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Monday, May 10th, 1936.

9:30 o'clock, A.M.

at the court that those of us who are here  
**MR. MOLL:** May it please the court, gentlemen  
of the jury, much has been said during your attendance  
here upon this trial as jurors concerning problems of  
color and of race prejudice and of intolerance, and I  
am going to ask you and urge upon you at the outset to  
treat those matters and discussion of those matters as  
something entirely incidental to the main issue, an  
issue formed by the allegations of the State of Michigan  
that Henry Sweet and his ten companions, on the night  
of September 9th, is guilty of a felonious, willful and  
deliberate killing of Leon Breiner with malice aforethought,  
and formulated in addition to that charge by the State,  
by the denial of Henry Sweet, so far as this case is  
concerned, of each and every allegation in the charge.  
Now, I want to urge upon you also at the outset, that  
we are trying an issue here with centers around the charge  
of murder, and we are not trying anything else. Everything  
that has crept into this record, extraneous to matters  
which bear upon the guilt or innocence of Henry Sweet,  
with reference to the charge or the crime of murder, I  
say, is incidental and should be scrutinized by you very,  
very carefully, for any probative value that it may have  
in aiding your deliberations of whether or not Henry  
Sweet is innocent or whether he is guilty of one of  
the most heinous and cowardly and vicious crimes on the

statute books. Now, I am not going to mince words here. I claim at the outset that those of us on this side of the table are parties to no frame-up. We appear here without any vindictiveness. We are perfectly tolerant of the situation that we have been trying here for two or three weeks, but we come here at this time to urge you to keep in mind the main issue of this case and to arrive at an ultimate verdict that is based solely on the facts. We make no other claim to you except the claim that we come here armed with facts; armed with facts that we expect will prevail. Now, we propose that this jury is going to ascertain whether we can all do our full duties, we as prosecutors, and you as jurors, simply because there has been interjected into this record matters of intolerance, matters of social prejudice, matters of racial dispute, and disorders. Now, we come here solely with these facts, and if I impress nothing on you in the course of my argument to you, I want to impress that you are going to eventually base your verdict solely on facts. Now, this may impress you as rather academic. It may impress you as rather a poor opening, but my defense of that statement is that I am not going to attempt any oratory. I am not going to try any persuasions; I am not going to try any flattery. I am going to give you my version of the facts, and if your version of the facts is not my version at the con-

clusion of this case, there will be no criticisms offered by me because the responsibility is no longer mine or ours. It is yours. Now, we have done our part, I claim, when we have given you the facts without reservation, without ambiguity, bearing upon the issue in this case, namely, the question of the guilt or innocence of Henry Sweet relative to the charge that the State brings against him.

There were eleven occupants of the Sweet house on the night of September 9th. Now, without mincing words, the State claims that each and every one of the occupants of that house took a hand willingly, and deliberately, and feloniously, in the killing of Leon Breiner. Now, that is just as plain as I can make it. But, we claim with reference to this case, that Henry Sweet took either an active part in the killing of Leon Breiner by firing the fatal shot that killed Breiner, or that if he did not fire the shot that actually killed Leon Breiner, he aided and abetted by his act and by his thought and by his conscience, the one who actually did fire that fatal shot. Now, that is the theory. We start out with the proposition that there was shooting from the Sweet house. There was a variable number of shots fired from 15 to 30. Now, one of those shots killed Leon Breiner. There can't be any doubt of that. I don't think it will be disputed by the defense that one of those shots killed Leon Breiner. So we start out with the proposition that from a house in which were

eleven occupants, came shots, one of which caused the death  
 of Leon Breiner. We don't claim absolutely to fasten on  
 Henry Sweet the responsibility for firing the one bullet  
 that passed through the body of Breiner, but we do claim  
 that Henry Sweet either fired that shot, or that he aided  
 and abetted, by word and deed, whoever it was, one of  
 the occupants of that house who did actually fire that  
 shot. Now, is that a reasonable proposition? You may  
 have some quarrel possibly with that theory, based on what  
 might be your understanding of the law, namely; that a man  
 can be responsible only for his own acts. Now, that is  
 true in part, and it is not true. A man is certainly  
 responsible for his own acts, the consequences of which he  
 has the right to anticipate, and in addition to respon-  
 sibility for his own overt acts, a man is responsible for the  
 acts of another, in the commission of any crime in which  
 he aids and abets by word or act, the commission of the  
 crime by that other. Now, is that plain to you? So,  
 to go back, it is the claim of the State that Henry Sweet  
 either fired the shot that was fatal to Breiner, or,  
 if you are not satisfied from the testimony in this case --  
 not from what you may think, or may conclude -- if you  
 are not satisfied from the testimony in this case that  
 he aided and abetted, any one of those other ten occupants  
 of that house, who were armed, and who fired, according to  
 the evidence. Now, do we need offer any apology for that  
 thing? On the other hand it is the claim of Henry

Sweet and it is the defense interposed with reference to all defendants, that the shooting, if there was a shooting, - and they deny that there was a shooting, was justifiable, because in self defense; justifiable, if you please, because it became necessary, or apparently necessary to Henry Sweet and to the occupants of that house to take a human life to protect their own lives. Now, do you realize the claim of the State? Do you realize and do you understand the claim of the defense? We claim that there was a deliberate, wilful, felonious and premeditated act on the part of someone, Henry Sweet or any of his ten companions, to take the life of Leon Breiner with malice, and we claim that there was nothing and there is nothing in this record from cover to cover that justifies the claim of self defense. They claim -- now let me repeat this to you -- that it became necessary; now, necessary, or it became apparently necessary from facts as they occurred that night for one or all occupants of the Sweet House to take a life to protect his or their lives. And I am going to ask you to find the necessity for a killing. I am going to ask you to find justification for the taking of Leon Breiner's life. If you find justification from the facts as they existed on the night of September 9th -- and I will go farther than that -- or from the facts as they appeared to Henry Sweet to exist that night, from what he saw or heard, or from what he felt honestly in his own mind, then your deliberations are through. You have found the necessity for the taking of Breiner's life, you find that the spilling of

his blood, and the sacrifice that Brainer made became necessary to the preservation of life of the occupants of that house, for the preservation of the security, for the preservation of their legal right, and the constitutional privileges. Now, is that a fair proposition to ask you gentlemen to participate in? Are we attempting to sell you on anything that doesn't exist? Have we attempted to sell you on prejudice, or on intolerance, or on anything extraneous, outside of the main issue here? Have we brought vindictiveness into this court room? Have we brought or attempted to bring racial prejudice and hatred along with us on this side of the table? Now, you are the judges of that. I claim we have not. I claim we have made a fair attempt to represent the state, to represent Brainer, if you please, to represent Brainer's family, if you please, and to represent every other law-abiding citizen of this commonwealth. The prosecutors often say that they carry no brief for the deceased. They feel, I suppose, as most of us do, that when the deceased meets his death, he is soon to be forgotten. I do not share that point of view. I carry a brief in this case, and I bring it forward, men, on behalf of Leon Brainer, and when I carry my brief to you on his behalf, I carry it to you on your own behalf, and on behalf of myself and every other man, woman, and child who lives in this state. I am not ready to forget Leon Brainer. I am not ready to let his memory pass, and I am urging upon you men to determine the

question of whether or not his life is to be a sacrifice on the altar of Henry Sweet's rights and privileges, or whether or not, or whether, I should say, the taking of that life was not an act of villainy, of wantonness, and of pure malice, without any justification? They haven't talked murder to you here. They have evaded the issue here and they have squirmed in their seats every time testimony was produced here concerning the shooting and the killing and the death of Leon Breiner. They don't like the charge. They like the picture of progress. They like to paint to you automobiles <sup>zooming</sup> ~~zooming~~ up and down Charlevoix and Garland Avenues. They want you to smell the gasoline fumes. They want you to see traffic officers in their blue uniforms directing the traffic, but they want you to forget the fact that <sup>their</sup> ~~their~~ bullets came out of the Sweet house, one of which passed through Leon Breiner, and snuffed out his life like that, and another one of which passed through the body of Houghberg. Fortunately, Houghberg, isn't a second sacrifice to the rights and the privileges that Henry Sweet and the others claimed for themselves. It is all right to talk about intolerance. It is all right to talk about racial disputes, and sociological problems, if they have any bearing, but we are here, gentlemen of the jury, in solemn deliberation upon the existence of a violation of rights, and the most sacred right to you or to me or to any man or any woman, is the right to live his life.

Now, it has been aptly said that the power and the duty of the law is the protection of human life. Isn't that so? Isn't that the dearest thing we have, and that was ever had? Isn't that what you have all fought for? If there was justification for the taking of life, in the preservation of Henry Sweet's life, then the power and the duty of the law for the protection of human life would be invoked by Henry Sweet. Henry Sweet has the right to say, in the absence of justification, "My life is sacred to me, and I am going to protect my life; if there is any justification of the taking of another life I am going to take that."

MR. CHAWKE: Just a minute. I take exception to the remark of counsel as the violation of the duty which counsel knows is his, calling attention to something that could not be called to the attention -- invoking matter which is clearly improper, and I think the court understands what I mean.

MR. MOULT: Well, I agree to that, your Honor. I think that the question of protection of human life works both ways.

THE COURT: What is the statement that you particularly take exception to, Mr. Chawke?

MR. CHAWKE: What went before, your Honor. I don't like to object to counsel, but I ask counsel to keep within the record, and I think what he says that the Court may agree to what I have particularly in mind.



THE COURT: All right. I will take it up.

MR. MOBLE: Now, let me go back. We are testing out the question of whether or not there is any truth in the things that the power and the duty of the law is the protection of human life. I claim that as Leon Breiner stood on that street that night, the power and the duty of the law gave him protection. It gave him the same right to live. The power and the duty of the law gave Henry Sweet the same right and security to his life. So the issue comes down to this: Was there a violation of Henry Sweet's rights, by Breiner, or by others with whom he may have been associated or consorting or was there a violation of the rights of Breiner to live? Now, that is a simple proposition. We claim, and we claim it again, and we will claim it again and again, that there is nothing in the facts in this case, nothing in the record to show any justification for the taking of Breiner's life. We claim that the power and the duty of the law should be invoked for the protection of that life, and we claim that the penalty for the violation of the power and the duty of the law should fall upon Henry Sweet. That is not vindictiveness. That is not hatred for the negro by a white man. Now we hate to have that word "Hatred" and "Intolerance" come in here. I see no basis for it. I do not see where this becomes a question of race or color. This issue is clearly defined. It is a question of rights and violation of rights. If Breiner, or those with

whom he associated, violated the rights of Henry Sweet and his associates, so that it became necessary to take a life, I have no complaint. Find the homicide justifiable. That is one side of the picture, but if there is no justification, if Breiner had no participation in any attack on Henry Sweet, or his associates, then say

Leon Breiner had a right to live and Henry Sweet violated the power of the law when he deprived him of that right. Now, object to that ~~is~~ Is there anything objectionable in that statement? Is there anything unfair? Is there anything in that statement that they can say is pictured by prejudice or by intolerance or by vindictiveness?

No, but they will. They will bring it in. They will bring in intolerance and they will bring in prejudice, and they will bring in everything but the facts. They will

bring, I suppose, that Doctor Sweet and his Associates, that Doctor Sweet, heading his Associates, is the second Emancipator of the Negro race. Why, they have placed Doctor Sweet now on the pedestal of a hero. They have placed him on the pedestal of a martyr. Why, this is martyrdom, his coming into this court room even to tes-

tify as a witness; even to come here as a star witness on behalf of his brother is martyrdom. It is beneath the dignity of Doctor Sweet, who assumed the right to live where he wanted to live, and ~~he~~ enforced the right by any means. I haven't any quarrel with his claims that

he has the right to live where he wanted to live. That is a

right that is your right and my right and Sweet's right and the right of any man or woman in this country, and in this state. But, I won't go farther with him and I won't agree with him that he had a right to live wherever he wanted to live by any means that he chose to adopt.

Now, what is murder? Murder is a heinous thing. It is a cowardly thing, but in law it is the taking of a human life as the result of premeditation and with malice. The law of this state classifies murder into murder of the first degree and murder of the second degree. Without going into the distinction, particularly I will say that premeditation must be present in murder of the first degree when it is not essential to murder of the second degree. Malice, is an ingredient of both murder of the first degree and murder of the second degree. An unlawful killing, without malice, is manslaughter.

Now, I attempted to sketch what is known as an excusable homicide as it applies to this case, and possibly you had better keep in mind the defenses. An excusable homicide in self-defense is this; where one is suddenly assaulted and in defense of his person, where immediate and great bodily harm would be the apparent consequence awaiting, and there is no other possible means of escape, he kills his assailant. Now, there is the ~~work~~<sup>fruit</sup> work of the case. We claim murder; we claim a willful, premeditated,

killing, with malice aforethought, the overt act being  
 premeditated either by Henry Sweet, or if you find that  
 our testimony does not justify that, then that the over-  
 night, ~~the~~ firing of the shot fatal to Breiner, was  
 engaged in by someone of his associates, whom he aided  
 and abetted. The defense claims justification, and I  
 have told you before that if you find a justification for  
 the sacrifice of this life, your deliberations are ended.  
 Now, are you going to find whether or not there was any  
 justification? Are you going to resort to prejudice?  
 Are you going to conclude that there must have been  
 something up there to justify the shooting? Or else  
 they wouldn't have shot? If you conclude that, you  
 do ~~not~~ without justification yourselves, unless you  
 conclude it from the testimony. Now, you get that situation.  
 That is just as plain as I can make it, and I feel it my  
 duty compels me to make it as plain as I have. If there  
 is justification for the shooting, your deliberations are  
 ended. ~~Now~~ <sup>Now</sup> Or are you going to find whether or not there  
 was justification? Solely from the testimony. Solely  
 from the testimony. Now, if there is any basis of the  
 claim of self defense, it must arise from facts that  
 the defense claims or that Henry Sweet claims made it  
 apparent that he was in eminent and great danger to  
 life or to property. Now, get that. If there is justifi-  
 cation for the theory of self-defense, theory of excusable  
 homicide, it must come from facts which led Henry Sweet  
 or others in that house to believing that they were in great

and eminent danger to their own lives or to their property,

which led them to believe that no lesser force than the taking of life would suffice for their own protection.

Now, killing your assailant, you will appreciate, is the last resort of a man who is attacked. The law does not

excuse killing of another of an assailant, unless the man who is assailed, has exhausted all lesser means of self-protection than the taking of life. So, we will look to

those which impressed Henry Sweet to the greatness and the imminence of his danger, and we will look into his

mental attitude with reference to those facts. Now,

that is the claim. The defense claims even though there

were facts, or happenings on the night of September 9th,

that might not have led you or me to be frightened, that

nevertheless Henry Sweet became frightened because he

happened to be a negro. And they claim that the negro

race has been persecuted and oppressed by the white race

to such an extent that Henry Sweet, because of his

knowledge of such oppression, and such incidents, is in

a different mental state, or was in a different mental

state than you or I might have been in on that night

because we are not black. So he claims a lot more latitude

than we could claim, and he claims it as the result of

matters communicated to him by his brother, Doctor Sweet,

the Star witness, who became the spokesman for the defense

with reference to this mental attitude toward the situation

that night and engendered not by what happened there,

that night, but engendered by the history of the negro,

which Doctor Sweet assumed the burden of transmitting to Henry Sweet, his collegiate brother. Now, that is the only basis, the court will tell you, on which that testimony concerning other incidents of racial prejudice have been admissible. You see, it does not enter into this case; what happened with reference to Doctor Turner, or what happened in Chicago, St. Louis, or in Orlando, Florida, has absolutely no bearing on this case unless you honestly conclude from the testimony here that Henry Sweet, and he alone was so influenced by his knowledge of those incidents, that he had a greater right to be frightened from what happened on the night of the 9th than you or I might have claimed. Do you see the situation? So, first of all, I am going to try to take you over the facts which, in my mind show an absence of justification, showing the lack of necessity for the taking of human life on the part of Henry Sweet or any of his associates in the preservation of theirs'. And I am going to show it negatively, and I am going to attempt to show you from the testimony the absence of facts justifying any claim that the shooting was in self defense, and later on, in connection with the theory of self defense, I am going to allude again to these incidents concerning which Doctor Sweet as spokesman for his brother, has testified to.

That brings us down face to face with the testimony. Now, every state's witness and every defense witness and I could assume for the sake of argument, a version

most favorable to the defense, has not testified to a word of violence. No State's witness or no defense witness has testified to any disturbance. No State's witness and no defense witness has testified that during two days and two nights any person, man, woman or child, ever set a foot on the property of Doctor Sweet. Now, that isn't an exaggerated statement. If it were, these astute gentlemen over here on this side of the table would have stopped me.

MR. CHAYKE: What about throwing stones?

MR. MOLL: We are coming to that. Throwing a stone, gentlemen of the jury, in my mind is not setting foot on property. It isn't a physical trespass on property of another. Of course, <sup>they are</sup> ~~it's~~ going to argue this barrage of stones. They are going to have this house battered down by thousands, and I suppose, millions of stones that were showered upon it, but I am speaking now of the testimony, both of the defense witnesses and the state's witnesses, which shows an absolute lack of any justification. Not one soul, man, woman or child, set a foot on Doctor Sweet's property from the time he moved in on the morning of September 8th until they were taken out the back way as prisoners on the night of September 9th. Not one witness, whether it be State's witness or defense witness, testified to any act of violence. Adler said it was a neighborly crowd. Adler said it was a riotous crowd, meaning by that, that people were block-

ing the sidewalk. He became one of the rioters when he and his wife and his child joined the throng, or joined the group, as he expressed it, near the Dove house. They couldn't let it go at that. Adler, you remember, the blackhaired gentleman with the moustache, who wore glasses.

MR. TOMS: A defense witness.

MR. MOLL: A defense witness, failed to state one word of violence or one word of disturbance. Do you remember that? And can you think of any witness, State's witness or defense witness, who said a word about any violence, about any disturbance, about any physical trespass upon the property of Doctor Sweet? Now, Doctor Sweet, the householder and the spokesman for his brother Henry was on the stand for nearly a day.

MR. DARROW: I think that is subject to exception. I will ask for a ruling. Will you step over here?

MR. MOLL: No, I will be right here.

MR. CHAWKER: Let's have an exception.

THE COURT: Mr. Moll, do not dwell on that further. During the recess I will discuss it with both sides.

MR. MOLL: You mean, my characterization of Doctor Sweet?

THE COURT: Will you stand?

THE COURT: Yes.

MR. DARROW: Save my exception, your Honor.

THE COURT: You may have an exception.

MR. MOLL: I think that probably the use of the term "Spokesman" is objectionable. But Doctor Sweet, the



evasive, and only quasi-intelligent for the defence, was on the stand for nearly a day.

MR. CHAWKE: The same objection, if your Honor please.

THE COURT: The objection is sustained. That is an improper appellation to apply to a witness who takes the stand.

MR. MOLL: Can't we characterize, if the Court please, his testimony as evasive? I think I have a right to go into the attitude of the witness, the manner in which he testifies, whether he gives his answers directly or not.

THE COURT: I do not understand that is what Mr. Chawke took exception to.

MR. CHAWKE: No.

THE COURT: I want to know what he did take exception to, please.

MR. DARROW: I will explain it to you in just a minute. He takes exception to that statement that he was the only quasi-intelligent witness.

MR. MOLL: I did not say that. I did not say that.

THE COURT: Will you read?

(The Statement was read by the reporter.)

MR. MOLL: I said only quasi-intelligent witness. I didn't say that he was the only.

THE COURT: I heard the record.

MR. DARROW: What does that mean?

MR. MOLL: Probably I can elucidate on that.

MR. DARROW: I think it means what I suggested to this Court.

THE COURT: I think that is objectionable. It may be stricken from the record.

MR. DARROW: We want to save our objection.

MR. MOLL: Let me repeat, that Doctor Sweet, the evasive and shifty witness for the defense, failed to testify in a whole day on the stand concerning one act of physical trespass on his property; he testified substantially to the breaking of one window in two places by what must have been two stones but, going a little farther and venturing a guess, that the side window toward the rear on Charlevoix was also broken because he thought he heard glass broken in that direction in the house ~~xxxxx~~ when he was downstairs. Now, give me those pictures, please. Now, Doctor Sweet, in a whole day's testimony, and the purpose of whose testimony was to show justification for the taking of human life, testified to the net result of two broken windows. (Indicating) He testified to the same thing that this picture shows; he testifies to the horrible destruction of a pane of glass about 12 inches long and about five inches wide, and he asks you to barter the life of Leon Breiner and barter the injury of Houghberg for this injury to his pride or to what he considers his rights were to live where he chose to live. Now, there is the net result of Sweet's testimony except what he tells you about his peculiar mental attitude

toward these whites on the outside of his house. Now, get that. There is the net result of his testimony, concerning the justification for the shooting, coupled with his idea and his belief that this window here was broken (indicating.) which William Johnson testifies was not broken when he was up there on the 10th; the day after the shooting, to take the picture, and sergeant Williams. Now, look at that. I will show you the other one, and if that window is open or if there is any trick photograph there, I will go up and eat it, if that isn't a shadow on the second picture I will go farther than that and eat the window on the other side.

MR. DARROW: Or the whole house.

MR. MOUL: I just want you to look at it. Turn around. That is the net result of Doctor Sert's testimony, the man who was in the house, the man who claims self defense, the man who claims justification to the right to live where he chose to live, unmolested, and who claims that because of his attack on his house, he and his associates were justified in taking human life and smiling about it.

MR. CHAWKE: Now, I ask that that be stricken because there is not any claim that the defense is smiling about it; he claims that there is justification for the taking of human life, no one has smiled in this case, any client of the defense. I submit that that is improper argument.

THE COURT: I think that is improper argument. It may be stricken from the record.

MR. MOL: Did you see this other one? Now, I claim --  
 let me go over this again -- I claim that that picture  
 shows this window intact on the morning of the 10th --  
 the morning after the shooting -- I claim that you can see  
 as well as I on this picture that that is a shadow, that that  
 window is not broken. I claim that those two pictures  
 corroborate the sworn testimony of William Johnson and  
 of Sergeant Clayton Williams, who testified to the fact  
 that that window was intact, and I claim that typifies  
 Doctor Sweet's testimony as very, very poor guess when he  
 says that he thought -- never having seen it -- that rear  
 window -- which I just called your attention to -- was  
 broken, presumably, I suppose, by a stone or brick on the  
 night of September 8th. Now, there isn't a word in the  
 testimony that the crowd on Garland Avenue was anything  
 but an orderly and well-behaved. Now, I am not misquoting  
 the testimony of their witness, when he said that the crowd  
 on Garland Avenue was orderly and well behaved on direct  
 examination by defense counsel. He came down the east  
 side of the street with his wife and his child. Remember,  
 he told you that he passed near y every one who was on  
 the street, because they were a standing crowd. Do you  
 remember that, gentlemen? He said the crowd on Garland,  
 was a quiet, peaceable and orderly and well behaved and  
 a standing crowd. Now, do you remember I asked him if  
 it was a static crowd, and he said you can use the expression  
 static if you want to, and he overlooked everyone that he  
 saw that night in plowing his way down to the front of the

with his own observation. . . .  
 second or third house. . . . Do you remember that he testified  
 that he came down the East side of Garland with his wife and  
 his child? Now, he was a defense witness, and he charac-  
 terized the crowd just as every other witness, whether they  
 were defense or state's witness, as a quiet, well-behaved  
 orderly, neighborly, and standing crowd. Now, that is the  
 testimony of their own witness. . . . And go over the testimony  
 of Mrs. Spaulding, and of Mr. Spaulding, and of Roy  
 Lorenz, and of Mrs. Hinteys, who they brought in here as  
 an afterthought, Saturday morning, and you won't find one  
 word in their testimony --

MR. CHAWKE: Just a minute. I take exception  
 to that. There is not any testimony that Mrs. Hinteys  
 was brought in here as an afterthought. I submit that  
 that is improper.

MR. HOLL: She was brought in here out of order.

MR. CHAWKE: No, she wasn't.

MR. HOLL: She was switched in here while Doctor  
 Sweet was on the stand.

THE COURT: I don't think that would justify the  
 remark that she came in here as an afterthought.

MR. HOLL: I will consent to it being stricken out.

THE COURT: It may be stricken from the record.

MR. DARROW: We want to save our exception just  
 the same.

MR. HOLL: Brought in here during recess in Doctor  
 Sweet's testimony. None of them said a word, about any  
 disturbance or about any violence except Spaulding, mind you,

with his keen observation, saw two men talking together over on the north side of Charlevoix, one of which was gesticulating with his hand in this manner (indicating). That is the only act of violence that any defense witness testified to.

Now, I am not misinterpreting the testimony, or I am not misconstruing it. I am throwing down the challenge to them to show you wherein the testimony of any witness, the state or defense, any act of violence was testified to. Now, there was some testimony concerning the throwing of stones, and we don't deny that some stones hit the house. Oh, they have testified to a barrage of stones. They have testified to hundreds of stones, a rain of stones with all that glass exposed on the front of the house, facing in the direction from which the stones came, one little pane of glass, that long and that wide (indicating), is broken in two places, and the holes remained so, just about large enough to put a monkey ~~xxxxxx~~ <sup>fit</sup> through, and you would have to be a pretty small monkey at that, and then they venture a guess that they had a broken window on the side of the house, but their guess has proven to be worthless by the testimony of Clayton Williams and William Johnson, and by the pictures. Now, I am a great admirer of Lincoln. I am such an admirer, that I resent the idea that Doctor Sweet is laying honors to being a second Emancipator, and I am reminded of a story that is told about Lincoln. Lincoln was representing one side or the other in a lawsuit which involved certain patent rights;

the attorney on the other side of the case, he had expert testimony, two days, in attempting to show two wheels that had the appearance of being exactly alike were different. I think they were ratchet wheels, and I remember how impressed I was when I read Lincoln's reply, in which he held the wheels out to the jury after two days of expert testimony; he said, "Gentlemen, here are the wheels that are in dispute. You look at them." Now, there is the testimony that is in dispute about violence, disturbance. Look at it. There is the window. Look at it. Doctor Sweet doesn't assume to say that it was broken. He says, "I think it was broken." William Johnson and Clayton Williams, say it was not broken on the 10th, and I say you have got to venture. The guess of Doctor Sweet very ably rebutted in the testimony, and in the mute evidence offered by those pictures. Now, outside of that, outside of the breaking of one window in two places there was not one cent's worth of damage done to that house, three cents worth of damage done to the fence around the house, or the hedge around the house. There wasn't a hair touched of the occupants of the house, and there wasn't a scratch put on them. The only injury which they suffered was the humiliation to the pride of Doctor Sweet when he claims to have been insulted or frightened in police headquarters by Mr. Johnson. I am going to talk about that later. I am going to show you how ridiculous it was and how absurd that claim was when he attempted to wiggle out from under a lot of previous

statements explaining why he falsified them. Now, women and children were on that street that night. They were on Garland. They were on Charlevoix. They were over on the school grounds. The State's witnesses generally say that there were groups of people on Garland. There were groups of people on Charlevoix. The defense say there was about 500. They all take an arbitrary figure. They have all seemed to agree that there was 500 people in the vicinity, but it is from for you to determine from the evidence how many people there was in that neighborhood at the time of the shooting. If you feel that that is important, and then ask yourselves whether this could be the violent mob the defense was going to claim it was, with the presence of women and children on the street that night, why then ask yourself whether this could be the violent mob the defense was going to claim it was, with the presence of women and children on the street that night? Now, I was going to tell you -- I don't venture, but that is the claim that there was a mob in front of the house. They are going to claim that it was a violent mob, the crowd. They are going to tell you that they came there as the result of pre-arrangement to do mischief to that house. I presume they are going back and draw further on their imaginations and claim that they came there bent on murder or on burglary, but nevertheless, they are going to direct all their energy and all their breath to the picture of that mob, and when they have got it all pictured to you,



they are going to rub a brush over it, and hocus-pocus, the women and the children are going to separate at their homes, and just the men are going to be there; men of violence, men bent on murder, rape, burglary, arson, or mischief, men who didn't even fire a shot into that house before or after the shooting from the house; violent men, who destroyed one pane of glass by breaking two small holes in the same pane, violent men, who stood still, who lost their desire for mischief after the shooting; men, I suppose, the calibre of whom, they are going to claim, may have torn that house down bit by bit, but who did not touch it before or after the shooting. Boys threw stones, while neighbors stood on the sidewalks in their shirt sleeves and walked down town to the store, while neighbor people, about 50 or 60 of whom you have seen here, stood around in the vicinity looking out of curiosity, out of curiosity, aroused by the fact ~~of~~ uniformed police officers were around their house or around the Sweet house. Breiner, they will claim, was a member of this mob. Breiner, who stood with his back turned to the Sweet House, across the street, 104 feet away from it, smoking his pipe that he had in his mouth, as he lying lay dying along side of the Dove house steps. Now, if they are ambitious painters, if they are connoisseurs of art, let them contemplate that picture.

MR. DARROW: We will paint it.

MR. MOLL: And Henry Sweet and Ossian Sweet and

all the other streets and let that collection of armed gunmen in that house that night contemplate it. And you can contemplate it. By God, it makes my blood boil to hear them argue about that mob, that crowd bent on murder, or what not. When you find Brainer leaning against Dove's porch, his back turned to the Sweet house, smoking the pipe, that he had in his mouth, as he lay dying. They don't like that picture, they don't like that picture, and I don't know what picture they like or what picture they are going to draw upon, because they have no picture of their own. They start to paint one up here on the corner of St. Clair and Charlevoix (indicating), and they started with Spaulding, the mail carrier, who testified that the gas station was filled with people, filled with people so that it was impossible for a car to drive in. That was Spaulding; Spaulding put in the back ground. Lorenz came along and ripped the back ground right out of it. He didn't see the crowd. The fire store man, do you remember? Mrs. Spaulding didn't see the crowd. She saw a crowd on the school house ground. She saw some people, about a dozen, congregated before the grocery store, but was not attracted to the north-east corner where the Gas station is. Now, you see, they are starting to paint their picture over. Spaulding sees the crowd 150 strong. His wife saw no crowd there. She saw about a dozen people over there, and she saw 500 people along here. Get that. That is an arbitrary figure. They have departed from a fact, and

then it isn't 500. Adler, who came down St. Clair, saw no people there. Do you remember? Saw 20 to 25 in front of the school, where Mrs. Spaulding saw her 500. Mrs. Hintey, standing up by the alley, do you remember? Lady that stood up here — lady that knew Mr. Chawke — lady <sup>dot</sup> took in the block said there might have been a couple down by the gas station, and then she went <sup>in</sup> down to relate that a couple might have been 10 or 12. So, Adler, he saw no people on the corner; Mrs. Spaulding, Roy Lorenz, and Mrs. Hintey saw no people on that gas station corner. Mrs. Spaulding saw 500 people <sup>back of the road</sup> ~~one line in front of the school~~. Her husband didn't see them. Lorenz didn't see them. Adler didn't see them, and Mrs. Hintey, she didn't see them. Mrs. Hintey saw some people over here (indicating), saying at that same time that she saw about 100 people west and south of the school. Adler, he just started to observe when he came down St. Clair <sup>with</sup> the school ground in front of him, saw 20 to 25 people north of the school. Now, you can't get away from that. A dressed-up crowd, a dressed up crowd, that is characterized as riotous, because they stood on the side-walk where he thought they were blocking traffic, pedestrian traffic; not having seen anybody attacked along there, the crowd is so black. Do you remember? When he came on Garland, it was quiet neighborly, well-behaved, orderly crowd. So we have got that crowd, or you have got the group, or you have got people, or you have got a few people around the house. I suppose that is true. I suppose there were people around.

that house that night. I suppose witnesses saw them, defense witnesses saw them. They can't all be mistaken. They can't all give you the exact number. We don't expect. But what you do expect is an honest and conscientious effort on the part of witnesses to tell you what the real situation was. Now, there were people there. There were some people over on the Dove porch. Dove was there, his wife was there, and his baby was there. Breiner was there, because that is where Breiner was shot. Houghberg came down from gazing at the first volley of shots, and he was the victim of the shooting. Now, Houghberg, I suppose they will claim that he was a member of what they will characterize as a mob in front of the house, Houghberg, who came down from shaving just in time to get shot; Breiner, who didn't even turn around and face the Sweet house before he was shot; but, I suppose, who lived there in the house, and even his baby, if eligible, was a member of the mob. I suppose the baby was throwing stones off the veranda; the Getke's, who sat on their front porch right here, adjoining the Sweet house to the north, were members of that mob. Why, they sat there for 10 minutes. They must have sat in that barrage of stones that were hurled at the house, that barrage of stones that exacted the toll of one broken window, bartered for a human life. The Getke's sat there in that barrage of stones, right next to the Sweet house, driven in only by the shots coming from the Sweet house. Now, let me tell you another reason.

why there was a crowd there. They claim there was a crowd. They will claim it is a mob. They will claim it is an infuriated crowd, but let us go back to the evidence. Let us consider, not intolerance, not prejudice, not oratory, on the part of these gentlemen, but let us consider ~~hard facts~~ <sup>hard facts</sup> -- come and take those pictures -- three shots penetrated Dove's north steps. Let us go back to the testimony. Three shots penetrated the Dove's north steps having been fired in that direction. (Indicating) This shot being 104 feet from the front of the Sweet house, another shot penetrated the tree in front of the Dove house. Another shot passed through the door where the lady upstairs was ~~hanging~~ <sup>hanging</sup>. Another shot in the top of the Dove porch. Now, get that situation. They are fired out of the Sweet's front windows, at a spot 104 feet away. We will assume that the front windows upstairs are 15 or 16 or 18 feet from the ground, so they shoot at an angle, that is, between 1 to 27 and 1 to 8, that is, the bullet as it travels 8 feet or 7 feet, depending on the height of the windows, drops 1 foot, see! The angle isn't very great. It is an easy angle coming from across the street. Now, let them tell me why or how, if there was a crowd, standing on the sidewalk, in front of those steps, those bullets that entered those steps missed that crowd and plowed their way into those steps? They had curves on them, or there were people killed there that night. Do you see that? These bullet holes are 2 feet

at the most from the ground. Now, if there was the crowd that they claim over here in front of the Dove house those bullets wouldn't have passed between their legs and under their arms and entered the Dove steps and they wouldn't have passed around their necks or skipped their shoulders and entered the door in which Mrs. Henley upstairs stood, and they wouldn't have missed somebody's head and plowed their way into the trees in front of the steps. And they would never have missed that crowd and struck Breiner. He stood back of the sidewalk a distance of some 15 feet. And they wouldn't have hit Houghberg, who was seated on Dove's north steps. So, where was the crowd? Now, we have accounted for one, two, three bullets in the steps, one bullet that passed through Breiner, who stood just north of the steps, that is four. One bullet, which passed through Houghberg, who was at the steps, that is five. Another bullet went into the save, is six. Another bullet that went into the tree is seven. Another bullet that went through Mrs. Henley's door is eight. Now, there is at least a bullet that took effect across the street. Now, we have accounted for another bullet that was fired into Getka's house so that a pencil placed in the bullet hole would point up to the Sweet back porch or upper window. That is nine. We have accounted for another bullet that went over the overhang of the Sweet roof. That is ten. So, there are ten bullets, which are visible, mute evidence of their striking, that we claim was fired either from the window either the north or the front of the Sweet

house. And there were bullets fired from Charlevoix Avenue. There was a bullet fired in the screen over here, on one of the side windows in the bed room. They had Mr. Johnson testify to that. And there was a bullet down here in the overhang over the dining room. Maybe I better show you the pictures. Now, there is a picture that shows the position of the Getke -- the bullet in the Getke house. That is one of them, and there is a side porch that I spoke of over here on Charlevoix. From the roof here, the bullet ricocheted. That is a little better picture of it. That is the position of the bullet, and Mr. Johnson testified to the hole in the screen in one of these two large windows there about half inch diameter that bulged out. Now, speaking of bullets for the moment, now, remember, gentlemen, I am calling your attention to facts that show an absence of justification for the shooting. I have showed you so far that the testimony is conclusive that there was no act of violence or disturbance. There is some testimony relative to the throwing of stones. I showed you that there couldn't have been any crowd around the Dove house. I have shown you that the Getke's sat on this porch, that the defense claims notwithstanding the barrage of stones fired in that direction. State's witnesses that there were men, women in that crowd. I have showed you that they were a neighborly, orderly crowd. I have shown you that the testimony disclosed the firing of some shots, variously <sup>admitted</sup> ~~admitted~~ as from 19 to 30. I have accounted for 10 of these shots, and I call to your attention also the

fact in the testimony that there were four, five, fourteen empty shells of five different calibers found at various spots in the house. Now, you will remember that Henry Sweet -- I beg your pardon -- or Doctor Sweet testified that Leonard Morris, armed with a shot gun, was in the front, at the time of the shooting; that his brother Henry, armed with a rifle, was in the front room.

Q. MR. CHAWKE: No.

A. MR. MOLL: At the time of the shooting.

Q. MR. CHAWKE: I submit there isn't any such testimony in the case. Doctor Sweet said distinctly that the room was dark, and he couldn't observe anyone in the room, as I recall it.

A. MR. MOLL: No, he said that he saw Leonard Morris upstairs armed with a shot gun.

Q. MR. TOMS: Yes.

A. MR. DARROW: He did say that he had a shot gun. He didn't say at any time that he saw Leonard Morris or Henry Sweet in the room at the time of the shooting.

Q. MR. MOLL: He didn't say that. I said that he saw them upstairs.

THE COURT: I can understand both of you two gentlemen pretty well so do not do that any more. Now, is this a convenient time to take a recess, Mr. Moll?

A. MR. MOLL: Yes, I think so, your Honor.

THE COURT: We will take a recess for a few minutes.

(Recess was then taken.)



MR. HOLL: Now, will you read my last statement please?

(The statement was read by the reporter.)

I have just called your attention to the testimony of Doctor Cassian Sweet. I find it was that he had the impression Leonard Morris was armed with a shot gun, that his brother, Henry, had a rifle, although he didn't say that Henry was in the front room. Henry, however, said that very conclusively at the time of this statement made to Mr. Kennedy the night of the shooting, at police headquarters.

MR. DARROW: I beg your pardon, Mr. Holl.

MR. HOLL: All right, so that we have evidence from Doctor Sweet, whom I regard as the most important witness for the defense, that Henry Sweet was armed with a rifle, and that Leonard Morris was armed with a shot gun. Now, they are talking, you will remember about justification, or lack of justification for the shooting, and I had enumerated certain points that, in my mind, were conclusive that there was no justification for the shooting; and I had alluded to bullets having been fired from the house, and I had alluded to the fact that empty shells — I think fourteen in number, of five different calibers were found in the house, and I was about to allude that one of these shells was a shot gun shell found in the front room where we can conclude Leonard Morris was firing with his shot gun, while Henry Sweet was firing from the same front room with his rifle. That room was occupied a part

of the time, at least, by Doctor Sweet, with a loaded revolver, exhibit number 5; that Paul Schellenberger testified he found laid or hidden beneath the radiator, or behind the radiator in the living room downstairs. That possibly was something of a digression from the point I was assuming to make, namely; that the facts are conclusive if you please, that there was no justification for the shooting, and I want to refresh your recollection to this extent, that what I have already said, or as to what I have already said, that if you find justification, of course, you do not have to concern yourselves with the identity of the persons who actually fired the shot or whether Henry Sweet actually aided and abetted <sup>by</sup> one that did, the person who fired the shot, if you conclude that he did not. Now, we are still talking about the lack of justification, and we talk about the testimony of both the state and defense witnesses, and I want to call your attention more particularly to the testimony of Inspector Schuknecht, who had assumed, so far as this is concerned, the responsibility for the protection of the Sweet house and its occupants and I want to call your attention so as to refresh your recollection <sup>by</sup> the testimony of Paul Schellenberger, this Lieutenant who was with him, not only on the night of the 8th, but on the night of the 9th at the time of the shooting. Anyway, you will remember that Inspector Schuknecht, and I say again, that it was he who assumed responsibility for the protection, if need be, of the house and its occupants, was in the neighborhood

of the house for several hours at the time of the shooting or prior to the time of the shooting. Then he testified quite conclusively that there was no disturbance about the neighborhood, corroborating the testimony, or adding to the testimony of Paul Schellenberger, who testified to exactly the same thing. Now, let me call your attention to what I consider a conclusive bit of testimony given by Inspector Schuknecht, and which was corroborated by the testimony of Doctor Sweet, when he was on the stand. Now, Schuknecht claimed that as he stood on the southeast corner with Schellenberger, and his brother-in-law, who also testified here, that he heard shots fired coming from the Sweet house; that without knowing anybody had been struck, he ran right to the house while Schellenberger ran to the telephone; that he rapped at the door or rang the bell and was admitted.

Now, understand, pandemonium is loose in the house. The defendant and his associates were terribly frightened, if you believe the testimony of Doctor Sweet. However, upon rapping at the door or ringing the bell, Schuknecht was admitted in the face of what the defense claims was a mob outside. Schuknecht's first question to Doctor Sweet was, "What in the Hell are you fellows shooting for?" Whereupon, Doctor Sweet replied, "They are ruining my house." Schuknecht then ~~said~~ <sup>said</sup> "I see no evidence of their ruining your house. What are they gaining?" "Well right, the shooting will stop." Emphasizing the fact that I am going to come to later, that

Doctor Sweet was in active charge of the people inside that house. Now, that may or may not have been natural.

It may or may not have been occasioned by the necessity of the circumstances. But, nevertheless, Doctor Sweet

was in that house where he gathered certain impressions, up and down stairs, half a dozen times from the moment

when one of his companions, he claims, looked out the window and exclaimed, "The people, the people".

— He was up and downstairs. He was present at the time that Ossian Sweet and Mr. Davis were admitted. They

came to this house in a cab before the shooting. He was there. And he stepped to admit Schuknecht, the Inspector

Schuknecht that I have just mentioned. Now, here is an old time officer of the police department, Inspector

Schuknecht, who had assumed the protection of this house, if need be, who concerned himself with the situation,

who planned on the coming of the Sweets.— he had done himself out, almost, in the preparation for a possible

contingency that never materialized. And possibly the best evidence of that is the testimony of Schuknecht

himself. Now, can you conceive of any possible reason why Schuknecht, having made the preparations that he did

make, for the coming of the Sweets, and for their protection, if the emergency arose, should have fallen

down on the job in the possibility of an emergency. But he is very explicit when he says that at no time, either

on the 8th or on the 9th just prior to the shooting, was Schuknecht

there any disturbance, or was there any violence. He saw no stones thrown. He saw nothing hit the house. We will assume that he knew when he got in the house, having been taken up here, by Doctor Sweet, that this window that I called your attention to, was broken in two places. Are you going to say that Schuknecht and Schellenberger and all the rest of the police officers were derelict in their duty? Now, if you say that, gentlemen, you have got to have a reason for it. It is going to be argued to you that they were. It might possibly be argued to you without foundation that these police officers stood idly by in the face of a disturbance or in the face of violence, and did nothing to stop either. They were just there because they had to be there for no purpose, so far as they were concerned. Now, that argument is all right. It is legitimate, but you are the judges of its soundness. Is there any basis on which such a claim can be made? Now, the basis of such a claim that officers, and particularly Schuknecht and Schellenberger, were derelict in their duty is the testimony by someone that there was a disturbance, that there was violence, that there was some occasion for the police to come, and as I explained to you before, the record is entirely stripped of any such testimony. It is barren of any testimony upon which the defense may base an argument that the police were negligent in the performance of their duty. The officers say they were there. The officers say, from Schuknecht on down the line, that there was no occasion

for any police. There was no disturbance. There was  
no violence. They saw no cause for arrest. They saw no  
cause for apprehending someone. Doctor Sweet, in his  
testimony, as a defense witness, throws no light on the  
situation. He does not testify to a single act that might  
properly call upon a police officer, regardless of his  
rank, to act out there in the protection of his property,  
Doctor Sweet's property, or occupants of his house. Now,  
there isn't a witness, State's or defense, who has testi-  
fied to any act of violence or disturbance that should  
call upon the police, individually, or collectively, to  
act, and I say to you that there is absolutely no basis  
for any argument that may be made to you that the officers  
were negligent in the performance of their duty in the  
face of testimony. Now, I assume that you are going  
to abide by the testimony other than by argument. Of  
course, I have no criticism to make of argument. I am  
arguing a case but I stand or fall on these facts, and  
I ask you to assume nothing from my argument, if you  
find any logic in it, except what you can assume fairly  
and honestly and conscientiously, gentlemen, from the  
facts of the case. There are a multitude of reasons  
why that should be so, without by enumerating them to  
you. So we are still dealing with the question of  
justification, on either theory that the state may adopt,  
either that Henry Sweet actually fired the shot that  
killed Leon Breiner, or that Henry Sweet aided and abetted

X

X

whoever it was that actually fired the shot that caused his death. And your question of justification is just the same, if there is no justification for Henry Sweet, there is no justification for anyone else under the circumstances. If there is justification for someone else to fire a shot and Henry Sweet was acquainted with the facts that justified the shooting, of course, there is justification for him. You see? But I am dwelling now on the situation, as I see it, based on the testimony that there is no justification for the shooting, and in that connection, that there is no justification for any claim that the police department were derelict in their duty; now, was there any necessity there for the police? There may or may not have been. I think the police preparations that were made were warranted. It was a safety measure. It was a matter that the police department should properly consider. Schuknecht may or may not have anticipated a necessity for police, but, nevertheless, police were there, and while the police were there, the occupants of the house ignored them. They treated the police on the outside of the house as lamp posts or as hydrants, or as pieces of wood. They did not take them into consideration at all. Doctor Sweet, who had anticipated trouble, who feared death, who tells you as long as he moved in had never made a request of the police department or any of his officials for protection. He had never discussed the fact that he was going to move into

the house. He roved into the house, so far as I know, along with his friends, and some of his friends, without advising the police department, or policemen on duty outside the house. And he took it for granted because they were there on the 8th, they were there on the 9th; never advised with them, never asked any of them what their instructions were, ignored them, and assumed the right to move into that house, and retain possession of it by any means, violence or otherwise. Now, the very means that he objects to in his testimony, as he claims, to put him out of the house, he adopted inside of the house and adopted, we claim, unnecessarily. He objects to what went on outside of his house. We object very strenuously to what went on inside of the house. We object to the fact that he ignored the police. We object to the frame of mind that was his, when he testified from the stand that he failed to call McPherson, one of the officers in whom he had confidence, because he thought the police would be evasive, and it would be useless. Here is a man who tyrifies, if you please, not only his frame of mind, but the frame of mind of his brother, Henry Sweet, fired, he claims, with imminent danger, armed men in his house; he chooses to resort to force from within the house, a lawful means for his own protection on the outside of his house. Now, that is as plain as I can make it to you, and I think you understand me, and his reason for so doing is confidence that the police department were that day, gentlemen, not



no good; his confidence that Schuknecht and Sobellenberger and all the rest of them would be derelict in their duty, and if he called at all for the officer in whom he had confidence, namely, McPherson he would find the police department very evasive. Now, is that the sort of an argument or is that the sort of reasoning on which you would place any confidence? Is that the sort of an argument on which you would venture anything in a business transaction? No. So we find Doctor Sweet in active charge, running up and downstairs, admitting his brother Otis and Mr. Davis, admitting Schuknecht, and we find him with the impression that Henry Sweet was armed with a rifle, that Leonard Morris was armed with a shot gun, and we find the verification for that impression, at least, in the statement of Henry Sweet himself, when he said that he was armed with a rifle, and went on to say he used it, fired, in his statement to Mr. Kennedy. Now, I am just going to allude for a moment or so, to certain other things that come to my mind with reference to justification. Now, they claim that this group, or these neighbors, or these people on the outside of the house were violent. They don't claim any damage to the house. Isn't it logical to presume that if they were violent after the shooting they would have exercised their violence in the direction of that house? Why, that is all that happened. One window broken in two places by what they have pictured to you as a mob across the street. That is all, gentlemen, not another thing happened.

That window was broken in two places by stones thrown by boys. There is evidence in the record that that happened, and we don't try to get away from it. Stones were thrown by boys, who stood over in the neighborhood of the Dove house, and the result was that one window was broken in two different places. Now, if there is anything in the claim they are going to make to you, why wasn't more damage done to that house? And if damage had been done to the house, there would be some basis for what I know their claim will be, that the police were derelict in their duty. Now, there was violence there, they claimed on the 8th. There were people congregated in the neighborhood of the house; were there on the 8th, according to several witnesses, than there were on the 9th. Other witnesses dispute that fact, but in line with justification, if there was justification for the shooting on the 8th, why wasn't there justification for the shooting on the 9th? Exactly the same thing happened the night of the 8th that it did the night of the 9th. At about 11:00 o'clock they testify a stone was thrown which hit the house. Some stones were thrown the following night. Now, if there was justification on the 8th for the shooting, there was equally justification on the 9th.

Now, some of these witnesses, namely, Miss Rochelle, and Edna Butler, the lady that Dr. Darrow referred to as the so-called artist, who came up there to take charge of the interior decoration of the house, testified to a crowd outside of the house at around eleven o'clock. They testified they were so frightened by the presence of the people that they didn't go home, although they didn't communicate their fears to anybody. Dr. Carter, if we believe the testimony of Miss Butler and Miss Rochelle, and Dr. Sweet, came to the house on the night of the 8th, at 7 o'clock, and didn't molest, came into the house the front way, went out after several minutes; that was the first time, gentlemen, that the Doctor, Carter, had been to that house on the 8th. Dr. Carter, a friend of Dr. Sweet's, who Dr. Sweet said was present in Dr. Turner's house on Warren Avenue, when he told them -- when Dr. Turner told them, meaning Dr. Sweet and Dr. Carter, about the incident upon Spokane Avenue, the day before -- the same man, that he was unable to tell you was in his car when they went out in the direction of Dr. Turner's house. See! Dr. Sweet was in the neighborhood of Dr. Turner's house up on Spokane Avenue when he moved in. He was in his car with three other companions. He doesn't remember whether Dr. Carter was there, or not. He, Dr. Sweet, went up out of curiosity. He doesn't remember that Dr. Carter was in his car, but he does remember that the next night Dr. Carter was present in Dr. Turner's home when Dr.

Turner told the assemblage what had happened the day before upon Spokane Avenue, and it was the same Dr. Carter that we find coming to Dr. Sweet's house to see how things were getting along three different times on the 8th, his last visit being at eleven o'clock at night. Possibly he came there for counsel. Dr. Sweet moved in eleven guns and lots of ammunition, too long to read to you, but you have seen it here. The ammunition and the guns were placed in the closet. The occupants of the house were told about them, and the occupants of the house later on used them, without Dr. Sweet <sup>not</sup> taking any instructions from him as to the emergency in which the guns were to be used. Now, concerning the justification there on the night of the 8th, which I claim was <sup>a great</sup> ~~that state~~ on the night of the 8th, we have the testimony of Serena Rochelle that she looked out of the window possibly fifty times <sup>at</sup> ~~at~~ night, and had never seen a soul on Charlevoix Avenue. Now, mind you, witness Serena Rochelle, an occupant of the house on the 8th, who came there with Miss Butler, terribly frightened, but never once looked out on Charlevoix Avenue, and, if you please, never saw a soul on Charlevoix, although her friend, Miss Butler, said that there were people there. Both of them deny that Dr. Carter came there at 11 o'clock without being molested. Why, here is what Miss Butler said: "I stayed because I was afraid to go. However, I felt perfectly secure in the house, felt safe in the house, but didn't care to go out, and I stayed." And

here she was so frightened that she and Miss Rochelle stayed there all night without imparting their fears to anybody. There was just a mutual understanding. See? So, if there was justification on the 9th, there was justification on the 8th, and we all agree that there was no testimony that there was justification on the 8th, and I think we will all agree that there is no testimony that shows justification for shooting anything, even shooting off a gun in the air on the night of the 9th. Now, what I have talked to you about, his justification, is true whether Henry Sweet fired the shot, or whether he aided or abetted the others in firing the shot. Now, I am going to deal a little later on with Henry Sweet's part in this transaction. I am going to call your attention now to certain facts that I believe justify the claim that every single person in that house was bent on murder; that the blood of Leon Breiner is on the hands of every occupant of that house, whether it be Henry Sweet or Mrs. Sweet or Dr. Sweet or Otis Sweet or Leonard Morris, or Lutting, or Washington, or Davis, right on down the line. I have no hesitancy in saying that the fact of this case in my mind stamps each and every occupant of that house that night as a murderer, simply because they were there. They knew what was going on. There was a simultaneous shooting from five different parts of that house, in which at least seven men participated. They were there with arms and ammunition. They were there

knowing where they were. The lights in the house were out. The house was sparsely furnished. That, of course, isn't necessarily the fault of Dr. Sweet, and the house was in a state of siege evidenced by the fact that in several rooms at the window sills were found evidence that someone had been sitting or standing there, cigar butts, and cigarette butts and ashes strewn around the window sill on the floor. Now, the shooting, mind you, came either in one or two volleys. Some witnesses testified that only one volley was shot or fired, running from fifteen to thirty shots. Other witnesses testified that two volleys were fired. Now, the view most favorable to the defense is that only one volley was shot, because if there were two volleys shot, certainly everybody in the house was familiar with the fact that there was some shooting going on there, and that it was a very unhealthy spot, and they wouldn't have been there if there hadn't been a mutual plan or scheme to shoot. Now, was there such a mutual plan or scheme? Shooting came from the front window where there were two men, at least, Leonard Morris was there with his shotgun because empty shotgun shells were found in the room. Henry Sweet was in that window because he tells you that he was there. So there are two men there. There are two men on the back porch. There was one man in the side window at least. There was another man, perhaps more, on the Charlevoix Avenue side of the house, and the shots came from all those different spots

simultaneously, making it conclusively appear that one man simply did not go up in a haphazard sort of way to the closet and get a weapon, fire it, and then another man went, but that the shooting was the result of a concerted action and prearranged plan in the house. Otherwise, why did they go to the various sides of the house? Why did they go there at the same time, and why did they all shoot simultaneously? No, they were all over. This wasn't just a matter <sup>the</sup> ~~for~~ one rather erratic person in the house may have become frightened and went off and popped off a gun up in the air. There was a prearranged design to shoot, evidenced by the fact that shooting came from five or six or seven or possibly ten guns at the same time from five different spots in the house. Now, remember, that there were five different calibers of empty shells found inside of the house. Now, there were enough weapons there, you will remember, to arm every defendant, save one, and that one was, or a possible candidate was Mrs. Sweet, the her husband said was downstairs, and there was enough ammunition there to supply those guns, and every one of them for a considerable length of time. In fact, there was ~~was~~ 301 pounds of ammunition, and as I have shown to you here this was 301 pounds in that catchall, the contents of which you have seen. Now, was there any common understanding? Are there any prearranged plans, and this becomes important only if you find that Harry Sweet didn't fire the shot that killed Breiner, and you enter upon a deliberation of whether or not he aided or abetted someone

in the house who did fire the shot that actually killed  
Breiner. Was there a preconceived plan? The lights  
were out in the house. The weapons were all hidden after  
the shooting. Henry Sweet's rifle, it was testified, was  
found in the Charlevoix Avenue bedroom in a closet. He  
claimed in his statement however, that he brought it down  
stairs and gave it to one of the officers. We brought  
the officer in here who found it, and he testified to  
where he found it. We brought other officers in here who  
testified that they found a shotgun under the mattress  
of the bed in the front room, where I claim Leonard Morris  
was. We brought the officer in here who testified to  
finding that German automatic in the pillow-case in that  
same front room. Now, there is evidence, good evidence,  
it seems to me, that a shotgun was used there; that a  
German automatic was used there; and that Henry Sweet,  
from his own statement, used his rifle there. That ac-  
counts for three guns; back in the back porch you have  
two men. That is five. There is some evidence that a  
gun was fired from the little side window on the north  
side of the house, which accounts for six men. We have  
fire coming from the Charlevoix Avenue side of the house.  
That accounts for the use of a weapon by seven men, and  
all these weapons were hidden after the shooting. Now, were  
they so satisfied from that, <sup>that</sup> they were acting in self-  
defense? Were they? Were they so satisfied from the  
fact that they hid all these weapons that there was



justification for the shooting? Were they satisfied, and are you now satisfied, that they exhausted every means for their protection, if they needed protection, before they were forced to act in extremis, and take the life of an innocent man, and remember, according to their own witnesses, with a friendly, well-behaved, orderly, neighborly crowd? Can you get away from that testimony? Gentlemen of the jury, you have got to be mental contortionists to do it. Now, that isn't prejudice. That is not intolerance. Yes, that is the talk of a prosecutor, but it is the talk of a prosecutor who is not interested in anything but this case, and the facts that go to substantiate it. It is the talk of a prosecutor who makes no apology for talking to you on these facts as he does. And if you find that Henry Sweet fired the shot, you will find malice, because you will find that he aimed his gun at the crowd. If you find that it was not he or if you are not satisfied that it was he who fired the gun, and you find that a shot from that house killed Breiner, then you will find by the same token and based on the things that I have called to your attention that Henry Sweet was a willing, wilful, aider and abettor, of whoever it was, and I do not care who it was, who fired the shot that killed Breiner.

Now, I am still carrying the brief for Breiner. I still claim that Breiner has a right to be alive and enjoying life today, and I claim there was nothing in what happened on Garland Avenue that night; there was nothing

that happened ~~in the place~~ where Brinner stood, that would justify Henry Sweet, or any other occupant from sniffing out the life of Leon Breiner, as according to their own witnesses, he was in a group of people that was well-behaved, orderly and neighborly. Can you get away from that testimony? On Charlevoix Avenue there couldn't have been anything. Dr. Sweet on the witness stand doesn't even remember. Mind you, looking out of his windows on to Charlevoix Avenue. The only recollection that Dr. Sweet has, and the only justification therefor, that he claims for this shooting, was that he saw or thought he saw, as he went up to lie on the bed, in the front bedroom; went up there with his gun, went up there with the loaded revolver that Pal Schellenberger found under the radiator of the front room downstairs. And he lay on the bed, because, as he told you on the witness stand, it was hard for him to kneel, and lay there for several minutes looking out into this crowd, as he called it, on Garland Avenue. He won't estimate the crowd. He won't place the crowd. He won't give you the territory that the crowd covered. He steadfastly refused to do that under the cross examination of Mr. Toms, who made every reasonable and fair effort that he knew how to get Dr. Sweet to testify to the magnitude of the crowd, the location of it, territory it covered, and would he do it? He absolutely would not. It was his impression. It was the same impression that he had when he told you that the side window up on Charlevoix was

broken by a stone when it wasn't broken by a stone at all. Now, I say that is an occupant of the house. Dr. Ossian Sweet, whose money went into the house, whom I claim had a right to buy the house, where he bought it, and the right to live in it. Dr. Ossian Sweet, an occupant of the house, takes the witness stand, and for one day absolutely avoids the testimony that will show any justification for the shooting of anybody, or even the shooting of a gun up in the air. Now, is that a fair statement? Can you pin your faith on that and I am talking to all of you -- I am talking to you individually and collectively -- can you men honestly, and can you conscientiously find anything in the testimony of Dr. Sweet, mind you, -- I am talking now of Dr. Sweet, the man whose money went into that house, who had the right to live there, to live there undisturbed, -- as would justify him or any of his associates shooting anybody? Now, you can conjure, you can imagine, you can conclude, you can guess, or speculate, but, gentlemen, you cannot find anything that fell from the lips of these witnesses to justify that vicious and wanton killing. Can you? I would like to know what it is. That is the thing that I have searched for high and low in this case; giving Dr. Sweet, his wife, his relatives, and his associates, the benefit of every doubt, I have prayed for some enlightenment as to the justification for the taking off of this neighbor across the street.

MR. DAWSON: Now, I think this is objectionable.

MR. MOLL: Well, I will ask a ruling on that.

MR. DARROW: He said that the thing he searched for.

MR. MOLL: I have searched the record for. I spent two days for it.

MR. DARROW: He didn't say that. He put it in. It would have been proper.

THE COURT: That is what you mean, isn't it?

MR. MOLL: Yes, absolutely, your Honor.

MR. DARROW: That is what you meant, all right.

THE COURT: Let that be on the record that there will be no misunderstanding.

MR. MOLL: That is all there is in the case.

It is the record. There is no prejudice in this case.

There is no intolerance; oh, sure, there <sup>as</sup> a lot of things that creep in. There are a lot of things that you will be affected by. I dare say, you men are affected by the presence here of Mr. Barrow, who has taken up this case of Henry Sweet. I don't know whether he comes here as champion of the negro, or as champion of the facts, but if he comes here as champion of the facts, he is going to go back to Chicago holding an empty sack.

MR. DARROW: Champion of what?

MR. MOLL: The facts. You may be affected by that. You may think that the wisdom and the experience and the fatherly advice, and the easy manner, and the grace of Clarence Barrow can cause things to spring out.

of this case that are not here, but you will find them. You will find them before you leave your deliberation room, and if they are here, I will bow to his sagacity and to my lack of memory. Now, that is impersonal. I don't say that out of any malice or unfriendly feeling toward Mr. Darrow because I have absolutely none. The ease with which he tried this case has been a surprise and a pleasure to me, the way in which he waived some points having to do with the issue is an education to me, and the manner in which he built up his defence, and the manner in which he conducted traffic on Charlevoix, is all very enlightening, but, I say to you, and I will that I have, as a warning to you, to look for facts rather than sentiment and to the transaction as it actually existed rather than <sup>the</sup> sympathetic veil, or the miasmic mist that Mr. Darrow is going to throw out. We are armed with the facts. We have no apology. We have noted the concern that has been there on the other side of the table when the name of Breiner has been mentioned, and how glad they are to leave the dove houses, and how glad they are to get away from the shooting and how pleased they are when they are standing with Mrs. Spaulding like oxen in a pen over here in the midst of them, five hundred people in front of the school. Oh, that is a pleasure for them. It is great to be in the mass of humanity over on the school grounds, that has been variably estimated at from five hundred to twenty, but they enjoy being there,

*Smith*  
 taking up the dirt on the school grounds. And they like  
 to walk up Charlevoix, and they like to walk down Garland,  
 and they like to go with Mr. Spaulding down here in the  
 seething throng on the gas station corner. They like to  
 ride along in the automobile with Mr. Smith whose testimony  
 was read here. God, how they hate to stand in front of the  
 Dove house. How they hate to have stood in what their  
 own witnesses characterize as a friendly, neighborly,  
 well-behaved and orderly crowd, in the hail of lead bullets  
 that came from the home of their client. Oh, that is a  
 vastly different story. Breiner is dead and gone. We  
 are interested in the right of the negro to live where  
 he chooses. We are interested in the proposition that a  
 jury of twelve men in this court of record will give them  
 their <sup>due</sup> ~~view~~. Now, let us forget about Breiner. Let us  
 forget about that hail of lead bullets, gentlemen. Let  
 us talk about intolerance. Take a trip down with me to  
 the south. Take a trip with me back <sup>to</sup> the ages of history;  
 take a trip with Dr. Ossian Sweet and stand by his side  
 in Orlando, Florida when he was a child seven years old.  
 Register that remote impression of the negro instinct of  
 which you know nothing. Speculate with me, my friends,  
 on what caused the Washington race riot. Speculate with  
 us again, my dear friends, on what happened in East St.  
 Louis. Speculate, oh, you twelve conscientious and sym-  
 pathetic, sentimental men in this jury box, with me when  
 we give you the narrow details that Dr. Turner repeated  
 here *July*

wind up on the corner by the gas station. They run around the school yard, and they run around the crowd the other witnesses didn't see, and they talk about violence the other witnesses didn't see, and they talk about the disturbance that didn't happen, and they talk about fear that was never engendered. Why was Henry Sweet so fearsome that night? He was so fearsome that night that he was justified in the taking of, or the helping to take an innocent life. He was fearsome, not as a result of what happened there; he was fearsome because of what his brother Henry, or his brother Ossian told him that he had seen or heard or read. Now, I am not joking with you. I am serious. I have never been more serious in my life; and I don't know as I ever will be more serious again than when I comment on the cold facts; that we claim is no justification for the taking of human life. Ossian Sweet tells you that he imparted all of his knowledge, this is, based on his tolerance, race persecution, and oppression, to his brother Henry. Why, he even went down to Wilberforce Academy at Wilberforce, Ohio in attendance at a football game, and used his spare time in discussing with his brother, whom he hadn't seen since he was a child, the racial situation in Detroit, with the substantial result that he imparted to Henry at that time, the defendant in this case, the information or the knowledge, I should prefer to call, that Detroit was an unhealthy place for him anyhow, un-

my life, and I met Mr. Toms under circumstances where  
 he becomes my assailant, where he offers me violence,  
 where he threatens me with bodily harm, where he threatens  
 my life, I am at liberty, under the law of this state,  
 to take into consideration not only the fact of Mr. Toms  
 assailing me, what he does at the time, but I am at liber-  
 ty to take in the fact that there has been communicated  
 to me threats made against me by him. That is a legitimate  
 defense, within certain limitations, upon which the court  
 is going to instruct you. Now, that is one extreme, if  
 you follow me, and the historical background as far back  
 as you want to go, as the other extreme. So, they didn't  
 find any actual threats, because Dr. Sweet signified on  
 the stand that no threats had been made against him. So  
 they go into the historical background. They take him  
 back to when he was seven years old, and have him relate  
 to you the details of a lynching, the merits of which  
 you know nothing about. I am not an exponent of lynching.  
 I am an exponent of letting the law take its course. I  
 am an advocate of going before a jury of twelve men with  
 the facts, as we are in this case, and letting that jury  
 decide the facts. Oh, twenty-three years ago, twenty-  
 three years back into his life, Dr. Ossian Sweet went, so  
 he claims, in effect, although he doesn't claim it ex-  
 pressly. He does not claim that he had that in mind  
 on the night of the shooting. You don't know where he  
 thought of it. You don't know where he heard of it. You  
 don't know where he saw it, <sup>and</sup> if he did see it, and the



to Dr. Sweet, who repeated as to what happened on Spokane.  
 Travel with us again, gentlemen, up on to American Avenue,  
 where Vollington Bristol's house was the subject of mob  
 fury, and where he still lives. Travel with me up to  
 Dr. Fletcher's - - where is that - - American - - on Stoepel  
 where he still lives. Oh, let us get away from this kill-  
 ing.

MR. PERRY: Live there forty-eight hours.

MR. MOLL: Is that in the record? There isn't  
 a word of testimony.

MR. CHAWKE: I will take exception to that, if  
 your Honor please, the jury of course, will recall that  
 the man was driven out of his own home in forty-eight hours.

MR. MOLL: Oh, was there? There is no testimony  
 in the record.

Oh, all right. We won't dispute those things,  
 because they are immaterial. You know they are immaterial.  
 Get away from the Sweet house. Get away from the question  
 of justification. We will make this case to order. We  
 will put in a beautiful historical background. We will  
 have a beautiful drop-curtain. We will have a beautiful  
 side curtain. We will have the beautiful music of Mr.  
 Darrow's sweet lullaby, waving aside anything that bears  
 on malice, and on a felonious homicide. Oh, that is  
 beautiful. The accompaniment to this case has been beauti-  
 ful. It has been soothing, and it has been pleasant until  
 we talk of Breiner, and then the music of the voice trans-  
 fers itself to the basso of the funeral march, and they

healthy for the negro in the face of testimony that in the last sixteen years, the population of this town - - the colored population increased 75,000 black souls; very unhealthy in the face of the testimony in the state in which they choose to live, namely, Michigan, where we happen to live, that in its entire history there have been four lynchings, the last one lynched being a colored man, 37 years ago - - the last one being a white man, 37 years ago. Now, his brother Henry Sweet came back from the academy at Commencement time last year, lived at his mother-in-law's house, with he and his wife. I am speaking now of Dr. Ossian Sweet, and they discussed together, like Plato sitting at the feet of Socrates, everything that Dr. Sweet had ever read in the "Nation", the "Crisis", "The Defender", and every colored newspaper or propaganda sheet that he could lay his hands on. And he saw Henry reading "Thirty Years of Lynchings in the United States" x in his spare moments, Henry Sweet, who is an athlete, a sharpshooter, who is on the sharpshooting team, or the rifle team at Wilberforce Academy, by the testimony of one of his schoolmates that came here. Now, Dr. Sweet's frame of mind is Henry Sweet's frame of mind. Now, they brought in that testimony on the theory that it is similar to communicated threats. Now, there is the legitimate defense proposition of the defense in the case. If I am fearsome or if I am an ordinary man, and I am informed on good authority, Mr. Robert Toms has made threats against

same is true about what happened on Spokane. He was told what happened. He was told what happened on American. He was told about what happened on Stoopel, and he heard it from the lips of one who was prejudiced. He saw the situation through colored complexion. Now, that is Ossian Sweet. And he, in his testimony, and these gentlemen, in their argument, are going to ask you to transplant from the mind of Ossian Sweet those fears, engendered by what he has seen, heard, read, or thought that he had seen, heard, or read into the mind of Henry Sweet, to give him justification for a brutal killing that the facts do not justify. Now, am I right, or am I wrong, if you strip race prejudice and intolerance out of this case, and arrive at your verdict based solely on the facts?

Now, we are going to leave this case in your hands. We are going to ask you not to judge us, not to be harsh with Henry Sweet, or the occupants of that house, not intolerant of a situation for which we are in no way responsible; not intolerant of the fact that we are not all white, or supposedly white, not intolerant of the situation that makes some of our brothers black, but we are asking you to take this situation, gentlemen, as you find it. Upon moving into Garland Avenue, Dr. Sweet and his associates found themselves in a place where they had a right to live. I do not deny them that. They found circumstances there that we claim amount to no justification for a shooting. They found the stage set, and Dreiner

found the stage set for what happened and, gentlemen, it is with what happened that we are concerned. It is not whether you have any prejudice. It is not whether you are intolerant. It is not whether you are uncharitable, unsympathetic or sentimental. It is not whether Dr. Sweet and his associates had a right to move into a home of their own; it is what happened there on the night of September 9th. Was there justification for a shooting? Either in what happened, or in connection with what happened because of the frame of mind of Henry Sweet. Now, let me impress on you, although the State claims that every occupant of that house has the blood of Leon Breiner on his head, we are only trying now before you the case of Henry Sweet. We are trying it on the simple issue of whether his act was wanton, wilful, premeditated and deliberate, or whether there was justification by what happened there that night on the corner of Charlevoix and Garland for what we claim to be a very brutal, cruel, and wilful fatal killing, shooting. Now, I am carrying the brief of Leon Breiner, and I am putting the case of Leon Breiner right on your doorstep. We haven't dodged it. You can't dodge it, and alongside the dead body of Leon Breiner I am placing the fate of Henry Sweet. Now, you can judge him, giving both their due and remember that the power and duty of the law is the protection of human life.

THE COURT: Court will be adjourned until 2:15.

(Court was then adjourned).

Monday, May 10th, 1936.

2:15 P. M.

ARGUMENT OF MR. THOMAS F. CHAWKE.

MR. CHAWKE: If it please the court, and gentlemen of the jury, it is with a feeling of profound gratitude that I arise to present this man's defense to you, for I appreciate the high honor which he has done me in selecting me to assist in a defense in the charge of crime which is made, not only against him, but against ten others of his race, and the lawyers to whom the responsibility comes to defend an innocent man, charged with murder, a feeling ordinarily moves him to a sense of appreciation that fires his soul, with a desire to see that the rights of that innocent man will be protected insofar as he is able so to protect them, and in this case, if in this argument I shall depart somewhat from the testimony, not intentionally, but because of the zeal that I possess, I trust that you will bear with me and attribute it to my zeal in behalf of this man and his fellows rather than in any intentional desire to lead you astray. I say, I count it a high honor, because I believe that any member of my profession standing here today, where I stand, would account it a high honor to protect the rights, not only of one man, but of ten others besides him, because in this case there is not only involved the liberty of Henry Sweet, but there is involved indirectly the liberty of ten others besides, and when I contemplate what this is all about, I wonder

why it was that they selected me. Never before were I so conscious of my limitations as I am now, when I consider that a citizen of these United states, within the constitutional protection of his own home, is attacked and in defense of himself, his wife and his friends, he is taken to court and is compelled to spend not only days, but weeks, in defense of that which it was not only his right, but his duty to assert. I feel my own unworthiness and wish that someone else other than I had this responsibility now. Oh, that the voice of Wendell Phillips had not been stilled in death, that he were here with all of his eloquence, with all of his powers of reasoning, to direct your steps along that path<sup>way</sup> which will lead to a righteous verdict, when tolerance will triumph over intolerance, charity over hate. Did it ever occur to you that in your time, that the responsibility which is yours, would ever be assumed by any one of you? Pursuing the peaceful avocations that were yours, it possibly never occurred to any one of you that the day would ever dawn that it would be your right and your duty to determine whether one of your fellow men should go to jail for the rest of his life, or leave the court-room a free man under an indictment for murder. I say, that this is a great case. I say that this case<sup>is</sup> marks an epoch in the history of this city. To those of you who have been lifelong residents of this town, as I have, the memory of your yesterdays must present a picture to you of a happy and a contented citizenry, a citizenry that respected the right of the others in the town, without any

regard for color or creed or nationality. But I say, we have a picture presented by this record, of an attempt to deny to a man that which was his constitutional right to live where he wished to live, unhampered and unattacked by anyone, and what crime has been committed here by Dr. Sweet and his co-defendants? That they moved into a neighborhood where they had a legal right to move, no one disputes. That they moved into a house which they had a right to live in, no one denies, but because some persons in the neighborhood did not want them, they were compelled to resist an attack upon them, even at the expense of discharging fire-arms.

Immediately there must be presented to you the query, "Were these people in the wrong?" Surely, when they moved into this house on September 8th, they violated no law. Surely when they brought arms into that house, they violated no law because the Constitution and the statutes of the state gives a person the right to bear arms in defense of himself and his habitation, particularly, within his own home. So, when Dr. Sweet for self-protection armed himself within the sacred confines of his own home, he was within the purview of the law. On September 8th, when he moved in, under police protection, he created himself no disturbance, nor did any of the persons who assisted him in entering the house. His possession of the house during the 8th day of September was peaceful. He created no disturbance, and in no sense did anything that should make him self-offensive to his neighbors ex-

cept he was black, and they were white. Prejudice and sympathy are now invoked to send this man and co-defendants to jail for life. I say, prejudice, because you twelve men, and every one in this court-room, knows, that if the situation were reversed, and eleven white men were in this house, and a crowd of colored people threatened the white people in the house, that there would not be any such trial as this. Why sinde words in connection with this situation? Why deny that the greatest asset that the State has in this case is prejudice and the greatest handicap that we have on this side of the table is prejudice, but I thought that this case was fraught with nothing but disastrous things, and apart from the testimony, when I viewed here the sinister figure of prejudice, sitting before you twelve men in a <sup>land</sup> dispensity of justice, but as I sat here this morning, and I saw an attempt made to abuse that prejudice, in order to becloud the issue here, so that you twelve men would not decide this case upon the testimony in the case, and the charge of the court, I was amazed to think that a public prosecutor at this eventual hour should go to the burial place of Leon Breiner and drag his helpless body before you in order that you might send Henry Sweet to jail because Leon Breiner is dead, and Henry Sweet is black instead of white. You, sir, say that you love your neighbor as yourself when you were asked whether or not you had any ill-will towards the colored man. I assume that when you said you love your neighbor as yourself, you believed



ing anything. We are demanding for him that which we would demand for you if you were here, and he and his ten companions were where you sit now. Could we ask at your hands, without being recreant to the duty we have, anything less? Could we demand in the name of justice of you anything more? That right may prevail over might -- we ask in this case that you courageously say that this boy and his brothers were justified in doing what they did that night. When the court instructs you, he will tell you, gentlemen of the jury, what constitutes murder in the first degree, second degree, and manslaughter. The time is too valuable to spend much time in a discussion of the essential elements of these offenses. I feel that it is my duty to leave that matter to the court, and that the court will protect the rights of this defendant in the careful and thorough exposition of the law which I know he will give to you in his instruction when he comes to the point where it becomes his duty to charge you as to the law in the case.

I know you twelve men have no motive in sitting here, as you do. I know that you have no purpose here, except to see that justice is done, between the defendant and the state, but I have an abiding sense of appreciation that you abhor injustice, and that you love justice. I feel that you are desirous of setting your faces determinedly against falsity, and that you, your countenances become brightened when you hear the truth, and right now, we claim in this case that the truth does not lie on the

side of the State, but that the truth lies on our side. We claim that there was a crowd in the neighborhood of this case on the 8th of September and on the 9th; that this crowd constituted a mob, that it attacked this man within his own home, and in defense of himself, he had a right to resist the assault made upon him. We believe that it is not lawful for any number of citizens to band themselves together under the high sounding title of the neighborhood improvement association which has for its purpose the invasion of the constitutional rights of those of the citizenship who do not belong to the association, or not in sympathy with them. In this case there is not any question about it, that the purpose of the formation of the Waterworks Improvement Association, was to drive these people out of that neighborhood. Every one of these witnesses who took the stand admitted that he did not want a colored man in his neighborhood; that he joined ostensibly the Waterworks Improvement Association in order to assist in the enforcement of the law, but when his real purpose was revealed after cross examination, it was apparent to you that they all joined this association for the purpose of keeping the negro out.

This may have been a neighborhood association, but I have no sympathy with men and women who band themselves in a neighborhood in the formation of an association in assisting in keeping out others who may have a legal right to live in their neighborhood. I do not believe that

a neighborhood association which wants one thing for itself, and doesn't want the same thing for others is an association that contributes one whit to the welfare of the town. These people had only in mind the keeping out of Dr. Sweet ~~and~~ of this particular neighborhood, but did not give a continental as to whether or not Dr. Sweet and his brothers were forced by their actions into another neighborhood or not. They were not the generous type of public-spirited citizens that you will find in an organization that was created for the improvement of the whole city. They were neighborly insofar as circumscribing the limits within which a colored man might buy a home and live, but they were the antithesis of all that is contained in the definition of the word "neighbor", when by their ill-will they would drive this man out of his own home, not by law, but by bloodshed and violence. Seven hundred people gathered together in a public school to preach the doctrine of intolerance. You patriotic citizens who have contributed generously of your funds to build up the splendid educational system that is ours, how do you like the spectacle of seeing the premises of a public school employed as a place where an agitator from another part of the town could agitate violence against a citizen who had a right to live within the territorial limits of Detroit? Not one witness in this case, other than Mr. Andrews, has told you who were the officers of this association, and what was said at these various meetings that were

held. Mr. Andrews last week ago, Saturday morning, when on the witness stand, after being plied with one question after another, by Mr. Darrow, in his effort to find out what was behind this Waterworks Improvement Association, evaded question after question, until he said, "Well, who spoke at the meeting?" Andrews says "I don't know who spoke there." "Well, what did you ~~see~~ <sup>hear</sup>?" "I don't recall what he said, but he was too radical." "Well, why was he too radical?" "Oh, I don't agree with violence." Didn't Andrews disclose the purpose of this organization? Didn't Andrews, by that, give the lie to the State's case here when the State claims that there was no crowd in front of that house that night, and that the people there were not bent on doing Dr. Sweet and his relatives and his friends violence? A speaker from the Tireman Avenue Improvement Association came to that meeting, and upon the school premises advocated violence. Gentlemen of the jury, I never thought that the property of my city would ever be employed as a meeting place where violence with impunity could be advocated against any of my fellow citizens, and particularly with two plain-clothes officers of the law present. This speaker said that he was opposed to the colored man, told them how they had kept Dr. Turner from occupying his house, and offered them the support of the Tireman Avenue Improvement Association in keeping Dr. Sweet out of his home. Tell me, sirs, how could the Tireman Avenue Improvement Association give any assistance to the Waterworks Improvement Association in keeping colored

people out of their house except by assisting them in the contribution of force and violence? It was the law that Dr. Sweet had a legal right to live in this house. There is not any court in the land that could oust Dr. Sweet from that house. No power under Heaven's dome could prevent him from enjoying his property, and yet this gentleman from the Tireman Avenue Improvement Association offered his support to these narrow-minded bigots on Garland Avenue, and the surrounding district in keeping Dr. Sweet out of his property. Now, I tell you that the words of Mr. Andrews are full of significance when you contemplate that Inspector Schuknecht said that on September 9th, the night of the shooting, more automobiles came into this corner than <sup>ever</sup> every came there on any night before. You remember how they closed off traffic on Garland Avenue, south of Charlevoix Avenue, at Waterloo, and they closed traffic at Goethe north of Charlevoix. What did Inspector Schuknecht mean when he said there were more automobiles come into that corner that night than ever came there before? What did he mean when he said that the occupants of these automobiles were for the most part and in their entirety strangers to him, and apparently to the district? What did he mean when he said that the newspapers had carried an account that Dr. Sweet had moved in to that house? What did the Mayor of Detroit mean when he urged all good citizens to stop rioting? Did he not mean that rioting of the character that was carried on that night by the Waterworks Improvement Association, augmented by the

strangers from elsewhere who were there to give them their support, that it was rioting of that kind - -

MR. DARRON: Race rioting.

MR. CHANKE: Race rioting, that the Mayor meant. Why, here is the leading morning daily of Michigan, the Detroit Free Press, and in the edition of Sunday, July 13th, they carried the warning of his Honor, the Mayor, to all good citizens to be tolerant and to stop race rioting. Why, this very newspaper, at the conclusion of the article states that the Waterworks Improvement Association are going to hold a meeting on Tuesday night, and that its purpose was to maintain the high standard of the residential district between Jefferson and Mack. For that purpose apparently a meeting has been called by the Waterworks Improvement Association for Tuesday night in the Howe School auditorium. Men and women of the district which includes Cadillac, Huribut, Bewick, Garland, St. Clair and Harding Avenues are asked to attend in self-defense. The leading paper - - morning paper of the community links up the Waterworks Improvement Association indirectly at least, with the condition existing in the city as expressed by the Mayor. In one breath, the chief executive officer of the city is advising all good citizens to be kindly, charitable and considerate towards their neighbors, and in another breath the Waterworks Improvement Association is taking a contrary stand with his Honor, the Mayor, and advocating violence. Upon which side will you stand in this controversy? Are you willing to stand

by his Honor, the Mayor, when he deploras race hatred, or are you going to take sides with the intolerant viewpoint of the Waterworks Improvement Association? Which course do you prefer? Do you prefer race hatred to charity, justice to injustice, tolerance to intolerance? You must answer that question here whether or not a person can live in this community without being destroyed himself, or his property ruined. I speak the viewpoint, not of an African, but of a Nordic. I am not black, but I am white, but my inherent sense of justice rebels <sup>against</sup> a situation that would deny to my fellow citizens that which the law of the land has conferred upon them. That there was a crowd in front of this house, no one will deny. These people within the sacred precincts of their own home faced a situation as desperate as ever faced any person who was compelled to defend himself under similar circumstances. True it was, that they were in the minority. Eleven of them did not compare in numbers with the five hundred or more people that were outside on the street. Eleven human beings ambushed in their own home, and one of them a woman, and a mother at that, they faced a situation as perilous as could be faced by any man within, a small group of peaceful citizens, without five hundred or more persons lashed into a fury by a radical attack upon a whole race, who had not offended except in the circumstance that the members of that race had been black instead of white. They faced that night the unbridled tyranny of a mob, the greatest menace that ever threatened the liberty

of a free minority anywhere. That minority in that house had rights which every citizen, no matter how great or how humble had to respect. The Water Works Improvement Association might enroll its membership up into the hundreds, might create honorary memberships for the type of violence over on the West side of the City, and augment its regular membership to members exceeding thousands, but no matter whether that Water Works Improvement Association consisted of 500 members or a million, as long as one man was in that house, and he had a right to be there, the million others who might not agree that he had any, that he had a right to live there, had a duty under the law to respect his rights, and leave him there unmolested.

Now <sup>have</sup> we come to a point in the history of this city when a majority can ride rough-shod and ruthlessly over the rights of a minority? Is this the kind of government you prefer, or do you prefer a government that functions with a full and complete recognition of the rights of every person who lives thereunder, a Government who <sup>will</sup> stay the hand uplifted for the injury of another, or do you prefer that kind of Government which is denounced as mob-rule? Do you prefer law and order to blood shed and violence? Which? What will your answer be? Are you going to deny today to them the right of self-defense? Are you going to say ~~that~~ under this government of ours a white man has a right to defend himself when attacked, but a colored man must offer up his life as a victim of



his neighbor's hatred? Was there a crowd in front of this house? Let's see. You will recall, and I will now try to review the testimony in this case in detail, and to present it as it fell from the lips of the various witnesses in this case, whose testimony I deem most important. You will, of course, appreciate, that when 50 witnesses, or persons take the stand in a lawsuit, it is impossible for counsel to remember all that was said and done. But you will recall the police of the City, in anticipation of an attack upon these colored people, massed themselves in the 5th precinct and sent policemen and lieutenants and inspectors to this immediate neighborhood. When this man moved into this house on September 8th, he moved in under police protection; the police of the city being fearful that he would be molested by the white people in that neighborhood went to the extent of protecting him while his few belongings were being put into the house, while he remained there; three police officers and the sergeant came around some time about noon on the 8th until about three or four o'clock in the afternoon; that the three police men and the sergeant's places were taken up by eight policemen and another sergeant.

Why was the force increased from three ~~and~~ <sup>out</sup> four o'clock in the afternoon of the uniformed men up until eight at four o'clock or -- up to eight and after? It must be apparent to you twelve men that this was a situation which Inspector Sobuknecht realized was precarious one.

It must be apparent to all of you that the police of the City expected the whites to attack these colored men in their own home, and they expected that the attack would most likely be made after four o'clock in the afternoon and up until the hour of midnight, so instead of having four policemen here in front of this house, at three or four o'clock in the afternoon, we find the force double, and what do we find at midnight or at four o'clock? We find a crowd in front of this house, larger in numbers than ever assembled there before, and these are the words of Inspector Schuknecht himself, "There was an unusual crowd in that neighborhood on September 8th". The situation was so desperate that the commanding officer in charge of the precinct, inspector Schuknecht, deemed it advisable to come back here after he had eaten his dinner at night and to remain there the whole evening in company with Lieutenant Schellenberger. Not only was the situation so precarious, but Inspector McPherson deemed it compatible with the threatening character of the situation to leave his own home and come there and stay in that neighborhood from eight o'clock until 11:30 at night; two inspectors of police -- two lieutenants -- persons of Lieutenant Schellenberger and Lieutenant Williams -- at least, a police officer, making a police detail of at least 12 men, stood in front of that house on the night of September 8th. Why were they there, if the police of the City anticipated an attack upon these eleven men? Can you honestly say that

these eleven men, who are the intended victims of the attack, had no right to expect that an attempt -- an attack would be made upon them? The law enforcing agency of the community, the police department, the chief executive officer of the City, the Mayor, all realized that the situation here in the City at that time was a precarious one, and when we find a crowd here in front of this house on the evening, we do not find the police department doing anything except directing traffic and asking the people to move on. Well, if they all moved on then there must have been a tremendous throng there. If there were more people in that neighborhood that night at any one time than ever came there before, and if they were not permitted to stand there and they were dispersed and the situation with reference to a throng extended up until the small hours of the morning, that throng must have been a large one of such proportions as to spell death to these men within the house.

Two girls, two respectable colored women, were in this house and they told you that they feared for their lives, and didn't dare go out and while they were there an attack was made upon the house with stones. I wonder what the police of the city were doing when they permitted a throng to gather in this neighborhood, when they permitted a larger crowd than was ever there before to even stand in groups in front of the Sweet house? What were they thinking of when they sent twelve uniformed (there? Why, the very presence of officers in uniform, twelve in number, were enough to excite a crowd, even though no one had any preju-

dice against the whites, or anyone else in that neighborhood. When they told you that there was not any crowd here, you can ask yourself, what is your own experience? If they put two officers in front my house tonight, within five minutes, you will have 500 people in front of the house to find out what it is all about! And yet at midnight the officers did not leave the scene and go home, but they remained on duty all night long. If there was <sup>not</sup> anything precarious in the situation up until twelve o'clock at night, why did the officers remain there after midnight? Inspector Schuknecht so fearful of an attack upon these people by the whites that at nine o'clock in the morning, he is in the vicinity of this house, on the morning of the 9th, to see what the situation was. Lieutenant Schellenberger is back there again on the 9th. Sergeant Williams reports for duty in the morning. And the situation is so precarious that after three o'clock in the afternoon when his day's work was done, he suggested to the inspector that he come back at eight o'clock that night. The house was under police protection not only in the hours of the night, but while everybody was at work and only women home. This house was under police guard and at four o'clock in the afternoon there was a change in detail of the police at that house and on the evening of the 9th we find these officers there and again in greater numbers than they were before, and what happened immediately before the shooting? You will recall that

there was an officer in an automobile stationed on Garland Avenue, South of Charlevoix, and he was stationed there so as to see to it that no one would throw stones from passing automobiles. I wonder where they got the idea that anybody in an automobile would have stones to throw at the Sweet house? It occurs to me that that officer was stationed there because the police experience must have been such with reference to what happened elsewhere, that it became expedient to have an officer for that purpose there. Now, while there isn't any crowd there as claimed by the State, but denied by the defendant, and while there is shown police at least to the amount of 12 or 14, this officer that is stationed here, just about 10 minutes before the shooting or five minutes, is dispatched back to the station to bring two more men. Now, why were two more men brought there if there wasn't anything there that would warrant the presence of two men there? When they came back, instead of Inspector Schuknecht, or Lieutenant Schellenberger, whichever it was, being satisfied with the numbers of police that were there, this man in the automobile was sent back to the station to bring six more officers that were held there in reserve to await a riot call. And while that was being done, a sergeant of police sent two men to the roof of the apartment house at the corner of Garland and Charlevoix to see if there would be someone up on the roof who might cause trouble, while Schuknecht, or

Schellenberger, whoever it was, thought the situation was such on the sidewalk and upon the streets, that eight men should be hurried to the scene immediately, a sergeant of police is taking two men off the street and sending them to a place where there was no one even threatening trouble in <sup>with</sup> that he might <sup>and one</sup> ~~be~~ who might. Do you believe that? Is there one of you in this jury box who believes that the Sergeant of Police sent those two men to the roof of that apartment house for that purpose? I will give him credit by assuming that he meant to protect these people for the sake of the argument. What purpose could there be, gentlemen of the jury, in sending two men that were apparently needed on the streets, to the roof of this apartment house, except for the purpose of putting them at a point of vantage so that they could look down on the crowd below and single out the disturbers. Tell me, is there any other purpose for doing that? Especially when these two men are taken off the streets, when the men on the streets are not sufficient in numbers to take care of the situation. And what do they do? When they reached the roof they walked over to the Charlevoix side, almost as soon as they reached the roof, of course, they went to the Charlevoix Avenue side to look down on the street below in order that they might see who were the principal disturbers in the crowd. Gentlemen, for fourteen years I have sat in this court room and heard testimony fall from the lips of the rich and the poor, from the white and the black, from the influential and the humble, but never

before did I ever see so much falsity in a case as appears in this case. I dislike to accuse any man of deliberately stating that which he knows to be untrue, particularly when what he says might mean the loss of liberty upon the part of another man for the rest of his natural life, but, I cannot stand idly by and let go unrebuked the testimony of the officers and the white witnesses for the State. Gentlemen of the Jury, when they told you that they did not know who the speakers were at the Water Works Improvement Association meetings, when they told you they did not know how many people were over on the school grounds, when some of them said there were only 50 there, when in reality there were 500, and 700, when they told you that they did not know how they came to join the association, and they did not see any crowd there; they did not see any stones thrown, they did not see any violence done this house, doesn't it shock your sense of decency? Doesn't it send a chill down your spinal column when you contemplate that the victims of their falsity are these men today, and if such testimony as that goes unrebuked, it puts a stamp of approval upon perjury which may mean the destruction of you some day, or those that are near and dear to you. Do you believe ~~that~~ the officers of the law, when they stated they stood there and saw no stones thrown against this house and heard no windows broken? Why, the idea of Schuknecht and Schellenberger coming into a court of Justice and stating that they stood on this corner across Charlevoix Avenue, which is a narrow

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street at that point, and did not see the windows in this house broken, when it is admitted they were broken, and they were broken by people in the neighborhood, when the officers standing on this corner told you that there weren't any windows broken or heard no stones strike the roof of this house, when stones did strike the roof of this house, when these windows were broken, do you believe that these officers are telling the truth, or, are deliberately lying? When Clayton Williams says, the sergeant of police, that he stood on this corner, and didn't see three men who stood on the same street alongside of him, when he says that there wasn't any crowd there, and when he says that there weren't any more people on the 8th than there were on the 8th, when Schuknecht himself says that there were more people on the 8th than there were on the 8th, do you believe Williams when he tells you that no stones struck the roof of this house while he was there? There were all the 16 officers, that they didn't see this man's home attacked? They are sworn officers of the law. They were there at your command to see that the streets of Detroit would not run red with the blood of the innocent victims of race hatred. And they stood here <sup>publicly</sup> and saw this man's house attacked with out raising a hand to prevent it, why, gentlemen of the jury, when Inspector Schuknecht, after the shots rang out, ran up on that porch, stones hit the porch, where were his officers then? Why, they didn't even see. Stones almost hit the head of their commanding officer. This is

a striking illustration of the incompetency and sheer neglect. If these officers had done their duty that night Leon Breiner would not now be dead. If they had dispersed these crowds that were there, if they had prevented stones from being thrown against this house, you would not be here today and I would not be here protecting against the diabolical attempt to destroy these men (an effort such as is being made here in a plea to prejudice and sympathy that these men might be cast out of the neighborhood so they cannot occupy this house because they may be within a penitentiary cell. Oh, this is a fine neighborhood. This neighborhood on the extreme easterly side of the City, and I feel chagrined when I contemplate, because all my life has been spent in that section of the city to the right of Woodward Avenue. When I contemplate that they permitted a speaker to urge violence, when they apparently invited others from another section of the city to participate in the violence, and when I see them now, in a devilish attempt to prevent this man from living in this house by sending him to jail for the rest of his natural life, I wonder under what kind of government we dwell, and what constitute the citizenship of this town. Just for that behold the spectacle, this benighted colored man denied his constitutional right to live where he pleases, by an attack made upon him by a riotous assembly, and then not having succeeded in that, a desperate, devilish attempt made in a temple of Justice to keep him out by sending him to the penitentiary for the

rest of his days. My boys look across the table into the faces of these strong-headed, generous, highminded men. Today you seek here not charity, but justice. They represent the best of our citizenship, and with an abiding sense of fairness -- a sense of appreciation, in their fairness I believe that they will resent this attack upon your liberty by placing the stamp of official disapproval upon a riotous assembly that would deny you that right which the constitution of the United States, and the fundamental law of Michigan says is yours. What purpose did this crowd have here that night? Tell me, sir, what did they mean by congregating there? Surely, the curiosity of the neighborhood must have been satisfied the night before when there was such a crowd there as compelled Inspector Schuknecht to say that there was a larger crowd than was ever assembled there before. The neighbors all knew that the Sweet's had moved in. Surely, merely to satisfy their curiosity they did not go to that corner that night. Consider the efforts to dodge the purpose of their being there. Think of the man who lived next door to the apartment house, whose wife a few minutes of, or at about half past seven, left her home on a kindly mission of charity to visit the bedside of a sick lodge member, so solicitous for the welfare of his wife, walked to the corner and remained there on the corner almost an hour to watch the street cars as they went by in order that he might be able to see his wife therein.

Gentlemen, he must have been a model husband, if that is the purpose, and the only purpose that called him to the corner, and the son says that he is on the corner because he is looking for his dad, and the women were over here on Garland Avenue, and they are walking to the corner because one of the ladies is looking for her children. Oh, but away over here on Hurlbut Avenue, Inspector Schuknecht's brother-in-law is looking for a 13 or 14 year old boy, on a September night at 8:00 o'clock. So because his boy isn't on the front porch at that hour, he goes up here to the corner and while he is there he never asked his brother-in-law, the Inspector of Police, if he saw his nephew on the corner. He says there wasn't anybody to amount to anything on the school premises. He says that he was so interested in the whereabouts of his boy that he went back to his home and remained there only a few minutes and then came back to this corner where Inspectors Schuknecht and Schellenberger were. He is there for 10 minutes watching the Sweet home. When the question was put to him by counsel, "Did you ask anybody if they saw your boy?" "No sir". Now, if he came back to the Sweet home, or to the school yard the second time, and was really solicitous for the whereabouts of this boy, don't you think he would have asked the boy's uncle, Inspector Schuknecht, if he saw him? Oh, Schellenberger was there and he never asked Lieutenant Schellenberger, or any of the other police officers, and Schuknecht's brother-in-law is a special police officer himself. I

wonder how he functions for the telephone company when he is trying to find something that has been stolen from the telephone company, if he is so energetic in finding what the company has lost as he was the night he was looking for his boy? I am afraid that the whole Randolph exchange is likely to be stolen under his own eyes and never recovered. Another woman north of Garland Avenue, or Charlevoix, was looking for her girl. Is it possible that the neighbors sensed the situation? Were all trying to get their children off the streets for fear there might be -- they might be harmed in the violent attack which they knew was going to be made on this house? It is a significant thing that they were there looking for their children, and were not attracted by what they thought was likely to happen.

MR. TOMS: Do you mean Mrs. Davis?

MR. CHAFKE: Three or four houses up across, went across.

MR. TOMS: Her daughter was 19.

MR. CHAFKE: Counsel calls attention to the fact that the woman was looking for her 19 year old daughter. I wonder what time she strayed from home. This was 8:20, and I know from personal experience that it is not an unusual thing to see 19 year old girls on the streets of Detroit at 8:20. I have observed many of them myself with a good deal of pleasure.

MR. TOMS: You got out of that pretty well.

MR. CHAFKE: Gentlemen, if this were not tragic, it would be a joke, would it not? If witnesses were not testifying in a matter so serious as this, you would be inclined to say they were jesting when they gave the testimony and did not mean what they said. Would you not? Was there an attack made on this house? Schuknecht, the Inspector of Police, said the attack was being made when he went into this house. Witnesses for the state testified that they heard the stones hit the side of the house, as recall the testimony of the witness Andrews, as he walked by this house, just before the shots rang out. That these people were within their rights, is conclusively demonstrated, it occurs to me, in the actions of the police at the time immediately after the shooting. Visualize, if you can, armed men, firing out into a street without justification and 12 to 20 police officers armed in front were returning the fire. What were they there for? If these men were wrong, in discharging their guns, why didn't Schuknecht return the fire? Where was Schellenberger with his gun? Where was Williams' automatic? They stood there and saw all these shots come from that house, and they all either regulated traffic, ran to call reserves, or stood there like a lot of wooden soldiers on the corner and permitted their Inspector, their commanding officer, to rush into this house, and he went there without his gun in his hand. Can you imagine an Inspector of Police, with at least 20 to 25

1:18

years police experience behind him, facing the gunfire of gunmen, without his own gun in his hand, if he knew that they were justified in what they did?

THE COURT: At this time, Mr. Chawke, we will have a few minutes recess.

(Recess.)

... I showed you... they were... and they did... no I do... and it... you could... to return... you mentioned... these... of the... do you... across... were... the... he... would he... If he... from... had... then...

I think, gentlemen of the jury, just before recess, I was calling your attention to a circumstance which I believe conclusively demonstrates the right which these defendants had to fire, at the time the shots rang out. I was trying to picture to you how the officers of the law, at least from 12 to 16 in number, stood on the corner there while the shots were ringing out, and did not do a thing to prevent the shots from ringing out. I showed you how they stood there, and they were all armed, and they did nothing to return the fire. You know as well as I do that if police officers are in a neighborhood, and individuals are shooting promiscuously at a crowd, you would expect, would you not, those police officers to return the fire of those who were shooting? But, when you contemplate Inspector Schuknecht apparently concluded that those people were within their rights, when he mounted the steps of the Sweet home, with a gun in his pocket; do you believe Inspector Schuknecht would have rushed across into that house, if he thought these individuals were firing without justification? When he went into the house, he wanted to know what it was all about, as he said, according to his testimony in the case. He said he did not see any stones thrown against the house. He said he saw no attack made upon this man's property. If he stood on the corner protecting this man's property from invasion, and was doing his duty, of course he must have seen that which others saw. There is not any question about it, for he told you himself, in effect, of the



attack upon the house when he mounted the steps, and at the time he was going up the steps, when he heard the stones hit the side of the porch.

Now, gentlemen of the jury, why was it that the officer standing on the corner thought that the primary purpose of him being there after the shots rang out was to regulate traffic? Was it not because of the crowd that was there? If he realized that his inspector of police was rushing into this house, where there were collected a number of law violators, don't you think that he would have gone in with his superior officer, into the house? What was the duty of the officers upon this occasion, if these men fired without justification? There is not any question about it, but their police sense would have suggested that they all rush into this house, and place these eleven individuals under arrest, -- place them under arrest and protect them from the infuriated crowd without. If they shot without justification, at ten people or twelve people or fifteen people, or five hundred people, and they knew that they were colored, it was their duty to have gone into that house if they fired without justification, and to have placed those eleven men, or ten men under arrest, and protect them from some violence, in the event of the whites attempting to take the prisoners from their hands and invoke the law themselves.

Why didn't they do it? The reason they did not run into this house and place these men immediately

under arrest, was because they knew that they fired in self-defense.

That there was a crowd there, the officers themselves, by their denial of a crowd, proved conclusively the existence of that which they attempt to recudiate, because, if there were no crowd there, there would be no necessity of having sixteen men guarding that house out there that night.

Now, after the attack was made upon this house, and the shots rang out, these men were placed under arrest, and taken to the station. I want to call your attention to the testimony, in passing, of Officer Gill. You remember the gentleman from Tennessee, who was sent up there by Inspector Schuknecht to protect a colored man from attack by a white. You will recall how he said that he went just before the shooting into this alley, and that after the shots rang out, he ran into this yard. Now, you will recall that the garage is to the right of the premises as you enter them. You will recall that there is a space of 30 feet between the northerly wall of the garage and the nouthery lot line of the house next adjoining or the premises next adjoining. He says that when he heard the shots ring out, he ran into the yard and stood, and he first marked where he stood; so that there cannot be any dispute as to where he stood. He stood alongside of the northerly wall of the garage, and at a point south of the easterly wall thereof.

MR. TOMS: What? Is that the easterly wall?

Did you mis-state, Mr. Chawke?

MR. CHAWKE: Probably I did. He stood at a point alongside the northerly wall of the garage. He was west of the easterly wall of the garage. In other words, gentlemen of the jury, he stood behind the front of the garage, and alongside of the northerly wall; and yet this officer tells you that he fired, and a bullet hit a portion of the premises above the rear door. Gentlemen of the jury, he says that from the point where he stood, it was his bullet that put the hole above this window. You will recall that this portion of the premises is ten feet towards the south, from the northerly wall of the building, and that this officer of the law stood alongside the garage when he fired. I submit that Officer Gill's bullet did not hit where he claims it hit, because it was a physical impossibility for it to do so, and I propose now to demonstrate that. You will recall that there is a space of thirty feet between the garage, -- and now, let us assume that this is the northerly wall of the garage, and this is the lot line of the house next adjoining and to the north; so that there is thirty feet of space in which he stood. He says that he stood back of the easterly wall of the garage, which would be that portion of the garage, if it has an entrance, which would permit an automobile to be driven out into the front, if there were a side drive.

MR. TOMS: This lot is 30 feet wide. It is not 30 feet from the wall of the garage to the next lot line.

MR. CHATKE: I am glad you corrected me. It is, marked, I assume.

MR. TOMS: That is the whole lot, 30 feet.

MR. CHATKE: Can we agree?

MR. TOMS: 15.8 feet.

MR. CHATKE: From here (indicating).

MR. TOMS: It is the same distance from here (indicating on diagram).

MR. CHATKE: Counsel calls my attention to the fact that there are 15.8 feet of a space between the garage and the lot line of the property immediately to the north.

MR. TOMS: No, the wall of the house.

MR. CHATKE: The wall of the house immediately to the north?

MR. TOMS: That is right.

MR. CHATKE: So, somewhere in that space, Officer Gill stood. Now, he says that he stood back of the easterly wall of the garage, and alongside of the northerly wall. If this is the garage, this is where he stood. Now, the point that he hit, claims to have hit, is a point about in the second floor, a distance of ten feet south of the place where he stood, if extended. In other words, let us assume that this is the northerly wall of the garage. Well, there is more than ten feet apparently from the side of this jury box to the wall. Now, if Officer Gill fired, he must have fired at a point somewhere relatively at where

I am pointing (indicating), to have hit where he claims the bullet struck.

But, what was Gill's testimony? Oh, Gill, like the other officers, had to put something into this case that wasn't true; he had to say that he fired that bullet, out on to Garland Avenue and it was his bullet that hit

Leon Breiner, in order to crowd himself out of this space and further over to a point where he could not have hit Breiner, as he thought, and we have him saying that he was right up against the northerly wall of the garage. (Reading):

"Q. How close?

A. My arm was touching the northerly wall of the garage."

Now, mind you, with a gun in his hand, his arm touched the northerly wall of the garage, and he said that he fired approximately in an easterly direction, and that he fired right straight ahead, alongside of the northerly wall of the garage, out into Garland Avenue, and it was a physical impossibility for him to have curved the bullet so that it would strike at a point ten feet somewhere over here (indicating). Now, I am going to read his testimony to you, so that you will see that I am not mis-stating his position. (Reading):

"Q. You have indicated here on this diagram where you stood. That is true, is it not?

A. No.

Q. How many feet from the northerly wall of the garage were you at the time you fired?

what witness "Mr. Tom: He testified he was against it.

Q. All right. The prosecuting attorney said that the north you were against the northerly wall of the garage.

only wall. Now were you or weren't you?

A. I was.

Q. Was your right arm against the northerly wall of

the garage?

A. It was.

Q. In other words, you stood up there against the

northerly wall of the garage, did you?

A. I did.

Q. Let us assume that this is the wall of the garage,

and you had your hands right against that wall

when you fired, did you?

A. I did.

Q. You are sure about that?

A. Absolutely.

Q. So that your coat sleeve touched the brick wall?

A. It did.

Q. You are positive about that?

A. I am.

Q. And you fired with your hand extended?

A. I did.

Q. And your coat sleeve touched the wall, you re-

member that, don't you?

A. Absolutely.

So, gentlemen of the jury, with his coat sleeve touching the wall of the garage, and in a position some-

what similar to this, he fired his revolver. And if he did, the bullet would have gone straight ahead, because the northerly wall of the garage is on a line with the northerly wall of the building, and he could not have curved the bullet so that it would have struck over here ten feet to the south of the point where he stood. Oh, but if he got out beyond the garage three or four feet, he admits that he was in a position that would have enabled him to fire out on Garland Avenue. Apparently, according to his testimony, he was the only officer in the back. But there is other testimony, and most credible testimony, that not only was Gill in that yard that night, but that other officers were as well. And so, Mr. Gill has to stretch a point in order that this man might go to jail for the rest of his days. But, it is getting so ridiculous, the claims of the State, that they attempt to establish that a bullet which is found on the first floor is the same bullet which went through the hole in the second story, and ricocheted off into the ceiling, and somewhere on the first floor, and is found there. The impression would be given to you by the testimony in the case that it was a bullet from the gun of Gill that did that. Why attempt the impossible, in an effort to take away the rights of an innocent man? Why go to the extreme in attempting that which never occurred, in order that ten or eleven innocent people might be deprived of their liberty?

It is a strange thing to me how Sergeant Neighbauer, with a witness for the State, after the shots rang out, is

enabled to go all of the way down to Hurlbut Avenue, put in a call for reserves, and then come all of the way back again, and this witness for the State walked up Garland Avenue, - - drove up Garland Avenue in his automobile a distance of 200 feet, and gets out of that automobile and walked down, before the other bullet and shots rang out. If that is true, and he seemed to be corroborated by this sergeant, during the interval that happened between the first volley and the second volley, I wonder what Inspector Schuknecht and Lieutenant Schellenberger were doing? Two witnesses in this case say that after the shots rang out, they drove down to the police box at Hurlbut Avenue, two blocks below, and the sergeant of police was enabled to put in a call. The man in the automobile who took him down was enabled to turn his machine around, and come all of the way back, before the second volley rang out. I wonder what the officers of the law were doing while that was going on.

Now I have attempted to demonstrate to you that there was a crowd in the vicinity of the Sweet home. I have attempted to prove that that crowd was large in numbers, by the testimony of the State's witnesses. I have attempted to demonstrate to you that the State officers did not lift a hand to help these people when they were in that house, that they did nothing to prevent an attack made upon that house by those without.

Now I wish to call your attention to the testimony offered by the defense in support of the claim that a



threatening mob was assembled outside this man's home and made an attack upon him, such an attack as warranted him and the rest of them in firing. You will recall that we put on the stand Mrs. Spaulding, a colored social service worker for the Urban League. She told you that her husband, who is an employee of the United States Government, and she were in an automobile, and they came to the corner of Bewick and Garland; and as they drove easterly on Charlevoix, from Bewick and Charlevoix, as they drove easterly on Charlevoix they noticed a crowd, Mrs. Spaulding says, in the schoolyard. She was to the right of her husband. She noticed the crowd in the vicinity of the grocery store, at the turn. It has been testified by some of the others that there is a grocery store next to the corner, and there is a grocery store on the corner; but whether it be a drug store or a grocery store, she testifies that there was a crowd over here. Her husband testifies to the crowd that he saw to his left, particularly near this gasoline station. Mrs. Spaulding testifies to something which is accountable for the crowd being present. She says that as she passed Hurlbut and Bewick, before she came to Garland, she noticed people going as if in crowds, as indicating that they were going to church or the theater, going north and south on Hurlbut and Bewick. She also saw them walking towards the north on Garland, and undoubtedly it was those people that later on made up, or helped to make up the large crowd that was present.

Now, you cannot say that Mr. and Mrs. Spaulding are not telling the truth here, unless you set aside their testimony, because they are colored. And if you do that, you are deciding this issue upon prejudice. But I was somewhat impressed by these two witnesses. They struck me as if they were telling the truth, sincere, apparently refined, and with a desire only to tell that which they saw. They took the witness stand in this case, to tell what they saw, and there was not any attempt of Mr. and Mrs. Spaulding to reconcile their testimony. Mr. Spaulding does not say that he saw what his wife saw. If they were going to reconcile their testimony and tell something that was untrue, they could both say that they saw the crowds, could they not, on both sides of the street? But, when my government trusts a man over the period that my government has trusted this colored letter carrier, and if he comes to court and apparently appears sincere and straightforward in the giving of his testimony, I know of no reason why I should not believe his story, and I can see no reason why you should not do the same.

These two girls, friends of Mrs. Sweet, it is true, one of them working as an interior decorator, and the other employed for six years by the ladies over at the Women's Exchange, she is a trusted one of them, an employee of some of the finest women in the city of Detroit, and they for six years have trusted her; I guess they must have found her truthful, or she could not have worked there during that period of time; and she tells

you that she was there with this other young lady, and they came there to assist Mrs. Sweet in the selection of furniture and drapes, and while they were there they saw this crowd, and they were afraid to go out on the night of the 8th, and one of them tells you that after she boarded the street car, she heard, while she was in the street car, she heard some woman telling the operator of the car, the motorman, that some colored people had moved into this house the day before, and that is why the crowd was there, and that they would not be there, the colored people would not be there that night.

Now, this young lady is not going to inject that into the case unless it is true. And, if you say that she is, the only reason for your saying so is to set aside her testimony because she is colored; and if you do that, you decide this case on prejudice and nothing else.

A colored man by the name of Smith drove his automobile to the corner of St. Clair and Charlevoix. You remember the dark-skinned six foot athletic-looking fellow, the negro who took the stand and says he was in the automobile with his father, and that another man by the name of Smith was there, and they were pelted by stones as they came into this neighborhood and into the crowd, and they were called "niggers", and their life was threatened, and they had to put the gas on, in order to step on the gas, in order to get out of the neighborhood. And I wonder why the public prosecutor did not ask this colored man,

on cross examination, anything that was brought out on direct examination with reference to the attack made upon him at that corner?

You can search this record, and you will find that the prosecuting officers here assembled permitted this witness to leave this stand without questioning him at all with reference to the circumstances of the attack upon him. It occurs to me that if there were no attack upon this colored man at this corner here, and if he dared assert it, the prosecuting attorneys, with all their zeal, all their enthusiasm, and all their ability, would have tried to break that boy's story down. It stands uncontradicted, unimpeached and undiscredited in this case. Will you disregard that, and say that you won't believe him because he happens to be colored? We have read into the record the testimony given at the former trial by, I think it was, his father,

MR. TOMS: His uncle.

MR. CHAPKE: His uncle. And he testified at that trial, apparently in his homely way, that he was present when this attack was made upon them in their machine, and the machine was damaged, and he had to pay out of his own pocket the cost of repairing it.

These colored people are corroborated by three white citizens, and I am glad that at least some white person in this community, who was an eye witness to this situation, had the courage, the sense of justice, and the spirit of fairness, to come willingly into this court-

room and tell you the truth. What is the motive of this type of man for telling you an untruth? Why should this young man, who was in business there on Charlevoix Avenue, say that there was a crowd there that night, if no crowd was present? What motive did he have for asserting an untruth? Was there anything in common between him and this black man? Did the same blood which courses through his veins run through the veins of this black man? Was he dependant in any way upon the trade of this black man, that would suggest an untruth? But, this honest, fair-minded citizen, white, without any interest in this case, took the lie in the mouths of these officers and these other white persons.

And, whom are you going to believe? Oh, but Providence steps in sometimes to prevent an injustice being perpetrated. I wonder how it came that the circumstances of that night brought a representative of the Detroit News to that corner, an experienced member of the profession, for years a newspaper man, an experienced chronicler of events, a man who has served his time not only upon the paper known as the Detroit News, but other newspapers as well; this man Adler happened to be there with his wife and child. Was he disinterested when he gave his testimony, or was he interested?

Gentlemen of the jury, I commend for your favorable consideration the impartial, unbiased, disinterested testimony of Mr. Adler of the Detroit News. He sat on

this witness stand and he told you of this crowd. He pointed out to you the large assemblage of people who were on Charlevoix Avenue, in such large numbers that he was prompted to drive his automobile up Bewick, and parked it somewhere near Goethe; and he was prompted to come down to Garland Avenue, to find out what it was all about. You will recall that, on his way down Garland Avenue, he says there were assembled, as he saw, at least 300 people on Garland Avenue, upon the east side of the street, and that he had to bow his way through the crowd; and after the shots rang out, his little girl got away from him, and he afterwards found her. If there were 300 people on the east side or thereabouts, on Garland Avenue, and there was a crowd on Charlevoix Avenue, as testified to by Mr. Adler, without any motive to tell an untruth, he asserts that under the sanctity of an oath, all of the testimony of these other white witnesses, interested witnesses, to the contrary notwithstanding, and that is enough to decide this issue favorably to our side.

Q. Was there an attack upon this man's home? Why, Adler says he heard the stones hit the house.

A. MR. TOMS: No, that was not the case.

Q. MR. CHAWKE: Adler did say he heard something hit the house.

A. MR. MOLL: He said he didn't know where it came from.

A. MR. CHAWKE: He didn't know where it came from.

What was it?

MR. TOMS: Nor where it landed.

MR. CHAWKE: I tell, what was it? Was it hail?

MR. HOLL: Ask Adler. Don't ask me.

MR. CHAWKE: But, let us not inject ridicule or jest into this case. Eleven human beings' lives hang in the balance. But, he heard the attack on the house. So, it is conclusively demonstrated, by an impartial disinterested witness, that a crowd congregated in front of this house, and attacked the colored people. Are the others interested, who have testified for the State? Gentlemen of the jury, what prompts people to testify falsely in a court of justice? A motive always suggests a falsehood. Tell me what greater motive could bring about the telling of a falsehood in a court of justice than the motive that is borne in prejudice, and brought to a fruition by an economic interest? Every one of these witnesses who have testified against these men all tell you they don't want colored people in that neighborhood, and they joined an association for the most part to keep them out. They are prejudiced against them. You have the prejudice that contributes to the motive for telling the untruth. You have the financial interest, because they all want these people out of there, because they fear that their property will become lessened in value. Prejudice, coupled with a financial interest, is what prompts for the most part and creates the bringing

about of perjury in a temple of justice. And that is what has happened here. The police officers, -- and I regret it; I regret it, that I have to say this, but I have a duty here; and, within my humble limitations I propose to perform it, irrespective of whom I may hurt in the performance of that duty; I believe that the officers of the law were in sympathy that night with the crowd. And that is demonstrated by the evidence in the case.

If an honest, sincere effort were made to protect these people, do you think that persons would be sent up there who might have an antipathy towards these colored people because of their color? Why, the man from headquarters, Inspector McPherson and Lieutenant John Hayes attest what I claim here in connection with these officers. Why, Lieutenant John Hayes, who has been working amongst the colored people for years, working out of headquarters in the detective bureau, tells you that he made this investigation of that neighborhood, and as a result of that investigation Inspector Sprott ordered a guard around that house to protect this man as he moved in. He says that he went and saw Lieutenant Schellenberger, and he said, "I asked him what are you going to do about it?" Why, he says, "We will take care of that." Lieutenant Hayes volunteered the statement that "that was all of the satisfaction that I get."

Now, let me read to you what Detective Hayes says. You will recall it was Detective Hayes that was up



at the house on the night of the shooting, and about an hour thereafter, and, at that time when he came in, he ordered the handcuffs off of Dr. Sweet, and he told them to turn out the lights, or at least to pull down the shades. Oh, these men from the Fifth Precinct had a splendid protective interest in this boy and his brothers, and his sister-in-law and their friends. Why, after the shooting had rung out, after Breiner had been shot, they pulled up the shades, with the lights on, so that they might become an easy target for these people outside. And Lieutenant Hayes immediately ordered the shades pulled down, so that no one might attack them from without. Inspector McPherson said that when he went up there and he saw these uniformed men in the neighborhood, he told them to get off the streets, and get in the stores, because he said, "Why, I knew that the presence of officers alone was sufficient to attract a crowd." They paid no attention to McPherson. They stayed on, on the streets. Lieutenant John Hayes says this (reading):

"Q. Well now, after you made this investigation, you reported to Lieutenant Schellenberger, and you reported to the Inspector, Deputy Superintendent McCarthy, and Deputy Superintendent Sprott?

A. I didn't make any report to Lieutenant Schellenberger. I just went there to see what arrangements he had made to take care of this situation.

Q. And you told him to make certain arrangements, didn't you?

A. I asked him, and he told me -- he cut me off short. He said they had taken care of it.

Q. Is that all he said?

A. That is the satisfaction he gave me."

Aha. Oh, aha! That is the satisfaction that Lieutenant Hayes got from Lieutenant Schellenberger. That is all the satisfaction that Lieutenant Schellenberger gave to the man who investigated this situation, and who believed that these colored people had rights that should be protected. He said, "From the investigation, I learned that they were not going to permit these people to move in there." I wrote this down, verbatim, what he said. I think it was either Mr. Darrow or myself who put the question, now referring to the investigation made in advance of the shooting.

Q. From the investigation, you learned that they were not going to permit these people to move in there?

A. Yes, sir."

Lieutenant Hayes knew that these white people were not going to permit these colored people to move in there. How were they going to keep them out? Lieutenant Hayes knew that they were bent on keeping them out, by force. That was the only way that they could keep them out, if possible at all.

Now, Mr. Adler, who is disinterested, corroborates the bicycle man and this splendid woman, this Mrs. Hintsy, whom counsel disparagingly refers to by saying that as an afterthought she was brought into the case. I don't know what he means, but he does not know the witness as well as I do, or he would not insinuate any such thing as that. Here is a woman who was a woman living over on Garland Avenue, four doors from the corner of Garland, and she lived there then, and she lives there now. She of course is white, owns her own home, and was present on the 8th and the 9th of September. She told you, on the 8th, how she went down to the store to get some milk, and how she noted the crowd that was on Charlevoix Avenue and on Garland Avenue at that time. She told you that on the 9th she had seen the crowd, from her house, and she walked down to Bewick Avenue, and at Bewick Avenue she walked up to the alley, and she stood there for some time, and she saw the crowd on Charlevoix Avenue. She said she could not see who was on Garland Avenue, north of Charlevoix, because she was on the north side of the street, just this side of the alley. After standing there for some time, she went back into her house, and she had some washing that she wanted to hang up; and she went out into her shed or her garage, and she hung up the washing; and after she hung up the washing, she came to the alley gate, and she saw three police officers run into this alley, into this yard; and after they got in the yard of the Sweet house,

then the shots rang out.

Gentlemen of the jury, what motive has this simple but honest woman to come here and tell you such a story as that, if it is not true?

Oh, she is the type that makes the world worth while. She is frank, sincere, an honest person who would not permit an injustice to be done if she could help it. She came here willingly and told you all she knew. I shall ask you to believe her story, because it is the voice of truth protesting against the voice of tyranny and the voice of prejudice. And the voice of narrow-mindedness which has been raised in her neighborhood against a people with whom they have no quarrel except that they are black. Is her home going to be lessened in value because these people move there? Is the presence of colored people in that white neighborhood going to tend to lower the price of real estate? She is going to be affected, right behind them, isn't she, right on Bewick Avenue? But, even that does not prevent her from coming to court and telling the truth.

Tell me the disinterested witnesses in this case. Are they on the State's side, or are they on our side? Let us eliminate the eleven colored people in the house, and let us accept as true the testimony of Adler, the testimony of the fireman, the testimony of Mrs. Hintsy, - - all disinterested witnesses; and what do you find? You find a crowd assembled, and an attack made upon this man's

home; the crowd being established by reputable and credit-  
 able testimony in the case; and the attack on this house  
 being conclusively demonstrated; and it is for you to say  
 whether, from the presence of the crowd, and the attack  
 made upon this house, the occupants thereof reasonably  
 believed that great bodily harm was about to be done to  
 them. Why, it was not the picture of a friendly crowd  
 that these colored people saw from this house on that night,  
 with all of the age-long persecution of their race before  
 them, with the memory of what had happened almost yester-  
 day in the city of Detroit, when three or four colored  
 people were attacked in their own homes and driven there-  
 from by violence, rose before them and created a sense  
 of fear that must have terrified every man and woman in  
 that house, that must have caused them to believe that  
 their presence outside meant harm, and that they were  
 about to be attacked.

Why, if I were colored, and if I had been the  
 victim, and my people, of the persecution of the ages;  
 if I had heard recited at my mother's knee about how my  
 people had been lynched, and the law taken by the whites  
 into their own hands, and innocent victims of mob rage  
 being taken out in the public highway, and their lives  
 taken from them; if I had read in the papers and periodicals  
 of my own race, of a number of lynchings, and the number  
 of executions, and the number of unlawful violent deaths  
 of colored people brought about by white people; and if,  
 in addition to that, I had read impartial accounts in the

daily newspapers of the city, read alike by white and colored people, but more by white than colored people, and I read an impartial account of a racial disturbance within my own city; and if that big crowd of five hundred people assembled in front of my house; if I had been warned that they were going to drive me out of that neighborhood; then, their presence there would be a threat against my life. And I say that, under the law, the presence there of this crowd in front of that house, when you consider the mental attitude of the people within the house, constituted a threat against their lives and their property, and put them in fear. And when that threat was carried into being, by violence being exerted upon the house, these men under the law had a right to fire. There was no cowardice in firing then. I admire the courage of a man who will defend himself when he is attacked. And there is no law in this country or elsewhere that compels a man to retreat from his own castle and his own door. He may stand at his door and defy all of the king's army and all of the king's men. The tyrant with all of his hordes behind him may not step foot upon his threshold. But, armed with the protection which the fundamental law of the land gives him, he has a right to meet the invader at the door. Did they invade his house? Why, they attacked it with a barrage of stones. Eleven human beings were ambushed in that house. Didn't they have a right to expect, when the windows were broken, and the stones came in upon

them, that it was going to be followed up by an invasion of their threshold, just as had happened at Dr. Turner's house, when they went right into the house and compelled him to sign an option for his property? Didn't they have a right to expect that their property would be demolished, just as Fletcher experienced, when two ton of coal, according to the newspapers, which had been deposited at a neighbor's house that afternoon, was found the next morning in Fletcher's house? It had been thrown in there, and his property destroyed, and he, under a police guard forced to leave the neighborhood.

Gentlemen of the jury, what would you have them do? Would you have them wait until this mob had rushed up that front porch, broken down the door, and taken this woman, this mother, out of that house, and despoiled her, and taken the lives of Ossian Sweet, and Davis and Washington and the rest of them, before Henry Sweet fired?

Oh, you did not give the crowd an opportunity to bring about their complete vengeance. You did not wait until your death-knell was sounded. You did not wait until your brother's body was dangling from a post. You did not wait until your sister's body was buried in a new-made grave. And because of that, they say that you had no right to fire. (Addressing the defendant Henry Sweet).

Tell me what this is all about. Tell me, shouldn't these men have waited until the crowd had rushed into that house, and wreaked its vengeance? Wreaked its

vengeance? Shouldn't they have waited until the streets of Detroit were made red with their blood? Shouldn't they have waited until the riot assumed the same proportions that it did in Chicago and East St. Louis, before they defended themselves? Thanks to Henry Sweet, thanks to Dr. Sweet, for having invoked the natural law, for having exercised the right of self-defense.

Leon Breiner of course unfortunately was shot. But it is far better for Leon Breiner to be in his grave, than this city, of whose accomplishments I am justly proud, should be held up to the world as a place where law and order no longer prevails, but bloodshed and violence rules forth! May the day never dawn when neighbor will be arrayed against neighbor in this city where I have spent the best part of my life, and, please God, I hope to die. Here, where I have rubbed elbows with my fellow townsmen, all of these now nearly forty years; here, where I have partaken of the hospitality of Jew and Gentile, colored man and white man; where, where I have grown amidst an atmosphere surcharged with the spirit of liberality; that this place that I have selected as my home, should ever become a place where the victim of mob fury and race hatred should be slaughtered like innocent children in the streets. Tell me, where will this lead today, it is the colored man that is the victim of this particular kind of intolerance. Tomorrow, who will be the citizen, what portion of our citizenry will it be said to that you



have rights under the law, but that you dare not exercise them?

In behalf of these eleven men, who committed no crime, but who defended themselves against a mob attack, I ask your favorable consideration of the defense they have made here. I appeal not to your passion, your prejudice nor your sympathy, but I ask of you, as I said at the outset, that you do these men justice. And, it is justice that we ask, and it is justice that we demand, -- that justice which was denied us on September 9th in our own home, when a mob attempted an invasion of our rights, a mob which took our property without process of law, and was bent on driving us out of our homes, even at the sacrifice of our lives.

I am sorry that this situation has been brought about, and a person living in this town was compelled to offer up his life upon the altar of hate. But I say to you that this is a time when men's souls must be tried. This is a time when the ideal of American justice is put to test. This is a time when there shall be demonstrated whether courts of justice are established for the protection of the innocent, or whether they are to be employed as an engine of destruction.

Without passion, and without hate, without enmity or avarice, but with a hero's high resolve to do your duty, I trust, my fellow townsmen, that you will take this case to the sanctity of your jury-room, and there, as the golden sunshine of another day illuminates your deliberations, to

dispel the clouds of prejudice, fairly and impartially you will analyze the testimony in this case, without rancor, without bitterness, with hearts without hate, with souls filled with hope and with charity, you will do unto this man that which you would expect him to do unto you.

No greater opportunity was ever presented to twelve citizens of this city to speak the voice of tolerance. No greater opportunity was ever given any man to level bigotry than is the opportunity which is yours today.

You have chosen as your chief executive officer a man who has denounced, and who did denounce on July 12th last year, bigotry and intolerance, and who feared that this race hatred might be a lasting stain upon the good name of the city, the man who said, "The condition which faces Detroit is one which faced Washington, East St. Louis, Chicago and other large cities. The result in these cities was one which Detroit must avoid if possible. A single fatal riot would injure this city beyond remedy."

I summon you to the side of the chief executive officer of this city. I ask you to let him lead the way, under the standard of tolerance and charity and good will towards all men that he has raised, above the strife, the turmoil, the hatred and enmity which some professional agitators would bring into this community to cause hate, to run its riotous way. If you do your duty here, there is not any doubt about it, and you will leave this court-

room with heads erect, conscious of the fact that you have contributed a vital part towards the destruction of bigotry; that you have stood out like a beacon light to illuminate the path of these benighted colored men, as they go through the streets of Detroit, warning everybody that whether they be black or white, they have rights which every person must observe, and no man dare take the law into his own hands.

Tell me, my fellow townsmen, what will your answer be? You have justice on the one side, and injustice on the other. You have hatred and enmity, as against love, charity and good will. These will dominate your deliberations, one or the other. We will permit you to go now, conscious of the fact that this verdict will be a righteous one; that Detroit will take its place among the fair cities of this country, as a place where government prevails, under an orderly administration; where bloodshed and riot are denounced as pernicious things, things, like a cancer, they eat their way into the body politic and bring about its ruin.

I ask you, from the bottom of my heart, as white men, such as you are, that you do for them what you would want them to do for you. I want you gentlemen of the jury to see this testimony in the broad light of a spirit of fairness, to the end that a <sup>righteous</sup> verdict will be returned as between the people and the state. We visualize you, with smiles upon your countenances, walking forth from

this jury room, after we have heard the stentorian of your foreman as he announces, "Not guilty."

THE COURT: We will now adjourn until tomorrow morning at nine o'clock.

(Whereupon court adjourned until the next day, Tuesday, May 11th, 1936, at 9 o'clock A. M.).

May 12, 1936, 9:30 A. M.

MR. TOMS: May it please the court, and gentlemen of the jury, I want to first express my personal appreciation of the patience and continued interest with which you have listened to this case during the wearisome weeks we have been here trying to do a public duty. I realize that it has been an occasion of some discomfort and inconvenience for you and that your service here has been or should be labelled as a patriotic one. It is not pleasant. It is not convenient, but you have faced it, and faced it cheerfully and patiently, and I for one want to commend you for it and state that I appreciate it.

I dread to impose upon you a further avalanche of language after what you have been subject to for the last two or three days. Unfortunately, it falls to me to pile on the straw which will probably break the camel's back, but I cannot feel but I must say something, at least, as it is my duty to on behalf of the State at the conclusion of this trial.

Now, I have learned a lot about the negro problem in sitting through this case twice. I mean, I have to learn a lot. The more I hear, the more I am convinced that I don't know much about it. I don't know whether it is a negro problem, or whether it is a white problem, or whether it is both, but the more I study it and the more I hear about it, the more I am convinced nobody knows much about it; that it is a problem which has arisen

recently and which is changing so rapidly that no one can claim to be an authority on it. I do not know what a negro is. What do you mean by a "negro"? Do you mean a person who has any trace of African blood in his veins? I can't say that in the ordinary acceptance of the term we mean a black person, because so many negroes are not black. Some of them are very white, so, what do we mean by a "negro"? What it means in the ordinary acceptance of the word is a person who has the slightest trace of African blood in his veins. In other words, he may be 99.9 per cent white man, but we feel that the other tenth makes him a negro. So our problem isn't altogether with the black man unless we are going to modify our definition of the word "negro". When does a man cease to become an Italian? Suppose a man's mother married a German, and suppose his grandmother married a German, and then his mother married a Finnish man. How long would that have to go on before he would cease to be called German? Probably only one generation, but with the negro we look at it differently. Whether we ought to, or not, I am not arguing. We do. We say that as long as any trace of African blood remains in the person's veins, whether we can see it, or not, that person is a negro. Now, you see that complicates the problem. That makes it more difficult of solution. Now, I don't know what the solution of this so-called race problem is. I don't think Mr. Darrow knows. I don't think he would presume to claim to

know. I do know some things that are not solutions of it. I know <sup>you</sup> can't deport the negro. I know you can't send them off to some foreign country. In the first place, there is no legal basis for it. It can't be done legally. It couldn't be done physically. It couldn't be done economically. You might just as well take them half way across the ocean and sink the ship as to try to deport them to some foreign land. I can't conceive of trying to deport a man like --- well, like Mr. Johnson --- James Weldon Johnson, or like Dr. Sweet, or like Walter White, or Mr. Perry. We can't deport men like that. They were born here. Their ancestors have been here as long as ours, maybe longer; we can't colonize the negro. There isn't any legal justification for that. Where are you going to colonize them? How are they going to live? Where is going to be the negro country? No, that won't work. You can't segregate them. Their social and economic lives are too closely interwoven with that of the white race to segregate them, and there isn't and there can't be any legal method of segregation. Now, you hear people say, why, I don't mind a negro, as long as he keeps in his place. I have often heard that. What do you mean by "his place"? What is the negro's place? It isn't a stable place. It isn't a thing that you can pound. It is changing. It is changing with the increasing number of the negro. It is changing with his migration. It is changing with his increase in intelligence and education, and culture, and skill. The negro's place yesterday isn't

his place today. The negro's place throughout the reconstruction period following the Civil War isn't even a guide to what his place is today. So some of these wise people who say that the negro should be kept in his place should be asked, "Well, granted, but what is his place?" So, that isn't the solution of the negro problem. I know one other thing that isn't a solution of it, when I read a statement which says that, "I see the birth of a new nation to fulfill His promise that out of Egypt shall come a prince. - -"

MR. DARROW: Just a minute, your Honor, I object to this.

MR. TOMS: I thought you would.

MR. DARROW: I don't know what paper it is.  
 MR. TOMS: I know that this will never solve the negro problem, for anyone to claim that the negro race is to be a ruling race in this country. That isn't going to lend one jot or tittle to the solution of this problem for anyone to claim that this land no longer will be a white man's land, and I will say that if a man like Mr. Darrow, to whom the negro looks up, on whose words the negro waits and pays attention to, for him to say to a room that was crowded with colored people, as this room was yesterday, that when a negro is in contact with the police, he is in the hands of the enemy, that is tearing down. It isn't building up. We are going to have police as long as you and I are here, or anybody else.



MR. DARROW: Are you sure I said that?

MR. TOMS: Exactly so. I have it exactly, that the Sweets in headquarters were in the hands of the enemy.

MR. DARROW: Oh, I don't like to interrupt you, but I didn't mean that, and I don't think I said it. I said anybody under arrest and being sweated, was in the hands of an enemy. I didn't say anything about colored people; just the same as white.

MR. TOMS: I will have to have the jury remember what you said. I wrote it down as you said it, and I am giving you my recollection of it, but if anybody, especially standing in the position that Mr. Darrow does, is for the colored people, who to them is somewhat of a hero and leader, for him to say to them that the police are their enemies, that doesn't help to solve the negro problem. That doesn't fit in with his theory that he would like to see man's love for his fellow man the basis for the settlement of this problem.

MR. DARROW: I take exception to that statement. I am sure I never said it. I was speaking purely of an instinct.

THE COURT: Have you got any reference to it, Mr. Toms?

MR. TOMS: I have.

THE COURT: Well --

MR. MOLL: And I have, too.

THE COURT: I suggest that during recess you

Refer to it. At that time I <sup>will</sup> ~~was~~ determine what instructions are necessary to give to the jury concerning it.

MR. TOMS: Well, the statement as modified by Mr. Darrow now doesn't help to restore even mutual confidence to refer to anyone who is in the hands of the police as being in the hands of the enemy; isn't promoting even a mutual understanding. Now there is only one way that this thing is going to be solved in my humble and perhaps immature judgment, ~~We~~ we have got to live with these people. They are going to be here the rest of our lives, and the rest of the lives of our children, and their children. There is no way out of that situation. We have got to occupy the same land together. We have got to be citizens of the same great country together, and we might as well face that now. We can't solve it by laws, nor by any regulated sociological or economical restrictions. It has got to be done by mutual forbearance, by mutual charity, by mutual respect for each other, and by giving the colored man a chance to elevate himself to education and law observance, and all other methods to a point where he gains our respect. Now, that is being done. That is being done in thousands of instances. And as soon as he has done that, this problem will settle itself. Our prejudices will be wiped out then, perhaps. But, I am sure of one thing, that you and I can't find the solution of it heretoday. It isn't our business to find it here. That isn't what we are here for. That isn't what Mr. Darrow is here for.

Here is a problem that in order to even understand it, to say nothing of solving it, may require years and years of study and research. Why should we, twelve men picked at random, in one settled spot in Detroit, attempt by a verdict to render any intelligent solution of a problem which never can be solved in our lifetime anyway. So, let us not try to do it. Let us not be persuaded into trying to do it by Mr. Darrow. Let us not get off on to a sidetrack here. Our business isn't to determine whether the legal - - whether the social status of the negro is a proper one today, or not, or whether his ancestors have been fairly treated. That is interesting, but it isn't what you are here for. So, I ask you from of the start not to let yourself be switched off into philosophical speculation as to what some day somebody is going to do with the negro problem. We are here to find out why a man was killed, whether someone is to blame for it and if so, whom?

Now, let me talk about prejudices a minute. I have got a lot of them. I am prejudiced against some negroes. I am prejudiced against some white men to such an extent that I don't think I could be argued out of it. My grandfather was prejudiced against Democrats. It happens that he was one of the founders of the Republican party out at Jackson in 1846, and he used to say that he didn't think that all Democrats were horse thieves, but it was funny that all horse thieves were Democrats. Now,

that is just prejudice, of course. It is pure, unadulterated, unreasoning, blind prejudice. Mr. Darrow has got a lot of pet prejudices too. He is prejudiced against policemen and he is prejudiced against state's attorneys as a rule, and he is prejudiced against state's witnesses; all you need to do to arouse his prejudice is to put a witness on the stand for the state, and he wouldn't believe him if they told him that his name was Clarence Darrow. He would doubt it. Oh, I have got a lot of other pet prejudices. I am prejudiced against bright blue window-shades, and I detest bathing girl stickers on Ford cars, and I have a prejudice against gossips, male or female, and I have a prejudice against slackers, lazy people, and I have a prejudice against women that use lip-sticks in street cars; a lot of things like that. There may not be any reason for, but they are pretty well grounded prejudices. And you, each of you, have such prejudices. Do not deceive yourselves. You have. And you can't put them out of your mind. But I want to tell you this, that among my pet prejudices, I do not hold one against the negro. I have known some fine negroes. I once ate dinner with Bert Williams, and spent the evening with him; as delightful an evening as I ever spent. I broke bread with Walter White when he was here at the last trial. I wish that he was here now. And I have a negro in my office, a competent, trustworthy fellow. My two children this morning are in the keeping of a colored woman, and in spite

of the fact that I am prosecuting this case, I am not a bit afraid, not a bit. So, I haven't any prejudice against a man on account of his color. I think if you were to ask Mr. Darrow, he would say that my attitude through ~~out~~ these two trials is some evidence of that.

MR. DARROW: It is.

MR. TOMS: So I will join with him in asking you to exclude all the prejudice that you have, all of it, from your deliberation in this case, and I include in that, the prejudices which Mr. Darrow has tried to instill into you: you recall my own school teachers.

Now, let us talk a little about sympathy. Mr. Shawke says that Breiner's body was dragged in here to play upon your sympathies, and he bemoaned that. He said it wasn't right, and yet Mr. Darrow's argument was nothing in the world but a potent, a forceful and moving appeal to your sympathies. Why, what else was there to it? The only thing that he asked you to do was to let your heart go out to this boy whom he is defending and to think what it would mean to him to be convicted. Oh, remember your own boys, remember Mrs. Sweet, a mother. Sympathy?

Why, his whole argument reeked with it and yet his associate says, Let there be no sympathy here, for Breiner. Now, sympathy hasn't any place in determining the truth. Sympathy may have a lot of place in determining what we shall do when we find out the ~~place~~ <sup>truth</sup>. It should have, perhaps. But your job here is to find out what are the

facts. And what do those facts show? Sympathy hasn't any place in that. Weighing testimony, finding out who is telling the truth, what place has sympathy in a task of that kind? That task should be approached from reason and logic alone, and experience, so, I am asking you not to approach your work as jurors in this case from a sociological point of view wherein prejudice and sympathy may enter, and perhaps properly, not to attempt to decide whether or not the negro race has been unjustly <sup>dealt</sup> held within the United States, as Darrow would have you, or as he would have you decide why our school teachers, if any, but rather that you would confine your deliberations to this question: Who shot Leon Breiner and under what circumstances? Now, that is all you have a right to decide. Why, Darrow asks you to acquit Henry Sweet, to find him not guilty, because certain social and economic conditions have not been favorable to the negro race. His appeal is entirely that of the philosopher, the sociologist, the poet, but not at all that of the lawyer who is arguing the proofs of the case. Now, I have a lot of respect for the counsel on the other side of this case. Why wouldn't I? The first murder case I ever tried was fourteen years ago, and tried against Mr. Chawke. I met him across the table lots of times since, and I have learned to respect his knowledge and his integrity. I was interested in his threatened experience with 18-year old daughter, but it turned out only to be an observation, prosaic observa-

tion and not an experience at all. I was kind of disappointed about that. I wanted to hear about that. And I have got to have a lot of respect for Mr. Darrow. Why, he was trying lawsuits when I was born. He has had 69 years of experience in life, not passive years either, active, intensely interesting. He has been trying cases like this for 35 years or more. Now, I can't help but be impressed with that, and I know you are. But I am not frightened by it at all, because no lawyer is any better than the facts in his case. Providing -- provided the jury will stick to the facts. The lawyer can't change facts. He can turn them around so that they will look differently, but the jury can turn them back again if they want. He can turn them upside down and put ribbons on them and call them medals if he wants, but the jury can see, nevertheless, that they are just facts. So I am not afraid of the lawyers on the other side, much as I respect them, and I really don't need the well-intentioned pity of the lady spectator who shook her head and said, "How she sympathizes with and pities the prosecution in this case." Of course, she is a great admirer of Mr. Darrow. That is all right. That is just loyalty. Now, if this case is going to be decided on sympathy or prejudice, why, I will just have to bow and defer to the emotional specialist from Chicago. I can't cope with him on that kind of basis. I haven't either the emotional nor the vocal equipment to compete with him. If you will stick to the facts in

this case, I am not a bit afraid; not a bit disheartened,  
 not a bit worried if you will stick to the facts. I will  
 be satisfied and I won't quarrel with you on your finding  
 what those facts are, not a bit, provided you are not  
 urged or forced or persuaded into judging those facts  
 from some sympathetic or prejudiced point of view. That  
 brings us down to facts. I would like to talk about that  
 a minute. What are facts? Facts are truths. Now, how  
 do you find out what is the truth? Well, there is the  
 tough job in that. That is why twelve men are asked to do  
 it instead of one. What is the truth? Now, obviously,  
 you can't have a man's mind spread out on the table in  
 front of you and put a microscope on it and say, "Well,  
 there is the truth, and there isn't the truth," and so on.  
 The science of determining the truth is not an exact one,  
 and never can be. We will never know whether some people --  
 whether those people are telling the truth, or not. We  
 can hazard a guess. We can form our best judgment. We  
 can be sure up to a certain point, but beyond that, we  
 may be wrong. So, there is no way to tell just exactly  
 and scientifically where the truth lies. But, we can get  
 it fairly accurate by <sup>getting</sup> getting on it some sidelights, by  
 looking at it through the eyes of human experience. We  
 can arrive, as nearly as possible, at a solution of the  
 question whether a man is telling the truth. Now, how  
 do you do that? Well, there are some tests which have  
 been laid down by law, in fact, which you can apply to



the testimony of a witness, and which will enable you to determine whether or not that witness is telling the truth, and what are some of those tests? Well, first, the appearance of a witness; how does he look; look good to you? How does he sound? Is he frank? Is he open? Is he willing to answer questions? Is he evasive? Is he subtle? Is he inclined to refuse to answer questions which might do him some harm? What is his manner in testifying? How does he look? How does he talk? What is his manner of speech? Has he some interest in telling a story which might be false? Has he anything to be gained by falsifying? Is he impartial? Why, those are some of the tests that you can apply to the man. Then there are tests that you can apply to his story, to his testimony. Is it consistent? Has he told the same story all the time? Or has he made other stories - other statements which are contradictory and inconsistent? Does his story hold water? By that, I mean, in spite of your experience, as men of affairs, men who have lived some years; is his story consistent? Is it probable? Is it such a thing as you might expect to happen? Because after all, things happen very much alike. We run along very much in grooves. The unusual things are rare. So does a story which a witness tells you, line up pretty well with what you expect to have happened. Does the witness' story bear the stamp of truth? Has he continued to tell the same story? These and many other tests which you

X you can undoubtedly think ~~out~~<sup>1</sup> yourselves, are sidelights which, when thrown upon the testimony of any witness, may aid you somewhat in determining how much of it is true, and how much of it is false.

Now, all testimony is not truth. All testimony is not evidence. You take all the testimony, and you sift it, and you let the kernels of falsehood and deceit drop through. Now, when you get that done, the grain that you have left is the truth, as nearly as you can get to it, and it is from that which is left, and it may be only a very little that is left, that you are to determine the facts in this case. Now, you have heard a lot of testimony

X in this case, pages and pages of it. You have got to take that testimony and ~~take~~<sup>pick</sup> out of it, with the aid of these tests, which I have indicated to you, and any others that you might use, pick out the kernels of truth,

X and put them aside, and then see what those kernels of truth ~~show~~<sup>have</sup>. Now, as I say, we have ~~gone through~~<sup>brought</sup> a lot of testimony. We have done that because we have to. The law requires the state to produce here all the eye-witnesses that we can find, favorable or unfavorable, and we have done that. We have brought you everybody that we could find that could shed any light on this unfortunate transaction. Of course, we didn't pick out the witnesses that we wanted to be present when this thing happened. We didn't say on the night of the 8th, now, at this shooting, which is going to take place tomorrow night, we have to

have some witnesses. Let's get around and find somebody that will be good, that will be intelligent, that will be favorable, and put them up there so that when this thing happens we will have a nice bunch of reliable witnesses. We didn't do that. We just took the witnesses that circumstances and chance gave us, and we brought them all into you. Some of them, I don't think very much of as witnesses to prove the people's case. I might have selected better. Only, I don't select witnesses. I just take what I get. That is all I can do. But, we did bring them all to you. Why, do you suppose we brought in the two boys who threw the stones? They didn't help us, did they? This George - -

MR. DARROW: Just a minute. I don't think counsel means that. There isn't anything in the record which indicates that the state brought in any of the boys who threw the stones.

MR. TOMS: Well, the boy that saw the other boys throw the stones.

MR. CHAYKE: Brought in the boys that threw them.

MR. TOMS: All right. Why do you suppose we brought in this Suppas - - what is the other one - - and Aldric Arthur, the two boys who said that they saw some kids throwing stones at the Sweet house? Now, we didn't bring those in to help ourselves. If we hadn't been playing pretty fair in this case, we would never have mentioned them. We would have at least taken a chance

on the defense finding those boys. That is true, isn't it? We weren't trying to help our own case when we brought those two boys in here. If we hadn't wanted to be pretty square in the trial of this case, we would have forgotten them. Even if we had known about them, we would have said, just forget them. Why should we bring in two witnesses who won't do us any good? We wouldn't have brought the stones there, would we? We didn't have to, or we could have just brought one or two stones? Couldn't we? When we might have brought them all here? What was to hinder Clayton Williams from just bringing in three stones instead of seven? It would have looked much better for us, wouldn't it? Wouldn't it have helped the state's case if we done that little trick? Well, we didn't, and as the result of that, it seems to me that you ought to give the State here credit for good faith at least. You ought to believe that we haven't tried to frame up a case here. If we did, we did a terrible job of it, terrible. Now, the ear-marks of a case, which is prepared and framed up, the ear-marks of such a case is perfect, the kind of a case where every witness corroborates every other one, where they all agree, where every angle and every contingency is covered by not one, but more than one witness. I say to myself that is too good to be true. So the fact that our witnesses do not agree, of course, they don't, of course they don't, - the fact that they didn't agree means this: We haven't brought them, and we haven't coached

them. Either that, or we did a bungling job of it, a job I wouldn't be proud of, so the inference I draw from that, if anybody say it again, is this: That if the State's case is not a beautiful, morbid thing, perfect, without a flaw, I think at least it should convince you that there has not been any planning and coaching and framing. We have brought it into you ~~as~~ showed it to you as we did here, for what it is worth. Now, I haven't any case to win here at all. This isn't my case. I am here as a public officer doing what is sometimes a most unpleasant duty. I hope you don't think it is either, or that I get any kick or pleasure out of it. I don't. Under our laws, as they are administered, somebody has got to do it. I have been selected, so I am going to do it as cheerfully as I can, but I am not trying to win any case here at all. I am trying to find out what the truth is. I am trying to present to you the facts which have been sworn to here, and to attempt, if I can, to aid you, in finding out what the truth is. I have my own opinion, my own impression, my own sentiment, judgment, from the testimony. Naturally, I can't present that to you. Well, then we get back to testimony as a basis for finding facts. Of course, testimony is subject to all the frailties of the witnesses who give it, and witnesses are human. They are subject to all the frailties that you or I would be, bad memory, inaccurate attention, hasty observation, faulty choice of words, excitement, <sup>disturbance</sup> ~~expression~~, all those things affect

the human element of testimony. They make witnesses more or less reliable as the case may be, and I would like to illustrate to you, if I may, just how frail testimony can be. Here is a little story of an experiment that was conducted in a class in psychology in one of the universities. It will take about a minute to read

it. "Professor Swift stated that upon one occasion when the regular work of one of his classes was in progress, the following scene, which had been carefully rehearsed, was suddenly enacted before the eyes of the students who were seated in a semi-circle. An altercation was heard in the corridor, then the door burst open, and four students, two young men and two young women, dashed into the room. Miss R. immediately after entering dropped a brown paper package on the floor. This package contained a brick so that the occurrence might not be too inconspicuous. K. flourished a large yellow banana as though it were a pistol, and all struggled across the room to the side opposite the door where Professor Swift himself was seated among several members of the class. He stood up at once, protesting at the interruption, and as he arose he threw a small torpedo on the floor. K. fell back crying, "I am shot," and was caught by Miss R. All then hurried out through the open door, Miss R. picking up the brown paper package which had been dropped near the door by Miss R. The entire scene occupied less than thirty seconds, and it was startling to the class, all of whom jumped up and grouped back against the wall, believing that it was a real fight."

The twenty-nine students of the class were then told that the scene had been "made to order", and were asked to write out in detail their memory and observation of what had occurred, and this is what they wrote:

Three of the actors were actual members of the class, and Miss R., although not a member of the class, was a senior, prominent in college activities, and all of the class knew her. Of the twenty-nine "witnesses" to the transaction, only three remembered that four persons had entered the room, although no disguises were used, not a single person recognized all of the actors. Seven students recognized three, eleven recognized two, seven recognized one, and four recognized no one; yet all the actors were persons they met every day. Surprising as these figures may seem to those who think that even under excitement they could recognize an acquaintance whom they had seen at least three times a week for eight months, the results are nevertheless too favorable to observation and memory, for recognition by elimination of those present played an important role. Eight of the class saw persons who not only took no part in the performance, but were not even present. Of these eight, one saw a former member of the class who had withdrawn about three months earlier; and a young woman who had never been in the class and was not present was "seen" by two. The descriptions of clothing were so general as to be worthless for purposes of identification, and if details were given they were generally found to be inaccurate. Only one witness spoke

of the brown paper parcel. No one saw Miss T. pick it up. Several students 'saw' the flash of a pistol, and one young woman wrote that they were attempting to hold back a man with long, black hair. This evidently referred to H., since the other young man, R., had light hair, and followed H. into the room. H's hair, however, was short, and the description was that of a young Italian who had been a member of the class early in the year but who withdrew several months before the experiment. Later this student in her deposition actually named that Italian as among the participants. Five of the reports did not contain a single item of truth or fact.

...but, no matter way has been ...  
 ...people ...  
 ...the first ...  
 ...they are ...  
 ...the ...  
 ...can you describe ...  
 ...can the ...  
 ...weeks ago, ...  
 ...did he have ...  
 ...and? Was, ...  
 ...after ...  
 ...where you had ...



Well, that is rather interesting as indicating why witnesses disagree, the fallibility of witnesses and the fallacy of testimony. Now, you wouldn't say that every one of those twenty-nine students were liars, would you? You wouldn't say that because they didn't agree with each other that some of them were liars. I wouldn't. Darrow would. But, on the other hand, it takes something more than just Mr. Darrow's say-so to make liars out of a whole neighborhood. Doesn't it? Don't you require something more than just Darrow's thundering denunciation of this whole neighborhood, except the defense witnesses,

of course? As liars, before you will take that for granted? But, human testimony is so untrustworthy? It is a pity that we have to rely on it in the administration of justice. But, no better way has been devised, but it is so untrustworthy because people are so - - shall we say - - unintelligent - - I didn't mean that exactly - - I say, so unattentive. In the first place, they don't know when they see a thing that they are going to be asked to describe it or repeat it in the most minute detail. Tell me, can you describe the man who sat beside you on the street car the last time you came downtown? Now, that was ~~the~~ <sup>three</sup> weeks ago, wasn't it? What kind of a man was he? What did he have in his ~~eyes~~ <sup>hand</sup>? Did he have brown or black shoes on? Now, if you don't agree - - if you twelve men can't agree - - well, here - - let's say this - - I don't know where you had your dinner last night. I hope you had it

somewhere. Can you tell me the color of the hair or the eyes of the person who brought you your dinner? Can you tell me whether the cashier who took the money for your dinner was a man or woman, whether she or he sat on a stool or chair? This is last night. Now, mind you, if you don't all tell the same story about this, you are all liars. Check you up. If the twelve of you can't agree on this, who went first into the dining room last night, which one of you gentlemen? Who sat next to you? Of course, that will be easy if you always sat in the same order. I imagine you don't. Now, if you can't tell me that, and if you don't all tell me that exactly alike, you are liars. That is in quotation marks. Well, that isn't fair. Don't you see it isn't reasonable? It isn't logical. It isn't fair at all. Just because people disagree, doesn't mean that they are falsifying. Of course, when you spread this over a neighborhood - - over four or five blocks - - and among seventy-odd people, the proposition becomes even more ridiculous. Why, I think I could take two or three of you for half an hour - - for five minutes - - through an ordinary experience - - say, out into the hall, into the next court-room, back into your jury room, and bring you back here, and I could make liars out of both of you, on Mr. Darrow's theory that you didn't agree about everything that was done, and everything that you saw and yet, when seventy-one people in the night-time, without expecting to be questioned about the events, month afterward, can't tell exactly identical story, they are

darned and branded as liars. Well, we have to argue something, I suppose. Now, there are certain undisputed facts here. I think you will concede that, won't you? There are a couple of things that we do not disagree on. All right. You probably will disagree as to what I say. Well, the first one is that Breiner is dead. That is eternally true. That is a fact that isn't going to change. The second is, that he was shot, and that that caused his death. He was shot in the back. The third is that he was standing near the north porch of the Dove house when he was shot. The next is that a number of shots were fired from the front and north side of the Sweet house just preceding the time of Breiner's being shot. That isn't disputed. It isn't disputed that there were ten weapons in the Sweet house. It isn't disputed that there were ten bullet marks at various places in the neighborhood, and that eight of them were in the immediate vicinity where Breiner stood. Seven - - now, that isn't disputed. You needn't worry about that. You don't have to decide what the truth is there. We can agree. I mean, we can agree. It isn't disputed that not one person trespassed upon the property of Dr. Sweet on the night of September 9th.

There was MR. DARROW: Trespassed?

MR. TOMS: Set foot on it. Is that what you mean?

MR. DARROW: His foot on it.

MR. TOMS: Is that the difference?

MR. DARROW: Oh, you said, set foot on it. I thought you said trespassed.

MR. TOMS: I did say trespassed. By that, I meant, went on to his property. It is undisputed that the only damage to the Sweet house were the two holes in one pane of glass, in the front window, and a sort of half-hearted claim, based on an impression, that the window on the south side of the house on the second floor might have been broken; and that constitutes the sum total of the damage to the Sweet house. It isn't disputed that not one finger was laid on any of the ten people in that house. It is not disputed that not a hair of their heads was harmed. It isn't disputed that there were no people on the sidewalks immediately around the house, that is, on the west side of Garland in front of the house, and the north side of Charlevoix at the side of the house. It isn't claimed that there was any mob or crowd over there. It isn't disputed that 391 rounds of ammunition were found in the house, and that 14 shells of five different calibres were found discharged in that house. It isn't disputed that no threats of any kind were directed at the members of that household that night. Well, I guess that is all. There may be some other things that are not disputed. That is a lot better than we thought, when you get it all together. It is quite a bit, and quite significant. The undisputed facts of this case are very important. They

go a long way towards proving what happened there that night, the undisputed facts.

Q MR. DARROW: If you want to be exact, out out the last one. It is disputed about that.

A MR. TOMS: That there were threats that night?

Q MR. DARROW: Claim the whole thing was a threat for two days.

A MR. TOMS: Well, all right, if you want to call that a threat. The situation was a threat. That is what Mr. Darrow means. Now, nobody had addressed a threat.

Nobody spoke a threatening word to any of the inmates of the house that night. I guess that won't be disputed. Well, that is what Dr. Sweet said. I don't imagine they will dispute that. All right. Now, there we have the foundation and the background of this situation.

Q And then we come to the question of civil rights. Let me talk about rights, if I can, for a moment. Now, I will admit frankly, without any evasion at all, that Dr. Sweet had a right to buy that house and move in there. It wouldn't make any difference whether I admit or not, because the law gives him that right, and I couldn't deny it to him. That is granted, the granted right of any citizen to live any place that he can buy a home, and I grant his right to defend it against invasion and attack, if attacked. I also claim the right of people to sit on front porches, at least, their own front porches. I claim the right of people to visit their neighbors. I

claim the right of people to go on public highways, especially on hot summer nights, and I claim the right of people to go to grocery stores, whether they buy Chesterfields or <sup>milk</sup> ~~not~~. And I claim the right of citizens to exercise the <sup>at</sup> privileges without being shot at while they are doing so. Now, you talk about rights. We all have rights. Sometimes we do not claim them. Sometimes we are rather ashamed of claiming them. I have a right to play my piano late at night if I want, and the fact that there is a woman upstairs who is on her death bed, ~~may~~ not make any difference to me. They can't stop me playing my piano. I can keep my seat in a street car while some elderly woman, or some woman with a child in her arms, stands up in front of me. They can't put me off the street car for that. I can be an insulting martinet to my subordinates, if I want to. They have got to like it. But, there are some of those things that we do not do, because - - well, because we just haven't the nerve to claim our right to do those things. We are continually waiving our civil rights. We are willing to do it. We do not know that we do it. We do it instinctively. There are some civil rights that we don't feel are worth fighting for and insisting upon. Now, I don't say that your right to live in your own home is one of those. I don't claim that ~~at~~ all. But let us not forget that there are other civil rights besides the right to live in the spot that you choose, and that you can't subordinate every other person's rights to your rights, to live just where you want. That doesn't

wipe out the rights of every one else. Well, what a ridiculous position to take, to say that Breiner was a party to a foul conspiracy because he was out on that street that night. He left home. Why? Why? Because a colored family had moved in across the way. I suppose Mr. and Mrs. Dove should have stayed upstairs in their hot, stuffy flat on a summer's night, because a colored family had moved in across the way. The colored family had a right to move in, and the Dove's must bow to that right, and they had their own right to sit on their own front porch. I suppose the man who went down to the grocery store to get some Chesterfields should have smoked a pipe or gone without the Chesterfields, rather than join this foul conspiracy and show himself on the public highway at night in front of a house where negroes had moved in. What about Mrs. Hinteys? She certainly, if she had known she was to be a witness for the defense, could have let the <sup>dog</sup> ~~dog~~ go without his milk, the dog's civil right to have his milk; they should have been forgotten and Mrs. Hinteys solicitude for her pet should have ~~been~~ kept indoors, rather than go out on the street in the neighborhood of the place where a colored family had moved in. Oh, rights. Rights are mutual. Rights are common. They are not all on one side in this case.

Now, let's talk about fear. I suppose I should have arranged the topics alphabetically so that you would have some intimation as to when I would get through.

MR. DARROW: You are going backwards now.

MR. TOMS: No sir, I am coming to curiosity and then to "A" for Adler. Let us talk about fear for a minute. Here is the whole defense in this case. It is a defense which is founded on fear. Well, now, fear isn't a thing that you can put your finger on either, / or put in a box. There are so many degrees of fear. You may be afraid that you will be late to work in the morning. You may be afraid that your hat isn't on straight. You may be afraid that your wife will ask you the time you got in last night -- not yourselves. You may be afraid of little or larger, or still larger or great things. I think fear may be graduated. Suppose a man came up to me that I had heard was a pretty tough fellow, like Darrow, you know, a fellow that he is a little bit afraid of, pretty bad reputation; not dangerous, but -- well, he is pretty hard, this fellow, and came up to me and said "Boo". Do you think I ought to shoot him and then come into court and say, "Well, I had heard this fellow was pretty bad and he said "Boo" to me, and I was afraid, and so I shot him?" Do you think that -- well, let's see now -- suppose that I wore a brown overcoat. I guess I did once. And suppose that I go by somebody's house, where the occupant has had a lot of trouble with a man with a brown overcoat, a man with brown overcoat had stolen chickens and set fire to the chicken coop, and he looks out the window and he sees me across the street in a brown overcoat and I stopped to talk to two or three people, maybe a dozen, maybe 50 people, and I stopped to talk with



them around the baseball score board, say. And then the occupants of the house looked across the street and saw me, "My, there is a man in a brown overcoat" -- <sup>that</sup> Unfortunately, I have a brown overcoat, -- and he shoots me through the back. Well, that all goes to show illustratively -- that fear can be great or small, or reasonable or unreasonable, based on nothing or based on something substantial. Now, in connection with honesty in this case, how frightened was Henry Sweet and what was the basis of his fright, because if he wasn't frightened there wouldn't be any defense here, that Henry Sweet was frightened, and they go clear back to the time his brother, the Doctor, was seven years old, to lay the foundation for that fright, and by inference, they say, if Doctor Sweet was frightened, Henry was frightened just as much, and every other defendant in that house, every other occupant was frightened just as much as the spokesman, Doctor Sweet, was frightened. They sort of standardized their fear. They said, "We will plot a fear here, about that size (indicating), yes, that is big enough to cover this case. That is our fear; Davis and Washington and Latting and Henry and Otis and Oselen, all of them, we all have the same fear. I wonder if all you 12 men fear the same thing to the same extent. I don't imagine Mr. Thorne fears the water, as much as some of you landlubbers. I don't imagine Mr. Fuelling fears the sound of a gun as much as I would. You can't put 11 people in the house and say that they are all afraid to the same extent of the same

thing. It is ridiculous. But, that is what they have done here. They have said, "We will elect Doctor Sweet, and he will tell you how afraid we all were." Well, here is ~~X~~ Davis, a United States Narcotic agent. I don't imagine he was frightened, being used to carrying a gun, that he was as frightened as some of the others. The Doctor, who had led an academic professional life, I imagine he was more frightened than Davis was. Well, anyway, the claim of the defense is, you have got to assume, that Henry Sweet was just as frightened, <sup>2</sup> as his brother, the Doctor, says that he was. You have got to assume that. That hasn't been proved. You have got to assume that Doctor Sweet told Henry everything that he told us here, that he told him in the same words and that they produced the same effect on Henry that these experiences have produced on the Doctor; well, now, let's see just how frightened they were? They moved in there conscious of the situation, fully expecting that their house would be torn down; if they didn't expect that, why did they arm themselves to prevent it? They moved in there expecting trouble, expecting to have to defend their lives. That is what they claim here, that they did have to defend their lives, and yet how do they act? These ten... terror stricken, mortally afraid people, <sup>did</sup> what/they do? And what happened to them? Well, they moved in on the 8th. Nothing happened all day on the 8th. Now, so you have the night of the 8th. Something fell on the roof and stopped, and on the 9th the Doctor gets up, puts his wife in a car

with him, and they go out shopping and attending to his practice, ministering to the sick, buying furniture, doing some shopping, getting some cooking utensils from Doctor Carter, living just their own ordinary life, leaving this house, which they would have to protect by firearms. That is all unprotected, left it at the mercy of the mob, didn't even stay there to guard it, but went casually about their every day business, of buying furniture to furnish the house which was to be torn down by the mob; \$1200.00 worth of to be delivered when? The next day, on the 10th. How fearful they must have been that the mob was going to demolish the house? When they bought \$1300 worth of furniture for it to be moved in on the next day? What about fear under those circumstances? And then they get home, go in the house, and some other negroes came in the house, Dr. Carter, and as he parks his car in front of the house -- Dr. Carter isn't here. I would like to have you see him. No one would mistake him for a white man, and he comes up the steps undisturbed, goes there three times in eight hours. Well, just when do you think these people ought to begin to realize that there wasn't so much to this mob business as they thought? How long would it take to prove to them that they were not in such danger as they thought? And then Henry Sweet, how terrified he was. He must have been down in the basement hiding in the part behind the furnace, trembling, shaking in terror of his life, at the white mob. Well,

not so that you could notice it. Henry goes out on the porch, and sits down and reads for three quarters of an hour in a swing on the front porch. Then he says, "Well, this is pretty tough. I guess I will go and get a cigar", and comes over to the white man's grocery store and buys a cigar and comes back, and walks up and down in front of the house, and finally from sheer ennui, he says, "I guess I will go in the house." Frightened to death. That was the day that -- that was the 9th, that was the day when they were all terror-stricken, when their house was to be demolished. And that is what they call being so frightened, so overcome with fear that they felt it was necessary to shoot 104 feet to kill a man by putting a bullet through his back to protect themselves. Oh, that fear theory is just a smoke screen, gentlemen. It is just a smoke screen. It is plain subterfuge. Well, they got to have some defense, and the fact that this man is a negro, immediately offers the defense of fear, of race persecution, and of hereditary terror. Why talk about being afraid? Why were these people inside running about? According to Dr. Sweet, frightened, terrorized, and someone rings the doorbell, and they go and say, "Come in." And it is his brother, and his friend Davis. Do you think you could have dragged him to that door, that front door? If they had been frightened, really frightened, two friends come up in an automobile and they say, "Hello, come in." Frightened? Oh, there are a few things, little things -- which show that they never were frightened until after they found out

that it was necessary to be frightened, in order to justify their actions.

Let us talk about recess, if you do not mind.

THE COURT: We will have recess at this time.

(Recess).

MR. TOMS: Now, in our alphabetical progression of topics, we have got curiosity. Now, it seems to me that curiosity has become a crime since we started this case. This makes most of us criminals, including Darrow.

It is perfectly natural human attribute to be curious.

Why, look at this court-room yesterday -- not so much so today -- yesterday it was packed with curious people who wanted to see Clarence Darrow in action. I suppose I might infer that he is more of a curiosity than I am because there aren't so many people here today.

MR. DARROW: They all know you.

MR. TOMS: Well, I will grant that. I won't even argue about that.

MR. DARROW: All right. That is fine.

MR. TOMS: Well, you can't call people conspirators because they are curious, and if we are going to do that, let us be consistent about it. Let us make everybody that is curious a conspirator. Why, Darrow has been curious all his life. I don't mean curiosity. I mean has been interested. I don't know that I ever saw a man who was so interested in digging into corners finding out about people and things and theories and events. Why, curiosity

is the salvation of the race intellectually. That is the only thing that makes us want to find out more. I have got it, and I am going to keep it all my life. The minute I am ceasing to be curious about people and things and events, why, you can lay me away. I am all done. And yet, if a lot of people come to be curious, it means that they are hooked up together in a foul conspiracy to commit a crime. Now, that is ridiculous. That is ridiculous to take a perfectly normal and natural and universal human trait and try to make it appear criminal. That means that you are desperate for something to use as a defense. Why, you have seen a man who was in a terrible hurry, who is knocking the people out of his path, and to get somewhere for some reason -- maybe -- and just swearing at people because they impede his progress and get in his way, and he comes along to a fellow trimming a window, and he will stop and stand there and look at a window trimmer. Did you ever see two fellows painting a sign upon a scaffold, swinging scaffold? And people who are awfully busy, got a lot to do, a lot of places to go, and in a terrible rush, will stop and watch him with his red paint. Just curiosity, that is all, just normal curiosity, and a very compelling, universal human trait. And I imagine that if any of you would have been going by the neighborhood of Garland and Charlevoix that night, and had seen two or three or seven or eight policemen, you would have stopped, and maybe you would have asked what is all the trouble. What is all the shooting for? And nobody would

have tried to make a criminal out of you for that, except Darrow. I wouldn't have blamed you. We have done it. I have done it. I have ducked into crowds lots of times, and found it was just some fellow with a little dancing figure on a thread, or some fellow selling collar buttons, or a patent device to thread a needle, and you will find that men whose time they consider most valuable standing around, standing around watching that fellow thread a needle. Well, according to Darrow, every one of them ought to be in jail on the charge of criminal conspiracy, because they were curious. Well, it strikes me that Adler was kind of curious. He didn't live there. He drove clear around three or four blocks, and parked his car, and walked down there. What for? Just curious; didn't have any other reason to be there. What about Mrs. Hintze? I am talking about defense witnesses now. What about Mrs. Hintze? She didn't stay in the house as Breiner should have done, according to Darrow. Mrs. Hintze left her porch and walked down there on the street, and joined the crowd and saw the policemen and wondered what it was all about, and guessed at the size of the crowd, and went over to the store and got some milk. How is she any different from the point of view of curiosity than anybody else? Why, Chawke says himself that the police alone were sufficient to draw a crowd. He says that. I am quoting him I think verbatim, and yet, the crowd that was attracted by the police, was immediately stamped with a criminal intent. Well, you got to argue about

something, as I said before. You got to have something to blame people for, especially if they are on the other side, and at this point let us just compare Mrs. Hintey's with Mrs. Davis, for example, they both live in the neighborhood. They are both women housewives, of mature years, along in the -- beginning to look over the top of a hill towards the sunset. They are both long residents in the neighborhood, both white, both women, both members of the Waterworks Park Improvement Association, both did about the same thing; same kind of women; naturally, they would do about the same things. Mrs. Hintey wanders down off her porch, and goes over where the crowd is. Mrs. Davies comes down off her porch and wanders over where the crowd is. But how different they are as totalled by Mr. Darrow here is Mrs. Hintey who worked for Mr. Chawke's mother, and who was a witness for the defense. There is the difference, gentlemen. There is the difference. Mrs. Hintey is a witness for the defense, and so, although she did the same thing that Mrs. Davies did, she is the kind of woman that makes life <sup>swifter</sup> ~~swifter~~ with kindness beaming from her features, and reminds Darrow of his mother. And Mrs. Davies, I want to be sure that I am right -- is a gopher, and a cowardly cur.

MR. DARROW: No, I didn't say that.

MR. TOMS: You said that every man and woman that was in that crowd was a cowardly cur. Now, don't gig back on it. You said that.



MR. DARROW: I thought you meant that I said Mrs. Davies was.

MR. TOMS: You said that Mrs. Davies and all the other white people that were there -- now, I would like to show you this, what those words mean. How are you going to make a saint out of Mrs. Hinteys and a gopher and a cowardly cur out of Mrs. Davies? By anything that they did? No. No. The only thing that makes one kind and the other, the other, is the fact that Mrs. Hinteys is a defense witness, and Mrs. Davies is a State's witness. Prejudice. I love to hear Darrow ask you to set aside your prejudices. I love that. And then to expect as rabid and unreasoning a prejudice as that in his argument. Mr. Darrow says everybody was there for the same purpose. No innocent people were there. Well, then you haven't got innocent people as your own witnesses, Mr. Darrow. Adler was there, and the Spauldings were there. Mrs. Hinteys was there. Were there no innocent people there, except the witnesses for the defense? Was everyone there for the same purpose, the same criminal purpose? Were the Spauldings there for that purpose? Was Lorenz there for that purpose? Was Adler there for that purpose? Was Mrs. Hinteys there for that purpose? They were there -- let us take Darrow's own version of it. They were all there for the same purpose. Now, you cannot separate Adler from Andrews -- you can't separate Mrs. Hinteys, from Mrs. Davies. Well, there was Mrs. Adler too. She

was taken there -- was she there as a part of a criminal conspiracy, of an infuriated mob? What about the man who bought the cigarettes, went down to the store with his wife and bought the cigarettes and the milk? During the first shots, his wife came home as best she might, while he went through the alley. Was his purpose there to join an criminal conspiracy? Oh, it is ridiculous, gentlemen. It is ridiculous to take 71 people picked at random out of -- -- how many would you say -- I don't know, say, 500, if you like, to take 71 people, and say that every one of them is a liar, and a cowardly cur, because they happened to be there. I could at least condone it a little bit if he would confine it to the members of the Waterworks Park Improvement Association. I could at least see some vestige of a point in argument -- not much, but some -- but to include in this fiendish conspiracy people who didn't live in that neighborhood, people who didn't own their property, people who rented, professional people, workmen, grandmothers, mothers, children -- that about covers it -- -- everybody -- everybody who happened to be on that street, regardless of how he happened to be there, could not be innocent. There were no innocent people there. All there for the same purpose. All liars, and all criminal conspirators. Why, it might easily happen that I had been passing through there that night, as the Spauldings were, or you, or you, or any of us. It takes something more than just being in front of a negro's house to put into your mind the intent to kill him and burn

his house. Doesn't it? What about Breiner? Breiner, who suffered the penalty for this thing - - even Breiner is branded in the same category with the others. He should have been home. Well, of course, that is safe. If you stay home, you won't get killed in this particular manner. Your house may fall down, or a burglar may break in and kill you in your home, but at any rate you won't get shot, for being on the street. Has it come to a pass that if a negro family moves on to a street, every other person must stay off the street? Or be branded as a criminal conspirator against that negro? What about the people that didn't live in that neighborhood? What about the people that were not members of the Waterworks Park Improvement Association? How glad they must be that they are not. What about them? Are you going to throw them all into the same hopper that grinds out liars and gophers and cowardly curs? I say, it has come to a strange pass if you can't walk on the public streets past the house occupied by a negro without being bedamned as these people have been. Now, I didn't know that veracity had anything to do with geography. I don't know that all the liars in a town live in one part of the city. I can't conceive of a district of four, five square blocks, where no one tells the truth, or where no one is innocent, but where every man, woman and child is a criminal conspirator. I didn't know that this was that kind of a part of the town. I wonder how many other sections of

the town there are. I will tell you. There are just as many other sections as negroes choose to move into. That is following out Darrow's line of argument. There are just as many neighbors <sup>with</sup> liars and villainous conspirators as there are places where negroes want to live. You can't get away from that logic. If this had happened five blocks east, or two blocks north, you would have discovered another case of liars and villainous conspirators. Every man, woman and child in that neighborhood would be there for no good purpose. Could not be innocent, and would be a cowardly cur. Now, how far is this thing going to impregnate the city? Perhaps it is cause for some alarm. How much of the population of this city are going to be branded in this manner? Well, just as many as live around a house occupied by a negro, apparently. And we didn't know about it. We didn't suspect it here in Detroit. We rather pinned some faith on the integrity of our citizens. We rather thought we had some decent people here. But it took a man from Chicago -- it took a ~~man~~ <sup>man</sup> from Chicago -- why, I remember, they do have such crimes in Chicago too, don't they? They even have race riots there. So it took a man from Chicago to come up here and tell us that a whole area of our citizenry are liars and gophers and cowardly curs. We must have been blind. We never knew it. We didn't suspect it until somebody from Chicago told us. Well, I am down to the A's, and from there I go to B. Let us talk about Adler. Now, Adler is a witness who was extolled by the defense, who

was called to substantiate the defense, and whom they say is telling the truth, and on whose testimony they place more reliance. I want to read part of it to you, and I want to ask you at the outset to see if you can find anything that Adler did - - if you can find anything that Breiner or Adler didn't do. Of course, Breiner lived there. Breiner was in his own block. He was only a few doors away from his own home. Adler was an itinerant curiosity seeker, who went to a lot of trouble to get where he could see what was going on. Well, that is all right. I don't blame him for that. We are not trying to blame Adler for anything, but I do object to extolling Adler, and then saying that Breiner should have been home, and he was a member of a criminal conspiracy. Well, this is Adler talking, defense witness:

Q. Walking slowly and you overtook all of the people on the east side of Garland?

A. Yes.

Q. So then you would not say that you saw any great excitement on the part of these people to get down to the corner, would you?

A. No, there was no excitement.

Q. You saw no running?

A. No, not on - - not on Garland Street.

Q. Heard no yelling?

A. No.

Q. Saw no disturbance in these people?

A. No.

Q. And you characterize these people along there  
as a neighborly, quiet, orderly crowd, don't  
you?

A. Yes."

Well, this is defense testimony, am I right?

MR. MOLL: Yes.

MR. TOMS: Defense testimony?

MR. MOLL: Yes.

MR. TOMS: I hardly believe it:

Q. Do you characterize these people along there  
as a neighborly, quiet, orderly crowd, don't you?

A. Yes."

That couldn't be a mistake, could it? Yes, that is defense  
testimony.

MR. DARROW: You might read it a little further.

MR. TOMS: Do you want to repudiate Adler? Do  
you want to repudiate your own witness, Mr. Darrow?

MR. DARROW: Not if you repeat the rest of it,  
I don't.

MR. TOMS: Well, do you want to repudiate what  
he has just said? Is it true, or isn't it true? What  
your own witness says, is your own witness a liar?

MR. DARROW: He is on the north side of the  
street, Mr. Toms, north end of the street.

MR. TOMS: Now, let us all argue together.

MR. DARROW: No.

MR. TOMS: Well, you haven't answered my question.

What I asked you was whether you want to repudiate Adler and claim that he lies?

MR. DARROW: Oh, no, no.

MR. TOMS: If you do not, you must admit that he tells the truth. You must admit that your own witness tells the truth. You have got to either stand or fall with him, Mr. Darrow. Adler is your witness.

MR. DARROW: On his whole statement, yes.

MR. TOMS: All right. He did say it was neighborly, and he explained what he meant. He said that the crowd on Garland Avenue was a neighborly crowd, men in shirt sleeves, home people, and it was quiet and orderly. Now, I am willing to let it go at that, perfectly willing to take Adler's word for that. I wonder if the defense wants to call him a liar. They haven't so far and then he said that the crowd down on Charlevoix Avenue was a dress-up crowd, as distinguished from a neighborly - - oh, I suppose he meant by that, that the men had their coats on, and their shoes on, and they were not out in slippers, and chatting with neighbors, up and down the street on a warm summer's evening. Did you ever do it? Did you ever do it? In the middle of the summer, did you ever go over to the corner store for a paper or a cigar without your coat on? Maybe in your slippers. Maybe you took a youngster along with you, and you met some neighbors over in the drug store, and you stopped to chat about the ball game that day, or how rotten the Tiger pitcher was, or

how bad business is; maybe walked back with your neighbors. That is what I mean by neighborly. I guess that is what Adler meant by neighborly. Would you like to be called a cowardly crowd for doing that, if you happened to pass the home of a negro?

Well, I wanted to digress just a minute, to see if we can get our bearings, as far as the law is concerned. The court will give you the law in his charge later. I have a right, as Mr. Darrow has exercised his right, to tell you our theory of the law; to tell you what we believe the law says with reference to the right to kill in self defense-- or protection of the home. I don't know, but the better way to do it -- let me read it to you --

"A person, though attacked in his own house, has no right to kill unless it becomes apparently necessary to save his own life or prevent a felonious destruction of his property or the commission of a felony therein; he is not justified in a killing to prevent a mere trespass on the property, even in his own dwelling.

"The force used by him -- that is, the method in repelling an attack, or protecting his home -- the force used by him must be neither greater in degree nor earlier nor later in point of time than is necessary or apparently necessary. It is the duty of the householder to prevent the injury of his house by means not fatal if he can do so consistently with safety.



In other words, he can't shoot sooner - - nor he can't shoot at all - - unless it is apparently and reasonably necessary to do so.

"The attempt to invade the home must be manifest, that is, it must be so plainly made that no reasonable doubt exists as to the purpose of the aggressor. But a mere demonstration towards, or even an effort to break into a dwelling will not excuse a homicide by the owner or inmate to prevent the breaking in. There must be such a demonstration of an immediate intention to do violence as to induce a reasonable belief that the party threatened will lose his life, or suffer serious bodily injury unless he immediately defends himself against the attack, even though in his own home. If, through carelessness or fright, or undue excitement, he takes the life of another, when it is not necessary and when he has no reasonable ground to believe that it was necessary, the killing is not excused. He must not take life if he can otherwise repel the assailants." He is not justified in killing unless the killing is to all reasonable appearances necessary to preserve his own life or prevent great bodily harm. There must be reasonable ground for believing the danger imminent, immediate and pressing. Before a person may be excused for taking life in the defense of person or home, he must have tried all reasonable means which would, under the circumstances,

"naturally occur to a humane man to repel the attack before taking life." Now, that is the whole sum and substance of this case.

How necessary was it that Breiner should have died? What could have been done to prevent it? Anything? Did Breiner have to be sacrificed on the altar of civic freedom here? Wasn't there some way out? Wasn't there some way that Breiner could have been spared to his family, and still the colored people have been guaranteed their right, the right to live. Oh, I think so. And that is the basis of my feelings in this case. There was an easier way, a less tragic way, of guaranteeing to these negroes their right as citizens. It wasn't necessary to have killed a man. It doesn't seem to me that Breiner had to die that Sweet should have his rights. I can't figure out. I can't convince myself that Breiner was a necessary sacrifice, or that anyone else was, much less Breiner, or that Houghberg should have been wounded. Wasn't there some way that Dr. Sweet could have enjoyed his home and have been guaranteed his rights under the law, without killing a man, and wounding another? I think there was. Why, one shot fired in the air -- well over the heads of this crowd -- safely over the heads of this crowd -- would have brought every police officer on the gallop to that house. It would have been an alarm that would have brought every reserve, and every man in that vicinity rushing to that house. What could the police do when

bullets were fired, after the man was shot? What could they do then? The toll had been exacted, the price had been paid. They couldn't save Breiner then. Suppose that Henry Sweet in the front room upstairs was as terrified as he said — here was the crowd, still across the street — <sup>not</sup> ~~set~~ <sup>huddled</sup> on his porch, not on the porch, not on his walks, but across the street, and stayed there. They had been there all the time. No attempt made to cross and attack the house. But, suppose that that situation was so fraught with terror that Henry Sweet said, "I am a goner unless I get help." I can't imagine that, even with his mentality, his history, his background, I can't imagine his thinking that, but suppose he did. One shot fired in the air would have brought help instantly. That is one thing that could have been done. What was the telephone in the house for? I suppose he didn't have any confidence in the police that were there. Why, I don't know. I suppose he didn't. I suppose he had no confidence in no one but Inspector McPherson. What effort did he make to get the man in whom he had confidence? He says his brother tried to call up a friend who would give him a telephone number where he could call Inspector McPherson, any Inspector of police, and that kind of reasoning from two college graduates; that kind of reasoning from a man who had been through two universities, and had graduated and studied and learned with honors. The dumbest man in the world would have immediately said, "I want McPherson. He

is the man I can depend on. I have confidence in him. I want to get McPherson here in a hurry. How will I do it? He is a policeman. I will call the police department. No, the intricate mentality of Dr. Sweet said, "Now, I will get my brother to call a friend who can tell me the telephone number where I can get McPherson. He took the hardest, the most difficult, the most improbable way, if they took any, of trying to get McPherson. Why, if I wanted the fire department, I would look in the telephone book under F and call fire department. I wouldn't call up a friend that could tell me where Chief McGinnity lived.

MR. DARROW: Look for it under Detroit.

MR. TOMS: If I wanted a policeman, I would look under P, police department, or I would look on the cover <sup>for</sup> of the police department, and I would say I want to talk to Inspector McPherson; it is important, and I think I would get him. Now, listen to the explanation, listen to the excuse; he says - - Dr. Sweet says, "Well, I didn't think of doing that because I was afraid they wouldn't let me talk to him. I was afraid that if I, a citizen, called the police department, and wanted to talk to Inspector McPherson, not knowing who I was, wouldn't let me talk to him." Oh, that is silly. It is ridiculous. It is impossible. If any one of you men go out here now and call for the Superintendent of Police, you will get him. You can call for any police inspector in this town,

and you will get him, if he is there, and if you want him very bad you will at least try to find out whether he is there. You won't just assume in a situation of imminent danger, when your life is threatened, when the only man that you believe would be able to help you, is the man that you are trying to call, you wouldn't just assume if I call him, they probably won't let me talk to him. Silly, ridiculous. It is silly and ridiculous, because it isn't true. Well, there are two things. They may have fired a warning shot. They may have called for the police department. They didn't have to have McPherson. Why not tell the first man that you got on the wire there is a mob out here trying to destroy our house? Send me some help, Garland and Charlevoix, and you would have had them in a minute. He would have them on the run. How frightened was he that that didn't even occur to him? Here was a policeman out on the sidewalk in front of the house. Did Dr. Sweet try to communicate with him. He opened the door and let his brother in. Did he try to call the officer at that time? Did he do any of the dozen of things that he could have done before it became necessary to kill a man? You know the law doesn't view human life lightly. Your life is the only thing you have that is worth a good deal. Some people, that is about all they do have, and oh, how jealous they are of it; how they want it; how they fight to keep it, and the law recognizes that. And it doesn't condone the taking of human life lightly. The

whole theory of the law for centuries has been, do everything else first before you kill, because you can't repair that damage. You can't give a man back his life. You can take his property away from him. He can get some more. You can take his health away from him, and he will regain it, but you can't give him back his life. Once you take it. And so the law says, and properly, you shall not kill except as a last resort. Can you say, gentlemen, and do you believe that there was no other course open to the negroes except to kill? I can't believe it. I can't believe that it was necessary.

You see, it wasn't as if they were unprotected entirely. It wasn't as if they had suddenly found themselves confronted with a mob which they themselves couldn't cope with. They had protection. They had policemen there. They had enough policemen there so that no one crossed on to their property. The police had protected them for forty-eight hours from any personal injury, and they had gone and come from the house. Why did they suddenly feel that the force which had protected them for forty-eight hours and given them access to go and come was insufficient? And was suddenly in such a state of collapse that they had no other recourse except to kill? Why, how frightened they were. They spent the evening playing cards. Here are men who are in terror of their lives, frightened -- who feared immediate, pressing, and impending death, lynching, their house torn down, about their heads, playing

cards. And Henry Sweet says, "Oh, I thought I would shoot so that they would go away and let us finish our supper." Oh, is that the price of interfering with a meal? Death? Do you disturb the tranquility of the evening meal at the risk of your life? Let us see what Henry Sweet does say, I mean let us see what he said before he had to have a lawyer to tell him to tell the truth. Now, here is the statement of a man which was taken the night that this thing happened, with his recollection fresh, without his having had time to conjure up, and manipulate, and manufacture fears and defenses. Here is what he says:

Q. You were at the house tonight when the trouble started?

A. Yes.

Q. What time did you come to the house today?

A. Been there all day.

Q. Did you leave the house at any time today?

A. Once, this afternoon.

Q. Where did you go?

A. I went to the drug store on the next street, and got some cigars.

Q. What time was that, about?

A. About 4:30, in the afternoon.

Q. Who was at the house when you left to go to the grocery store?

A. Who was there?

Q. Yes. Doctor come home at that time?

A. Yes.

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Q. And his wife?

A. Yes.

And so on -- telling who were the people.

"Q. Well, then, after you got back there to the front porch, what did you do?"

A. Sat on the porch and began to read."

Imagine trying to read and understanding what you are reading, at 4:30 in the afternoon. Later than that.

Got back at 4:30. Imagine trying to read, when you are in such a mental state that you are terrorized -- that you are loading your guns, that you are bringing your guns into the house and stationing your men about the house at the different windows; imagine being in that frame of mind, in such a state of terror, that you felt you had the right to kill a man to save your own life. Could you sit down to read and play cards?

"Q. How long did you sit on the front porch?

A. Oh, I guess about three quarters of an hour."

And nobody, nobody made a move toward him.

"Q. And then did you go in the house?

A. Yes.

Q. Any trouble while you were on the front porch?

A. No.

Q. Policemen there, wasn't there?

A. Yes.

Q. How many?

A. I am afraid to say.

Q. Was there more than one?



A. Yes.

Q. They were walking up and down, protecting the house, is that right?

A. Yes.

You see, Henry knew about the police.

Q. What was the first of the disturbance, that you know, what happened?

A. Oh, I was in the kitchen, I heard stones and things falling on the house.

Q. Then, what did you do when you heard that?

A. I went upstairs.

Q. Whereabouts did you go?

A. In the front room.

Q. What did you do when you got up there?

A. I got my rifle.

Q. What rifle? Is this -

A. That small one.

Q. This one here?

A. Yes.

I don't know the number. And then he identifies the rifle.

Q. Where did you get this rifle from?

A. I had it in my room.

Q. Which room was yours?

A. Middle room upstairs, on the side of the house facing Charlevoix.

Do you remember, that is where it was found finally?

Q. Where did you have it there?

A. In the corner.

Q. After you got it, what did you do?

A. Went to the front window.

Q. What did you do then?

A. I began to watch the stones and things. "

Now, that is the room that Dr. Sweet couldn't state that anybody else was in that time that he was lying on the bed. Do you remember, looking out at the crowd across the street for fifteen minutes? He didn't see his brother Henry doing these things.

"A. I began to watch the stones and things.

Q. Were you at the window?

A. Yes.

Q. And how long did you remain at the window?

A. I remained there until the stones began to come in on me.

Q. Did the stones come through the window?

A. Yes.

Q. How many stones come through the window?

A. I don't know; I never counted them there.

Q. Was the window open or closed?

A. It was closed.

Q. Did you kneel down at the window there?

A. Yes.

Q. Then what did you do?

A. I began to look out the window.

Q. What did you see when you looked out there?

A. A crowd of people.

Q. Where were they?

A. Across the street.

Q. What were they doing?

A. What were they doing? Throwing stones.

Q. What did you do then?

A. I didn't do anything until the stones begin to come in on me.

Q. Then what happened?

A. I tried to protect myself.

Q. What did you do?

A. I fired the rifle.

Q. Where did you fire it?

A. The first time in the air."

Then, of course, he didn't wait to see what effect that would have, or whether any help came.

"Q. Whereabouts? You mean, straight up in the air?

A. No, on an angle, about 70 degrees, I guess, from the ground."

What is 70 degrees? This is 90 - - 70.

"Q. What did you do then?

A. And I fired again at the crowd.

Q. How many times did you fire in the air?

A. I don't know?

Q. Did you fire more than once?

A. I couldn't say.

Q. How many shells does the gun hold?

A. Eleven.

Q. And you say you fired in the crowd?

A. Yes.

Q. And where was the crowd?

A. Between the store and the first house, and between the first and second houses; <sup>of course that is a great distance from the</sup> and in the meantime there were officers standing there, where that crowd was scattered, and the people throwing stones and hit over the officers head. They didn't attempt to do anything to stop it.

Q. Is that all the people were doing, throwing stones?

A. I couldn't say that is all they were doing; that is the particular thing I noticed.

Q. You say you fired at the crowd?

A. Yes.

Q. Just what part of the crowd did you fire at?

A. Between the store and the first house.

Q. When you fired, did you aim at these people standing down there?

A. Not anybody, just firing.

Q. Were you firing at the crowd?

A. Not particularly firing at the crowd, but in that direction.

Q. You knew if you pointed your rifle down there, all you were going to hit somebody?

A. Well, that is if you are going to take aim, but if you are going to shoot in the direction, you are not going to hit anything.

Q. Why did you fire as close as that? - now, here is a chance for Henry Sweet to give his own justification

for the thing -- here is a chance for him to say that he was in mortal terror of his life, if he was afraid, if he didn't fire, he would lose his life or his brother's property would be destroyed? Now, this is right after he did it, that he makes this statement.

"Q. Why did you fire as close as that?

A. To frighten them so they would leave us alone so we could go and finish our supper."

MR. DARROW: Now, didn't he say that there were two more boys in the room?

MR. TOMS: No. But, I don't claim that I have read the whole statement, no.

MR. DARROW: What?

MR. TOMS: I don't claim that I have read the whole statement.

MR. DARROW: Didn't he say the other fellows?

MR. TOMS: Yes. I don't deny that at all. The whole statement has been read into the evidence.

MR. DARROW: Well.

MR. TOMS (Continuing reading): "To frighten them so they would leave us alone so we could go and finish our supper." Well, if that is a good reason for killing a man, all right. If a man must be shot because not he, but some other people were there moving around, are disturbing the quiet of my supper hour, I will quit. We are all done if that is the reason for killing a man. Now, I think the most ridiculous conjecture, speculation, suspicion

that has been put into this case is the one about Gill, of his having shot Breiner. How desperate you must be for a defense, gentlemen? Clutching at straws. In the first place, why would Gill be shooting into the crowd? What earthly reason, sensible or otherwise, could there be for Gill shooting into the crowd? When at the same time there were two men right above his head on the porch who were firing in his direction?

MR. DARROW: Pardon me?

MR. TOMS: They were firing into Charlevoix.

What a fancy it is! It is plain imagination that Gill, instead of directing his shots toward the two colored men who were shooting out into the public highway, at a crowd, <sup>he</sup> he himself tried to shoot into the crowd that he was trying to protect. Now, is that the more logical, sensible thing? Or is it more logical to suppose that Henry Sweet aimed directly at the place where Breiner stood, shot him. <sup>Leather</sup> Oh, it is just a half hearted, not serious attempt, all to induct some suspicion of doubt, based on nothing, nothing at all. Now, your minds, of course, the answer to it is that it is not possible, that it could not be done. I mean, that Gill couldn't have shot Breiner from where he stood, from where Gill stood. Now, we don't ask you to believe any of his testimony on that. Here is a picture taken from the spot where Breiner stood.

MR. DARROW: That is where he said he stood.

Oh, I can -

MR. TOMS: Where Breiner stood.

MR. DARROW: I beg your pardon. I thought you meant Gill.

MR. TOMS: No picture taken from the spot where Breiner stood showing the garage, and you can see the end of the garage where Breiner stood.

MR. DARROW: Where Gill ~~said~~

MR. TOMS: I wish you would let me alone on my names. Where Gill stood. Now, of course, you can't simply say Mr. Gill is a liar, that is all. You can't get around it that way, just as everybody else who testifies for the state is a liar, but what is there to prove it? You don't just say that a man is a liar unless there is some reason for it? Do you? He wasn't impeached. He wasn't shown to have the reputation of a liar. The worst that you can say about him is that he was from Tennessee, and for that reason he was shooting at white people in preference to negroes. How things have changed in Tennessee since the Scopes trial?

MR. DARROW: Yes.

MR. TOMS: Since Gill left Tennessee, and I haven't yet seen any of these bullets that shoot around corners. Bullets have a habit of going in a straight line, and you can't move Getke's house, and you can't move the garage, and there is no dispute as to where Breiner stood, and you can't make a bullet shoot around a corner. So, you are just confronted with physical facts. Why, Gill's bullet couldn't have hit Breiner. Well, what else? What other physical facts? We have got a bullet, of the same

caliber, as Gill's gun, which we found in the house, at the foot of the stairs. We got a bullet hole in the back porch, where he says that he aimed and fired, going through the door casing and ricocheting off the ceiling, and dropping naturally at the place where we find the bullet. Now, that is the same kind of bullet that fits Gill's gun. Now, even if you don't believe that this is his bullet, it certainly must have some weight in counter-acting this utterly nonsensical suggestion that his bullet hit Breiner. Well, why assume that one bullet fired from such a queer position, and having to go around a corner, was the one that hit Breiner rather than any one of the shower of bullets that fifty witnesses testified came out of the front windows of that house. Let us see which is the more probable. Well, now, if your Honor please, I see that I am not going to be able to finish, not by one o'clock.

THE COURT: All right, Mr. Tom.

MR. TOMS: If you do not mind.

THE COURT: At this time we will adjourn until two o'clock, two-fifteen, gentlemen.



3 o'clock P. M.

Court convened pursuant to recess.

THE COURT: All right, Mr. Toms.

MR. TOMS: At the noon recess, gentlemen, we were directing our thoughts to Officer Gill. You remember the testimony was that he stood at the north end of the garage up against the wall when the shooting from the back porch began. Now, of course, Gill has been discredited. He has been a cold liar along with the others, but let us see whether he should be called a liar. And there ought to be some reason for it. We don't just blindly, without any basis, call people liars; at least, we shouldn't, and Mr. Chawke used the illustration of Gill standing up against the wall of the garage. Now, that is a very natural thing to do. He wanted whatever protection the garage would afford and I think you or I would have stood just as close to the wall of that garage as we could without needlessly exposing ourselves to the bullets that were flying from the back porch. So, we can say that it is probable that he stood where he said he did. It would be the natural thing to do. Mr. Chawke used the jury rail here as an example. Then he indicated where the bullet would have to land, about over the door, and he said up there, do you remember? Of course, he entirely ignores the really significant fact that there are forty feet between this end of the garage and the

house; that Gill didn't have to do that, turn his wrist around the end of the garage, to shoot ten feet over on a porch that is forty feet away. Now, here are the measurements: It is 40.3 feet from the wall of that garage to the rear wall of that house. Mr. Chawke uses an illustration of 8 or 10 feet, so that the angle of Gill's gun, the muzzle of Gill's gun, would only have to be deflected a very little to hit the top of that door, 40 feet away; to hit the top of that door 10 feet away, it would have to be deflected considerable more. There is no doubt about that. But it would be perfectly simple for Gill, by turning his wrist just the slightest, to have deflected his bullet the 10 feet it was necessary to go over that door; just a slight change in angle; he wouldn't have to do that. He would just have to turn his gun a little. If he had held his hand six inches away from that wall of the garage, and then turned the muzzle, his bullet would have struck right where the hole was, and where the bullet was found. Now, that is possible. That is perfectly possible under the physical laws of nature, but it is not physically possible for ~~the~~ shooting around the corner of the Getke house in an arc, in a parabola, to hit Breiner. Now, let us talk about crowds, just a minute or two. Let us talk about a crowd. That is the one we are interested in. Now, at the time of the shooting, let us take the defense version of it, at the time of the shooting, in front of the Dove steps, there was a crowd;

oh, any number of people, not less than fifteen, and from that up to one hundred. The front lawn and the sidewalk in front of the Dove House, jammed with people; well, now, let us see if that can be physically possible? Here were seven bullets that were shot into that immediate area, one in the tree, one in the eaves-trough, one to the door leading upstairs; three through the steps, one through Breiner and one through Houghberg, and they are all of them in a very restricted area (indicating). They are all of them within this area. The width of the house, including the street; here is the one through the door; three through the steps, one in the tree, one through Breiner, and one through Houghberg, seven of them right there. Now, tell me, if you can, what would happen to the people, the crowd that was jammed on the lawn here, on the sidewalk, clear down to the corner, if seven bullets had been shot through them, and hit the people who were back of them. There are five bullets that missed that crowd, two of them found human marks.

MR. DARROW: One, in the eaves trough couldn't.

MR. TOMS: No.

MR. DARROW: Or in the tree.

MR. TOMS: Oh, yes. Oh, yes, the one in the tree was just about a person's height.

MR. DARROW: Outside of the sidewalk.

MR. TOMS: No, sir. Not a bit outside of the sidewalk.

MR. DARROW: Upstairs.

MR. TOMS: What?

MR. DARROW: Upstairs.

MR. TOMS: Well, now - -

MR. DARROW: Well, now, we are interrupting.

Excuse me.

MR. TOMS: We will show you pictures of them.

MR. MOLL: Here it is.

MR. TOMS: There are seven bullets. Here is the only one that could possibly have missed hitting some one of that crowd, and that is the one up in the eaves trough. We will say that went over their heads. Here is the tree. Here are the steps of the Dove house, right here. Here is the tree right in front of them. There is the tree right there (indicating). And the bullet is just as high as the floor of the steps, the floor of the porch. There is the bullet (indicating). How did that bullet miss that crowd that it went through? There are three more bullets coming in almost horizontal. Now did those three bullets miss the crowd that was packed right here in front of them in the yard? There is the same three bullets. This one just barely scuffed the step as it went in. That went in almost straight. This one went in almost straight. How did those bullets, two, three, four, five, and six, six out of seven, how did they get through that crowd and hit the people who were in the back end of the crowd, if the crowd was there? They must have done more tricks than Gill's bullets did. They must have been fired in this sort of fashion, then came down

and straightened out, and went ahead. They must have cleared the heads of the mob, and then come down until they were in front of Dreiner and Houghberg, and then straightened out and passed horizontally through Breiner. Don't you think, there is something that doesn't depend at all on anybody's testimony? You don't have to believe anybody's spoken word to see that is the situation. There are physical facts. There are photographs, undisputed facts. There is no argument about that. Let us take the physical fact, and even Mr. Darrow can't change the laws of nature much. I wouldn't want to say that that is what he went to Dayton for.

MR. DARROW: No.

MR. TOMBY: But, anyway, he doesn't change the law of physics. He doesn't make bullets do things that they ordinarily don't do, and even he can't make a bullet jump over the head of a crowd and then pass horizontally through the body of a man who is back of the crowd. There is absolute, conclusive, and inescapable proof, gentlemen of the jury, that that crowd wasn't there. If the crowd had been there, six people would have been killed instead of one, or would have been struck, at least. Well, for example, let us take this group of people right here on the corner, standing there, probably a fair example of the mob which was in front of the Dove house, as Mr. Darrow describes it, on the lawn and in front of the sidewalk. Now, I would ask Mr. Darrow to take this Remington rifle here, and put a bullet through the body of the man

who is standing against the wall horizontally, without hitting the men in front, and then, if you can do that, let him shoot five more bullets right into that crowd and hit nobody, except the people in the back. Now, explain that, gentlemen. That is just physical, concrete, cold facts, that you can see; not facts you listen to, and you can't get away from it. The same is perfectly true of Gill's bullets. If Gill had been able to shoot over there, and the mob was there, that has been pictured to you, he would have hit somebody in the front row, not Brainer in the rear. There is no getting away from that fact. Now, does it bother you some, or give rise to some speculation in your minds, that this bullet passed horizontally through Brainer's back, although it was fired from the second story window? It shouldn't. You will remember that the distance from the place where the shots were fired, that the place where Brainer stood, to the Dove steps, is 104 feet, the distance is 104 feet. Now, if Brainer had been standing erect, -if Brainer had been standing erect, a bullet fired from the second story window, 20 feet above the ground, 104 feet, the bullet would have passed on an angle 1 inch above horizontal. This bullet passed through Brainer's body, and about horizontal, which I will try to explain to you in a moment, but if Brainer had been standing erect, that bullet would have risen one inch, the degree of it, through the body, and would have been only one inch higher where it went in than came out, at a distance of 104 feet. And

all he needed to do to have it pass horizontally through his body, would be this (indicating), or this (indicating), or anything which would tip the upright line of his body slightly. Now, here is a man that is talking to a neighbor, neighbor sitting on the steps; he is smoking a pipe. Maybe Breiner might have stood this way; maybe he did this (indicating), or maybe he did any of the nine other natural things that a man might do talking to a man sitting on the steps in front here, or, if he did that, then the angle of the bullet would have passed about—would have been eliminated entirely by the tip<sup>ing</sup> of his body, and the path of it would have been horizontal through his body. What of it? That is academic. Does anybody claim that he was shot from anywhere else? Do the defense claim that he was shot from anywhere else except the Sweet house? Why should we fret ourselves about figuring angles and distances, when the only bullet that were fired in the direction came from the Sweet house? It isn't of much importance whether they went through horizontally or at a slight angle. It doesn't bring Breiner back, does it? He was shot just as fatally one way as any other going throughout the rest of this argument, and throughout your deliberations, it seems to me that the only thing you ought to bear in mind, as bearing upon the presence of the mob, or the crowd in front of the Dove house, is the fact that I just mentioned a few minutes ago, <sup>How</sup> could there have been a mob there and any one person killed with the

shower of bullets that was poured over there? It isn't humanly possible, at least, for others would have been shot, if they would have been as thick there as the defense claims they were. Now, let us talk about odds. Who had the advantage here? Let us suppose that these were two antagonistic groups, which ~~was~~ bent on doing damage to the other. Who had the better chance of doing it without harm to himself? Well, in the first place, the negroes were behind solid walls. In the first place, they had the only guns which anyone has been able to show here, and plenty of them. In the first place, they were in darkness. They were at a point of vantage where they could shoot without being seen or anticipated. They were at a place where they could not be hit if shot at themselves. The only difference is that there were ten of them, and more people on the other side of the street. Well, numbers don't mean so much always, numbers of men; numbers of bullets make a difference; advantage in position makes a difference. I remember reading about the immortal Three hundred at Thermopylae.

MR. DARROW: Three hundred?

MR. TOMS: Was it three hundred?

MR. DARROW: Well,

MR. TOMS: How they stood off the whole Persian Army because they had the advantage of position. I remember in days I used to recite at school, "When Horatius at the bridge"



MR. DARROW: "Out spoke brave Horatius".

MR. TOMS: Horatius<sup>o</sup> was alone, but he was out on the bridge. So that ~~his~~ numbers don't make so much difference provided the other fellows have the advantage of position, of protection, or are in a strategic point, or have more bullets. There were 391 bullets here, not counting those that were found empty in the house, the empty shells. That's a pretty fair advantage right there. They could have taken care of three hundred of this crowd before they could have got anybody on to their property, if they would have found it necessary. That gave them quite<sup>gr</sup> an advantage, but, in addition, they are in darkness, behind solid walls, and the people across the street given no chance to retreat - or to change their minds, or to get to places of safety; women, what difference does that make? Children? No chance to get under cover. No chance to protect themselves. No chance to change their minds, if they had been intent on destroying this house. No chance to repent, but, suddenly, unannounced, and without warning, these flashed forth from four sides of this citadel showers of bullets; what could the white people do? Stand there and take them, that is all. They had no means to protect themselves. I don't call that bravery. I don't think that makes a hero and martyr out of a man, to fire under those circumstances. And, by the way, why from four sides of the house? There are the mob? Nobody testifies even amongst the defendants, nobody

testifies to any threatening crowd except across Garland Avenue from the front of the house. What were the two men on the back porch firing at? They were not shooting towards the so-called mob on Garland Avenue. What were the people on the south side of the house firing at? Who has testified to any mob over there? Dr. Sweet? No. He didn't see any mob over there. Now, mind you, the only mob which frightened the man inside, the mob that he saw; certainly, if Dr. Sweet, if Dr. Sweet didn't see a crowd on Charlevoix Avenue, he wasn't frightened by them, was he? I don't believe if they were menacing him in his house, or they were intending to tear down his house, they should have fired out on that side of the house, just the same as if they had seen the threatening mob there. And who was threatening from the rear of the house, from the alley? Well, we will play safe. We will fire out there, too.

MR. DARROW: Mr. Toms, have you any doubt that anybody fire back to the alley, or to one side or the other side?

MR. TOMS: Well, firing from the back porch.

MR. DARROW: I know, but they could fire from the front to the back porch.

MR. TOMS: All right. That is another trick bullet.

MR. DARROW: I don't want to interrupt you.

MR. TOMS: That is all right. I am glad to be

interrupted if I am wrong. Now, here is a picture of the back porch. Can you tell me how the men who stood on this side of it, firing into Charlevoix Avenue, could be firing at the mob which is around here on Garland Avenue? The man on the other side, who fired between the two houses, is in a different situation. He was firing between the Sweet and Getke house, and might possibly have hit the crowd on the other side of Garland, but, what about this boy? This fellow who stood on the south side of the back porch and firing into Charlevoix Avenue? He wasn't shooting at the mob in front of the house, unless he had another one of those trick guns that shoots in semi-circles.

AND NOW No, the whole thing -- the whole thing resolved itself into this, gentlemen of the jury, into an attitude toward the people of the neighborhood which can be expressed by this: We are not going to take what Turner took. We will throw a scare into these white people at the very first crack out of the box that will let them know that we mean business. And so they kill a man to scare the white men and let them know that the colored people did not mean to be driven out easily. Now, there is no legal justification for that. They had no right, morally or ethically, or legally, to kill Leon Breiner just to impress on the white people that they didn't propose to be driven out, and that is just what happened. Well, now, let us try the case of Sweet versus the Waterworks Park, Improvement Association. That is the case Darrow would

like to have tried all the way through here; either that, or Darrow versus -- what was that name, of the school-teacher? --

MR. CHAWKE: S-t-o-w-e-l-l.

MR. TOMS: Darrow versus Stowell, he would have like to have tried that, or Hintey versus Davis, or Sweet versus the Detroit Police Department, any case -- any case that he could think of except the People of the State of Michigan versus Henry Sweet. He doesn't like that, and he doesn't like to have us talk about Breiner's death, and about Breiner being shot, and about Breiner being buried. I don't blame him. He says it is mussy. And when he used the word, I couldn't help but think of Dr. Sweet's vivid and wonderful description of the burning of the colored boy in Florida, when Dr. Sweet was seven years old; mussy -- that is kind of mussy to talk about pouring kerosene on him, and that sort of thing. That is my idea of mussy. Oh, you see, that doesn't hurt Dr. Sweet any. The mussy things that Darrow doesn't like to hear are the ones that don't do Dr. Sweet and his brother any credit. So he hates to see Breiner brought in here. Breiner, poor Breiner, just a figurehead here. That an innocent figure he has turned out to be. Just some man who was killed, that is all. Just the man who is dead. Well, that is mussy. Who made it that way? Who created the mussy? What is the only violence and bloodshed in this whole case? Well, it is the violence and bloodshed

that was caused by a bullet fired from this house. That is the only bloodshed. That is the only messy feature. I am not surprised he doesn't like to hear about it. It isn't pleasant. We don't any of us like to hear about the dead, but we ought, none of us, to forget them.

Now, the Waterworks Park Improvement Association is just one of these associations all over town; a lot of neighbors who are interested in their property, in their schools and streets, and police protection, and the other things that neighbors have in common, get together to form an association. Now, you know it is perfectly natural for people to colonize. Man is a gregarious animal.

He herds. He always has and I guess he always will. We are naturally drawn to people of our own tastes, or our own color, and I don't know how you are going to change that. I don't know whether it is commendable. I don't know whether you can justify it, but it is there. It is just one of those prejudices, maybe. We naturally herd with our own kind; animals do it, human animals do it.

Look right around this building. Here is a street right over here where, if you do not speak Greek, you wouldn't be able to buy very much. Let us go out here a few blocks.

If you are not Italian, then you move in, people begin to wonder why. Let us go down a little farther, down on Franklin Street, and you find Armenians. Let us go up to the Seventh and Ninth wards, and you will find Germans. Let us go up into Hamtramck, and you will find two Polish Mayors at the same time. Go out in Delray, you will

find Hungarians. Haven't we a pretty well-defined colored district here? It all goes to show that people just naturally like to be with their own kind of people, and it is perfectly natural, and not necessarily criminal, that they try to keep their neighborhood, the kind of a neighborhood that their own people will enjoy living in. Now, I say, maybe that is wrong. Maybe it is narrow-minded, but it is natural. It is instinctive, and people are going to keep on doing it right after this trial, and probably to the end of time. So, for the Waterworks Park Improvement Association to band together, if you please, to prevent negroes from moving into the neighborhood, it wasn't unreasonable, providing they did so by legal methods. Now, of course, there would be a legal method of doing it by placing restrictions on their property. They couldn't do it legally ~~by force and coercion~~ <sup>by force and coercion</sup>, and if they did that, no one holds any brief for them, or justifies it. But where there are two possible ways of doing it, of maintaining a white character for their neighborhood, if you like, leave it to the defense to claim conclusively that they were interested only by their desire to drive them out illegally. It isn't possible that any of these citizens, these men who work in our city, and pay our taxes, it isn't possible that they could have intended to keep their neighborhood restricted to white families by legal methods. No, why, nobody in that neighborhood could have done anything legally according to the defense,

or, say, where you have the choice, of giving the man credit for intending to do a thing, by a legal and proper method, or by an unlawful and violent method, don't by any means give him credit for being decent. Don't suspect for a minute that he meant to obey the law, or that any of them that belonged to the association, planned to accomplish their purpose lawfully. We can't do that. Why, that is attributing a decent motive to a person. You mustn't ever do that. You must not ever assume that people have any decency or integrity in their make-up. Attribute the dirty motive always. Charge them with having a criminal intent. Say that they meant to break the law. Don't for heaven's sake let anyone suspect that <sup>you</sup> can see that they might have intended to do the thing lawfully, which they could have done. So, we have this interpretation on the purposes of the Waterworks Park Improvement Association, that they filed their articles of association in Lansing as a mere subterfuge, camouflage; that their by-laws meant nothing; that every solitary member was actuated by a desire to do violence to the negro, and they had no other purposes. Well, I suppose, I could make some remarks about the National Association for the Advancement of Colored People. Well, if I did, here is what I would say about them. They are a high-minded, well-meaning, altruistic group of people who are trying to better their own race. I admire their standards. I admire their personnel. I respect their purposes. That is what I have got to say about the colored organization. I think they

are a fine body of men and women, who are doing an immeasurable amount of good for their own people. If they are the type of mind of some other people, I could say that the National Association for the Advancement of Colored People was just a trick. It is just a scheme for forcing colored people into white neighborhoods. It is just a scheme for grabbing public offices for colored people. It is just a scheme for securing marriage with the white race.

MR. CHAWKE: I object to that statement, all of it.

MR. TOMS: I am repudiating it myself.

MR. CHAWKE: I submit that it is the most unfair argument that could possibly be made, by innuendo, arguing as counsel argues here. Now, I object to it as improper. The National Association is not on trial here.

MR. TOMS: Neither is the Waterworks Park.

MR. DARROW: Yes, the Waterworks Park, is.

MR. CHAWKE: I ask for a ruling of the court.

THE COURT: Do you want to be heard about it, Mr. Toms?

MR. TOMS: Of course, I hadn't finished my remarks in that connection. I intended to proceed to state that I repudiate any such statements as I have made, as being my true sentiments.

MR. CHAWKE: We object to counsel making the statement before the jury, and then repudiating what he



says because that is arguing a matter which is presented to a jury by innuendo. It is covertly done instead of openly done.

THE COURT: I think that, gentlemen of the jury, is an argument that is improper, and the reference of the prosecuting attorney to the National Association will be stricken from the record.

MR. TOMS: Does your Honor mean to strike all my remarks with reference to that?

THE COURT: I will strike out what was objected to.

MR. TOMS: You wouldn't object to --

THE COURT: I understand --

MR. DARROW: Every statement where he said that if he had the kind of mind that we have on this side of the table --

THE COURT: I will let stand on the record that portion of it where you yourself gave your own view of it. The other may be stricken from the record.

That is what I understand that you object to?

MR. DARROW: That is what we object to. If he had that kind of mind, he could have <sup>made</sup> all these things.

THE COURT: Yes, that may be stricken from the record, and you are instructed to disregard it, and not gather any inference from it, that is unfavorable to the accused in this case.

MR. TOMS: Now, that is what I am urging the jury to do myself.

THE COURT: Then there is not any objection.

MR. TOMS: There should not be. Now, I don't want you to gather any inference that is unfavorable to the accused from anything that I have said about the National Association. Not a bit, nor that is unfavorable to that Association. Oh, you see my point, just difference in breadth of view, that is all.

MR. DARROW: I do not believe you see my point now. Do you want me to tell you quietly what I think?

MR. TOMS: Suppose I change the subject. Will that do it?

MR. DARROW: Oh, well, I have a high regard for your honesty, and I do not believe you see just exactly what I do.

MR. TOMS: Tell me.

(The conversation was inaudible to the reporter).

MR. TOMS: Well, I probably haven't got the point of it. But I am perfectly willing to attribute to the colored organization the highest of motives. I don't for one minute suspect them of any subterfuge. I will take their by-laws at face value. I will subscribe to their constitution without thinking for one minute there is any secret or undisclosed purpose which doesn't appear in their by-laws. Well, that is that.

Now, let us talk about stones and things. I want to show you a picture of that house that has been bombarded - - wait, I will quote this verbatim - - bom-

barded by an infuriated mob for two whole days and two whole nights.

MR. DARROW: Who said that?

MR. TOMS: You. "Besieged", "besieged", not bombarded. You said "besieged." There is a house with thirty windows in it (indicating). There is a house with thirty windows in it, that was besieged by a hostile mob for two whole days and two whole nights, and this picture was taken at the end of that period, the next day, thirty windows, and the sum total of all the damage resulting from the siege, by the hostile mob, is one pane of glass, three by ten inches, broken. What a trifle bargain for a human life; only one pane of glass worth a quarter, for a human life. Well, if the stones were pouring in on this house, as some people have said, where did they land? How did all but one of the thirty windows escape this infuriated mob which was bent on the destruction of this place, not a blade of grass trampled? The hedge in perfect condition, the rose-bush in bloom at the side of the house, and this place over-run by an infuriated mob for two days and two nights. Well, that was the same kind of a mob that was over in front of the Dove house, and the kind of a mob that you can shoot through without hitting. Mr. Moll tells me I haven't done them justice. There were forty-five windows in the house, counting each separate window, three on the side. All right. What is the difference? Thirty or thirty-five, isn't it strange that with the bombardment and the barrage that

was laid down around that house, just one little pane of glass, three by ten inches, was the only one broken. How frightful the artillery fire must have been? What a terrifying effect it must have had on these people inside armed with ten guns?

Now, let us talk about statements. I told you I am going from A. to Z. Here is Dr. Sweet's statement in headquarters. Now, you know that you don't need a lawyer to get you to tell the truth, and that, if you claim that whatever you did was legally justifiable, if you claim that you had a perfect right to do what you did, as Dr. Sweet claims here, there is no reason for denying it. Mr. Chawke frankly states that the purpose of a lawyer is to tell his client to keep his mouth shut. Why keep your mouths shut if you have nothing to hide? If you claim that everything you did was legally justified, then you have a perfect reason and excuse for it; why hide it? Why refuse to state your reason and your justification? So, we have two reasons why Dr. Sweet does need to tell the truth to Mr. Kennedy when he was being questioned: First, he was bewildered, or bewildered — I don't know what he meant by that. He didn't say. Second, he didn't have a lawyer. He didn't have to have a lawyer to tell him not to tell the truth, or to tell him to tell the truth. Which? If the lawyer had told him to tell the truth, he simply would have justified himself in everything that he did that night. He would have simply laid on the table there, as

he has here from the witness stand, the reasons why Breiner was shot. Are the reasons any different now than they were the night of the shooting? Has anything happened since the shooting which makes it legally justifiable now which didn't exist at the time of the shooting? Well, then why all the subterfuge, why the scrupulous evasion? Why the plain out and out lying, to be plain about it? Admittedly so, admitted falsifying. If you have nothing to hide, you have nothing to lie about ~~it~~. Now, what did Dr. Sweet have to hide? He didn't testify that he was frightened and terrified when Mr. Kennedy was asking the questions on the night of the shooting but he claims that he was bewildered, that his statement was not freely and voluntarily made. He says that now, and he was frightened by the police who didn't put a hand on him. The thing that frightened him -- the one thing -- and he says this, the one thing that frightened Dr. Sweet was Mr. Johnson's remark, "Oh, what did you move out there for, if they didn't want you there?" How that must have struck terror to his heart and made his blood run cold, for such an inhuman, brutal, threatening remark as that to be made to him. "What did you move out there for, if they didn't want you?" Now, you have seen Johnston on the stand. What an ogre he is? And how little children must run in the house when Johnston goes by, something to frighten anyone; Johnston, a man of terrible mien, a frightful visage, and he says to Dr. Sweet, "Well, what did you move in <sup>out</sup> there for, if they didn't want you?" And that

frightened Dr. Sweet so much that he told him an entirely different story than he tells you here on the stand. Well, you better apply some of the tests of testimony which I related to you this morning to that kind of a statement. Will it hold water? Is it consistent? Is it in line with your experience with men about town? Is it the thing that you expected naturally to happen? Then, of course, ~~it is~~ <sup>he only</sup> farther, much farther; much too far, and absolutely denies having said certain very significant things. Now, mind you, he doesn't say that he didn't mean this that I am going to read to you. He didn't say that he may have said it, but he doesn't remember, and doesn't say that it is not correctly transcribed here. He says he didn't say it at all. "Everything you told us here, Doctor, has been told freely and voluntarily, has it, on your part?"

A. To the best of my ability.

Q. Have I threatened you in here since you have been here?

A. No.

Q. Treated you all right?

A. Yes.

Q. Satisfied with the way we treated you?

A. Yes.

Q. How about these officers when you were brought in here, after you were locked up? They let you sit in there with the rest of the boys that was out in the assembly room?

A. With rest of the boys. I was treated royally.

I think I feel it best. I will say this, if there were more officers like the officer who was in charge of us down here" - - that is, Johnston, - - that frightened him - - perhaps you "why, I am sure this thing wouldn't have happened, and it is highly appreciated.

Q. Nobody threatened you?

A. No, been treated like a gentleman."

We have brought Mr. Silberblatt here, and he says that he took those statements down as they fell from Dr. Sweet's lips. Well, now, either Silberblatt is telling the truth, or he is the most dangerous perjurer who ever went into a court-room, because he not only lied to you here, if Dr. Sweet is telling the truth, - - but he manufactured those statements and put them verbatim into this record, made them up out of his own mind, not a word of them Dr. Sweet's. Well, then Johnston says, I heard him make those statements and saw Mr. Silberblatt write them down, as he said that. Now, are you going to brand Silberblatt and Johnston both as perjurers, because Dr. Sweet says that he didn't make the statement, in the face of Dr. Sweet's statement admittedly that he has lied repeatedly in that transcript? Are you going to believe him who admits that he made false statements in that transcript, against Silberblatt and Johnston? Do you honestly believe that Silberblatt manufactured that statement, "I was treated royally. No, been treated like a gentleman." Are those Silberblatt's words, or are they Dr. Sweet's? Well, it

was a clumsy falsification by the doctor. It had no purpose. It brought him nowhere. It gained him no advantage, but it is significant in this, that it shows that he doesn't hesitate to falsify to serve his ends. So, perhaps, you ought to scrutinize the rest of his testimony in this case, with that in mind; with the fact that he has admitted falsifying statements. Maybe that is another thing, another aid, in testing his testimony throughout this case. He proved himself before you to be a perfect witness? How much credence ought you to put in his testimony? Use the same rules and the same tests that you do for any other witnesses. I don't ask any exception, but apply them to Dr. Sweet's testimony. Has he admittedly falsified? If so, how much of his testimony can we believe? Now, of course, no claim made here that Henry Sweet's statement is not free and voluntary. Nobody claims that he was frightened or bewildered, or that it wasn't true, so, perhaps we ought to take the most significant of testimony in the whole case as ultimately true, and, that is Henry Sweet's own version of what happened out there that night, of what he did, of his part in the shooting; just how far he went. Is there anything to show that that statement isn't true? Men don't say things contrary to their own interests unless they are true. I mean, I don't manufacture a lie which will do me damage. I may manufacture a story which will inure to my benefit, which may help me out of a situation, but the whole theory of the law is that if a



man makes a statement which involves him, which is derogatory, which is harmful, or incriminating, the law presumes that it is true, because he wouldn't go out of his way to make up a lie, which would get himself into a hole. So, the law presumes that any statement which is contrary to your own interests, is made advisedly and bears the stamp of truth. So, let us take Henry Sweet's statement as true. I am willing to. Nobody has claimed that it is not true. Nobody has attempted to repudiate it.

MR. CHAWKE: Now, just a minute. I ask that the jury be excused. We have a matter to take up with the court. I think it might just as well be taken up right now.

THE COURT: You may be excused, gentlemen.

(The jury was excused).

MR. CHAWKE: We now move the court to declare this trial a mistrial, because of the argument of the Prosecuting Attorney, particularly the portion of the Prosecuting Attorney's argument which he just made, in which he stated that no one has claimed that the statement of the accused is not true, and the language used by the Prosecuting Attorney just before he made that statement, the contents of which are a direct attempt to call the attention of the jury to the constitutional rights of the accused, of which he has availed himself in this case, that is, in selecting my testimony. I think that the court reads the language of the counsel for the prosecution, and it will be seen that the language of the counsel for the prosecution is a direct attempt to call the attention of the jury to the constitutional rights of the accused, of which he has availed himself in this case, that is, in selecting my testimony.

(The statement of the prosecuting attorney was then read by the reporter, and it was followed by argument on both sides).

THE COURT: Well, as I stated before, I think it is a dangerous subject; best to keep away from it. It is dangerous, but I think it can properly be cured by instructions, so I will deny the motion for a new trial.

MR. TOMS: For mistrial.

THE COURT: Deny the motion.

MR. CHAPKE: May we have an exception?

THE COURT: You may have an exception, and to-night, Mr. Toms, Mr. Chapke, if you discover cases on that, I wish you would bring them to my attention in the morning.

MR. TOMS: I can finish in a very few minutes, I think perhaps, less than half an hour.

THE COURT: We will take a recess at this time.

(The jury thereupon was brought in).

THE COURT: Proceed, Mr. Toms.

MR. TOMS: Now, gentlemen, I am nearly through. I say "if." It must be. Now, it has been claimed here that the police were in contact with the crowd, in sympathy with the crowd, and yet, the police didn't lend the crowd assistance. They kept them moving. It is admitted that they kept them from coming on the side of the street, either street, where the Sweet house was. Now, if the police were in sympathy with the crowd, and wanted to see them do any damage to this house, how easy it would have

been for the officer who was on the west side of Garland  
to have let people slip past him, and to have let a crowd  
congregate in front of this house. How easy it would have  
been for the inspector, if he was in sympathy with the  
crowd, to have sent two or three men down there. Does  
his going down there in person indicate that he wasn't  
interested in the situation? Does the fact that this  
superintendent of police himself went out there, the deputy  
superintendent, indicates that he didn't take the situation  
seriously enough, or used every every reasonable effort  
to afford protection for this house? Of course, I can see  
where the people on the other side of the street might  
have some complaints that they were not afforded any  
protection. I can see where they might very justly com-  
plain, but nothing was done to protect the neighbors  
who were using the public highway on the other side of the street.  
There were no officers put in the Sweet house to see whe-  
ther or not that mob was dangerous, or threatening, or  
armed. We can see where the white people along Garland  
Avenue have pretty serious grounds to complain, but nothing  
was done to see that they were protected from being shot,  
from a mob, and ten is a mob, which was armed, and bar-  
ricaded inside of a house, but I don't see what grounds  
they complain at all in the house for. The crowd was kept  
moving, -- unless they think that the street should have  
been clear, and that everyone who presumed to use the pub-  
lic highway that night, who was so officious as to dare

to put their nose outside of their own doors that night - -  
 unless it can be claimed that they should have been driven  
 indoors, and ho<sup>l</sup>dered into their houses, and their windows  
 closed, and perhaps shutters drawn, and barricaded, so  
 that they couldn't look out, or throw stones out, or shoot  
 out. It seems to me that is the only other thing that the  
 police may have done. Mr. Darrow complains that no one  
 was stopped and asked, "What is your business here?" Well,  
 just what right did the police have to ask citizens walk-  
 ing on the public highway in their own neighborhood, or  
 standing on their own porches, or lawns, "what business  
 have you got here?" Why, I think I can imagine the re-  
 ply I would have made to a policeman if he had come up  
 to me as I was standing in front of my home, and had demanded  
 to know what business I had there. I would have told him  
 that whatever business I had was none of his business, at  
 least that. I wonder what kind of a howl we would have  
 heard from the defense, if Mr. and Mrs. Spaulding had been  
 stopped and asked, "What are you doing here in this neigh-  
 borhood?" "What business have you here?" ~~Knowing~~ the  
 police realized their limitations, the limitations of their  
 authority, and they didn't presume to go over ~~there~~. But  
 I think the most ludicrous claim is that the police didn't  
 shoot at the house. It is hard to conceive that Mr. Chawke  
 can be serious in that, that when Inspector Schuknecht  
 started across the street, up the steps of the Sweet house,  
 he didn't draw his gun, and that Lieutenant Schellenberger

didn't return the fire. What would he shoot at? Whom would he hit? Of course, if they would have adopted the same standard of promiscuous shooting that prevailed inside of the house, that is what they would have done. They might have hit Mrs. Sweet, or they might have hit some innocent bystander; another innocent bystander; they might have broken a few windows, but what would they have accomplished. The inspector knew who was in the house. He wasn't afraid of them, and what a foolish, silly, reprehensible thing it would have been for Schuknecht

X to have fired, to have fired on the house. Would that have brought Breiner back to life? The shooting was over then.

X Would that have prevented the shooting in the first place, to have returned the fire? What effect would that have on the people outside? What effect would that have to

L shoot <sup>all</sup> a policeman across the street <sup>from this house</sup> from this gun at this house? What would have been the result? And what would it have accomplished? That is about as meaningless a suggestion as has been made throughout this trial.

In this house for two days and two nights. I don't remember that they were... I referred to the case... The days and the nights... the evening... the house... still on the other... for two days and two nights... the house...

Now this crowd is said to be hostile, and yet after one of their number had been killed and another one wounded and the lights were turned on in the house and the shades were up and the colored people inside were exposed to view, not a finger was laid on that house. No one returned the fire. No one attempted to hurt the negroes inside. No stones were thrown through the windows. No one went on the property of the Sweets even after the shooting, even with that provocation, with that which must have stirred the crowd, if anything would. They still maintained themselves as a lawful assemblage. They did not retaliate. They did not seek revenge. They did not formulate any attack, with the shades up and the lights on and the people who had done the firing in plain view. How hostile was that crowd? If ever there was an example of self restraint, even by a mob, there it was. Now just as an example from Mr. Darrow's attempt to pervert the testimony for the sake of working on your sympathy, he drew a picture here of these colored people besieged for two days and two nights. What did he say? Ten blacks penned in this house for two days and two nights, with a surging mob around them. I don't remember that Henry Sweet --

MR. DARROW: I referred to the evening.

MR. TOMS: Two days and two nights does not refer to the evening. That is just what you said. I take what you mean from what you say. And we can assume that the Jury will do the same. Henry Sweet was not penned in the house for two days and two nights. Doctor Sweet was not penned in the house for two days and two nights while he was buying his

furniture and attending to his practice. Mrs. Sweet was not penned in the house when she went with him. Davis and Otis Sweet, who did not come there until the night of the 9th in an automobile, they were not penned in the house for two days and two nights. Where is your mob surging around them? When they moved in? No. When Henry Sweet was out on the porch reading his book? No. Any time during the day of the 8th or 9th was there a mob surging around them? No. They did not even claim that themselves. The testimony of the defense does not say that. Nobody says that except Mr. Darrow who tells you that he wants to stick to the testimony. Well, he did not do it then and he did not do it when he said that Mr. Andrew testified that Breiner was at the meeting over on the school house yard, the meeting of the Water Works Park Improvement Association. Mr. Darrow has been going through the testimony ever since trying to find something which would justify that statement to you that Breiner attended that meeting of the Water Works Improvement Association. I will sit down now and let Mr. Darrow read all of Andrew's testimony from start to finish to you and see if he can find that statement.

MR. DARROW: Mr. Toms, I told you that I was mistaken.

MR. TOMS: You told me, but I want to tell the Jury.

MR. DARROW: Do you want me to tell them?

MR. TOMS: No, I will tell them and you won't dispute me, will you? You were mistaken?

MR. DARROW: Certainly I was.

MR. TOMS: That is all right, probably the first time in your life.

MR. DARROW: Now, not the first time, even in this case.

MR. TOMS: I guess you are not unusual in that. We have probably all been mistaken once or twice in our lives. But the point is that I want you to decide this case on the testimony as it is, not on any misstatement of the testimony either innocently made or made in the heat of emotional argument. Let us have it accurate. That is what we want in the way of testimony.

Well, Mr. Darrow made another mistake. He said that Mrs. Rose went down Garland Avenue looking for her daughters — Mrs. Davis. And she did not say anything of the kind. She said she went down Garland Avenue out of curiosity and when she got down about the Getke house she saw a girl across the street whom she thought was her daughter and she went over there to get her and it turned out not to be her daughter. She was not one of the gathering parents who went out to get in their chickens for the night at all. That probably was innocently made too. I do not doubt it. I mean that sincerely.

MR. DARROW: That is pretty near correct.

MR. TOMS: No, it was not nearly correct at all, because you imputed to her the wrong motive in leaving her steps, so it is not right at all. It is just one of these things from which you can draw a wrong inference if you want, so it ought to be accurate. Well, I just wanted to check him up on those three.



MR. DARROW: That is not so bad.

MR. TOMS: No, not so bad, considering what you could have done. No, not bad at all.

Now, let us talk about holes. We found two of them in the Sweet house, both in one pane of glass three by ten made by stones. We find eight of them made by bullets in the houses of people around the neighborhood. Where do you think the odds were? Two holes made by stones or eight holes made by bullets? Talk about odds and advantage. Who had the better show for his life that night? Let us look. There are two boxes of stones. We will give those to the crowd outside. We will do better than that. I will ask you please, unless there is some legal objection that you won't interrupt, would you mind?

We will give this to the crowd outside, two boxes of stones. We will throw in Gill's gun for good measure. That was outside the house. It could not belong to the crowd outside, but we will put in Gill's gun for good measure. Then we will go inside the house and we will take a rifle, another rifle, and a shot gun, one, two, three, four, five, six, seven revolvers. Here is the wall of the house right there. These are outside and these are inside. Oh, but we must take something else inside. We must put 391 rounds of ammunition inside the house, 391 rounds of ammunition and ten guns, and here is the wall of the house and these people are outdoors in the open, unprotected, in plain view, easy targets, and these people are well protected. You can't see them. You can't see their guns and their ammunition. They are protected

by mortar and brick and wood. And here outside the wall is a cordon of police to keep these people away. What are the odds, gentlemen? Who had the even break that night? The people with those guns and that ammunition secure in the darkness behind the walls of the house with the lights out, or the people out on the street in the open, in daylight, with a lot of little stones? What a miracle it is that only two people were casualties that night.

Now the defense that has been presented here is a defense that could be made for any negro charged with crime. It could be said of any defendant, if he is a negro, just what has been said here in behalf of Henry Sweet. This is going to be a standard set defense for any negro involved in an altercation concerning a white man. Now let me ask you this. Suppose you bring in a verdict of "Not guilty". Someone comes to you afterwards and says, "Mr. So and so, you were on the Jury in the Sweet case?" "Yes, I was." "You found him "Not guilty"?" "Yes." "Well, then you must have found that Breiner deserved to be killed?"

MR. DARROW: I object to that statement. It does not follow at all.

MR. TOMS: Now, is there a legal objection to it, or do you just disagree with my conclusion?

MR. DARROW: You haven't any right to make a statement that is not justified by the evidence; that, as a matter of law, does not at all follow that a verdict of not guilty would be returned in this case would mean that Breiner was to blame.

MR. TOMS: Well, all right. I will withdraw the statement rather than leave it open to the suspicion of being unfair. I will put it this way. Someone asks you, "you found Henry Sweet not guilty?" "Yes." "Then you must have found that Breiner was lawfully killed."

MR. DARROW: I object to that statement.

MR. CHAFKE: I think that is wholly improper for the reason that the Jury are answerable to no one, to counsel for the state or counsel for the defendant, or this Court; or anybody for their verdict.

MR. TOMS: I am not trying to hold them answerable.

MR. CHAFKE: I submit this is covertly done in this way. The jury is free and independent. They can do anything they like in this case and answer to no one.

MR. TOMS: There is no doubt about that. I will agree with it.

THE COURT: What might be suggested to them afterwards is not proper argument. You can go along the thought that you want to develop without stating to the jury --

MR. TOMS: Unless I am doing something improper or illegal I do not propose to have the defense outline my argument. If I am overstepping, the Court can direct me to stop, but I do not propose to have them tell me what I shall say to the jury.

THE COURT: You won't be limited at all, Mr. Toms, but I think it would be better if you do not refer to any question that may be asked them afterwards for the reason that under the decisions in this state the juries are answerable

to no one except their own consciences.

MR. TOMS: I know that, of course. I am not attempting to hold the jurors responsible. They are responsible to nobody. But, this is the answer that you will have to make. This is the reason you will have to justify in your minds. You are responsible to yourselves, your own sense of reasoning.

MR. DARROW: I object to that statement, your Honor. The statement is that Breiner was lawfully killed, or else they must find this defendant guilty. It does not follow at all. That they have got to justify it in their own minds is utterly absurd. That is a proposition of law he is laying down.

THE COURT: I think it will be fully covered by the charge, Mr. Darrow. You may proceed.

MR. TOMS: I am going to tell you what I mean. A verdict of "Not guilty" in this case means this; that Breiner came to his death without anyone breaking the law; that Breiner came to his death without anyone's unlawful act. Well, for what reason are people deprived of their lives? For what reason are people deprived of their lives without the law being broken? They forfeit them for some misconduct of their own. What did Breiner do to forfeit his life? Was he careless? Was he malicious? Was he criminal? Did Breiner do something from which you can say his death was his own fault? And that nobody is to blame for it? Let us see what he did. Breiner walked out of his house. He had a right to do that, didn't he? He goes down the street

to the store. Has he done anything yet for which his life should be taken? He walks back up to the Dove house and stops to talk to some neighbors. What is done so far? He stands at the corner of the Dove porch smoking his pipe, talking to a neighbor with his back to the Sweet house. Was he making an attack on the Sweet house? With his back turned toward it, was he threatening the Sweets by turning his back on them? Did he constitute eminent threat, pressing and immediate danger to the Sweets by standing 104 feet away from them, smoking his pipe, talking to a neighbor? Tell me if you can one overt thing that Breiner has done in this case which justifies the taking of his life? Does it mean that men can't do what Breiner did that night without being shot? Does it mean that Breiner has violated any law for which he deserved death? Did Breiner harm someone for which he should suffer as he did?

Now Mr. Darrow asked you if you had your choice between going out here and having your leg cut off by a street car, or being a negro which would you choose? If you had your choice between losing your hearing or your eyesight and being a negro, which would you choose? If you had your choice between being Leon Breiner today and being a negro, which would you choose?

I want to talk about civil rights just a second. There is one civil right that is more precious than all the others that you can think of and which no man surrenders except at the command of his God or his Country, and that is the right to live. When John Hancock and five others of

our forefathers signed the declaration of independence, they affixed their signatures to one external principle upon which this country is founded and that is this Doctrine: All men are endowed by their Creator with certain inalienable rights, and among these is the right to life, the right to life, liberty, and the pursuit of happiness. I have not any doubt that in setting out those inalienable rights our forefathers put the most important one first, because without that right all the others are of no importance. An inalienable right to live first, and then liberty and the pursuit of happiness or the right to live where you please follows.

Let us ask ourselves, "What has Leon Breiner done to be deprived of this fundamental, inalienable right to live? How do people lose their civil rights, any of them? They lose them by their own misconduct, by their own breach of the social rules under which we elect to live. That is the only way that they lose them. Now, had Breiner committed some outrage that his right to live should be taken away from him, and if so what? What outrage has he committed? And, have it taken away from him without any chance to defend it? You can't take away a man's liberty without giving him his day in court, without giving him a chance to defend himself and be heard. You can't take away a man's property without due process of law. What due process of law or chance to be heard did Breiner have before his right to live which is so much more important, was taken away from him? Which is the more important, gentlemen, the right to live where you please, the right to live in a certain neighborhood,

the right to live in a certain house, or the right to live at all? Certainly the latter. Breiner, had he been given a chance to state would have said, "I will live anywhere. I will live anywhere in this world, but let me live. I won't insist on living on Garland Avenue or Charlevoix, if you are going to kill me if I do. I will live anywhere, but oh, let me live." Now, let us not be misled as to the real issue here.

MR. DARROW: I want to take an exception to this. I don't know how much more of this there is. I was waiting to get through with it. I want to take an exception to that statement. It has not the slightest bearing upon this case. It is utterly falacious and untrue. It might just as well apply to a pure accident or to a man who is killed while someone is defending himself, or run over by an automobile. Breiner's right to live has not the slightest thing to do with the facts of this case. It is simply a question of whether these defendants, purposely under the rules of law, took somebody's life. Somebody is not necessarily guilty because another man loses his life. I want to take an exception to it.

THE COURT: You may proceed.

MR. TOMS: Let us not be misled as to what we are to determine here, what the real issue in this case is. We are not trying a group of hoodlums in Chicago, nor a mob in Tulsa Oklahoma in 1918, or in Chicago, or East St. Louis, or Orlando, Florida. We are not fundamentally concerned with the

prominence or distinction of the defendants or their witnesses, or any organization which sponsors them. It is not so important to us that Doctor Sweet was once a good waiter or worked as a bell-boy, or that he studied medicine in Europe, or graduated from Silberforce University. That is not of much importance here. This is all a smoke screen, gentlemen, thrown out to hide the real question to be decided here and that is who was responsible for the death of Leon Breiner? On whom should the hand of guilt be placed? Back of all your sophistry, gentlemen of the defense, back of all your transparent philately, back of your prating of the civil rights, and your psychology, and your theory of race hatred, and fear, and slavery, back of all that rise the dead body of Leon Breiner with a bullet hole in his back. You can bury it if you will, or if you can, beneath all the copies of "The Crisis" and "The Defender" and "The Independent" and the other committees' reports in the world; bury it if you can, and still out from under that avalanche appears the mute face of Leon Breiner and the lips are forever mute. All your specious arguments and all your beautiful ingenuity born of many years of experience, and all your sociological theories and all your cleverly conceived and manipulated race psychology can never dethrone justice in this case. Leon Breiner, just a poor insignificant American citizen, just one man in thousands, but a living human being with a right to live, without aspirations and with hopes and with ambitions, and with the



God-given right to work them out, Leon Breiner, chatting with his neighbor at his doorstep, is shot through the back, from ambush, and you can't make anything out of those facts, gentlemen of the defense, or gentlemen of the jury, but cold-blooded murder.

MR. CHAWKE: If your Honor please, may it be understood by counsel for the State that the request to charge heretofore filed before your Honor instructed the Jury in the last case may be considered with the request to charge which we have filed and which we have served a copy of upon the prosecuting attorney, may be considered as the defendant's request to charge in this case.

THE COURT: That will apply to both the People and the defense. Gentlemen of the Jury, I will instruct you tomorrow morning at 9:30. Court will be adjourned until that hour.

Feb 2 2:3

Thursday, May 13th, 1936.

CHARGE OF THE COURT.

THE COURT: Gentlemen of the jury, the information in this case charges that Ossian Sweet, Gladys Sweet, Joe Mack, Henry W. Sweet, Morris Murray, Otis O. Sweet, Charles F. Washington, Leonard C. Morris, William E. Davis, John Latting, and Hewitt Watson, late of said city of Detroit, in said County, heretofore, to wit, on the 9th day of September, A. D. 1925, at the city of Detroit and County aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder one Leon Breiner, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan.

In addition to the information, the Prosecutor has filed the following bill of particulars:

"The theory of the people in this case is that the defendants premeditatedly and with malice aforethought banded themselves together and armed themselves with the common understanding and agreement that one or more of them would shoot to kill, in the event, first, of threatened or actual trespass on the property wherein they were assembled, or, second, of the infliction of any damage, real or threatened, however slight, to the persons or property of them, or any of them. Further,

that deceased came to his death by a bullet  
 fired by one of the defendants, aided and  
 abetted by all of the others, in pursuance of  
 their common understanding as above set forth.  
 Further, that such understanding and agreement  
 was to commit an unlawful act, to wit, to shoot  
 to kill without legal justification or excuse."

The information, Gentlemen of the Jury, is based  
 upon section 15193, of the Compiled Laws of the State of  
 Michigan for the year 1915. The section reads as follows:

"All murder which shall be perpetrated by  
 means of poison, or lying in wait, or any  
 other kind of willful, deliberate and pre-  
 meditated killing, or which shall be committed  
 in the perpetration or attempt to perpetrate  
 any arson, rape, robbery, or burglary, shall  
 be deemed murder of the first degree, and  
 shall be punished in the manner that is set  
 forth in the statute.

I consider it my duty to further read to you  
 Section 15193 of the Compiled Laws of the State of Mich-  
 igan for the year 1915. This section reads as follows:

"All other kinds of murder shall be  
 deemed murder in the second degree, and  
 shall be punished in the manner that is set  
 forth in the statute.

Gentlemen of the jury, while eleven defendants  
 are named in the information in this case, you are to

consider and to pass judgment only upon the innocence or guilt of one defendant, that is, the defendant Henry Sweet. Now, at the outset, I urge you to be calm in your judgment, and to summon the best judgment that you have, in order that in your deliberations you may be equally fair with the prosecution and with the defense. Anything less than this will be less than your full duty.

The accused in every criminal case is presumed to be innocent. He comes into court surrounded by that presumption; and, because of it, it is the duty of the people, that is, the prosecution, to prove his guilt of each and every one of the essential elements of the crime with which he is charged, to the satisfaction of each and every one of you, by competent testimony, and beyond all reasonable doubt, before you are in a position where you may return a verdict of guilty against him. When the prosecution has proved its case by competent testimony, and beyond all reasonable doubt, and to the satisfaction of each and everyone of you, it then becomes your solemn duty to return a verdict of guilty, just as it remains your solemn duty to return a verdict of not guilty if the prosecution fails in this regard.

The killing of one human being by another is called homicide. The word "homicide" is a derivative from two Latin words, "caedo, - I kill"; and "homo, - a man;" the word "man" being used in the generic sense, a human being. Manifestly, not every homicide is a crime. A

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homicide may be, first, justifiable; second, excusable;  
and third, felonious.

When a homicide is justifiable or excusable, as I shall hereafter define these terms to you, a homicide is not a crime. When felonious, as I shall hereafter define the term to you, it is a crime. The first question to be answered by you is, did the defendant in this case commit a homicide, that is to say, kill a human being as charged in the information, Leon Breiner, within the corporate limits of the City of Detroit, on the day in question? Obviously, if the homicide or death of Leon Breiner was brought about by some one other than the accused, or if the evidence in this case raises a reasonable doubt in your minds as to whether the homicide or the death of Leon Breiner was brought about by the accused, or some one with whom he was acting, it would be your duty to return a verdict of not guilty.

The second question to be answered by you is, if the accused killed Leon Breiner, did he kill him, first, justifiably; second, excusably; or, third, feloniously?

As I stated above, only in the event of the last instance, namely, felonious killing, would his killing of Leon Breiner be a crime. Hereafter, I shall explain the kinds of crime a felonious homicide may be.

If you find that Leon Breiner was killed by the accused, your inquiry has only begun. You must fur-

ther inquire, was the killing, first, excusable, in defense of himself or of others; second, as justifiable, in repelling a riotous attack; and, third, as justifiable in resisting a felony.

As a preliminary to defining excusable and justifiable homicide, there is a general rule of law which I am bound to give you, which applies to all the grounds of defense. You might very properly ask in this or any other case whether the necessity for taking life in order to excuse or justify the slayer must be one arising out of actual or imminent danger, or whether he may act upon a belief arising from appearances which gives him reasonable cause for such belief that the danger is actual and imminent, although he may turn out to be mistaken. Human life is not to be lightly disregarded, and the law will not permit it to be destroyed unless upon urgent occasion; but, the rules which make it excusable or justifiable to destroy it under some circumstances, are really meant to insure its general protection; and such rules, in order to be of any value, must in some reasonable degree, be accommodated to human character and necessity.

Were a man charged with crime be held to have knowledge of all facts precisely as they are, there could be few cases in which the most innocent intention or honest zeal could justify or excuse a homicide. The jury, by a careful sifting of witnesses on both sides, in cool blood, and aided by the comments of court and counsel, may arrive at a tolerably just conclusion on the

circumstances of an assault. But, the accused, who is to justify himself, can hardly be expected to be entirely cool in a deadly affray, or in all cases to have great courage or large intellect, and cannot well see the true meaning of all that occurs at the time, while he can know nothing whatever concerning what has occurred elsewhere, or concerning the designs of his assailants, any more than can be inferred from appearances. And, the law, while it will not generally excuse mistakes of law, because every man is bound to know that, does not hold men responsible for a knowledge of facts unless their ignorance arises from fault or negligence.

A criminal intent is a necessary ingredient of every crime; and therefore, it is held that, as the rule of law, founded on justice and reason is that an act does not make guilt unless the intent is clear, the guilt of the accused must depend on the circumstances as they appear to him. In all cases where a party, without fault or carelessness, is misled concerning facts and acts, as he would be justified in doing if the facts were what he believed them to be, he is legally, as he is morally, innocent. The accused, therefore, is to be judged according to the circumstances as they appeared to him at the time; and he or they who were with him were entitled to act upon the belief arising from appearances which gave him or them reasonable cause for it, that their danger was actual and imminent, although it might

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turn out thereafter that he or they were mistaken.

The defendant, therefore, is to be judged under the circumstances as they appeared to him or to them at the time, being, however, held to the rule of reason and good faith in his belief based upon these circumstances.

It is your province, gentlemen of the jury, to consider what were the circumstances which confronted the accused at the time, his situation, their situation, his race and color. The actions and attitude of those who were outside the sweet home all has a bearing on whether or not the sum total of the surrounding circumstances, as they appeared to him at the time, was such as to induce in a reasonable man the honest belief of danger.

Judged by this rule which I have given to you, was the killing of Leon Breiner by the accused, if a killing, justifiable, excusable or felonious? The only variety of excusable homicide which I need advert to is that which embraces the defense of one's own life, or that of his family, relatives or dependents, within those relations where the law permits the defense of others as of one's self. Practically, as far as immunity from punishment is concerned, there is no distinction with us between excusable and justifiable homicide. Neither an excusable or a justifiable homicide is punishable by the law. But, there is a distinction between justifiable and excusable homicide, which will be convenient in order to illustrate the difference between the various instances



of homicide in repelling assaults, according as they are or are not felonious.

Homicide, in self defense, is excusable when it occurs in a sudden affray, or in repelling an attack not made with a felonious design. It is excusable and not justifiable, because, occurring in a quarrel, it generally assumes some fault on both sides. In these cases, the original assault not being made with a felonious intent, and the danger arising in the heat of blood on one or both sides, the homicide is not excused unless the slayer does all which is reasonably within his power to avoid the necessity of extreme resistance, by retreating, where retreat is safe, or by any other expedient which is attainable. He is bound, if possible, to get out of his adversary's way, and has no right to stand up and resist if he can safely retreat or escape.

The rule governing excusable homicides committed in self defense against an attack not made with a felonious design is thus clearly stated. The party assaulted must, therefore, flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment, or as far as the fierceness of the assault will permit him; and it may be so fierce as not to allow him to yield a step without manifest danger of his life or great bodily harm; and then, in his defense, he may kill his assailant instantly.

Before a person can avail himself of the defense that he used a weapon in defense of his life, he must

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satisfy the jury that that defense was necessary; that he did all he could to avoid it; and that it was necessary to protect his own life, or to protect himself from such serious bodily harm as would give him a reasonable apprehension that his life was in imminent danger. If he used the weapon, having no other means of resistance, and no means of escape in such case, if he retreated as far as he could, he would be justified. A man may defend his family, his servants or his master, whenever he may defend himself. A man is not, however, obliged to retreat if assaulted in his dwelling, but may use such means as are absolutely necessary to repel the assailant from his house, or to prevent his forcible entry, even to the taking of life. But, here, as in the other cases, he must not take life if he can otherwise arrest or repel the assailant. Where the assault or breaking is felonious, the homicide becomes justifiable, and not merely excusable.

The essential difference between excusable and justifiable homicide rests not merely in the fact that the one was felonious, although pardoned, of course, while the other was innocent. These only were justifiable homicides where the slayer was regarded as promoting justice and performing a public duty; and the question of personal danger did not necessarily arise, although it does generally.

It is held to be the duty of every man who sees a felony attempted by violence to prevent

it, if possible; and, in the performance of this duty, which is an active one, there is a legal right to use all necessary means to make the resistance effectual. Where a felonious act is not of a violent or forcible character, as in picking pockets and crimes partaking of fraud rather than force, there is no necessity, and therefore no justification for a homicide unless possibly in some exceptional cases. The rule extends only to cases of felony, and in those it is lawful to resist force by force. If any forcible attempt is made, with a felonious intent, against any person or property, the person resisting it is not obliged to retreat, but may pursue his adversary, if necessary, until he finds himself out of danger. Life may not properly be taken under this rule, where the evil may be prevented by other means within the power of the person who interferes against the felon. Reasonable apprehension of danger, however, is sufficient here, as in all other cases. It is also the settled law that private persons may forcibly interfere to suppress a riot or resist rioters, although a riot is not necessarily a felony in itself. This is owing to the nature of the offense which requires a combination of three or more persons assembling together, and actually accomplishing some object calculated to terrify others. Private persons who cannot otherwise suppress them, or defend themselves from them, may justify a homicide in killing them, as it is their right and duty to aid in preserving

the peace; and perhaps no case can arise where a felonious attempt by a single individual will be as likely to inspire terror as the turbulent acts of rioters; and a very limited knowledge of human nature is sufficient to inform us that when men combine to do an injury to the person or property of others, of such a nature as to involve excitement and provoke resistance, they are not likely to stop at half-way measures, or to seem closely the dividing line between felonies and misdemeanors. But, when the act they meditate is in itself felonious and of a violent character, it is manifest that strong measures will be generally required for their effectual suppression; and a man who defends himself, his family or his property, under such circumstances, is justified in making a complete defense as is necessary.

Accordingly, if you find, from the facts in this case, that the accused fired a shot that brought about the death of Leon Breiner, and that it was fired under an honest and reasonable belief, based on the circumstances as they appeared to him and to them at the time, that he or they were in danger of losing his or their lives, or suffering great bodily harm, or were resisting a forcible and violent felony in the only effectual manner that it could be resisted, the shooting would be justifiable, and the defendant would be not guilty.

If the defendant killed Leon Breiner, and you find his act was not excusable or justifiable, under the rules which I have heretofore stated, you will then be

required to determine if the killing of Leon Breiner would be a felonious homicide; and felonious homicide is one in which the law recognizes neither legal excuse nor justification. Felonious homicides are divided into three grades: Murder of the first degree, murder of the second degree, and manslaughter.

Murder occurs where a person of sound mind and memory kills any reasonable creature in being, with malice, premeditation, or aforethought, either express or implied. Under our statute in this state, murder is divided into two classes, known as murder in the first degree, and murder in the second degree. Murder in the first degree occurs where the killing is effected by poisoning, lying in wait, or any other premeditated or deliberate killing, or when it is committed in the perpetration or attempt to perpetrate the crime of arson, robbery or burglary. All other murders are of the second degree. Murder in the first degree may be committed in any one of the various ways provided by the statute as I have given them to you; but the distinguishing element between murder of the first degree and murder of the second degree, with which you are concerned in this case, is whether the murder, if there was a murder, was deliberate and premeditated. By premeditation is meant a fixed design in the mind of the accused to commit the crime of murder, that is, that he had designed it. The length of time is immaterial, but in some time before the fatal shot

was fired. The length of time is immaterial, be it some time before the fatal shot was fired. The accused must have had murder in his mind, and design to kill his victim, - that is, formed a definite purpose to kill some person pursuant to a fixed design. That would be premeditation. That is, to constitute murder in the first degree, the killing must be willful and deliberate; it must be done with malice, and must have been premeditated.

To constitute murder in the second degree, the killing must be done with malice, and must be willful and deliberate, but not premeditated. In other words, the same elements must be shown to prove murder in the second degree as murder in the first degree, excepting that in first degree murder, the killing must be premeditated.

Malice, as I have used the term here, may be either express or implied. Express malice occurs where one, with a deliberate purpose, kills another. Malice is implied from any deliberate or cruel act against a man, however sudden. Malice is not confined to any particular ill-will of the murderer towards his victim, but is intended to denote an action flowing from a wicked and corrupt motive; a thing done where the act is attended by such circumstances as carry in them the plain indication of a heart bent on mischief, regardless of social duty.

Malice aforethought means malice existing any time before the act so as to be its moving cause. In murder, the real test of malice is to be found in the

presence or absence of adequate cause or provocation to act with violence. Where a deadly weapon is used to do a killing, malice will be implied, unless the provocation which results in the killing is very great.

Below murder in the first degree and murder in the second degree is the crime of manslaughter. Manslaughter differs from the crime of murder, in that it is not the result of malice, but is the result of wrath or anger superinduced by provocation, and without sufficient cooling time having elapsed for the wrath to have subsided and reason to have resumed its sway. As I have already stated, however, where the killing is done with a deadly weapon, the law implies malice, unless such killing is the result of considerable provocation.

To summarize briefly what I have just explained to you in detail: If you are satisfied beyond all reasonable doubt, from the testimony in this case, that the accused killed Leon Briner without legal justification or excuse, and as the result of cruelty or wickedness of heart, or recklessness of disposition, the crime would be murder. If, with premeditation, it would be murder in the first degree; if without premeditation, but with malice, it would be murder of the second degree. It would be manslaughter if done without legal justification or excuse, as I have explained them to you, without malice, but upon reasonable provocation and without sufficient time elapsing for passion to cool and reason to resume

its way; or, if you are satisfied, beyond all reasonable doubt, that the accused killed Leon Breiner, either in the doing of some unlawful act, or in the doing of some act that could not but be attended with manifest danger of hurt to the person of some human being, or be of such a nature that it could not be done without a manifest hazard of life.

Now, while it is your duty here to determine the innocence or guilt of Henry Sweet alone, it is my duty to make clear to you the relative criminal liability, if any, of each of the several defendants. Of course, it goes without saying that every man is responsible to the law for his own acts. He may also become criminally responsible for the criminal conduct of another. Our statute provides that all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, although not present, may hereafter be indicted, tried and punished as principals. Hence, it follows that if one of the defendants shot and killed Leon Breiner without legal justification or excuse, as I have defined them to you, he would be guilty of a felonious homicide in so doing, because of his own act; and any and all others who aided and abetted him in the commission of that felonious homicide would be equally guilty with him. Aiding and abetting the commission of a crime consists of encouraging, counselling and assisting the principal who



commits the crime in the commission of it. While the guilt of each defendant is personal and individual, and while you are asked to decide here solely the guilt of the defendant Henry Sweet, it nevertheless is the law that each defendant is responsible not only for his own criminal conduct, if any, but also for the criminal conduct of any other defendant whom he aided or abetted to commit the crime charged. This defendant, Henry Sweet, may, therefore, be convicted of the crime charged, if he himself committed it, and also if he aided and abetted some other defendant in doing it. In other words, his guilt, as an actual perpetrator of the crime or as an aider or abettor of the perpetration of the crime by another, is the same. Therefore, before you can find Henry Sweet, this defendant, guilty, you must be satisfied beyond all reasonable doubt that, without legal justification or excuse, he shot to death Leon Breiner, or aided and abetted the person who did shoot to death Leon Breiner, such person not having any legal justification or excuse, as I have defined them to you. In other words, this defendant cannot be convicted unless you are satisfied beyond a reasonable doubt that such defendant, by himself, without legal justification or excuse, killed Leon Breiner, or aided and abetted the killing of Leon Breiner by another person, such person not having any legal justification or excuse as I have defined them to you. The mere presence at a homicide and knowledge of its com-

mission cannot in and of itself make a person guilty.

It is the claim of the defense in this case that the State has failed to prove, beyond a reasonable doubt, that Henry Sweet or anyone of the accused, fired the shot that killed Leon Breiner, and that whatever shooting was done from the house of Dr. Sweet was in the defense of that house, and of persons inside, and to resist a forcible felonious assault on their persons and property. Dr. Sweet had the right, under the law, to purchase and occupy the dwelling house on Garland Avenue. Under the law, a man's house is his castle. It is his castle, whether he is white or black, and no man has the right to assault or invade it. The negro is, now, by the Constitution of the United States, given full citizenship with the white man, and all of the rights and privileges of citizenship attend him wherever he goes. Our Supreme Court has said, all citizens, whether white or black, are equal before the law. The white man can have no rights or privileges that are denied to the black. Socially, people may do as they please, if they do it within the law. The whites may associate together and exclude the blacks, or the blacks may associate together and exclude the whites, from their dwelling houses and private grounds, and from their own private activities.

Now, gentlemen, the accused in a criminal case, may take the stand or may neglect to do so. In this case, a co-defendant, Dr. Sweet, not on trial at this

time, has taken the stand; and it is your duty to give every fair and conscientious consideration to his testimony. You should apply the same tests of common sense and reason to determine the truth or falsity of his testimony that you will apply to determine the truth or falsity of the testimony of any witness who takes the stand. It is your privilege, if you are so impressed by his testimony, to accept his theory and his statements as correct, and disregarding all of the other testimony in the case, to acquit the defendant, Henry Sweet. On the other hand, because he is one of the defendants, does not mean that you should give any greater weight or credibility to his testimony than you would to the testimony of any other witness. You should, as I have previously stated, apply the same tests of common sense and reason to determine the truth or falsity of what he tells you, that you would to determine the truth or falsity of the testimony of any other witness, having in mind that he is one of the defendants in this case. As I mentioned a moment ago, the accused in a criminal case may take the stand or neglect to do so. This is the law of this state. It is his right to make an election. The defendant, Henry Sweet, has not taken the stand; and, because he has chosen not to do so, the Prosecutor may not comment upon it. Counsel for the defense may not comment upon it; and I cannot, except to explain the law to you. Under the law, he may make his own choice or selection.

and because it is his right, under the law, if he invokes it, you have not any right to guess or speculate why, or to gather any inference against him because he has not taken the stand. Obviously, no prejudice should accrue to one who has exercised a right the law for sound reasons grants to him. It is the duty of the court to instruct you as to the law, and it is your duty to accept the instructions of the court in that regard; but the responsibility rests upon you, and you alone, to determine what the facts are in this case. In seeking to determine the facts, you have no right to go outside the testimony. You are bound absolutely by the testimony of the witnesses who have appeared here on the stand. By that I do not mean of course that you are bound to accept everything that every witness has said as true. It is for you to determine what testimony is true; and if you do not believe it all, then what testimony is false. It goes without saying that any testimony that you do not believe to be true, you should cast aside as mere surplage, and it is of no consequence whatsoever. It is also your function to determine what weight or credibility you should attach to the testimony of each witness, taking into consideration the opportunity the witness has had to know the facts about which he or she seeks to testify here on the stand; and, taking into consideration the demeanor of the witness on the stand, the reasonableness of the story that is told,

whether the story is conflicting with other testimony that the same witness has given, or other testimony in the case that you believe to be true, whether it is corroborated by other testimony that you believe to be true. These are some of the tests that will occur to you in seeking to determine what weight or credibility you will attach to the testimony of each witness who has appeared here before you.

You have a right to take into consideration any interest that any witness has in the outcome of the case, in determining what weight and credibility you will attach to the testimony of the particular witness. You have a right, if you find that a witness has deliberately testified falsely as to any material facts, to disregard the testimony of that witness in its entirety, or you may disregard it in part and believe it in part. In other words, gentlemen, as I have already said to you, you will determine from the testimony of the witnesses what the true facts are in this case, and then you will apply the law to the facts as I have given you the law, and you will thereby arrive at your conclusion.

I have been requested by the prosecutor to instruct you as follows in regard to certain testimony, and I give you the following instructions:

Certain testimony has been introduced by the defense, showing that Dr. Sweet had witnessed and had heard of occurrences in Detroit and elsewhere, in which it

was claimed that the rights of negroes had been violated by white men, or in which negroes and white men were involved in racial outbreaks. This testimony was not offered, and is not competent, to show whether or not such circumstances actually happened, and you are in no way concerned with the question of the truth of the reports which Dr. Sweet claims to have received. If you find that they were repeated to Henry Sweet, in substantially the same form as you have heard them from Dr. Sweet here, then you may consider such disturbances only in determining what effect, if any, they had upon the mind and mental make-up of the defendant.

One cannot justify the killing of an assailant on the ground of self-defense, if it is done through mere fear or excitement, or under circumstances which, as they appeared to him at the time, were not sufficient to induce in him a reasonable belief that he was in danger of bodily harm.

Counsel for the defense in this case have submitted several requests to charge, and the following I give to you:

The jury is instructed that Omeria H. Sweet had the right to purchase the property at 3903 Garland Avenue, in the city of Detroit, and to be free from interference and intimidation in its possession. He had the same right that he would have in case he were white.

The jury is instructed further that every man

has the right to defend the possession of his home and his person, and the persons of his family or his dependents. In this connection, if he deems it necessary, he has the right to call in his friends or any other person or persons to aid him in the defence of such home or the persons occupying the same. He has the right, in defence of his home or persons therein, to defend himself and the occupants against invasion, and every other person present in such house has the right to defend the owner and his home and the occupants of the dwelling. The defendant in this case had such right. And if, under all of the circumstances in the case, and considering the defendants and their condition and feelings at the time, a reasonable man placed in the position in which the defendant was placed, believed, on account of threats or circumstances, that it was necessary for him to use force in defending his home or person, and such belief arising from the appearances confronting him and them in the house, gave him and them reasonable cause for it, he and they had the legal right to use such force. And, even though the jury should believe, as a matter of fact, that they were not in imminent danger from any people there assembled, or from any show of force or intimidation, still they had a right to use force if they honestly, under all of the circumstances of the case, believed that they were so menaced.

The jury is instructed that, to constitute a

riotous assemblage, it is not necessary to show any agreement between the members of such assemblage to do a specific act. It is only necessary to find that they came together for a common purpose, to accomplish an illegal result, by means of intimidation, coercion, force or violence, and that they or some of them threw stones or other missiles on the house, or broke the glass in the house of the defendants.

The jury is instructed that, to constitute a right of self-defense, or the defense of home, it is not necessary that there shall be real danger of life or injury to the home. It is only necessary that the defendant should act in good faith and under reasonable apprehension of danger. The defendant had a right to act in such manner as a reasonable person would act under all of the circumstances of the case. And in considering the question of the conduct of a reasonable person, under each circumstance, the jury should take into consideration the question of the conduct of a reasonable person under such circumstances. They should take into consideration the condition of the defendant in the case, the hostility, if any, that existed against them; the appearance of menace by the congregation of people, if any there was; the knowledge that the defendants had of the treatment of people of their race in the City of Detroit, and in other parts of the United States; the length of time that any considerable number of people had acted with a show



of menace, hostility or force around the house of the defendant Sweet, if any such menace existed, and all of the circumstances surrounding the case.

You are instructed that, in determining the issues of this case, you are not to be governed by the number of witnesses called on each side; you are to consider the testimony of each witness by itself. You are to consider the prejudice, if any, that is shown by their testimony. You are to consider any feelings that might exist in a community or in the minds of witnesses. You are to consider the means of observation of the various witnesses. You are to consider the interest of the witnesses. You are to consider, from all their testimony, whether they seemed to be candid and fair and to be telling the truth. You are to consider all of the facts and the circumstances of the case, to arrive at the credibility of the various witnesses who have given testimony in this case.

You are instructed that neither in the testimony of witnesses, nor in any other facts in this case, are you to disregard any witness or to render any judgment or inference on account of the color or race of the defendant or any witness in the case.

You are instructed that, under the statutes of Michigan, it is provided:

"Every person who shall wilfully and maliciously destroy or injure any house,

barn or other building, or another, or the appurtenances thereof, if the damage resulting from such injury shall exceed twenty-five dollars, shall be punished by imprisonment in the state prison not more than five years, or by imprisonment in the County Jail not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment; and if the damage done shall exceed Twenty-five dollars, he shall be punished by a fine not exceeding One Hundred dollars, or by imprisonment in the County Jail not exceeding three months, or by both such fine and imprisonment."

You are instructed in this case that if Oeslan H. Sweet and Henry Sweet, and the occupants of his house, had reason to believe, from the appearances and the conduct of the people assembled in the vicinity of the house, if any such assemblage there was, that said members of said assemblage were about to wilfully and maliciously destroy or injure his house, or other buildings and inflict thereon damages exceeding twenty-five dollars, then the defendant had the right to resist any threatened invasion or injury to his premises, even though it involved the taking of life, if, under all of the circumstances of the case, they had reason to believe and

did believe that such danger was real or imminent. However, life may not properly be taken under this rule where the evil may be prevented by other means within the power of the person who interferes against the felon.

You are further instructed that if you believe from the evidence that the defendant or defendants had knowledge of other instances of recent occurrences in the city of Detroit, where damages to dwelling houses and buildings to the extent of more than twenty-five dollars had been done by mobs or assemblages of people against the property of colored people, then you have the right to consider such knowledge or belief upon the part of the defendant as affecting the condition of mind of such defendant as to whether he or they had a right to apprehend or fear the imminent danger of destruction or damage to the property of Ossian H. Sweet, or the damage to it to an amount exceeding Twenty-five dollars.

You are instructed that each of the defendants, as well as Henry H. Sweet, was entitled to take an interest in the life and safety of the other defendants, and in the protection of the property of the defendant Ossian H. Sweet; and, in this, the defendant had the right to act in such manner as seemed to him, under all of the circumstances in the case, was necessary for the protection of life or home. If you find that on the night of September 3th, in the vicinity of Dr. Sweet's home,

twelve or more persons armed with clubs or other dangerous weapons, or thirty or more, whether armed or not, were assembled for the purpose of violently ejecting Dr. Sweet from his home, or for the purpose of intimidating him by threats so that he would leave his home, then such persons were engaged in an unlawful assembly or riot, even though there was no loud tumult or great confusion. There is some testimony introduced in this case that persons in the crowd had stones. It is for you to find whether there were persons armed with stones, and whether they were dangerous. If, on the night of September 9th, there were gathered in the vicinity of Dr. Sweet's home, twelve or more persons with clubs and other dangerous weapons, or thirty unarmed, for the purpose of compelling Dr. Sweet to leave his home, through threats of such persons, or for the purpose of violently ejecting him from his home, then you will find that such persons were unlawfully assembled.

You are instructed that the guilt of the defendant, Henry Sweet, cannot be established by circumstantial evidence unless all of the necessary facts and circumstances pointing to guilt are not only consistent with such theory of guilt, but are inconsistent with any other rational theory. To justify a verdict of guilty on circumstantial evidence alone, the necessary circumstances must be inconsistent with any reasonable theory of innocence, and every fact necessary to the conclusion

of guilt must be distinctly proven by competent evidence. And, unless you are satisfied beyond reasonable doubt that it has been so proven in this case, you must find the defendant not guilty.

There has been some testimony put in in this case as to the good character of the accused, and as to his reputation as a peaceful and law abiding citizen. Good character is an important fact with every man, and never more so than when he is put on trial charged with an offense which is rendered improbable in the last degree by a uniform course of life wholly inconsistent with any such crime. There are cases where it becomes a man's sole dependence, and yet may prove sufficient to outweigh the evidence of the most positive character. The most clear and convincing cases are sometimes satisfactorily rebutted by it, and a life of unblemished integrity becomes a complete shield of protection against the most skillful web of suspicion and falsehood which conspirators have been able to weave. Good character may not only raise a doubt of guilt which would otherwise not exist, but it may bring conviction of innocence. In every criminal trial it is a fact which the defendant is at liberty to put in evidence, and the jury has a right to give it such weight as they think it is entitled to.

Now, under our law, the defendant in every criminal case is presumed to be innocent, until his guilt

is established by competent testimony beyond all reasonable doubt. That presumption of innocence starts with him at the very inception of the case, and continues until such time as you and each of you in your jury room determine that he is guilty. When you are satisfied, beyond all reasonable doubt, by the testimony in the case, of his guilt, then the State has overcome that protection which the law gives him. But up to the time you are so satisfied, he is presumed to be innocent. When I say that the People must prove their case beyond all reasonable doubt, I do not mean by that, of course, beyond all possible doubt, but beyond all reasonable doubt. Now, a reasonable doubt is a doubt based upon reason and common sense. It is a fair, not a vain, captious or imaginary doubt, but one growing out of the evidence or the lack of evidence in the case. It has been said that it is such a doubt that, after a careful review of all the testimony in the case, you cannot say that you have an abiding conviction amounting to a moral certainty of the defendant's guilt. If you have such a doubt as that, it is your duty, under the law, to acquit him. If you have no such doubt as that, then it is your duty to convict him.

Now, gentlemen of the jury, some evidence has been offered here of statements made by the defendant at the time of his arrest; and I charge you in relation thereto, that such statements, at the time of the arrest,

are to be received with great caution, for, besides the danger of misapprehension of a witness, or the misuse of words, the failure of a party to express his own mind, and the infirmity of memory, it should be recollected that the mind of the prisoner himself is often expressed by the calamity of the situation, and that he is often influenced by motives of hope or fear to make such statements. You have no right to draw upon any prejudice that you may have, or upon any passion, upon any sympathy, either for the respondent in this case, or for the deceased, or for anybody else. It is your duty to weigh, and analyze and consider what the testimony is in this case, considering carefully the testimony of each witness, and determining from all of the testimony what the true facts are.

Now, gentlemen of the jury, because of the particular facts surrounding this case, and because of all that has been said and argued here, I consider it my duty to especially caution and warn you against prejudice or intolerance in your deliberations. I urge you, gentlemen, to summon the best judgment you have, and your finest sense of conscientious duty. You must strive to be equally fair with the prosecution and with the defense. Anything less than this will be less than your duty under the law. If you permit passion or prejudice, or hate or the like, to enter into your deliberations, reason will depart, and that calm, judicial and fair judgment necessary in doing justice, will not prevail. You will

remember, gentlemen, that under the Constitution of the country, as well as the Anglo-Saxon conception of justice, all men are equal before the law. Real justice does not draw any line of color, race, or creed or class. All charged with crime, rich or poor, humble or great, white or black, are entitled to the same rights and the same full measure of justice. It may be possible, human as we are, we cannot create perfect justice; but the ideal is plain, and it is our duty to strive and reach for it as sincerely as it is in our power to do so.

It is an important responsibility that is yours in this case; and, in order that right will be done, and that you will be fair both to the prosecution and the defense, I again urge you to summon the best judgment and the best conscience that you possess.

Now, when you come to your deliberation, keep in mind that if you become angry or excited, that you will have difficulty in arriving at a verdict. Do not be hasty. Be calm and deliberate. Try to be understanding of one another. Try to reason with one another. Be tolerant of each other's viewpoint. In this manner you will be able to better reason your way out of any difficulty. Remember, gentlemen, you are answerable to no one for your verdict. The prosecutor may not determine the facts here. Counsel for the defendant may not determine the facts. I have not the right to determine the facts. The responsibility of determining the true facts in this



case rests squarely upon your shoulders. And, when once you have done this, and done it in a conscientious manner, you are unanswerable to no one. No one has the right to question you about it. You are bound to do your duty, to your own conscience. And when you have done that, you are through.

Now, you may return one of four verdicts, as to the defendant Henry Sweet. If you find, on the date in question, within the corporate limits of the city of Detroit, the accused did kill and murder Leon Breiner, with malice aforethought, and that it was premeditated, the verdict would be guilty of murder in the first degree.

If you find, on the date in question, within the corporate limits of the city of Detroit, the accused did kill and murder Leon Breiner, but without premeditation, or without justification or excuse, it would be murder in the second degree.

If you are satisfied, beyond all reasonable doubt, that the accused killed Leon Breiner, within the corporate limits of the city of Detroit, on the date in question, but that it was not premeditated, and was not with malice aforethought, but was the result of reasonable provocation, or because of some unlawful act, or some act that could not but be attended without manifest danger of hurt to the person of some human being, or be of such a nature that it could not be done without manifest hazard of life, then you would return a verdict

of guilty of manslaughter.

If you believe that the accused in this case acted in self defense, as I have defined and explained it to you, or, if the defense in this case raises a reasonable doubt of guilt in your minds, it will be your duty to return a verdict of not guilty.

Is there anything further, gentlemen?

MR. TOMS: I have some requests, your Honor.

THE COURT: Something further?

MR. TOMS: All right.

THE COURT: All right. Will you hand them to me? Step up here, Mr. Darrow and Mr. Toms.

(Discussion off the record).

THE COURT: I believe I will arrange to have the jury go to their luncheon, before they start their deliberations. The officers will be sworn.

(Officer Sworn).

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