETIRED)

. . . . . We stand in recess now until tomorrow morning at 9:30 o'clock.

5:00P. M., FEBRUARY 4, 1963: HEARING RECESSED

-----

9:30A. M., FEBRUARY 5, 1963:

MR. BLOCH: If the Court please, we were in Dawson on the 19th of January taking depositions in this case. Documentary evidence was exchanged and at that time it was agreed that certain photographs, which have now been admitted, should be taken; and I told counsel at the first opportunity I would submit to him

Mr. Bloch:

a certified copy of an ordinance of the City of Dawson, being Section 230 of the City Code, and reading:

"No person shall resist or in any manner interfere with any of the officers of this City" --

MR. HOLLOWELL: Excuse me, Your Honor. May it please the Court, I would submit that we would want to see the document before there's any reading from anything. We haven't had an opportunity to see the document and, therefore, it would be improper for anything to be read in the record.

THE COURT: Do you just wish to submit the certified copy at this time?

MR. BLOCH: I wish to submit the certified copy to counsel and see if the certification is satisfactory to him, that the form is all right; and, so that, if necessary, we can get the Clerk, the City Clerk of Dawson over here.

THE COURT: All right, sir; suppose you submit it to him.

MR. BLOCH: And also at the same time I submit to counsel the Code of the City of Dawson, adopted July 5, 1910, calling particular attention to Sections 230 and 231.

(Tendering Code to Plaintiff's counsel)

MR. HOLLOWELL: May I ask Mr. Bloch this: This is the first opportunity that we have had to review either of these documents and we would like a little time to do so, and which time, of course, would be in advance of the time when you would be beginning your case, Mr. Bloch. We will be glad to look it over and we would like to have the Judge to reserve his ruling.

THE COURT: Allright, suppose we do this: I understand Mr. Bloch's problem to be that, if the certification as he submitted it to you, if for any reason you find it inadequate, he wants to have somebody here to make proof; so, if during the course of today, if counsel for the Plaintiff will let Mr. Bloch know whether what he has presented is adequate or not, some time during the day, say, that would satisfy your purpose, wouldn't it, Mr. Bloch?

MR. BLOCH: Sir?

THE COURT: Would that satisfy your purpose, if counsel lets you know some time during the day today?

MR. BLOCH: Yes sir.

THE COURT: Whether this is adequate?

MR. BLOCH: Yes sir.

THE COURT: Allright, we will leave it that way. All right, who do you have next for the Plaintiff.

MR. HOLLOWELL: Dr. Joe M. Webber.

MR. HOLLOWELL: Your Honor, we want to hold Dr. Webber one moment and put Mr. Cherry on for the purpose of identification only, and then we can have the Doctor. We are calling Mr. Cherry back on cross.

W. B. CHERRY

party Defendant, recalled  
testified further on

ADVERSE EXAMINATION

BY MR. HOLLOWELL:

Q You recollect that you are still under oath, sir?

A Yes.

Q Mr. Cherry, I hand you PLAINTIFF'S EXHIBIT No. 17 for identification and ask you to indicate whether or not you know what that instrument is?

A That's a slap-jack of a certain type.

Q A slap-jack of a certain type?

A Yes.

Q Is this of the type -

~~MR. BLOCH:~~ Your Honor please, may I make a request: If counsel would stand back and not so close to the witness, I wouldn't have so much difficulty in understanding.

MR. HOLLOWELL: Be glad to accommodate him.

Q Of a certain type, I believe you said?

A That's right.

Q Now, what type is this?

A This is the type with flat steel spring in the handle of it.

Q Is this the type that you had?

A No, it is not.

Q What type -

A Same design but different type.

Q Beg pardon?

A The same design but a different type.

Q Would you explain what your type was?

A The type had a hole through it here where the strap fitted and had a leather handle, a solid leather handle.

Q Was it made generally on the order -

A Made generally on the same pattern.

Q On the same pattern?

A Yes.

Q Except yours had a hole - excuse me a moment - yours had a hole in the handle end? Here?

A And a different strap on it.

Q And the strap ran through like that, as distinguished from being attached at the bottom and about half-way or approximately half-way in the center as this one is; is that correct?

A No, it did not fasten in the center.

Q Well, I thought that's what I said: The distinction

between yours and this one, this P-17, is that instead of having a strap that attaches in the center and on the rear generally, yours had a hole in the rear of the handle and had a strap that projected up?

A That's right.

Q Other than that, you would say that yours was shaped generally like that?

A Shaped, yes.

Q And you say about -

A I wouldn't say it was of the same construction.

Q Beg your pardon?

A I wouldn't say it was of the same construction.

Q Would you indicate the difference in the construction?

A This slap-jack has a steel spring in the handle and I don't believe that ours did.

Q Is that the only distinction?

A That is the main, the biggest distinction between them, and the strap.

Q Now, are there any other distinctions?

A I couldn't say because I haven't cut one of the others apart and I don't know what it's made of inside.

Q What was yours made of inside?

A I couldn't say because I haven't had one of them apart. This one has a solid piece of lead in it.

Q How do you know that? You haven't seen that one?

A I've seen these type slap-jacks.

Q But you haven't seen that one?

A No, but I've seen this type.

Q Now, other than the distinction which you mentioned -

A And this same brand, which we have some of them  
in the Police Department.

Q All right, now I'll ask the question again, other  
than the distinctions which you mention, would you say that  
they are substantially similar?

A I would say that they are on a similar pattern.

Q Can you point out any other distinctions?

A No, I can't.

Q No further questions.

MR. BLOCH: May I ask one question?

THE COURT: All right.

MR. BLOCH: Never mind. Come on down.

THE COURT: All right, go down, Mr. Cherry.

MR. HOLDWELL: May it please the Court, we would  
seek to tender this instrument, with the distinctions  
made by the witness between this instrument and the one  
which he has used; the distinctions being, No. 1, that  
instead of there being a handle attached in the way  
that this one is attached on the -

THE COURT: Well, instead of you saying what the

The Court:

distinctions are, Mr. Hollowell, the witness stated them.

~~THE~~ MR. HOLLOWELL: Very well.

THE COURT: Suppose you tender it with the distinctions as stated by the witness.

MR. HOLLOWELL: Very well, sir, fine. I so tender it.

THE COURT: Do you have any objections, Mr. Bloch?

MR. BLOCH: No sir.

THE COURT: All right, it is admitted. (P-17)

MR. HOLLOWELL: We call Dr. Webber.

-----  
DR. JOE M. WEBBER

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

DIRECT EXAMINATION

BY MR. HOLLOWELL:

Q ~~Would you state your name, sir?~~

A Joe M. Webber, W-e-b-b-e-r (spelling).

Q Are you a physician, sir?

A I am, sir.

Q Where do you live?

A I live in Columbus, Georgia.

Q How long have you lived there sir?

A We've resided in Columbus approximately 5 years.



Q Were you living there in 1958, during the spring thereof?

A I was.

Q Were you in the practice of medicine at that time?

A Yes sir.

Q Would you indicate, sir, where you went to school and what your qualifications are?

A I attended Albany Medical College in Albany, New York; took internship in Rochester, N. Y., year of surgery in Cincinnati, Ohio, at the Good Samaritan Hospital; four years of pathology in the Miami Valley Hospital in Dayton, Ohio; and I have since practiced in Columbus.

Q What is your specialty, sir?

A Pathology, clinical and anatomical.

Q Would you indicate just generally, I know it's a whole field, Doctor, but what is the basic function of a pathologist as distinguished from that of a general practitioner?

A The pathologist is a physician specializing, specially trained in the conduct of laboratory, the performance of autopsies and examination of tissue removed at surgery.

Q You mentioned autopsies, Doctor, about how many autopsies would you say that you have performed?

A Several thousand, maybe 3- or 4,000.

Q Did you have the occasion to perform an autopsy on a man by the name of James Brazier in 1958 during the month of April?

A I did, sir.

Q Do you recollect what date that was on?

A I don't recollect it. I saw it in the record.

Q I show you PLAINTIFF'S EXHIBIT #18 for identification and ask you whether or not you have seen the original of that record?

A I have; this is my signature.

Q It is subscribed by you?

A Yes sir.

Q Is this an exact reproduction of the original?

A It is.

MR. HOLLOWELL: (To Mr. Bloch): I beg your pardon, sir?

MR. BLOCH: Nothing.

Q Mr. Hollowell: As you notice on this reproduction here, P-18, do you notice the date thereon?

A Yes, April 26, 1958.

Q Does that refresh your recollection as to the time when you took or performed the autopsy?

A Yes sir.

Q Would you indicate -

MR. BLOCH: May I ask a question there?

Mr. Bloch:

I understood this was not the original. Did we have an agreement as to the use of a certified copy?

MR. HOLLOWELL: I don't think that we have used a certified copy as such on the record. There has been no tendering.

MR. BLOCH: All right.

\_\_\_\_ Q Mr. Hollowell: I believe it was your testimony that this was an exact reproduction of the original?

A Yes sir.

THE COURT: Where is the original?

MR. HOLLOWELL: I beg your pardon, sir?

THE COURT: Where is the original?

MR. HOLLOWELL: The original is to be brought by another doctor, if he gets here, sir.

\_\_\_\_ Q Doctor, did you have the occasion to examine the exterior of the head and body of James Brazier on the 26th of April, 1958?

A Yes sir.

Q Would you relate what you found?

A The examination of the head showed, first of all, that the patient had recently undergone scalp and skull operation. There were two incisions, one over each ear. The incisions ran vertically on him or in a direction upward from the ear toward the top and center of the head, each of

these incisions was about  $2\frac{1}{2}$  to 3 inches long, and closed with 3 or 4 black stitches or sutures, as surgeons call them.

Also, the scalp had been shaved; all of the hair had been shaved off, which is necessary in order to maintain cleanliness of the skin when the surgeon is operating.

The scalp in this area that had been shorn or shaved of all of its hair showed numerous bruises and contusions. Most of them were linear or made little lines, 3 to - from 2 to 4 inches in length; and these lines or contusions or bruises were in helter-skelter arrangement; in other words, they were not all parallel but some were this way, some were that way(indicating) and so on. They were all in different orientation or different plane.

Q Doctor, excuse me a moment; I am wondering if it might be helpful to the jury if you could step down here and identify these charts, and you might find it helpful?

A That's the skull there and this external examination would not apply itself to the skull.

Q All right, so that what you're saying is that the external examination -

A Yes sir.

Q Was this on the frontal part of the head or on the side or on top, or where did you see these multiple contusions and abrasions and marks that you mentioned, 2 to 3 centimeters; you said there were many of them, where were they?

A 2 to 3 inches.

Q 2 to 3 inches?

A They were generally in the hair-bearing portion; in other words, where his hair had been shaved off and this area was above the ears, I would say. If you drew a line around the head like this (indicating), they were confined prettymuch to the area from which the hair grows in the scalp.

Q Would it be a fair explanation, when you say the hair-bearing area, do you mean generally in the top of the head?

A Yes.

Q And were there others? Were there any on the front part of the head or on the rear of the head?

A There were none on the face. There may have been some in the back of the head down below the ear, this line that I suggested as a theoretical delineation. To my recollection and as I have referred to the record, all of the contusions and abrasions were in the hair-bearing portion of the head. I don't recall any in the face.

Q Now, Doctor, from what you observed as to the exterior condition, I show you PLAINTIFF'S EXHIBIT #17, and call your attention to the fact that there was an instrument made like this, except that there was no strap in this fashion but rather a strap which ran through the hole in the end, and except that there was no metal spring right in the

handle: Would you look at that and tell me whether or not such an instrument could have produced the condition that you saw exteriorally?

A This could have produced these wounds, yes sir.

Q Did you have the occasion to do anything to the head, except to examine it exteriorally?

A Well, we did a complete autopsy, which involves examination of the skull and its contents and the spinal column and the entire body, in fact; we did a full autopsy.

Q Doctor, now would you want to step down here for a moment -

MR. HOLLOWELL: Would it be any more helpful if it were right over here, Mr. Bloch?

THE COURT: I believe, Counsel, it would probably be better for the jury and I am also thinking about the court reporter, if you put your chart up here on the Clerk's desk and examine him from up here rather than from back there.

MR. HOLLOWELL: All right sir.

THE COURT: Turn it around where the jury can see it and where opposing counsel can also see it and that will probably be better for everybody.

MR. HOLLOWELL: Very well. Can you see it all right from here, Mr. Bloch?

MR. BLOCH: Yes.

Q Doctor, would you look at this chart, and if I might ask Mr. Cowart to mark it first, so that there won't be any problem of identification? (Clerk identifying charts) . . . .

Doctor, I show you PLAINTIFF'S EXHIBIT FOR identification No. 25 and ask you have you had the occasion to view that before?

A Yes, this is my signature also.

Q And what is this a representation of?

A This is the final diagnosis, based on microscopic examination of tissue as well as gross examination of the body.

Q This resulted from that examination made on the 26th of April, '58, is that correct?

A Yes sir.

Q Now, Doctor, would you look at P-24 and indicate whether or not P-24 is a reasonably accurate schematic diagram of the meninges and arachnoid areas of the scalp, skull and brain?

A It is.

Q I show you P-21 for identification and ask you whether or not it depicts a reasonably accurate schematic sketch of the brain, the right and left hemispheres?

A That's right.

Q I show you P-22 and ask you whether it is a reasonably accurate schematic sketch of the functional areas of the brain?

A These are the areas that I learned. I have not determined experimentally but that's what they taught us in medical school.

Q Have you ever found it to be any different?

A Oh no, no.

Q I show you P-23 and ask you whether or not this is a reasonably accurate schematic sketch of the brain, showing the ventricles?

A It is.

Q I show you P-19 and ask you whether or not it is a reasonably accurate schematic sketch of the bones of the skull?

A It is.

Q And I show you P-20 and ask you whether or not this is a reasonably accurate schematic sketch of the base of the skull, the inner surface?

A It is.

Q And the base of the skull generally?

A It is.

Q Now, Doctor, would you be kind enough to come here and to take this crayon and indicate for the Court and the jury where the injuries to which you have testified existed as of the time that you made the autopsy?

A With your permission, I would like to take these and go ahead and describe them?



Q Would you please, sir; that would be excellent?

A This is pretty much the view of the skull that we get when we do an autopsy.

Q Excuse me, Doctor, would you want to come on this side?

A All right. First, in order to open the skull, we take a saw, an electric saw and make a cut just about in this line and let the skull or lift the skull half off; and that is the view there which you get when you lift the top of the skull off.

On opening this particular skull, we found a fracture line which started in this location and extended out in this direction (marking chart P-20 with red crayon). This area is called the foramen magnum or the big hole, and the spinal cord goes down through this, through this foramen or this opening in the base of the skull; and any fracture that extends across the base of the skull to the foramen magnum or to this opening usually results in the most serious consequences. Very, very seldom does the patient survive that has a fracture that extends to the foramen magnum or to this opening, which connects the base of the skull to the spinal column. The spinal cord, you remember, goes down through this hole.

This then gives you a view looking down on top of the skull. We take this view, this is P-19, and you remember

we're coming out on the left side. This is a view looking toward the left of the skull. This fracture was perceptible here and continued on around in this fashion, extending clear to the top of the skull like this (demonstrating on chart).

Q Right here for just a second, if we would let the record show that on P -- What was that first one?

A P-20.

Q P-20 and P-19, there has been an interlineation with a heavy red crayon, which follows the general course of the fracture as described by Dr. Webber, the witness.

Go right ahead, Doctor?

A The fracture ended right almost at the mid-line, which we call the vertex. The vertex is right straight over the center of the skull and the fracture line extended from the foramen magnum, the hole at the base of the skull, out alongside up, just about over the ear and back to the top.

The total length of this is between 21 to 23 centimeters or 8 or 9 inches, whichever way you want it.

I'm sure you are obviously thinking in inches rather than in centimeters - 8 or 9 inches from the foramen magnum around the left side up to the top.

There are some other terms which we will be using, which I think will be important to you. First of all, we will use the term epicranial hemorrhage or hematoma. Now, epicranial refers to outside the skull. This is the skull right

here and epicranial would be in this location here (indicating on chart).

Q Doctor, would you want to identify it by exhibit number?

A This is your P-24.

Q And by making a little arrow running over to it and putting a little legend there, "epc" or something like that?

A We'll call it "ep". That's the apicranial area. Then, next we have the sub-dural, the sub-dural. Now, dura refers to a very thick membrane which completely encloses the brain for protective purposes, and this is that membrane, and sub-dural would mean a hemorrhage underneath the dura; so, we indicate like this, sub-dural hemorrhage (marking chart with red crayon). And we will call that "SD".

There is also a type of hemorrhage called epidural, which occurs between the dura and the skull. We have to draw that right about like this (marking chart with red crayon) and call that "ED".

Now, on opening the scalp, I'll take you through an entire examination of the head from start to finish, so you can get a picture, the total picture. We've described the external contusions. And on opening the scalp, you can make an incision extending from behind one ear throughout the top to the other and the back part flips down and the

front part flips forward.

Underneath these areas, each area where there was a substantial size contusion, there was an epicranial area of hemorrhage like this (indicating on chart). That's outside the skull, between the skull and the scalp. Beneath each one of these linear areas there was a fairly good size hemorrhage or hematoma.

Now, hematoma is a hemorrhage that has started to heal; in other words, once it becomes a clot and tissue processes begin to carry the blood away and it's organized so it will stay in one place and not just flow away as liquid blood, we call it a hematoma or a little blood just a blood clot. Hematoma is another way of saying a blood clot.

So, underneath each of these contused areas there was a smallepicranial hemorrhage or hematoma or blood clot.

As the scalp was stripped - the fracture, which we showed you right here, was obvious. There was no doubt about that fracture being present. Also present were two holes like this (indicating on chart), each about 3 centimeters in diameter on each side of the skull. These were right underneath the incisions that we mentioned on the external examination.

The neuro-surgeon had taken these little buttons of skull or bone out, in order to relieve the patient of the

pressure being caused by extensive sub-dural hemorrhage.

In other words, he had to remove the button or the little disc of skull and made incision in the dura and took a suction tip apparatus and went in there and tried to suck out all of the sub-dural hemorrhage that was present.

We took the top off of the skull, as we explained; and on opening the skull we found extensive sub-dural hemorrhage which remained. It is not uncommon that the neuro-surgeon will evacuate a considerable amount of hemorrhage, but because of the extensive damage, the hemorrhage will re-occur and another sub-dural clot will form. So, we found extensive, over the entire surface of the brain, extensive hemorrhage and organizing blood clot. Organizing means it is formed, so it is not fluid any more. It won't just float out like fluid blood will.

The brain itself showed severe damage. Both the left and right sides showed what we call encephalomalacia. We can't say things in normal terms; we have to use Greek words and so on and confuse everybody. That means softening of the brain. That's all that word means. We found extensive softening of the brain on both sides of the brain.

On the left side in the temporal area -now, this is the left hemisphere, we are looking at it from the left; this is the front and this is the back - this area, this whole area here was softened and was hemorrhagic. And usually

you can pick up the brain, after you have severed the connection to the spinal cord, pick it up and you can remove it without tearing it up or having it to fall apart. But this whole area was just like soft butter; and as we tried to pick up the brain, this part just fell away. It didn't retain its integrity; it didn't remain intact.

Q Doctor, would you want to identify the particular chart that you are working from?

A P-21 - I'm sorry. On the right hemisphere, the parietal - now, this is not indicated but the parietal area, which is this area here, was the area that was also softened and hemorrhagic. This area also was so soft that it would not stay with the rest of the brain. When we tried to remove the brain, this area here tore and came apart.

Q Would you want to identify for the record?

A (Witness marking chart with red crayon). . .

Q Let the record show that the Doctor, the witness, has on the right hemisphere of the brain, shown on P-21, colored it with red and identified it; and on the left hemisphere has colored it in red and put an "F" on the left side for frontal and on the right side would be for back, and colored the area about which he testified.

Go ahead. Now, if I follow you here, Doctor, could I ask you, in the exhibit about which you've testified that these little holes have been made by the neurosurgeon in order

to relieve the pressure, was this very pointed and very conclusive, so that there was no question between that which was done by the neurosurgeon, as distinguished from that which was done otherwise?

A. Oh, there was no question; you cannot mistake that. This is a clean purposeful cut. He has a little circular saw and it is absolutely uniform symmetrical hole. It would be impossible to get this type of injury by just accident or random force. It would have to be delivered by instrument specially designed to produce this kind of defect. And, of course, the surgeon has this instrument for this particular purpose.

Q Now, could you indicate the type of instrument generally that would have produced the kind of injuries that you have described?

A The only conclusion - in fact, I can't make a conclusion - the only opinion that I can draw from the injuries that I have described would have to be drawn from the marks on the scalp and the epicranial hemorrhage; and since there were no lacerations, there were no cuts, in other words, on the scalp, other than the incisions made and closed by the surgeon, I would have to offer the opinion that these wounds were caused by a blunt instrument and not by a sharp instrument or by a hard instrument, an instrument such as an angle iron, for example; that if these blows were

delivered by such, a thing with a corner on it, for example, they are usually stellate or star-shaped tears that occur in the scalp; and these contusions suggest very strongly that these wounds were caused by a blunt instrument, a rounded end.

Q Would you be able to tell whether or not such injuries would be produced with light force or severe force, or with what kind of force?

A If we relate the injuries to the scalp to the skull fracture and the brain injury, then these would have had to have been delivered with tremendous force.

Q How many - strike that, Mr. Joiner -

I believe you indicated that the whole area of the hair-bearing surface was covered with contusions, is that right, or abrasions?

A Yes.

Q What would be the minimum number that you would suggest; that is, the minimum number of these abrasions and contusions and the other defects that you found?

A Normally, when we do an autopsy that has any medical-legal possibilities, we chart these injuries. The number of injuries here was quite high, I would say between 5 and 10; and they were small and irregularly arranged, and we did not chart these. But in my estimate and from my recollection and from the description in the record, there



were between 5 and 10 such contusions on the scalp.

Q You may take your seat, Doctor. Doctor, you referred to degeneration of the brain: what causes that, what caused it, from your examination, in your expert opinion?

A The life history of brain injury is, first of all, severe trauma or force delivered to the brain. This then causes swelling of the brain. The swelling of the brain is exceedingly serious. The cranial cavity is closed, an air-tight cavity, and if the brain starts to swell, there's no place to go, there's no place for it to expand. For example, we sprain the ankle, the ankle can swell up as big as your leg but it's not going to cause any trouble except pain. But with the brain this is not the case. Once the brain starts to expand and swell, there's a definite limitation on how much swelling can be tolerated.

And with the fracture and with the hemorrhage that was caused inside the skull, this combined with the swelling of the brain, this ultimately produces pressure on the blood vessels which go to these respective areas; and, of course, pressure on these vessels by the swelling ultimately results in the death or softening of the tissues, as has been described.

Q Doctor, from your experience as an expert pathologist, can you say from your examination whether or not the wounds that you observed, the condition of the brain, the

head, the scalp, indicated a detached period of time or a fairly close period of time as relates to the infliction of the blows that he might have experienced?

A These contusions on the scalp all showed the same stage of development, you might say. Wounds begin by having a fresh appearance, with fresh cut edge or fresh blood clot and so on; and then as it progresses, the wound would fill in with coagulant and the edges would become indistinct and begin to diffuse into the surrounding tissues or surrounding skin.

And all of these wounds appeared to be in approximately the same state of development as far as healing was concerned, which suggests very strongly that they were sustained during a fairly limited period of time, which in my estimate would be between 4 and 6 hours; in other words, between a single period of 4 to 6 hours, all of these wounds were delivered to the head.

Q Doctor, do I understand from what you have related ~~relative to the hematoma deep down inside, that is on the brain as distinguished from the hematoma say just under the skull, that a light blow could produce hematoma, say~~ exteriorally, that is of limited depth, but that it would require severe blows to get down into the brain as you described in your testimony?

A That's correct. Minor blows to the scalp will

cause epicranial hemorrhages of very minor degree, but to cause the skull fracture described here in a young man 31 years of age, particularly a Negro, requires terrific amount of force.

Q Why do you say particularly a Negro?

A The skull of a Negro is usually 1 to 2 millimeters thicker than comparable skull of other races, of most other races, Chinese, Indian, white or what have you; but the Negro skull seems to be thicker.

Q Now, Doctor, I believe you examined the man physically all over?

A Yes sir.

Q What did you find as related to his general physical health other than his head?

A We found a little area of pneumonia. I'll have to look--(referring to notes). . . I believe it was the left lower lobe, I don't remember which lobe it was in, but one of the lobes of his lungs showed a little area of lobar-pneumonia. Other than this, we found also a little nodule in the periphery or edge of the lung, which we presumed to be a little tubercle. However, nearly all adults have this little tubercle some place, which means that we've been exposed to tuberculosis and have overcome it; so, this is not an abnormal finding. I would say that 99 out of 100 people in this room for example have a similar little nodule

in the lung.

The lobar pneumonia, however, was probably the result of his stay in the hospital, since he was in coma, according to the record, and this often occurs when a patient lies unconscious that he will develop pneumonia. Other than this, we found no pathologic conditions.

Q Would you say that from the tone of his muscles and body generally that he was in good physical condition?

A He appeared to be in good physical condition. He was a slight or thin-build, but he was well developed muscular and the tone appeared excellent throughout.

Q Would you say that this was true for a man of his age?

A Yes.

Q 31 years of age?

A Yes, I would.

Q Doctor, if blows like this were administered, would a man be likely to have any drainage in the ear?

A Usually, fractures of the base of the skull are associated with bleeding from the ears or ear; and this is one of the cardinal signs of basal skull fracture, is bleeding from the ear. However, two words that we avoid in medicine are "never" and "always"; and it is possible to have a skull fracture, a basal skull fracture or fracture of the base of the skull without having bleeding from the ear.

But if a patient comes in unconscious, bleeding from the ears, your first primary diagnosis is basal or fracture of the base of the skull. Until this is ruled out, we have to consider that first.

Q Would it be a common thing for a doctor generally, based upon your experience - well, let me just strike that and ask this question:

What would be normal action of a physician noticing this in a patient?

A It all depends on what his specialty was. If he was a general practitioner, he would call for a neuro-surgeon and let the neuro-surgeon take over as soon as possible.

Q This is on the first indication of the same?

A Yes sir.

Q What would be the effect on the actions from the standpoint of speech and from the standpoint of movement of an individual who had received this kind of injury?

A This degree of injury to the scalp and skull - and again, I'm not, in this case I am speaking and I am offering the opinion of a physician and I am not speaking as an expert in neurosurgery or neurology and so on. If you want my testimony on that basis, I will be glad to give you my opinion, but I would like to disqualify myself as an expert as far as the hypothetical question as to his physical behavior following the injuries. In other words, I

am no more expert at giving an opinion in this than any other practicing physician would be.

Q That is, as to that particular phase?

A Yes sir.

Q But the rest of your testimony is as an expert witness, is that not correct?

A Yes sir.

Q Now, when you say you are no more of an expert, you don't mean to indicate that you have not had considerable experience in this area or not; I mean as a physician?

A I have had encounter and experience with head injuries before, the same as any other person who has gone to medical school and had an internship and been in general practice for several years. Again, my experience has been that this extended injury would render the patient unconscious very soon; but again, I've had experience where a young man, I can recall, was hit on the head, he went in the house, passed out and then woke up; and I sent him to the hospital and the neurosurgeon said "Well, he's all right". Three days later he was dead of a subdural hemorrhage. So, these things do occur silently, without causing symptoms and the patient is able to locomote, walk and talk for a period of time.

But this degree of injury, if I saw that degree, saw that amount of injury, I would have to conclude that this patient, if he was conscious at all after this, after he

sustained this injury, he wasn't conscious or active very long.

Q Suppose that the initial blow had been inflicted at one time, say 2 or 3, and then within a radius of say 3 or 4 to 6 hours thereafter, there had been the remainder of the traumatic experiences that you describe, would there be some considerable difference possibly between the actions of the individual after the first 2 or 3, as distinguished from after the next several, with that intermittent period existing?

A This is very possible. Hypothetical questions of that type are difficult to handle, because there is such variation from person to person in ability to sustain injury and in his response, physical development and so on. And I think, if you would ask almost any physician, that he would tell you anything is possible; and I think for me to make a flat-footed statement, if that term would be allowable statement, would be very unsafe.

Q Excuse me - we're not asking for a flat-footed answer but we are asking if it is possible that there would be some variation between the manner of speech and locomotion, say after the first 2 or 3, as distinguished from what it was some 4 hours later either from those 2 or 3 or from others which would have been imposed?

A This is possible, yes.

Q Would you say it would be probable?

A It is very probable that if there were a series of injuries delivered at intermittent periods, that his physical behavior, his speech and so forth, would show a substantial change.

Q Would you want to say whether or not that it would be reasonable to assume that the progression would be worse?

A Yes sir.

Q Would it be possible for a man to have these kind of injuries from falling down stairs, for instance? What would the stairs have to be made of and from what distance probably would he have to fall?

A I don't know whether I'm allowed to say, Your Honor?

THE COURT: Well, if you don't have any opinion, of course --

Q Mr. Hollowell: If you have an opinion?

THE COURT: -- it would be proper to say nothing, if you don't have an opinion.

A- The Witness: I made a statement in the deposition which, I think, as I have thought about the case since, I think -

MR. BLOCH: I didn't understand you -

The Witness: Sir?

MR. BLOCH: I didn't understand you.



A    The Witness:    I made a statement in the deposition which was taken in Columbus; and I said that this type of injury would necessitate falling down a series of stairs made of concrete or steel, to cause this type of injury.

          However, since that time, in considering this, I feel that falling down stairs of concrete or steel, causing this extent of injury with fracture and so on, there should be laceration and actual tearing of the skull. And I would say that falling down the stairs, to cause this type of injury, would necessitate that the stairs probably be carpeted and that you'd have to fall down a flight of them maybe 50 or 60 stairs, pretty steep and a long ways.

          MR. HOLLOWELL: Doctor, I believe that is all for the moment. He is your witness, Mr. Bloch.

CROSS EXAMINATION

BY MR. BLOCH:

Q    How old are you, Doctor?

A    Sir?

Q    How old are you?

A    I'm 39, sir.

Q    Where were you born?

A    Indianapolis, Indiana.

Q    You went to what medical school?

A    Albany Medical College.

Q    Where is that?

A Albany, N. Y., Union University.

Q And from 1953 to 1957, I believe you were at the Valley Hospital at Dayton, Ohio?

A Miami Valley Hospital, Dayton.

Q Miami Valley Hospital?

A Yes sir.

Q At Dayton, Ohio?

A Yes sir.

Q You were a deputy coroner there, were you not?

A Yes sir.

q Q You don't recall - withdraw that. - you never saw James Brazier alive, did you?

A No sir.

Q What you are testifying from entirely is an autopsy performed by you on the 25th of April, 1958?

A The 26th of April, yes sir.

Q The 26th of April, '58?

A Yes sir.

Q The day after he died?

A Yes sir.

Q You do not recall any wounds at all on his face or forehead?

A The only - four years is a long time, I'm sure you'll agree. I do not remember any face wounds. At least, if there were such present, they did not contribute to the

injuries described. If I have described them in the autopsy protocol, they were there; but, to my personal recollection as of right now, I don't recall them; and if they are present in deposition, it was because I had the record in front of me and was reading it. But, as far as recalling, I do remember these injuries described, but the other details I consider incidental.

Q How long have you been in Columbus?

THE COURT: Now, just a minute, Counsel.

The question was not fully answered and I'm interested in him answering myself. Your question was, did he detect any injuries to the face or forehead. Now, his answer he related only to the face; he did not answer the question with relation to the forehead. I would like to have that answered.

The Witness: May I have a look at the autopsy?

Q Mr. Bloch: Well, I don't mind you looking at the autopsy but I would like to know what your recollection of it is?

MR. HOLLOWELL: If it please the Court, I submit that he can draw on his memory but, at the same time, I think that the witness is entitled to look at the record which he says is his record, to refresh his recollection.

THE COURT: Yes, but counsel is entitled to cross-examine him.

MR. HOLLOWELL: Oh, I quite agree.

THE COURT: And he seemed to remember everything else very clearly; and I think that's one of the elements of cross-examination, to test his memory, without looking at the record; and then, if he wants to look at the record after he answers the question and maybe it varies, but that's all right too; but counsel is entitled to ask him if he recalls without looking at the record.

MR. HOLLOWELL: Yes sir.

The Witness: Okay.

MR. HOLLOWELL: But when he asks for it, that's the reason why I submit he should be entitled to it.

THE COURT: He will be given a chance to look at it but counsel is entitled to ask the question, what is your recollection.

MR. HOLLOWELL: Oh, I understand, sir. I will leave it there simply. He may want it.

A The Witness: I do not recall specifically injuries to the forehead; and in explaining my ability to recall the injuries to the scalp, to the skull and to the brain, the pathologist is drawn to the features of an examination which are directly related to death and to the cause of death; and these injuries were outstanding and memorable; but other lacerations or contusions of the face or forehead, I do not recall.

Q Mr. Bloch: Which injuries were outstanding and memorable?

A The contusion in the hair-bearing area, the fracture of the skull, the necrosis, hemorrhage, softening of the brain and the swelling of the brain.

Q Leaving out the medical terms, a great many of which I do not understand, are you describing the fracture at the base of the skull?

A I'm describing fracture beginning at the base, extending out along the side clear up to the top.

Q Base means right back here (pointing on head)?

A No sir.

Q Where does it mean?

A Well, the base of the skull, as I indicated, beginning at the foramen magnum, which would be right straight in from the ear, extending outward past the ear and right up to the top.

Q On the side of the head?

A Pretty much on the side, yes sir.

Q When did you come to Columbus, Doctor?

A December, 1957.

THE COURT: Now, Mr. Bloch, before you go any further, give the witness the report that counsel for the Plaintiff wishes him to look at, and let's let him look at it and let's see now if he wants to modify or

The Court:

explain any testimony that he has already given by his recollection.

\_\_\_\_ Q     Mr. Bloch:     Did you understand what the Court said?

A     Yes sir.

THE COURT:     Do you wish to look at that and refresh your recollection concerning it?

A     The Witness:     If it's appropriate, sir, I don't -- I don't mind.

THE COURT:     You do not wish to do so; it's up to you.

A     The Witness:     I see.

THE COURT:     All right, go ahead, Mr. Bloch.

\_\_\_\_ Q     Mr. Bloch:     Were you through?

A     Yes sir.

THE COURT:     Go ahead.

\_\_\_\_ Q     Mr. Bloch:     I think the last question I asked was when you came to Columbus. I didn't get the answer?

A     December, 1957.

Q     December, '57. You recall, of course, when your depositions were taken over in Columbus last fall?

A     Yes sir.

Q     I ask you if you remember that counsel for the Plaintiff, who has been examining you, asked you this question:

"On or about the 35th day", it's got here; I guess it means the 25th day, "of April, 1958, did you have the occasion to pefform an autopsy on a 31-year old Negro deceased by the name of James Brazier?" And your answer: "As I told you on the phone last night, I in thinking recollect by direct memory the occasion. I think you can understand that with the number of autopsies that we do. But after refreshing myself by reading the account, I remember the case"

Now, is that the basis of your testimony?

A Yes sir.

Q On that same occasion you were asked the question, "Would a pistol butt be an instrument of the sort which might produce contusions of the kind described, depending on whether it was hit on the end or whether it was hit with the flatter surface"; and you replied, "If it were hit with the flatter surface, yes. There was no tearing or cutting of the skin".

Is that your present recollection?

A Yes sir.

QA And the question was asked: "What about a billy-club?" -- Yes, you answered "Yes, definitely". Is that your present opinion?

A I'm not an expert in these instruments. I assume a billy-club is a wooden instrument about 12 to 14 inches in length and about an inch in diameter, and if that's what a billy-club is, the answer is yes.

Q When counsel asked you the question in Columbus, "Question: What about a billy-club", you answered "Yes, definitely", without any discussion as to what a billy-club was, didn't you? Did you know what a billy-club was then?

A This is my understanding of what a billy-club is.

Q Then he asked you, "A black jack" and you answered "Yes"?

A That's correct.

Q That's still your opinion?

A Yes sir.

Q And you were asked, "A slap-stick, do you know what we mean by a slap-stick as against--" And you answered, "No. Question: This is the more flat surface instrument, very often carried by police, which is completely made of leather. It does not contain any, as I understand it, any metal but is hard leather"; and you answered, "That could do it, yes."

Now, as I understood you, your testimony on direct examination, you referred to it as being your opinion caused by a round instrument?

A If I said round, I should have said blunt.

Q You also said blunt?

A Not necessarily round in the sense of completely or uniformly curved surface.

Q But blunt?



A Blunt, yes sir.

QA As distinguished from flat?

A Blunt, as distinguished from sharp edge.

Q Now, counsel asked you at that time, "Well now, this instrument, the last one of which I take reference to, is perhaps an inch and a half to two inches in width and generally flat and made of hard leather, would that kind of instrument, if hit on the flat surface, be likely to produce a fracture"; and your answer was, "I think it's possible. To say whether it would be likely or not would be just giving a speculative opinion, but it is possible"

Is that still your testimony, a speculative opinion?

A It is possible; that's my opinion.

Q Do you depart from the phrase "giving a speculative opinion"?

A I think I would not choose the term "speculative" if an issue were to be made over it. It is my opinion that it is possible.

Q Why do you depart from the use of the word "speculative" now?

A If speculative is going to be used in the term of connoting remote possibility, then I would depart from it. I think it is a very real possibility, but I cannot say; all I was saying in that sense was that it is possible that it caused it, but it's not possible for me to say definitely

that it did. But if we use "speculative" in the term of saying it's remotely possible or to diminish the degree of possibility, then I would strike it out. It is possible and that's all I can say, and I do not wish to qualify it further than to say it's possible.

Q Very well, sir. You also testified on that occasion, "In view of these brain changes and in view of the massive amount of hemorrhage, both epicranial, epidural and subdural, it would seem to me most likely that an individual suffering this kind of force to the skull would be rendered unconscious almost immediately, and it would be difficult for me to imagine that this person maintained any degree of consciousness following the sustaining of such an injury; but anything is possible in medicine; but it would be my opinion that following the episode, during which this kind of trauma was administered, that the person would be unconscious":

Is that still your opinion?

A This is, again we are treating the same hypothetical question that counsel asked me a few moments ago, and my response would have to be the same. It is certainly - this degree of injury would carry with it, as far as I'm concerned, a very real possibility that this person would be rendered unconscious. And my statement as you've read in the deposition there essentially stands as is. But again, anything is possible.

Q You testified on direct --

MR. HOLLOWELL: May it please the Court - excuse me, Mr. Bloch - I would like to make the request that counsel indicate the page from which he is reading in the deposition, since he is not asking the witness whether or not he did in fact make such an assertion and is not permitting him to read it for himself.

It appears that he doesn't really need to necessarily but at least, Counsel, when you do that, if we could have the page.

MR. BLOCH: What I last read to Dr. Webber was on page 13 of his deposition. You recall the depositions are divided. Page 13 of his deposition.

Q You testified on direct, "We usually chart all injuries - "

THE COURT: If you're going to proceed that way, in other words, if you're going to read and tell him that he testified that way, rather than asking him whether he did testify that way, if you're going to proceed that way, give opposing counsel the benefit of the page number, so they can follow you in the reading.

MR. BLOCH: This is not from the deposition, sir, the question I was asking him then.

THE COURT: Well, you began by saying "you testified so and so".

MR. BLOCH: Without identifying it.

THE COURT: You're not referring to the deposition?

MR. BLOCH: No sir; I'm departing from the deposition.

THE COURT: All right.

Q Mr. Bloch: As I understood you to testify on direct examination here this morning, on examination of counsel for the Plaintiff, you said "We usually chart all injuries when they appear to us to have a legal-medical significance at the time of the autopsy but we did not chart these injuries" - is that what you testified?

A Yes sir.

Q Why did you not chart these injuries?

A These were - when I say "chart injuries", these are lacerations of substantial size and particular location and so forth. These contusions were, there were many of them over the scalp. They were in the process of healing. They would be hard to outline and delineate. So, in this instance, in these cases, we usually describe them as multiple, give their average length, say whether they're all in the same direction, or whether they're helter-skelter, and so forth. This is practice of pathologists that probably is not terribly satisfactory to attorneys, but this is the way we do it, the way I do it.

Q Considering the limitations which you have put on yourself as an expert, it is your opinion that upon examination of the injuries that the deceased would have become unconscious immediately after or very soon after the trauma or injury, is that correct?

A If we possibly - if all of these injuries were delivered within a short span of say 5 minutes, yes.

Q If delivered within 5 or 10 minutes?

A All at one time, yes sir.

Q Yes?

A Yes.

Q I said "yes", I meant you said "yes"?

A Yes.

THE COURT: Well, do you say "yes"?

The Witness: Yes sir, I do, sir.

Q Mr. Bloch: Do you know Dr. Louis Hazzouri?

A Yes sir.

Q Where does he practice and reside?

A He resides in Columbus and practices in Columbus.

Q What is his specialty?

A I consider Dr. Hazzouri one of the finest neurosurgeons in the Southeast, if not in the Country, very able and capable surgeon; neurosurgeon.

Q One of the finest neurosurgeons in the Southeast?

A Yes sir.

Q Do you recall his testifying at the same hearing upon which you did in Columbus? You were not there when he testified?

A No sir, I was not; in fact, I have not even discussed this case with him. I don't know what his testimony is.

Q I am reading from page 21 of Dr. Hazzouri's testimony:

MR. HOLLOWELL: Just a moment, sir! From whose testimony?

MR. BLOCH: Dr. Hazzouri.

MR. HOLLOWELL: If it please the Court, we would object to him reading any testimony from Dr. Hazzouri.

THE COURT: Well, I don't know but my guess is that what counsel is going to do is, he's going to read him something and ask him if he agrees with it. That's probably what he's going to do.

MR. BLOCH: Your guess is accurate.

THE COURT: q And I don't know that there would be any objection to that, would there, Mr. Hollowell?

MR. HOLLOWELL: No, except that it is probably argumentative, but we'll wait and see.

Q Mr. Bloch: On that occasion - I'm reading from the bottom of page 21 - counsel asked Dr. Hazzouri - is it Mazzouri?

A Hazzouri.

Q This question: "What would be the immediate effect

"of a blow on this man's left side of his head, which was sufficient to cause what happened on the right side, what would be the immediate effect of it"; and the Doctor answered, "From the description of the autopsy report, one would assume that this man had sustained quite a violent injury and should have become immediately unconsciously". That's the end of the quote.

Do you agree with that opinion?

A Yes sir.

Q He was asked the question - page 22 - "Could he have talked" - Go back a minute, scratch that - "After having sustained an injury of the type which is indicated by the report and from your own examination of him, could the man have eaten on the day after he sustained an injury of that sort"; and the answer, "It would be very unlikely".

Confining your answer to the reports, because you made no examination other than autopsy, post-mortem, do you agree with that opinion?

A Yes sir.

Q The Doctor was also asked this question, page 22: "Could he have talked after sustaining that injury, Doctor?" And his answer is, "There is a possibility but, there again, with this if we are speaking specifically of this incident here as reported, it would be unlikely":

Do you agree with that opinion?

A Again, he's essentially giving you the same answers that I have, I believe. I'm in substantial agreement. He's an expert; if he says it, his testimony is more important than mine, and I certainly would agree with him.

Q He was asked the question, still on page 22: "Could he have walked alone", and his answer is, "It would be unlikely": Do you agree with that?

A Yes.

Q Page 24: Dr. Hazzouri was asked this question: "Would a small abrasion or laceration on the frontal region of the scalp and another of similar size in the " - what's that?

A Occipital.

Q - "occipital region, which was not large enough to warrant closure with sutures be sufficient to cause the fracture of the skull that you saw"; and he answered, "Not a direct blow. It would be unlikely unless the skull struck something else".

Is that your opinion, or do you agree with that opinion?

A I agree with the opinion that small lacerations, too small to require closure by suture, would be insufficient to cause the injury described. The suggestion that the skull hit something, rather than something hit the skull, I wouldn't be able to resolve that question. The force would



have to be delivered to the skull of a very violent degree, so that, I do not share the opinion that is implied here that the skull hit something else. I think it's just as possible that something hit the skull. As far as sharing his opinion as to the degree of force, yes; but sharing the implication that the skull hit something, I don't, necessarily.

Q Then, do I state your opinion correctly, when I phrase it this way, that a direct blow, which resulted in a small abrasion or laceration on the frontal region of the scalp and another of similar size in the occipital region, neither of which were large enough to warrant closure with sutures, would not be sufficient to cause the fracture of the skull that you saw?

A That's correct.

Q That's all.

#### REDIRECT EXAMINATION

BY MR. HOLLOWELL:

Q Just a couple of questions, sir: When you gave your condonation of the statements which Mr. Bloch related, which had been made by Dr. Hazzouri, and I'm speaking specifically to the matter of more or less immediate unconsciousness, was that based upon the mass condition, as distinguished from the condition having been brought about by blows inflicted at different times, but within a reasonable range of 4 to 6 hours? Do you understand my question?

A Yes. I feel, again I can't speak for Dr. Hazzouri, but I would say that if this force were delivered in a short span of, say 5 minutes, that I would agree without hesitation to the opinion in the testimony or the deposition of Dr. Hazzouri. If they were delivered periodically or spread over a period of time, then, of course, I would have to modify my agreement and feel that this would be cumulative or would accumulate as more and more blows were delivered, if we're going to postulate a 6 hour period.

Q You don't know that Dr. Hazzouri was asked the question that has just been asked you though, do you?

A No sir, I do not know.

Q Now, when you say that the Doctor was an expert and you were not, what did you have specific reference to?

A Dr. Hazzouri is certainly an expert, would be more of an expert than I in predicting the clinical result or the result in the individual while still in life and relating it to the injury that I described at the autopsy, as far as answering such hypothetical question or questions as you and Mr. Bloch have raised this morning.

Q But as to your general testimony relating to the injuries and where they were and the condition and the effect, you are a pathological expert in testifying on those; is that correct?

A Yes sir.

Q Then, in conclusion, sir, generally speaking, would it be proper to say that your opinion is that the instrument -

MR. BLOCH: That question starts off leading, Your Honor.

THE COURT: Yes.

MR. HOLLOWELL: I'll rephrase it, Mr. Bloch.

MR. BLOCH: I object to it; I object to it as leading.

MR. HOLLOWELL: I said I will rephrase it.

THE COURT: He's going to rephrase it.

\_\_\_\_ Q Mr. Hollowell: Would you relate again what you indicated was the cause of the death of this man, that is James Brazier?

A The cause of death of this man was necrosis - necrosis means death of tissue - necrosis of the brain, and hemorrhage resulting from severe, violent force or trauma delivered to the head.

MR. HOLLOWELL: No further questions.

THE COURT: All right, may the Doctor be excused?

MR. HOLLOWELL: Yes sir.

THE COURT: Is he excused?

MR. BLOCH: Yes sir.

THE COURT: All right, you're excused, Doctor. We'll now take a recess for about 10 minutes.

RECESS: 11:10 AM to 11:20 AM, FEBRUARY 5, 1963

THE COURT: All right, who do you have next for the Plaintiff.

MR. HOLLOWELL: May it please the Court, we would like to tender into evidence PLAINTIFF'S EXHIBIT No. 19.

MR. BLOCH: I have no objection to any of those that the Doctor identified.

MR. HOLLOWELL: All right, sir; that is 19, Mr. Bloch, the bones of the skull; 20, the base of the skull and inner surface; 21, which shows the right and left hemispheres of the brain; 22 - scalp, skull and brain, the meninges and the arachnoid.

THE COURT: They're admitted without objection.

MR. HOLLOWELL: We would like to tender photostatic copy of the reports, which were identified as having been signed by Dr. Webber, and which he testified were the same as the originals, which would be P-18 and P-25.

MR. BLOCH: My recollection is that the Court ~~asked where the originals were~~ and he said another doctor had them. If the originals could be produced, it would be better.

MR. HOLLOWELL: I submit that the originals would be better, but these have been identified as duplicates of the originals or photostatic copies of the originals; and I would like to have them admitted, subject to the production of the originals.

MR. BLOCH: Well, suppose we see whether the originals can be produced during the day or tomorrow; and, if they can't, then we can think about introducing secondary evidence.

MR. HOLLOWELL: Very well. The Plaintiff calls Sheriff Z. T. Matthews for cross-examination under Rule 43(e).

-----  
SHERIFF Z. T. MATTHEWS

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

ADVERSE EXAMINATION

BY MR. HOLLOWELL:

Q Will you state your name, sir?

A Z. T. Matthews.

Q What does the Z. T. stand for, sir?

A Zachary, Zachary Taylor.

Q Sir?

A Zachary Taylor.

Q Would you spell that middle word?

THE COURT: Taylor. May I make this suggestion, at this time, I notice when other witnesses have been on the stand, there have been innumerable times when it's been necessary - I don't know whether it's been necessary or not but it's been done anyway - when the witness has

The Court:

had to ask counsel again what the question was, and when counsel has had to ask the witness again what the answer was.

Will the witness keep in mind that it is necessary for counsel to hear him, and will counsel keep in mind that it's necessary for the witness to hear him, and let's try to minimize the repetition of questions and answers. I think fully 20 or 25 per cent. of our time with the witnesses has been devoted to a repetition of questions and answers. Will both, will everybody, all counsel and all witnesses, keep in mind the difficulty of hearing in this room, and speak loud and distinctly, so that everybody can hear.

MR. HOLLOWELL: Thank you, Your Honor.

Q Where do you live, sir?

A Dawson; Dawson, Terrell County.

Q You are the Sheriff of Terrell County?

A I am.

Q How long have you been the Sheriff of Terrell?

A Entering into my 19th year.

Q As the Sheriff of Terrell County, are you the custodian of the Terrell County jail?

A I am.

MR. BLOCH: I object to that, Your Honor, first,

Mr. Bloch:

on the ground that it is a conclusion; and, secondly, the Sheriff's duties are defined by law.

MR. HOLLOWELL: We don't mind, Your Honor. We'll ask the Court to take judicial knowledge of the fact that the Sheriff, the Sheriff of the County is the custodian of the county jail.

THE COURT: Well, I don't know whether that's what the law is or not. I can't take judicial notice of it until I'm made aware of it some way. I don't know it at the moment. If you say that's what it is, I presume it is but what I mean, I can't judicial notice of it until it is brought judicially to my attention.

MR. HOLLOWELL: Well, we are bringing it judicially to the attention of the Court now, that the Sheriff, under the State laws, and this Court does take judicial notice of the laws of the State, is the custodian of the county jail.

THE COURT: All right, I'll look into it and, if I find that to be the law, I'll take judicial notice of it. What I was thinking was, if you have the statute there that you could show me right now.

MR. HOLLOWELL: We'll produce it for you, sir.

THE COURT: Allright.

Q Mr. Hollowell: Sheriff, you feed the prisoners,

both City and County, do you not, in Terrell County?

A I do.

Q And the City pays you a fee, is that correct?

A They do.

Q To the best of your recollection, all of the officers of the City have a key to the safe where you keep the keys to the cells and to the jail proper, is that not correct?

A Most of them have a key to the key cabinet, what we call it, where we keep the jail keys.

Q Have you seen the photographs, Sheriff, that were shown yesterday?

A I have not.

Q Let me show you PLAINTIFF'S EXHIBIT #2 and ask you whether or not that is the office in which those keys are kept?

A It is.

Q Do you have a set of keys personally?

A I do.

Q Do you keep them on your person?

A I do.

Q And then, the man who acts as your jailer, he has a set of keys, not to the safe, but to the cells, is that correct?

A He's not the jailer.



Q Beg your pardon?

A He's not the jailer. He's a janitor.

Q The man who carries the keys and who lets sometimes the officers in and out and would let you in if you asked him if you didn't have your key; that's the person that we're talking about?

A That's the janitor of the jail.

Q I'm asking you whether or not he, as a matter of fact, I'm talking about Eugene Magwood, carries keys?

A He does.

Q Does he act under your orders?

A He does.

Q Or did he act under your orders?

A He does.

Q He also acted under your orders or rather under the orders of the City policemen, did he not?

A He did.

Q So far as letting people in and out?

A He did.

Q He fed the prisoners, did he not?

A He did.

Q Was this on your instructions?

A That's just routine duties, routine every day.

Q This was routine daily?

A I didn't have to ask him to feed them every day. That

was understood. That was understood at all times.

Q And this understanding was based ppon instructions that you had given him, is that correct?

A Yes, based upon those instructions.

Q Now, you've heard the testimony here relating to the use of the jail office, do you agree that this jail office was used both by the City officers and by the Sheriff and the Deputy Sheriff?

A I did.

Q Is it not also true that the office in the County courthouse, which is the Sheriff's office, was also used jointly by the City policemen?

A The City police had a desk in my office over there.

Q And that the phones were answered interchangeably?

A I did.

Q You say this is true?

A That is true.

Q And this was true in 1958, was it not?

A Been true - it was.

Q During the whole year of '58?

A The whole year of '58.

Q And it was also true, was it not, that the radio two-way radio that was lodged in the office in the courtroom - I'm sorry - the courthouse, to which we have just referred, was also used interchangeably by the City and the County?

A It was.

Q It was used jointly, as a matter of fact?

A Owned jointly.

Q Owned jointly?

A Owned jointly.

Q Calling your attention to the afternoon of April 20, 1958, were you home on that date?

A Not as I know of. I'm not clear.

Q It's not clear in your mind?

A I don't know what happened the 28th or any other day, unless something special happens.

Q Well, we're talking about the 20th of April, 1958; do you recall -

A I don't know what happened April of 1920.

MR. HOLLOWELL: If it please the Court, we would ask the Court to instruct the witness to permit counsel to finish the question before he seeks to answer.

THE COURT: Yes, that's another difficulty we continue to have. Now, once again, the witness will let counsel complete the question before he answers; and then counsel will let the witness complete the answer before he starts the next question.

MR. HOLLOWELL: Would you read the last question, Mr. Reporter?

THE REPORTER: "It's not clear in your mind?"

The Reporter:

"I don't know what happened the 28th or any other day unless something special happens. Question: Well, we're talking about the 20th of April, 1958, do you recall - "

Q Mr. Hollowell: Now, do you recall whether or not you were in your office or in your home on the 20th of April, which was a Sunday, 1958?

A I'm not clear on that date. I don't know what I did any other day of the year, unless I make a note of it.

Q Do you have any recollection as to whether or not you talked with Dr. Ward on that date?

A Not that I know of. I'm not clear on it.

Q Do you know Dr. Ward?

A I do know Dr. Ward.

Q Do you know that he is the County Medical Officer?

A He is.

Q He is the doctor that you would call or one of the other officers would call, if there was a prisoner sick in jail and you wanted to give him medical attention; is that not true?

A I would.

Q Did you make any such calls on the 20th of April, that you recollect?

A I did not.

Q Excuse me, sir - relating to James Brazier?

A I did not.

Q Was there any person in your household that you recollect who made such a call?

A I do not recollect anything. We did not make any calls for James Brazier.

Q What "we"?

A I didn't, nor any of my family make a call for James Brazier.

Q I didn't say to James Brazier, Sheriff?

A For, for James Brazier.

Q Or in his behalf?

A Not in his behalf.

Q Do you recollect whether or not you talked to Mr. Ragan Arnold on that Sunday?

A I did not.

Q You do not recollect or are you saying that you did not talk with him?

A I did not. I did not talk to Mr.-

Q - to Mr. Arnold?

A - to Mr. Arnold.

Q On the 20th of April, 1958; is that your answer, you did not?

A That's the answer; I did not.

Q Did you see him?

A I did not.

Q Do you know whether or not he saw you?

A I don't. I do not.

Q Did you have the occasion to talk to - strike that -  
Did you know James Brazier? . . . Sir?

A Well, not too good. I didn't know him too good, no.

Q You had seen him?

A I've seen him several times coming in and out the  
jail on different occasions.

Q Did you know him by sight?

A No.

Q You did not know him by sight?

A I did not.

Q Did you know his father, Odell Brazier?

A I do.

Q Did you have the occasion to see him on the day in  
question?

A I did not.

Q Do you know the wife of the deceased, James Brazier?

A I wouldn't know her if I were to see her.

Q You would not know her if you were to see her?

A I would not.

Q And you did not know James Brazier on sight, is that  
correct?

A If I had met him on the street, I wouldn't have  
known him.

Q Did you ultimately find out who he was?

A Repeat your question?

Q Did you ultimately find out who James Brazier was?

A I've heard.

Q Did anybody report to you on the particular day in question, April 20, 1958, that James Brazier was in your jail?

A They did not.

Q Is there anyone who has keys to the jail, other than the persons that we have mentioned?

A No one else.

Q No one else?

A No one else.

Q Were you at home during the night of April 20 and the morning hours of April 21, 1958?

A I was there in the morning and I'm not clear whether I was at home even -- the first part of the night, I wasn't.

Q What do you call the first part of the night?

A Sometime until 10 o'clock.

Q How do you know?

A I just know I wasn't.

Q I mean, how do you know that you weren't? You say you don't remember any of these other things on the 20th; how do you know -

A I know - I recorded -

Q Excuse me, sir, just a moment - I say, how do you know

that you were not there at your residence or at the jail during the hours from 6:00 to 10:00 generally on the evening of April 20, 1958?

A Because I had supper out that night.

Q Where did you have supper?

A I had supper with a friend.

Q What friend?

A He lived at Sasser, my brother-in-law.

Q What's his name?

A Luther Durr.

Q How do you spell the last name?

A D-u-r-r (spelling).

Q Whereabouts does he live in Sasser? Does he live in the city limits or does he live out of the city limits?

A He doesn't live in Sasser at this time. He's moved to Dawson.

Q Where does he live in Dawson?

A He lives east of Dawson.

Q On what route?

A On Route 32; 33, I believe.

Q About how far - 33?

A About a mile from the courthouse.

Q Did you say on Route #33?

A On the Leesburg Road east of Dawson.

Q What time did you go there?



A Just about night, before night.

Q Well, about what time?

A Oh, I'd say 8 o'clock.

Q And what time did you return?

A Usual about bedtime, around 10 o'clock.

Q When you returned, where did you go?

A I went upstairs and went to bed.

Q Did you go in the jail office at all?

A I didn't go in the jail office.

Q Is this your best recollection, or are you saying definitively that you did not?

A My best recollection.

Q Your best recollection; you don't say emphatically that you did not go into the jail office?

A Don't usually go to the jail office.

Q That isn't my question, sir. I say, you do not say emphatically that you did not go into the jail office on the night of April 20?

A I don't remember that I did. I'm positive I didn't.

Q You're positive that you didn't?

A I'm positive I did not.

Q Where did you park your car on that night when you came in?

A In the driveway.

Q Which driveway?

A West, the west side of the jail.

Q I show you PLAINTIFF'S EXHIBIT #10 and ask you whether or not you mean in the court as shown on that photograph?

A Negative.

Q Sir?

A I was on this side (pointing on P-10) The driveway is on the west side, entering from Johnson Street.

Q Now, where is Johnson Street?

A The jail faces Johnson Street, south.

Q When you say - excuse me -

A South.

Q You mean-

A The front of the jail faces Johnson Street, which Johnson Street runs east and west.

Q Now, looking at PLAINTIFF'S EXHIBIT #10, Sheriff, do you mean the opposite side of the structure which we see in the middle? Is this your house here in the middle?

A This is my house, and I came in from a side door on the west side from the driveway.

Q Which side are you saying is west?

A This side (pointing on P-10). . .

Q Over on the right-hand side?

A The right-hand side.

Q Let me hold it so the jury can see. This is your house?

A That is my house.

Q Now, are you saying, when you say that the jail faces the south, you are referring to your house and the attachments, the wings and the corridors, which are attached to your house as all being the jail?

A This - the house is not the jail.

Q The house is not the jail?

A The house is not the jail.

Q But it's attached to it?

A Living quarters.

Q The living quarters?

A The living quarters.

Q Now, when you say the front of the jail, you are referring to the -

A The front of my home.

Q - opposite side?

A The front of my home.

Q The front of your home; I see; and that's on the opposite side of where this picture was made?

A The opposite side of the jail.

Q And that's the direction from which you approached it?

A That's right.

Q And you parked over on this side of the house (pointing on P-10)?

A On this side, on the west side.

Q And you came in that door?

A I came in the kitchen, what you might call the kitchen door from the driveway. The driveway is on the west side.

Q Is that the kitchen out of which the prisoners are served?

A That is right.

Q So, you used this facility for your own private use and for the preparation of the food for prisoners, is that correct?

A I do, I do.

Q And your best recollection is that you went on to your room, is that correct?

A Well, I'd say I was positive I went to my room.

Q Did you have the occasion to come down at all?

A Didn't have it. I did not.

Q Is this your best recollection?

A I'm positive.

Q When did you first learn of the incident which occurred on the 20th of April, '58, involving James Brazier?

A The next morning.

Q About what time was that?

A Well, when I got up. I imagine it was around 6 o'clock when I got up; might have been a little before or after but approximately 6 o'clock.

Q When did you come outside?

A After breakfast, around 7 o'clock.

Q Is this your best recollection or is this what you habitually did?

A I would say that was my best recollection on what time I got up and what time I came out.

Q Did you see any police officers when you first came out?

A I did not.

Q Now, when was the first time that you had the occasion to see any of the police officers of the City of Dawson on the morning of the 21st?

A I saw Mr. Chapman taking James Brazier to court.

Q Where did you see him? I'm sorry -

A About 9 o'clock/

Q Where were they at the time you saw them?

A Coming out the back gate.

Q You're talking about the gate that's right here

(pointing on picture)?

A That gate at the back of the jail.

Q Where were you at the time?

A Between the courthouse and the jail.

Q Was anybody with him?

A Nobody but James Brazier.

Q Do you know whether or not Brazier was walking alone?

A He was.

Q This is to the best of your recollection?

A I know he was.

Q What was being done with him?

A He was coming out the back gate and the car was parked there close, and he was in the act of carrying him to the car and putting him in, letting him get in the car.

Q Did he get in the car unassisted?

A He did.

Q How do you know that he was walking by himself?

You said you didn't even know Brazier on sight?

A Well, they said it was Brazier. I was told it was Brazier.

Q They said it was Brazier?

A I was told it was Brazier.

Q Didn't you say you didn't know him on sight?

A I didn't know him on sight.

MR. HOLLOWELL: Let me ask, Your Honor, that the language "they said it was Brazier" be stricken as hearsay.

THE COURT: All right, I sustain the objection.

Q Mr. Hollowell: Did you see any other prisoners around at that time?

A I don't recall any. I don't recall any other prisoner.

Q Do you know what time the Mayor's Court meets on Monday Morning?

A 9 o'clock. I'm under the impression it's 9 o'clock.

Q You haven't ever been to the Mayor's Court?

A Never been to the Mayor's Court.

Q In all of your days as Sheriff?

A Never been to the Mayor's Court.

Q Where did you go when you left the point where you were when you saw Mr. Chapman?

A I was going over to the dog yard. That's back of the jail.

Q These are your personal dogs?

A~~X~~ They are.

Q Are these blood-hounds?

A~~T~~ They are.

Q Afe they the blood hounds that are kept or were fed and handled by Magwood?

A They are.

Q Magwood used to go hunting with you, didn't he?

A He could have at times but I don't remember.

~~I don't remember him going hunting with me. We -~~

Q Do you remember -

A Go ahead.

THE COURT: Go ahead.

MR. HOLLOWELL: I thought he wanted to finish something.

A The Witness: He handled the dogs; he fed the dogs, and he maintained the yard; and he fed the prisoners at the jail; and when I needed him to go with me to run and chase a prisoner, he went with me. He handled the dogs.

Q Mr. Hollowell: He handled the dogs for you?

A For me.

Q When you were chasing a prisoner?

A He did.

Q And he had the responsibility for feeding the dogs and for training the dogs?

A That's right.

Q How many times - strike that - As a matter of fact, as a matter of practice, all of the prisoners would be taken out to be carried over to court at the same time, would they not?

A We didn't take any prisoners out of the jail unless it was a traffic case and we took him over to the Ordinary's office for disposition of the case. We didn't take any State prisoners out, unless we took him over to the courthouse to sign a bond or something like that.

~~Q But if they were going --~~

A Just in routine line of duty.

~~Q~~ All I'm asking is, Sheriff, that in going to court, those who were going to go would usually be taken out at the same time, if they were going to the same court; is that not true?



A Usually. I think they took them all, all City prisoners at one time.

Q Had any bond been made by Brazier?

A I don't know anything about Brazier.

Q I beg your pardon?

A Brazier never was in my custody.

Q He was in your jail?

A He was in my jail but not - I don't have anything to do with the City prisoners and the disposition of City prisoners.

Q Who keeps the warrants when they are brought in?

A They file them in my office.

Q Where?

A They file them in my office.

Q If there was a State offense committed and one of the police officers brought a warrant in, would that be filed in your office?

A It would be.

Q Would it be processed through your office?

A Processed through my office, yes.

Q And this is the usual routine, is it not?

A It is the usual routine.

Q Did you have a prisoner in jail by the name of Mary Carolyn Clyde?

A I think I did. My records would show it. (Referring to book)

THE COURT: What date are we referring to now?

Q MR. HOLLOWELL: On or about the 20th of April, sir, 1958?

A I have it marked here, from the 21st through the 25th, and I had Mr. Hilton Holly.

Q Well, excuse me, sir, will you just answer the question?

A Carolyn Clyde, I do have, No. 4.

Q Did you have a prisoner by the name of Irene Gladdin in jail?

A I did.

Q Where did those prisoners stay?

A All women stayed in the closed cells, those three cells over on the east side.

Q Looking at PLAINTIFF'S EXHIBIT #10,,are you saying in what would be the left wing?

A Left wing.

Q If we looked from the courthouse?

A Left wing.

Q Now, do you recollect what particular cell they stayed in?

A I don't remember. I'm not clear on that. Usually -

Q Well, you said you were not clear, is that correct?

A I'm not clear.

Q Let me show you PLAINTIFF'S EXHIBIT #3 and ask you

can you identify this window that is right there that I'm pointing out, the one that looks like about a third of a window frame of the canopy type that opens out?

A I could not.

Q You cannot?

A I cannot identify it by that picture.

Q Do you recognize this area as being in the east wing looking west?

A The picture is not clear enough to tell anything about it.

Q Not clear enough for you to tell anything about it?

A No, that's right.

Q You recognize the window, don't you?

A I know I can recognize a window.

Q Do you recognize this as a door?

A I recognize it as a door but I couldn't recognize it, I couldn't distinguish it from any other door.

Q You couldn't tell where it leads to?

A I could not.

Q If I told you that that's the window to the Sheriff's office right there, you would be unable to say it was or it was not?

A I could not.

Q How long have you worn glasses?

THE COURT: He says, how long have you worn glasses?

A The Witness: Oh, 25 years.

Q Mr. Hollowell: Are you near-sighted or far-sighted?

A I wouldn't say, I'm not familiar; I can't read any without glasses and I wear bi-focals.

Q Sheriff, you were present at the time that these photographs were taken, were you not?

A I was, if those -

Q You have a recollection -

A We have had two sets of those records. I don't know which records they are.

Q Do you recollect - Excuse me - had you finished?

A Yes, I have.

Q Do you recollect seeing Mr. King here of counsel and the little man that was on the stand yesterday as the photographer?

A I do recollect that.

Q As a matter of fact, you went around with them as of the time that they took those photographs, isn't that correct?

A I did, I did.

Q And you gave them permission to take the photographs?

A I did, but I have never seen the pictures since.

Q Beg your pardon?

A I couldn't identify, I couldn't say that was the picture that they taken.

Q Do you remember Attorney King asking you to lock a particular door?

A I do.

Q In order that a picture might be photographed out of that cell?

A I do.

Q Was this done?

A It was done.

Q Do you remember what cell that was?

A No. 3, No. 3.

Q Now, when you say No. 3, are you speaking of the third cell when you come in from the jail office?

A The third cell from the door on the right.

Q PLAINTIFF'S EXHIBIT No. 1, would that be the third cell?

A This doesn't picture the door. I see one, I believe only two cells in this picture.

Q Well, let me show you PLAINTIFF'S EXHIBIT #13 and see if that is at all helpful?

A Now, here's 1, 2, 3. This is coming in the door, 1, 2, 3. This would be No. 3 (pointing on P-13). . .

Q Is that the one where the "X" is there; can you see that?

A I do, I see the "X".

Q You're saying that this cell would be No. 3?

A That is No. 3.

Q Now, do you know whether or not that was the cell in which Mary Carolyn Clyde and Irene Gladdin were?

A I'm not exactly clear. That's the one I think they were in.

Q Well, they were your permanent visitors -

A That's 5 years ago.

Q Yes, but they were permanent visitors there, were they not?

A They were permanent visitors.

Q Don't you recollect indicating to Counsel King here that that was the cell in which they were staying?

A I'm fairly clear that they was in that cell.

Q Do your records show whether or not Marvin Goshea was in jail on the date of the 20th of April, '58?

A My records don't show that he was in jail.

Q Would your records show if he were a City prisoner; would your records show it?

A They would not.

Q It would only be in the record that we have in the other book, is that correct?

A It would.

Q Was there any docket that was signed by prisoners coming in and out that was used jointly by the two of you, so as to know the number of keys, and when I say keys here

I am referring to the money that is paid?

A I do have that record.

Q Is that record here?

A Right here.

Q Sir?

A It's right here, mine and mine only. I don't keep the City's records.

Q Well, how do you know whether or not you are getting a fair shake?

A Well, I just know who I'm dealing with. I let them keep it.

Q In other words, you trust the City people, is that right?

A I trust them.

Q Now, let me see if I understand: you get a dollar for each turn of the key, is that correct, a dollar when a prisoner comes in -

A In and out.

Q - when he comes in -

A When he goes in a dollar and out a dollar.

Q And that's for all prisoners that come in?

A All prisoners.

Q As a matter of fact, your records are not 100 per cent. correct at all times, are they?

A I would say they were as correct as possible.

Q Let me ask you whether or not you recollect having been up for the deposition here in this courthouse on the 10th of April, '62?

MR. BLOCH: 10th of what?

Q Mr. Hollowell: 10th of October, 1962; do you remember being here?

A Not here.

Q I beg your pardon?

A I don't remember being here.

Q You don't?

A It was in Columbus.

Q Was your deposition taken at Columbus?

A Columbus.

Q That's where you recollect it being taken?

A That's right.

Q Are you sure about that?

A I'm not sure. I don't recollect you taking my deposition in this.

Q You don't?

A From here? I was under the impression that it was Columbus.

Q Well, you're not saying definitely whether it was or was not?

A That's right, I'm not saying definitely.

Q You would say that you recollect a deposition having



been taken of your testimony though?

A I do.

Q Just a little louder, Sheriff, please?

A I do.

Q I will ask you whether or not at that time you were asked the question: "She's not on May sheet now; would that mean that she got out during the month?" And your answer was, "Possibly she would have showed up on May sheet if she hadn't got out. Of course now, we have other records. This is not 100 per cent. correct at all times". . . Do you recollect that question having been asked and you having made that answer?

A I don't remember that exactly. I don't remember yet what I said that day.

Q You do not deny that this was an accurate reading of the question, which was asked you, and this was an accurate reditation of the answer which you gave on that occasion, do you?

A I remember -

Q Excuse me, sir, the question is, do you deny that this question was asked and you gave that answer?

A No, I couldn't deny it. I'm not clear.

Q Now, what other records do you keep?

A We keep a jail record and we keep an arrest record and we keep a disposition record.

Q Now, where are they maintained?

A In my office.

Q Would this be the jail office or over in the office which was used jointly by the two of you in the courthouse?

A In the courthouse.

Q Now, who maintained those records?

A One of my deputies, M. E. Matthews.

Q That's Deputy Sheriff, Mansfield Matthews?

A Mansfield Matthews.

Q Your nephew?

A My nephew.

Q Did Magwood generally check the jail for you?

A Magwood cleaned the jail.

Q That is not the question, sir. The question is, did Magwood ever check the jail for you?

THE COURT: What do you mean by "check", Counsel?

MR. HOLLOWELL: Well, I would have to ask him.

THE COURT: Well, I'm not clear but if the witness understands it.

Q Mr. Hollowell: In other words, in checking, sir, I can give my interpretation of what I mean by checking: checking to see that the cells were locked, checking to see that the prisoners were in the jail, checking to see if they had needs, for instance women, pertaining to certain needs and this sort of thing?

A I did.

Q To see if it was locked?

A I did.

Q Allright, you say he did?

A He did.

Q As a matter of fact, you assigned <sup>him</sup> these responsibilities, did you not?

A I did.

Q Is this -

A I assigned him this responsibility, to clean the jail -

Q Just a moment, sir, excuse me. I am asking you to respond to the question which I asked. Now, let me ask you this: This is the man that you got out of prison, out of the work camp, who had an 8 year sentence and you got him out 2 months after he was there and kept him with you for the rest of his sentence, is that not correct?

A He had lifetime.

Q He had lifetime?

A Lifetime.

Q And you brought him over after he had been there two months?

A Two months about; approximately two months.

Q Approximately two months, and he stayed there at your jail until he was released, is that correct?

A Until he was released, that's correct, he did.

Q You were familiar with that which he had done, were you not, which caused him to be in jail?

A I had records to that effect.

Q And yet at the end of two months, you got him and brought him to your jail and he served in the capacities which you have mentioned, did he not? He served in those capacities?

A I will say this, I didn't make any special request for him. Captain Findley at the Prison Camp was in charge of him and he sent him up there.

Q He sent him up there?

A I didn't know Gene Magwood at that time.

THE COURT: You say you did not know him?

The Witness: I did not.

Q Mr. Hollowell: You got his record prior to the time that he was sent?

A Captain Findley at the Prison Camp kept his records there.

Q Excuse me, sir.

MR. HOLLOWELL: If it please the Court, we would like to have the witness to answer categorically. We do not certainly want to restrain him from any information but we would like to have a categorical answer.

THE COURT: What was the question, Mr. Reporter? Read the question, please.

THE REPORTER: "You got his record prior to the time that he was sent?"

THE COURT: Now, the question is, Mr. Mathews -

A The Witness: Negative.

THE COURT: You did not?

The Witness: Did not.

THE COURT: All right, now you go ahead and explain it.

Q Mr. Hollowell: Thank you, sir. When did you get the record?

THE COURT: Well, let him explain it now. He was about to explain it.

MR. HOLLOWELL: Oh, all right, sir.

THE COURT: Go ahead and explain it.

A The Witness: I did not know Gene Magwood before I got him and I didn't keep his records. We have - when a prisoner, if he's good, he can earn - if he doesn't give any trouble, he can earn 48 days a year; and then he can also earn 24 more days extra good time and I report to Captain Findley his conduct during the time he's with me each month.

Q Mr. Hollowell: And he was a trusty from the time he came, was he not?

A He was a trusty.

Q From two months after he was sentenced?

A At all times, he was.

Q All of that time?

A At all times.

MR. HOLLOWELL: I believe that's all the questions we have for the Sheriff at this time.

THE COURT: Youdon't have anything at this time, Mr. Bloch?

MR. BLOCH: No sir.

THE COURT: You may go down, Sheriff.  
Who doyou have next for the Plaintiff?

MR. HOLLOWELL: William Roberts.

END OF VOLUME 1