

## III.

The Court erred in overruling Defendant's Third Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 4 and the definition thereof for each and all of the following reasons:

(a) There is no evidence to support the submission of such issue;

[fol. 81] (b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

## IV.

The Court erred in overruling Defendant's Fourth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 5 for the reason that the statement inquired about is a comment rather than a fact as a matter of law, and as submitted is a comment on the weight of the evidence and infers that said activity was libelous per se rather than submitting the same to the jury to so determine.

## V.

The Court erred in overruling Defendant's Fifth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to special issue No. 8 and the definition thereof for each and all of the following reasons:

(a) There is no evidence to support the submission of such issue;

(b) There is insufficient evidence to support the submission of such issue;

(c) Neither the issue nor the definition informs the jury that malice cannot be inferred from the publication itself, which is a necessary element of such definition or instruction;

(d) Such issue as submitted does not limit the jury to malice which may have existed at the time of the making of the publications sued upon.

## VI.

The Court erred in overruling Defendant's Sixth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

[fol. 82] Defendant objects and excepts to special issue No. 9 on damages for the following reasons:

(a) There is no evidence to support the submission of such an issue;

(b) There is insufficient evidence to support the submission of said issue;

(c) The issue as submitted and the instructions in connection therewith would permit the jury to award damages resulting from statements found by the jury to be fair comment and found by the jury to have been made in good faith in reference to a matter in which the defendant had a duty to report to its members and thence to the public, and said issue should be corrected so as to instruct the jury that no damages can be awarded for statements that are fair comment

or made in good faith in reference to a matter in which the defendant has a duty to report to its members and thence to the public.

#### VII.

The Court erred in overruling Defendant's Seventh Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to the submission of special issue No. 10 on exemplary damages because there is no evidence or insufficient evidence to support a finding of exemplary damages.

#### VIII.

The Court erred in overruling Defendant's Eighth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant specially objects and excepts to the submission of special issue No. 11 on exemplary damages because there is no evidence or insufficient evidence that plaintiff is entitled to exemplary damages.

#### IX.

The Court erred in overruling Defendant's Ninth Objection to the Court's Charge and each and every ground thereof, which reads as follows:

Defendant objects and excepts to the Court's charge as a whole because the same is tantamount to instructing the jury that the statements quoted in special issue [fol. 83] Nos. 1 and 5 are libelous or are libelous per se, and said charge does not contain any issues with the burden of proof upon the plaintiff inquiring in substance whether either or both of said statements were in fact libelous or libelous per se or would have been understood by an average reader to be libelous,

with appropriate definitions and instructions with respect to the meaning of the term libelous.

X.

The Court erred in rendering judgment for the plaintiff and against defendant for each and all of the following reasons:

(a) The jury's negative answer to Special Issue No. 1 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(b) The jury's negative answer to Special Issue No. 2 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(c) The jury's negative answer to Special Issue No. 3 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(d) The jury's affirmative answer to Special Issue No. 4 on malice is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(e) The jury's negative answer to Special Issue No. 5 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(f) The jury's negative answer to Special Issue No. 6 is so against the great weight and preponderance of [fol. 84] the evidence as to be manifestly wrong and

unjust, and there is insufficient evidence to support such answer;

(g) The jury's negative answer to Special Issue No. 7 is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(h) The jury's affirmative answer to Special Issue No. 8 on malice is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(i) The jury's answer to Special Issue No. 9 on damages is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(j) The amount of damages found by the jury in answer to Special Issue No. 9, to-wit, the sum of \$500,000.00, is so grossly excessive as to be manifestly wrong and unjust and to show that the jury disregarded the evidence, and was influenced by passion, prejudice, or other improper motive;

(k) The jury's affirmative answer to Special Issue No. 10 on exemplary damages is so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust, and there is insufficient evidence to support such answer;

(l) The jury's answer to Special Issue No. 11 on exemplary damages is so against the great weight and preponderance of the evidence as to be manifestly [fol. 85] wrong and unjust, and there is insufficient evidence to support such answer.

(m) The amount of damages found by the jury in answer to Special Issue No. 11 on exemplary damages,

to-wit, the sum of \$300,000.00, is so grossly excessive as to be manifestly wrong and unjust and to show that the jury disregarded the evidence and was influenced by passion, prejudice or other improper motives.

#### XI.

The Court erred in permitting the plaintiff Edwin A. Walker, over defendant's objection, to testify that he did not lead a charge of students against Federal marshals on the Ole Miss campus, because such testimony was an incompetent and inadmissible conclusion on the part of such witness and invaded the province of the jury.

#### XII.

The Court erred in permitting the plaintiff Edwin A. Walker, over defendant's objection, to testify that he did not assume command of the crowd, because such testimony was an incompetent and inadmissible conclusion on the part of such witness and invaded the province of the jury.

#### XIII.

In permitting the plaintiff Edwin A. Walker, over defendant's objection, to testify that he did not lead a charge of students against federal marshals on the Ole Miss campus, and that he did not assume command of the crowd, the Court further erred by stating in the presence and hearing of the jury that the Court would permit plaintiff to so testify after the Court had excluded such testimony by other witnesses, in that such statement by the Court amounted to a comment upon the weight of the evidence and inferred to the jury that the Court believed the plain-[fol. 86] tiff's testimony upon such subjects to be more credible than the excluded testimony of other witnesses with respect thereto, and such statement by the Court further indicated to the jury that in determining whether the statements by defendant were substantially true, or were fair comment, the standard to be applied by the jury was

the subjective intent of the plaintiff, whereas, the proper standard in determining such matters was how the plaintiff's conduct appeared to an ordinary viewer.

#### XIV.

The jury was guilty of misconduct during its deliberations, which was materially harmful and resulted in injury to defendant, such misconduct consisting of each of the following:

(a) During the deliberations of the jury, and prior to making any answers to the Special Issues, several jurors stated to the others that all news media in the past had been guilty of false, irresponsible and malicious reporting, and one juror stated in this connection that news services were always publishing false and malicious reports, all of which statements constituted misconduct in that:

(1) They constituted the receipt by the jury of original evidence with respect to the conduct of all news media in the past about which there was no evidence whatever at the trial, in direct violation of the Court's instructions to the jury, and with respect to which any evidence, if offered at the trial, would have been irrelevant, immaterial, inflammatory and prejudicial, and

(2) They clearly demonstrate preconceived bias and prejudice against this defendant on the part of at least some of the jurors which was concealed by said jurors during the voir dire examination in spite [fol. 87] of the fact that said jurors were asked on the voir dire examination if they had any preconceived bias or prejudice, to which they responded that they did not, and said bias and prejudice, if disclosed upon voir dire examination, would have likely resulted in said jurors being disqualified, or at least would have afforded defendant the oppor-

tunity to exercise its peremptory challenges against them;

(b) During the deliberations of the jury, and prior to making any answers to the Special Issues, one juror stated to the others that the jury should award plaintiff a million dollars because defendant had plenty of money and would never miss it, which said statement constituted the receipt by the jury of original evidence concerning the financial condition of this defendant in direct violation of the Court's instructions to the jury, in the complete absence of any admitted evidence with respect thereto, and with regard to a matter which was highly inflammatory and prejudicial, and with respect to which no evidence would have been permitted if offered at the trial;

(c) During the deliberations of the jury, and before answering any of the Special Issues, one of the jurors stated to the others that a plaintiff never receives damages in the amount he seeks, whereupon another juror stated that a football coach in Georgia had received a large damage award in a libel suit, which said statement constituted the receipt by the jury of original evidence concerning the results of litigation among other parties in direct violation of the Court's instructions to the jury, and with respect to which no evidence [fol. 88] would have been permitted at the trial, if offered, because the same is immaterial, irrelevant, prejudicial and inflammatory.

Each of the foregoing statements constituted overt acts on the part of the jurors occurring during the deliberations of the jury, and said statements, considered separately, and particularly considered together, clearly demonstrate the preconceived, unsupported and openly expressed conviction upon the part of at least some of the jurors that since all news media had in the past been guilty of false, irresponsible and malicious reporting, this defendant, as a part



of the Nation's news media, must be similarly disposed and guilty of the same conduct with respect to the matters alleged by plaintiff in this case, and that defendant was possessed of such financial means that the sum of one million dollars was an insignificant amount to it; and such statements could have had no other effect than to result in harm and injury to this defendant, both with respect to the issues concerning liability and those concerning damages. In support of this ground of the Motion, the affidavits of jurors M. L. Meriweather and W. J. M. Tarter are attached hereto and, to the extent they relate facts, are incorporated herein by reference.

#### XV.

The jury's finding of exemplary damage in the sum of \$300,000.00, despite the complete absence of any evidence of malice, and the jury's finding of general damages in the grossly excessive amount of \$500,000.00, in support of which there was no evidence whatever, when considered in connection with the misconduct described in the preceding paragraph, further shows the preconceived and unwarranted bias and prejudice against this defendant which led the jury to disregard all the evidence, even though the finding on exemplary damages was properly disregarded by the Court in rendering judgment.

[fol. 89] Wherefore, premises considered, this defendant prays that the judgment heretofore rendered be set aside and that judgment be here rendered for defendant that plaintiff take nothing; and, alternatively, defendant prays that the judgment be set aside and that defendant be granted a new trial herein; and that it have such other and further relief to which it may show itself entitled.

Cantey, Hanger, Gooch, Cravens & Scarborough, By  
Sloan B. Blair, 1800 First National Bldg., Fort  
Worth 2, Texas, Attorneys for Defendant.

[fol. 90]

## AFFIDAVIT TO MOTION

The State of Texas  
County of Tarrant

Before Me, Mary D. Blackburn, a Notary Public in and for Tarrant County, Texas, on this day personally appeared M. L. Meriweather, Who, being by me duly sworn, upon oath says:

On June 8, 1964, I was selected as a juror in a case entitled Edwin A. Walker vs. Associated Press, Cause No. 31741-C in the District Court of Tarrant County, Texas, 17th Judicial District, and thereafter through June 19, 1964, served as a juror in said case; that at or about 2:00 p.m., on June 18, 1964, the Court charged the jury and thereafter counsel for the parties argued the case to the jury and the jury then retired to begin its deliberations. During the deliberations of the jury and prior to making any answers to the Special Issues two jurors stated that all news media had in the past been guilty of false and malicious news reports. One juror stated that news services were always publishing false and malicious reports. One juror stated that we should award Walker a million dollars because the Associated Press had plenty of money and would never miss it. At some time before or during the deliberations a juror remarked that a Georgia football coach had gotten a big libel damage award.

M. L. Meriweather

Subscribed and Sworn to Before Me by the said M. L. Meriweather this 26 day of June, 1964, to certify which witness my hand and seal of office.

Mary D. Blackburn, Notary Public in and for Tarrant  
County, Texas.

[fol. 91]

## AFFIDAVIT TO MOTION

The State of Texas  
County of Tarrant

Before Me, Wayman B. Flynn, a Notary Public in and for Tarrant County, Texas, on this day personally appeared W. J. M. Tarter, who, being by me duly sworn, upon oath says:

On June 8, 1964, I was selected as a juror in a case entitled Edwin A. Walker vs. Associated Press, Cause No. 31741-C in the District Court of Tarrant County, Texas, 17th Judicial District, and thereafter through June 19, 1964, served as a juror in said case; that at or about 2:00 p.m., on June 18, 1964, the Court charged the jury and thereafter counsel for the parties argued the case to the jury and the jury then retired to begin its deliberations. During the deliberations of the jury and before answering any of the Special Issues a few of the jurors orally stated that all news media had in the past been guilty of irresponsible and malicious reporting. Two of the jurors were more outspoken in expressing such opinion than others.

In my opinion this malicious reporting did not affect the verdict.

W. J. M. (Bill) Tarter

Subscribed and Sworn to Before Me by the said W. J. M. (Bill) Tarter this 24th day of June, 1964, to certify which witness my hand and seal of office.

Wayman B. Flynn, Notary Public in and for Tarrant  
County, Texas.

[fol. 92]

IN THE 17TH JUDICIAL DISTRICT COURT OF  
TARRANT COUNTY, TEXAS  
No. 31741-C

[Title omitted]

PLAINTIFF'S AMENDED MOTION TO REFORM AND CORRECT THE  
JUDGMENT—Filed September 1, 1964

To said Honorable Court:

Plaintiff Edwin A. Walker, with leave of Court, files this amended motion to reform and correct the judgment signed herein on 3 August 1964, to make the plaintiff's recovery against the defendant the sum of \$800,000.00, in that there was some evidence more than a scintilla, and sufficient evidence, to sustain the jury's findings and answers to Special Issues Nos. 4, 8, 10, and 11, upon the following grounds:

1. Entrusting a story of the magnitude of the Ole Miss campus to an untrained and immature reporter without guidance from experienced personnel able to exercise discretion, and then relying unquestionably upon his lurid story charging a seasoned general with insurrection against his government, was such a showing of wilful disregard of his rights as to justify the jury's finding of legal malice.

2. When The Associated Press failed to exercise diligence to reconcile the internal conflicts and discrepancies in the excited and confused reports of an immature reporter, and sacrificed any attempt to correct and verify such statements in its own selfish interest in the speedy dissemination of a startling story, it displayed such a disregard for the rights of Walker that the jury was justified in finding legal malice.

3. The known failure of the Associated Press to verify the harmful implications of the story before its dissemina-

[fol. 93] tion to the world is some evidence from which the jury may draw the conclusion that the story was disseminated with a callous disregard to its impact on the reputation of a former general of the United States, which would constitute legal malice.

4. Upon knowledge of its conflict with the United Press story, the total failure of the Associated Press to reconcile the conflicts or investigate their cause, while continuing to disseminate the story, was evidence from which the jury could find the existence of legal malice.

5. By the failure of the Associated Press to produce its employee, Van Savell, as a witness to the intent with which the false story was written, there is a presumption which the jury may draw that his non-production was because his testimony would have been damaging, and this inference is some evidence of that ill will and evil motive which constitutes legal malice.

6. Since the jury could not see Van Savell and hear him cross-examined, to weigh whether his motives, as ratified by the Associated Press by its acceptance and transmission of his story, were vicious propaganda for the intentional destruction of Walker and his conservative views, and since the Associated Press could have produced its employee but did not do so, the jury was entitled to conclude that there was a deliberate scheme to blacken Walker's reputation, which would constitute legal malice.

7. If Van Savell had written the story in good faith and at his honest fair comment on the confused events at the Ole Miss campus, he would have appeared and told the jury so under oath, and his failure to do so is evidence of malice.

8. The deliberate persistence of the Associated Press in insisting upon the uncorroborated veracity of its immature [fol. 94] reporter from the time of the publication of his story until the jury retired, and its failure to retract or

correct its story with its harmful results, was properly considered by the jury as evidence of legal malice.

9. The unbroken lack of contrition by the Associated Press for the injury done Walker's reputation from the time of publication to the conclusion of the trial was some evidence which would justify the jury in finding legal malice.

For all of the foregoing reasons, plaintiff moves the Court to increase the amount of the judgment to correspond with the answers of the jury.

Looney, Watts, Looney, Nichols & Johnson, 219  
Couch Drive, Oklahoma City, Oklahoma;

Andress, Woodgate, Richards & Condos, By Wm.  
Andress, Jr., 627 Fidelity Union Life Building,  
Dallas 1, Texas.

Attorneys for Plaintiff.

[fol. 95]

LETTER DATED SEPTEMBER 29, 1964 FROM JUDGE MURRAY  
TO COUNSEL

CHAS. J. MURRAY  
District Judge  
17th Judicial District of Texas  
Civil Courts Building  
Fort Worth 2, Texas

Sept. 29, 1964.

Mr. Clyde J. Watts,  
219 Couch Street,  
Oklahoma City, Oklahoma.

Mr. William Andress, Jr.,  
627 Fidelity Union Life Bldg.,  
Dallas 1, Texas.

Mr. J. A. Gooch,  
First National Bank Bldg.,  
Fort Worth 2, Texas.

In re. Cause No. 31,741-C  
Edwin A. Walker vs Associated Press

Gentlemen:

I am overruling defendant's motion for a new trial, and make the following Findings of Fact and Conclusions of Law on the issue of jury misconduct:

*Findings of Fact:*

Before the verdict of the jury was returned in open court,

(1) At least one juror made the statement that Associated Press was always hurting someone, and printing false and malicious reports, or words to this effect. This statement was not discussed or commented upon at length by the jury.

(2) At least one juror made the statement that Associated Press had plenty of money, and would never miss it. This statement was discussed by the jury until they were admonished that it was not a proper matter for their consideration. It was not then discussed again.

(3) At least one juror made the statement that the Georgia football coach had received a substantial award and damages for libel. There was no further comment or discussion about this statement.

[fol. 96] (4) The statement set forth in (1) above was made during a general discussion of the case.

(5) The statements referred to in (2), (3), above were made during deliberations of the jury on the issues of malice and exemplary damages.

(6) None of the aforesaid statements, either singly or collectively, made by one or more of the jurors induced any juror to change an answer, or vote differently than he would otherwise have done on one or more of the issues.

*Conclusions of Law:*

(1) The statement referred to in paragraph (1) above under Findings of Fact was not misconduct. The jury had before them numerous Associated Press and United Press reports, as well as news stories from several newspapers, and could have been discussing this evidence on the issue of malice when this statement was made.

(2) The statements referred to in paragraphs (2) and (3) under Findings of Fact constitute misconduct because there was no evidence in the record concerning A.P.'s financial condition or the jury award to the football coach, but they do not constitute material misconduct since I have determined that none of the statements induced any juror to change an answer, or vote differently than he would otherwise have done on one or more of the issues. Moreover, the Court has already set aside the jury findings as to malice and exemplary damages.



(3) There has been no showing, considering the pleadings, the testimony, the Court's charge, and argument of counsel, that probable injury resulted to the defendant because of any or all of these statements.

The Clerk is being directed to file a copy of this letter as part of the record in this case.

Very truly yours,

Chas. J. Murray

[fol. 97]

IN THE 17TH JUDICIAL DISTRICT COURT OF  
TARRANT COUNTY, TEXAS  
No. 31741-C

[Title omitted]

ORDER OVERRULING MOTIONS FOR NEW TRIAL AND TO REFORM  
THE JUDGMENT—October 6, 1964

On 18 September 1964 came on to be heard the amended motion for new trial filed by the defendant Associated Press, and the amended motion to reform the judgment filed by the plaintiff, and it appearing to the Court that all of said original motions and amended motions were duly and timely filed and presented in accordance with the rules, and all parties having been heard in full, and having presented such testimony as they desired, and submitted briefs,

It is ordered that the defendant's amended motion for new trial be and the same is hereby overruled; and

It is further ordered that the amended motion to reform the judgment filed by the plaintiff be and the same is hereby overruled.

All parties excepted to adverse rulings and gave notice of appeal to the Court of Civil Appeals for the Second Supreme Judicial District of Texas, Sitting at Fort Worth.

Signed October 6, 1964.

Chas. J. Murray, Judge.

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[fol. 98]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS

17TH JUDICIAL DISTRICT

No. 31741-C

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[Title omitted]

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DEFENDANT'S NOTICE OF APPEAL—Filed October 7, 1964

Now comes The Associated Press, defendant in the above entitled and numbered cause, now pending on the docket of this Court, and hereby gives notice that it desires to appeal from the judgment rendered herein on August 3, 1964, and from the order overruling defendant's Amended Motion for New Trial signed and rendered herein on October 6, 1964, to the Court of Civil Appeals for the Second Supreme Judicial District of Texas, Sitting at Fort Worth.

Cantey, Hanger, Gooch, Cravens & Scarborough, By  
Sloan B. Blair, 1800 First National Bldg., Fort  
Worth 2, Texas, Attorneys for Defendant.

[File endorsement omitted]

\* \* \* \* \*

[fol. 106] Clerk's Certificate to Foregoing Transcript  
(omitted in printing).

[fol. 1]

IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS  
17TH JUDICIAL DISTRICT

No. 31-741-C

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 EDWIN A. WALKER

vs.

 THE ASSOCIATED PRESS
 

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Be it remembered, that upon the trial of the above numbered and entitled cause, before His Honor, Charles J. Murray, and a Jury, on the 8th day of June, A. D., 1964, the following proceedings were had and evidence adduced:

**Transcript of Evidence****APPEARANCES:**

Mr. Clyde J. Watts, Oklahoma City, Oklahoma; Mr. William Andress, Jr., Dallas, Texas; and Mr. Toy Crocker, Fort Worth, Texas, for the Plaintiff;

Cantey, Hanger, Gooch, Cravens & Scarborough, Fort Worth, Texas, By: Mr. J. A. Gooch, Mr. Carlisle Cravens, and Mr. Sloan Blair, for the Defendant.

[fol. 3]

**PROCEEDINGS**

\* \* \* \* \*

[fol. 87] **OPENING STATEMENT BY MR. WATTS**

Mr. Watts: If Your Honor please, and ladies and gentlemen of the Jury: As His Honor told you, I am C. J. Watts, and I am one of the lawyers for General Walker and he is a long-time friend. For thirty-five years we have

been close personal friends. And, at this point if I seem to get too deep into the lawsuit it may be because I have too deep a personal association.

Now, I will read the Plaintiff's pleadings, and they just outline to the Jury and the Court the facts we intend to prove.

(Plaintiff's pleadings read by Mr. Watts.)

(Defendant's pleadings read by Mr. Gooch.)

[fol. 88] Mr. Watts: Thank you very much.

Mr. Gooch: May I have the Court file to read from?

I will read the Answer of the Defendant, Associated Press.

(Answer read to the Jury.)

The Court: Mr. Watts is going to make an opening statement.

Mr. Watts: If Your Honor please, and ladies and gentlemen of the Jury, the Jury, having suffered through these long delineations of the legal issues as outlined by the lawyers in this case, we feel are entitled to a very brief and simple statement of what's involved.

We expect to prove a state of facts substantially as follows:

In order to brief you properly, I will draw a very crude diagram on the board of the University of Mississippi campus.

(Drawing.)

I am never able to tell where I am going or where I have been unless I can see it.

Now, to orient the Jury and Your Honor, the top of the little rough plat, of course, is north. This is the area of the Mississippi campus where the entire riot took place, [fol. 89] as we will outline. This area in here is the so-called "Oval".

The evidence will be from General Walker and many, many witnesses that General Walker came to Mississippi for a basic reason:

Number one, as the former commander at Little Rock, to protect against making a Military operation of a very critical civilian problem.

Number two, to protest, as best he could, against the diversion of the attention of the American people and of the Military power of the country away from Cuba where he thought it belonged sincerely and into the Mississippi campus.

Now, his evidence will be that he arrived on the campus at night about 8:45; that he walked with an associate, a friend of his, along this sidewalk on the south side of University Boulevard; that when he arrived about in this position, there was a group of people gathered around this installation here, which is a Confederate Statue.

He, in this area, talked to several people for a few minutes, maybe fifteen or twenty minutes. At that time there was activity going on up in this direction. This installation here is the so-called Lyceum Building which was surrounded by a ring of U.S. Marshals.

[fol. 90] Prior to that, to his arrival on the campus, and about 8:00 o'clock the Marshals had, between them and the assembled students, a ring of Highway Patrolmen. About eight, tear gas was fired and the Highway Patrolmen pulled away and so that when Walker and a young lad, Louis Leman, who will be here in Court, arrived on the campus, there was sporadic activity out in this area out here in terms of two, three, five, a few, students, throwing rocks and sticks and things such as kids will throw, and the Marshals shooting tear gas.

Walker and Leman stood in this area for a few minutes, observed what was going on, then walked out into this area in the so-called Circle or Grove. They stayed there for

fifteen or twenty or perhaps thirty minutes, so that in a period of thirty to forty-five minutes they had proceeded from the entrance to the campus out about to in here, near, between the Confederate Monument and the flagpole, had talked with several people, observed what was going on and then started back to this area here.

About the time Walker started back, there was a convoy of vehicles going out here, leaving the campus. It became immediately obvious they were highway patrolmen leading [fol. 91] them. The evidence will be that students then raised the comment that, "The Governor has sold out."

The evidence will further be that General Walker, who had been downtown at the Court House and heard the Governor's representative speak and state his position, decided for the first time that he would get on the Confederate Statue and speak to the students.

He did get on the Statue and did make a presentation to the students, first, that violence was not the answer to nobody, that the real enemy was yonder way in Cuba. [fol. 92] At that point, the evidence will be that he was met by one massive jeer.

Later he went on to point out that the Governor had not sold them out; that the individual who had let the student onto the campus was the highway patrolman, one Col. Birdsong, and not the Governor.

After the speech, Walker got down from the monument, stood around here for a few more minutes and again, in company with several other people, one of whom is a deputy sheriff, who will be here to testify and was with Walker constantly from the time Walker arrived on the campus and he saw him coming until the time he left, this deputy sheriff will testify that at no time then did Walker lead or participate in anything that even remotely approximated a charge.

The evidence will be that after the speech on the monument, Walker then again proceeded out into the oval area

where there was activity of a constant sporadic nature of groups of students throwing things, tear gas being fired, falling back, more groups coming in, Walker stood around in this area and observed those activities for several hours.

Now his evidence will be, and it will be supported by many, many witnesses, that at no time did he lead a charge; at no time did he commit the act that the Associated Press [fol. 93] circulated of him around the world, that he arrived striding down the middle of University Avenue, met the leaders of the mob in this vicinity, assumed command of the crowd, had a student or a leader of the mob on each side by each elbow, lined up in front of a thousand people, led a charge against the Marshals and raced back to the statue.

Our evidence will be, Ladies and Gentlemen, that that just did not occur and is an absolute deliberate fabrication by a 21-year-old boy who was a cub reporter and represented the Associated Press at that incident.

The evidence will further be that this lad, after he claims he saw this alleged charge, is supposed to have raced 600 yards over here and made a report and then raced back at which time he saw Walker speaking upon the monument. [fol. 94] Now, when we have presented to you ladies and gentlemen these facts, we feel that beyond any possible shadow of a doubt this Jury must conclude that Walker did not lead a charge. That proves the first issue in the lawsuit. The second issue is, assuming as we hope we do that we are able to prove that this is a deliberate fabrication, and that this is false, that Walker did lead a charge, that the Associated Press, by its conduct in its news releases, literally did it with malice, in which event if we are able to prove that, not only will Walker be entitled to actual damages but punitive damages.

Our evidence will be substantially as follows: The Associated Press will bring into Court a stack of news issues in which in issue after issue after issue and message after

message it is reported Walker leading a charge; that he was arrested by the Federal authorities; that he was shipped to the insane hospital in Springfield, Missouri. The evidence will be a stack of news releases by the Associated Press this high (indicating) as to Walker being arrested, committed to the nut house. The evidence will be that when they came around to report in a sanity hearing that we held in Oxford on November 21, 1962, that they reported extensively and in several news releases on the [fol. 95] so-called A and B wire the testimony of the Government psychiatrist, who incidentally had never seen him, that he was a paranoid and psychosomatic. The evidence will be that along toward the end of the hearing the Judge of that Court opened a report by Dr. Stubblefield of Dallas, a Court-appointed psychiatrist, who stated in his report that Walker was of superior intelligence; that report, however, that Walker was of superior intelligence, never found its way into the A and B wire, and the evidence as to Walker's sanity got cut off right there.

Oh, it got in a few local papers, maybe in Fort Worth, probably in Fort Worth, but anyhow the evidence will be that the Associated Press deliberately smothered the evidence, as opposed to the testimony that Walker was crazy.

Finally, the final culmination and conclusion of this tragic incident occurred on the 22nd of January, 1962, when the United States Government, after having arrested him, after having committed him to the nut house, after his having finally got out, dismissed the charges against him, upon the grounds, it will be obvious from reading the news reports, the evidence will be, that the Associated Press, after building the thing up that he had been put in jail, [fol. 96] after building up that he was paranoid and psychosomatic had a little tiny release, a line or two, that Walker had been released by the Government and the Government dismissed the charge, which means it can be re-filed in five years.



So, when we get through with this evidence, ladies and gentlemen of the Jury, I feel sincerely that you ladies and gentlemen will find that this young lad, Van Savell, a twenty-one year old Cub Reporter, sat down and wrote himself a story that absolutely did not happen, and that General Walker, after having suffered six days and nights among the atmosphere of the insane, certainly did not get a fair break in the most powerful news media on the face of the earth, under the label of the truth.

Thank you.

OPENING STATEMENT BY MR. GOOCH

Mr. Gooch: You will recall that at the outset the Court said that the pleadings and what the lawyers say is not evidence. I assume he is still of that opinion as he listens to Mr. Watts make this very dramatic appeal, and if he is in a position to back up his statement on that, there is not much for the Jury to listen to.

You told me on voir dire examination that you would listen to the witnesses in this case; that you would keep [fol. 97] an open mind until all of the evidence in this case is concluded.

The preparation for this case has not been in ten or fifteen minutes or ten or fifteen days. There have been some fifty-one depositions taken in this case. All of those people who could have had or possibly had, if they could be found, a possible knowledge of what occurred on the campus of the University of Mississippi on the night of September 30, 1962; part of the pleadings that were read to you in this case was to the effect that prior to the time General Walker made his advent on the campus of the University of Mississippi he called in—mind you, the Press didn't seek General Walker out, General Walker called for a Press conference at his Turtle Creek home in the City of Dallas, and he said to the reporters and to the world on television tape, "I am going to Mississippi," in effect

Barnett is right. "The orders of the United States Government should be disobeyed," by inference, and, "how should we do it?" "Bring your flags, your tents and your skilletts, ten thousand strong from every state in the Union."

He gets over to Mississippi, this man who had called the Press conference, all the reporters in the news media, the TV camera to take down for posterity what he has to say. [fol. 98] He gets over to Mississippi and he says, "I stand shoulder to shoulder with Governor Ross Barnett. Rally to the cause of freedom. Now or never. Bring your flags, your tents and your skilletts," by inference, "We will show the United States of America and the constituted authorities what should be done in this instance.

One more time he calls in the Press, after he had arrived at Oxford, Mississippi, if you please, on the scene of where he was to come. He says, "We are called to Oxford. We are here to carry out what Governor Ross Barnett said he wanted to carry out. We will not let the constitutional authority of this United States interfere with what we want to do as citizens. Mind you, he was not a citizen of the State of Mississippi, he lived in the State of Texas.

Mr. Watts dramatically portrayed General Walker slowly walking on the campus at the University of Mississippi along about 5:00 p. m. on the evening of September 30, 1962.

Well, I have read these depositions. I participated in these depositions. Maybe Mr. Watts and I don't read the same language, I don't know, but Walker says—that is, General Walker I am talking about, a great man when he [fol. 99] was in the Army until he started mixing with things he had no business meddling in. He says, "I came down University Avenue." That he got near the campus; he turned around and waved his arm, "Come on." He got within a few steps of the Confederate Statue. He saw a group of people standing on the corner. This is General Walker testifying. He says, "Come on."

Then we pick up and we have got Mr. Watts saying, "We have got witnesses." We sure have. Mr. Watts'

witnesses, if they tell the truth as they did when their depositions were taken, will testify that General Walker came on this campus and got with this howling mob.

[fol. 100] The deputy sheriff having been sent there by Governor Ross Barnett to keep Meredith from entering the University of Mississippi.

We are not trying a segregation or integration case, Ladies and Gentlemen. We are trying the rights of an individual public figure to defy in any manner the law of this land; otherwise we would have anarchy, we would be guided by mob rule.

The witnesses who have testified that have been called by Mr. Watts, have testified that General Walker went with a group over near the flagpole which is about the center of this circle (indicating on blackboard). He called it an oval. The witnesses usually refer to it as a circle. There, while he was loitering there with this crowd, that Walker had nothing in his hand. Nobody ever said Walker had a missile or anything in his hand. But there this group surrounding Walker hurled their rocks and missiles at the United States Marshals who had been ordered in there by the President of the United States to see to it that the law of the Court in this country should be obeyed. That is what we are trying in this case, as to whether or not a man can defy the Court.

Mr. Andress: I believe that is completely beyond the scope of the pleadings. We are trying whether or not the [fol. 101] Associated Press can make a false statement about what a man did, not whether the man can defy the Courts.

The Court: Ladies and Gentlemen, you have heard the pleadings. Questions will be submitted to you concerning matters of alleged libel. Now in answering those questions you can consider any evidence which is offered in evidence in this trial, and according to the pleadings evidence of the activities of the Plaintiff here and the activities of possibly Meredith, and certainly the Marshals, and what

the Courts did, will be in evidence. You may consider all of that.

You may proceed.

Mr. Gooch: I reiterate we are not trying the question of integration or segregation; we are trying a story that was written by the Associated Press of the action of General Walker on the campus of the University of Mississippi from about 8:45 p.m., on the night of September 30, 1962, until the wee hours of the morning.

The Associated Press, as Mr. Watts has told you, as Mr. Andress has told you, is an organization that gathers news. The Associated Press does its best to cover every piece of news that it can get its hands on. It does not publish a newspaper of its own. It sends these stories to the newspapers who are members of the Associated Press, [fol. 102] for the newspapers to use or not as they see fit, such news as is sent to them on the wires.

The issue in this case—another issue in this case will be the truth or falsity and the fair comment that was given by the Associated Press to such newspapers as cared to print the story.

Now I will not go into the details of what the witnesses will testify. I said to you before that you will listen to these witnesses and you can draw your own conclusion as to whether or not this publication charged to be libelous by General Walker was, in fact, libelous, false or untrue. I think you will determine from the witnesses and from General Walker himself that the statements made about General Walker were in fact true.

Now I know this may be boring to you but we are full of our cases and I can't sit here and listen to Mr. Watts get up and tell you what the facts are, without giving you my version of them, because I have been there, too. As Charlie McCarthy used to say, I was there, Charlie. Not in Mississippi, but in these depositions.

He says the Associated Press slanted the news. He says

the Associated Press did not send out a story from Dr. [fol.103] Stubblefield to the effect that Walker, at the time of his mental examination along about October 2nd or 3rd of 1962, was acting under a superior intelligence—

Mr. Watts: —excuse me.

Mr. Gooch: —I challenge that statement—

Mr. Watts: —excuse me—

Mr. Gooch: The very statement—

The Court: Just a minute.

Mr. Watts: If Your Honor please, I must challenge this statement. I didn't say they didn't send it out. What I said, the statement of Walker's imprisonment and insanity was put on the A and B wire; the statement by Dr. Stubblefield was put on the subordinate wire.

Mr. Gooch: So we are tit-for-tat.

[fol.104] As I understand the pleadings in the case, and the Court will correct me if I am wrong, Mr. Watts has traversed the state, the State of Texas. The story Mr. Watts claims is untrue and false was published in the Fort Worth Star Telegram and was an AP story. Now, he says he went all the way around the world getting his pleadings. He is limited, or should be limited in his cause of action, to something that happened in the State of Texas and particularly in the Fort Worth Star Telegram. Now, I say to you, Mr. Watts, and I say to you ladies and gentlemen without fear of successful contradiction, that this Associated Press story was sent to the Star Telegram, the same newspaper that published the libelous article, that Mr. Watts says is libelous, in which they said that the psychiatrist who examined General Walker, the psychiatrist said General Walker was operating under a superior level of intelligence at the time he was examined.

He further read to you and stated in his argument that they slanted the news because the Associated Press did not send to the Star Telegram as part of its news coverage the contention that General Walker had been denied his

constitutional rights when he was arrested in Mississippi. [fol.105] I challenge that statement and I tell you that we will show and Mr. Watts knows we will show, and yet he stood here and read to you that the news was slanted. [fol.106] He knows that the Associated Press in a story from Oxford, Mississippi, on the very day that this motion he's complained of, complaining that we didn't print it, on the very day it was printed the Associated Press, on its wires, sent a verbatim copy of Mr. Watts' motion in favor of General Walker to the Forth Worth Star Telegram and it was run on the very day that it was filed in Oxford, Mississippi.

News slant? Ladies and Gentlemen, the Associated Press is not mad at anybody. They have one function in life to perform and that is to disseminate to the public news as it occurs and as quickly as possible. It is given to the newspapers to print as they see fit. The headlines are not those of Associated Press. The news stories come in the newspaper. The newspaper can do as it sees fit.

I have taken too much of your time. You get carried away with these things when it is attempted, as I see it, to deliberately mislead the jury before the evidence starts.

I apologize for my outburst.

Again, may I say, with all candor, listen with me on the evidence in this case and see if the innuendoes and statements that I have made to you are not sustained by the evidence that comes from that witness stand.

[fol.107] The Court: Ladies and Gentlemen, it's too late, I think, this afternoon to go ahead and start with the testimony. We will just get a little bit in, so I am going to recess until 9:00 o'clock tomorrow morning.

Now this jury room to your left will be your home while you are trying this case. Just be in the jury room tomorrow morning at 9:00 and we will call you out from there.

(Thereupon, at 4:45 p.m., an adjournment was taken until 9:00 o'clock, Tuesday, June 9, 1964.)

[fol. 110]

## Proceedings

## COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gooch: If Your Honor please, we ask the invocation of the Rule with respect to the witnesses.

The Court: The Rule has been invoked in this case and that means all the witnesses except the parties to the suit must remain outside until each is called by the respective attorneys. So, Mr. Andress and Mr. Watts, you keep an eye on your witnesses and if they walk in ask them to remain outside.

Mr. Watts: Do you wish to swear all witnesses who are available?

The Court: No, I will swear them one at a time.

Mr. Watts: If Your Honor please, we have some news releases I think we can open up with.

The Court: All right.

Mr. Watts: If Your Honor please, we have here by agreement the respective teletype releases of the Associated Press which we now will offer in evidence.

The Court: You want to have them marked?

Mr. Watts: Yes, sir. It will probably save time if we just mark each of these groups as an exhibit, and then we will designate them as A, B, C and so forth later. Mark [fol. 111] this as Exhibit 1.

(Document marked Plaintiff's Exhibit 1, by the Court Reporter.)

Mr. Cravens: If you will, read which is which.

Mr. Watts: Yes, we will.

Mr. Gooch: I assume—

The Court: Just a minute, he is marking.

Mr. Watts: This is 2, 3, 4, 5, 6, 7, 8, 9, and 10.

(Documents marked Plaintiff's Exhibits 2, 3, 4, 5, 6, 7, 8, 9 and 10 by the Court Reporter.)

Mr. Watts: Now, Mr. Gooch, do you have a comment to make?

Mr. Gooch: I don't know what you are introducing, or having marked, so I assume the objection, if any, will be raised at the time of the entry of the individual item.

Mr. Watts: Yes, sir.

Mr. Gooch: As I understand the ruling of the Court on pre-trial conference, that the matters introduced are confined to the AP reports as carried in the Forth Worth Star Telegram?

The Court: I don't recall that. As far as the allegations in paragraph 2 of the Petition are concerned.

[fol. 112] Mr. Gooch: That's right.

The Court: In those wire reports that appeared in the Star Telegram, are the only ones to be admitted.

Mr. Watts: That is correct. It is my understanding—

The Court: Is that what you have at this time?

Mr. Watts: No, sir, it was my understanding that the news releases alleged in paragraph 2 of the Petition would be offered without identification to establish the libel, and that everything connected with Walker issued by the AP would be tendered by the Plaintiff in support of its contention of malice. That is my understanding of the pre-trial.

The Court: Are you offering one of those news reports?

Mr. Watts: At this time we offer to the Jury the news report upon which paragraph 2 asserts libel.

The Court: That is all you are offering now?

Mr. Watts: That is all we are offering now. Then, when they are specifically identified we will introduce the entire news releases of the Associated Press, to establish malice.

The Court: To which exhibit are you now referring?

Mr. Watts: I must pick them out. Let's see. Now, we [fol. 113] will hold these (indicating) on the side. They are not identified as exhibits.

If Your Honor please, it would save considerable time if we later—if I offer them as alleged in the complaint, the specific news releases, and then we will get the same releases out of the file.

The Court: I will admit that at this time.



Mr. Watts: If Your Honor will permit me to read it from the original Complaint then.

The Court: All right.

Mr. Watts: Now, Ladies and Gentlemen of the Jury, it has been agreed by counsel in this case that the specific teletype report as alleged in the Plaintiff's Original—rather, Amended Complaint, to be presented to the Jury as having been issued by the Defendant, Associated Press.

I will now read to the Jury the teletype report issued by the Associated Press that the Plaintiff, General Walker, asserts is false and libel. This will be identified in the record as the Plaintiff's Exhibit 1-A.

(Plaintiff's Exhibit 1-A marked by the Court Reporter.)

Mr. Watts: And the release under date of October 3rd will be identified as the Plaintiff's Exhibit 1-B.

[fol. 114] (Plaintiff's Exhibit 1-B marked by the Court Reporter.)

Mr. Watts: I will now read to the Jury the Plaintiff's Exhibit 1-A, under date of October 2, 1962:

PLAINTIFF'S EXHIBIT 1-A

“Walker, who led a charge of students against Federal Marshals on the Ole Miss campus was arrested on four counts, including insurrection against the United States.”

That is the Plaintiff's Exhibit 1.

Mr. Gooch: 1-A.

Mr. Watts: I will now read—sir?

Mr. Gooch: 1-A.

Mr. Watts: 1-A, yes.

Mr. Gooch: All right.

Mr. Watts: I will now read Plaintiff's Exhibit 1-B, which is under date of October 3, 1962, was issued by the Associated Press upon its teletype wire services to the Fort Worth Star Telegram in Fort Worth, and as I understand,

it is admitted by all parties that this news release was published by the Fort Worth Star Telegram?

Mr. Gooch: That is correct.

Mr. Watts: All right.

[fol. 115]

PLAINTIFF'S EXHIBIT 1-B

Editor's Note: "Former Major General Edwin A. Walker, a key figure in the week-end battling—

Mr. Gooch: Just a minute. The Editor Note was by the Star Telegram?

Mr. Watts: No, that's part of the news release, Mr. Gooch. See, that is the AP Editor's note and is a part of the news release.

(Reading) "Former Major General Edwin A. Walker, a key figure in the week-end battling over admission of a Negro to the University of Mississippi, was eating dinner Sunday night when he says that he was told there was a scene of considerable disturbance on the University of Mississippi campus. He went there.

Here is the story of Van Savell, twenty-one, Associated Press newsman, who was on the scene and saw what happened:

By Van Savell. Oxford, Mississippi. October 3, 1962, AP. Utilizing my youth to the fullest extent, I dressed as any college student would and easily milled among the several thousand rioters on the University of Mississippi campus at night. This allowed me to follow the crowd, a few students and many outsiders, as they charged Federal [fol. 116] Marshals, surrounding the century-old Lyceum Building.

It also brought me into direct contact with former Major General Edwin A. Walker, who is now under arrest on charges of inciting, insurrection and seditious conspiracy.

Walker first appeared in the riot area at 8:45 p. m., Sunday, near the University Avenue entrance about 300 yards from the Ole Miss administration building. He was nattily

dressed in a black suit, tie and shoes and wore a light tan hat.

The crowd welcomed Walker, although this was the man who commanded the 101st Airborne Division during the 1957 school integration riots at Little Rock, Arkansas.

One unidentified man queried Walker as he approached the group, "General, will you lead us to the steps?" I observed Walker as he loosened his tie and shirt and nodded yes without speaking.

He then conferred with a group of about fifteen persons who appeared to be the riot leaders. The crowd took full advantage of nearby construction work. They broke new bricks into several pieces, took survey sticks and broken soft drink bottles. Walker assumed command of the crowd, which I estimated at 1,000, but was delayed for several minutes when a neatly dressed, portly man of about forty-[fol. 117] five approached the group. He conferred with Walker for several minutes; then joined a group near the front.

Two men took Walker by the arms and they headed for the Lyceum and Federal Marshals.

Throughout this time I was less than six feet from Walker. This march toward tear gas and some 200 Marshals was more effective than the previous attempts. Although Walker was unarmed, the crowd said this was the moral support they needed.

We were met with a heavy barrage of tear gas about 75 yards from the Lyceum steps and went a few feet further when we had to turn back. Before doing so, many of the rioters hurled their weapons, the bricks, the bottles, rocks and wooden sticks toward the clustered Marshals. We fled the tear gas and the charging Marshals, the crowd racing back to a Confederate soldiers statue near the Grove entrance below the Lyceum.

I went to a telephone. A few minutes later I returned and found Walker talking with several students. Shortly

thereafter, Walker climbed half way up the Confederate Monument and addressed the crowd.

I heard Walker say that Governor Barnett had betrayed the people of Mississippi, "But don't let up now," he said, [fol. 118] "You may lose this battle but you will have been heard."

He continued, "This is a dangerous situation. You must be prepared for possible death. If you are not, go home now."

There were cheers. It was apparent that Walker had complete command over the group.

By this time it was nearly 11:00 p. m. and I raced to the telephone again.

Upon my return, Walker was calmly explaining The New Frontier Government to several by-standers. He remained away from the rioting throughout the next few hours but advised on several tactics.

One Ole Miss student queried the former General, "What can we use to make the tear gas bombs ineffective? Do you know of any way that we can attack and do some damage to those damn Marshals?"

Walker suggested the use of sand to snuff out the tear gas. This stuff worked real well, "But where can you get it?" He asked.

At this time the rioters were using a University fire truck and fire extinguishers in an attempt to make the tear gas bombs ineffective.

I left Walker and walked a hundred yards away where Molotov Cocktails and gasoline bottles with a fuse were [fol. 119] made.

Again I left the area for a telephone. As I walked toward a dormitory with George Bartsch of the Little Rock Associated Press Bureau, we were attacked by Marshals who mistook us for students. We were deluged by tear gas, manhandled, handcuffed and beaten with clubs during a 200-yard walk to the Lyceum Building.

Thanks to recognition by Chief Marshal James B. McShane, we were quickly released and given freedom in the

Marshal's headquarters. Within minutes shotgun and rifle fire erupted from the rioting crowd and two men, one a French newsman, were killed. We considered ourselves lucky to have been arrested and glad to be behind closed, heavily guarded doors.

Is Richard Sweatt out there?

The Court: Mr. Watts, has there been a stipulation that Exhibits 1-A and 1-B were written by an employee of the Associated Press who was in the course of his employment with the Associated Press at the time?

Mr. Watts: There has been such a stipulation and perhaps it would be in order to confirm it at this time.

[fol. 120] Mr. Gooch: That is correct.

Mr. Watts: At this time, then, I will read a deposition from another of the Associated Press employees.

Mr. Gooch: You called Sweatt. What are you doing now?

Mr. Watts: I thought while he was showing up, I would read that deposition.

Mr. Cravens: Which deposition are you reading, Mr. Watts?

Mr. Watts: Just a moment, I will get it here. Ben Thomas.

If the Court please, this is the deposition of B. R. Thomas, Associated Press newsman, taken in New Orleans on March the 31st, 1964.

[fol. 121] "DEPOSITION OF B. R. THOMAS"

Mr. Watts: (Reading)

"Q. Your name, please, sir?

A. Ben Thomas.

Q. Your profession?

A. I am an Associated Press newsman.

Q. And what educational background do you have, Mr. Thomas?

A. I have three years of college, and almost thirteen years in the news profession.

Q. Have you done news work, in addition to working in the office for A.P.?

A. Yes, I have.

Q. What is the difference between a reporter and an office re-write man? Are you interchangeable?

A. I am interchangeable, that is why I say I am an A.P. Newsman. We do office work, re-writes, and also field reporting.

Q. Where did you go to school?

A. Henderson State Teachers College, Arkansas.

Q. When did you graduate?

A. I did not graduate. I lacked about twelve hours receiving a Bachelor's degree.

Q. Where were you raised, Mr. Thomas?

A. In Florida, and in Arkansas.

[fol. 122] Q. What place in Florida?

A. Sarasota, where I was born.

Q. How long did you live in that place in Arkansas? What was that place in Arkansas?

A. Hot Springs was my grandmother's house, and then I lived in Hot Springs for a short period, up until the time I was fifteen, and then I was there from then on out, until—except for the times I visited Florida.

Q. Where did you work when you got out of school?

A. I worked— After college?

Q. Yes?

A. Well, I was in college, and before I was in college while I was finishing high school, I worked on the Centennial Record in Hot Springs, Arkansas.

Q. And then where?

A. Then the Times Picayune, in New Orleans.

Q. How long were you with them?

A. I was with the Picayune for seven months.

Q. Where then?

A. Associated Press Bureau in New Orleans.

Q. What was the occasion for your transfer?

A. There was a vacancy in the A.P., and I had long

wanted to work for the Associated Press, so I applied for it and was hired.

Q. When did you first go to work for them?

[fol. 123] A. The first of July, 1960.

Q. What is your age?

A. Thirty. (30)

Q. Do you know what personnel the Associated Press sent to cover the Oxford incident?

A. When you say, "Oxford incident," do you mean on September 30, or the entire story?

Q. Just September 30?

A. I believe I recall the principal people as they were. There were so many press people thrown in that night I might miss one.

Q. Give us the best you can recollect, the ones that came from the New Orleans office?

A. To the best of my knowledge, there was no one from the New Orleans office itself at Oxford that night except photographer James Bourdier. There were people from some of our correspondent points.

Q. What office was Van Savell from?

A. Jackson, Mississippi office.

Q. And no newsmen at all were sent from New Orleans?

A. To the best of my knowledge, there were none out of New Orleans, except our photographer newsman, James Bourdier.

Q. What time that day, on the 30th, did you come to work?  
[fol. 124] A. Around three o'clock in the afternoon.

Q. What was your assignment?

A. I came to the Bureau to write some sport stories early, and be on hand for anything that happened at Oxford.

Q. What was your assignment in the office?

A. My specific assignment that night was to work the night re-write shifts from ten o'clock at night until six-thirty in the morning.

Q. Now, from eight o'clock—

A. That is my normal shift on Sundays, and I am sure the records will show that I was scheduled to work that

shift that night. I usually came in about three in the afternoon to do my sports, take a little break, and then come back on at ten o'clock.

Q. What do you mean by the "re-write shift"?

A. It is just an A.P. term. That is what the shift is called. Actually, the early editor, or the overnight editor is responsible for filing the early reports for the afternoon newspapers.

Q. Why do you use the term 're-write'?

A. Because much of your duties consist of re-writing stories from the previous cycle.

Q. What are your guidelines for re-writing?

A. I am not so sure what you mean by that.

Q. Why don't you just disseminate on the wire services [fol. 125] the report that the news writers send in, that is the news men send in?

A. This is not necessarily re-writing of reports that newsmen send in. On this night re-write or early shift, you take stories that have occurred during the period which would be reported in the morning newspapers, and you re-write the stories simply by changing the structure of the words and possibly digging up fresh information. If there is not a reporter, getting on the phone yourself, and calling to the sheriff or wherever it might be, and pick up fresh information to have a different story for the afternoon newspapers than the morning ones had.

Q. Did you re-arrange then, the context of—

A. No, not the context. The contents are re-arranged but not the context. We never try to change the meaning of any story unless there is fresh new information that does change the situation of the story.

Q. Were you on the telephone on the night of September 30?

A. Yes, I was.

Q. With whom were you communicating in Oxford?

A. I communicated with Van Savell, I talked to Edmund Lebercon, and I talked to Gavin Scott.

Q. All right. Go on.



A. And I talked to two Ole Miss. students who were work-  
[fol. 126] ing with the A.P.

Q. Were they so-called 'stringers'?

A. Yes, sir.

Q. Would you know who they are?

A. Yes, John Perkins and John Hall. I also talked one  
time to Wilson Minor, who is the Times Picayune Jackson,  
Mississippi correspondent.

Q. Go ahead.

A. I talked to A. P. photographer, James Bourdier.

Q. How do you spell that?

A. B-o-u-r-d-i-e-r.

Q. All right. Go on.

A. And I talked to Jim Laxson, who is photo editor in the  
Atlanta Bureau. I may have talked to one or two or pos-  
sibly three more people, but I can't recall. If I did, they  
were very brief conversations.

Q. Did any of these individuals, other than Savell, report  
to you that they had seen General Walker lead a charge  
against the United States Marshals?

A. No, sir, except for the students. May I clarify that  
answer? May I add something?

Q. Yes.

A. Except for the students who were in the dormitory  
room, where we had a telephone line, and they did not go  
out of the room, and could not see the area where the demon-  
[fol. 127] strations, the main demonstrations, took place.  
The other A.P. people that I talked to, that night I talked  
with them much later, and none of them were in the vicinity  
of the Lyceum Building.

During the early part of the evening, from the start of  
the demonstration on to around seven o'clock, until after  
midnight.

Q. Now, you used the term, 'except for the students', did  
the students purport to see the charge?

A. No. I say none other than I talked to the students.  
The only ones that I talked to between approximately seven  
o'clock and midnight were the two students who were in

their room, and were in their dormitory. We had maintained a telephone line, a long distance line, into their room that night for about nine to ten hours, and they did not leave their room, they stayed there and held their lines. Savell would come in from his various points where he had been on the campus.

Q. What was the nature of these reports that these students gave you?

A. The only reports that they gave me was that tear gas was seeping into their dormitory, and they told me of hearing what sounded like either rifle fire or possibly tear gas cannisters exploding, of seeing other students from their window, which looked in the opposite direction of the Ly-[fol.128] ceum, of seeing students and others scurrying about.

Q. Now then, let's get down to Van Savell. Start with the earliest report that you received from him, and outline it by time and content.

A. It has been nearly a year and a half. The earliest report that I received from Savell that night was around five o'clock in the evening, on the Marshals being thrown into the airport at Oxford, and going onto the campus.

Q. Did you have at that time, two phones connected to Oxford?

A. I couldn't say. At various times, one. We had from six-thirty at night until around four o'clock a.m. in the morning, this one telephone line into the dormitory room occupied by John Hall and John Perkins. The connection was continuous on that one, and at various times when the other newsmen who were in the area could get an open line, they would talk to the Bureau, but for the period from seven o'clock until almost three o'clock, the only method of communication we had was this one telephone line, and over our wire photo net work net up in a motel some ten blocks from it.

Q. Did you then, alone, maintain and operate that one open telephone line at Perkins' room?

A. Yes, I did.

Q. Did you have any assistance on the line, or any one [fol. 129] else that helped you?

A. Around two or three o'clock in the morning, I turned the phone, very briefly, to Carl Corben who is now the editor of the States Item, a former A.P. man, and I asked him to hold it while I went to the rest room. He said there was nothing. No one had anything to report on the telephone during that time.

Q. So then the A.P. Office in New Orleans received all the reports from Savell?

A. Yes, sir.

Q. Up until two o'clock?

A. Well, it was certainly up until around three o'clock, around three or four o'clock.

Q. Well, it was certainly after midnight?

A. Yes, sir.

Q. When was the next time that you heard from him?

A. I believe the next time that I heard from him was around six-fifteen to six-twenty, when he called from this room. That is when we kept the line open from there after.

(Conference was held off the record.)

I wasn't taking notes on the typewriter of what Savell had to say. I wasn't noting the time, except where it was really pertinent, as Meredith arrived on campus at such and such a time. I don't remember whether the story said that [fol. 130] Meredith arrived on campus at such and such a time, but it seems to me that it was around six-fifteen or six-twenty that he called and said that Meredith was there or that the Marshals had circled the Lyceum Building.

Q. Have you read Savell's deposition?

A. No.

Q. You haven't seen it at all?

A. No, sir.

Q. All right. Go ahead and give us the next report. You may refer to those exhibits in that deposition to refresh your recollection if you would like. Also there are other wire releases there before you, covering the same period of time. Now, then give us the next report that you received.

A. Well, we had a television set near the telephone, and I heard President Kennedy's speech which started at seven o'clock, and before it was over, or during the middle of it, Savell came back to the phone and said that the Marshals were firing tear gas at co-eds, and that the students had started throwing bricks and bottles, stones, and rocks at the Marshals.

Q. Now, let's recheck the timing on that. Wasn't the speech at eight o'clock instead of seven?

A. To the best of my knowledge, it was seven o'clock, Central Standard Time. It might have been eight o'clock [fol. 131] Eastern Standard Time. Because the A.P. usually operates and changes time to make everything eight o'clock Eastern Standard Time, or to make it into Eastern Standard Time, the stories may show this, particularly on radio wire copies.

Q. I wish you would recheck some of your communications there, because I was positive in my own mind that it was eight o'clock.

Mr. Gooch: I think it was. It was eight o'clock, Central Standard time, it is a fact.

The Witness: All right, then that was it.

By Mr. Watts:

Q. All right. Then you do remember, distinctly remember the incident of the President's speech on the television, right before, by your side?

A. Yes, sir. Not from the television on my side, but by hearing, because they had the telephone, I mean the television, in the room, in the dormitory room at Oxford, and the boys would hold the telephone there, and I was listening to what the President had to say.

Q. All right. Go ahead then. Before this speech was over, Savell reported that bricks were being thrown and tear gas fired?

A. Yes, sir.

Q. All right. Give us the next report.

A. I can't at this time, specifically say what his next report was. I know that I told him to be sure and check back [fol. 132] in or at least get word to me every fifteen or twenty minutes, even if he really had nothing to report. Just so we would know where he was and what the situation was, and if we had any word to pass on to him.

Q. All right. Go ahead?

A. He came in, as I said, every ten or fifteen minute intervals thereafter, reporting various facts that he had seen and observed. More students, or more people, not necessarily students, throwing bricks and bottles, and the Marshals firing tear gas, and the wind was blowing it back toward the Marshals.

Q. Did he tell you how far away he was from the scene of the rioting?

A. He told me he was in and out of the student groups, that he mingled in as close as he could. In fact, sometime he would be in the midst of a group of students who were yelling taunts and jeers at the Marshals.

Q. Did he give you a briefing as to the lay of the land?

A. Well,—

Q. How far the distances were, we will say from the Confederate Monument to the dormitory, when he was making the fifteen minutes reports?

A. I don't remember if he gave me a briefing on the distances or not. I know that it seems to me that he said [fol. 133] it was just a short distance.

Q. All right. Go ahead then.

A. Then, he came to the telephone, and said that General Walker had talked to the students, the rioters, and then had led them on a charge on the Marshals.

Q. That Walker had talked to the students, and then led them on a charge against the Marshals?

A. Yes, sir; walked to the front of the charge, and led it against the Marshals.

Q. All right. Go ahead. Tell to the best of your recollection, the rest of his report.

A. And he told me—

Q. Excuse me. Right there, see if you can convert this information that he gave you about Walker talking to the students, and then led them on a charge against the Marshals. Can you convert that into terms of a report that you passed on for use on the wire service?

A. Well, since I was not actually writing any of the material that he was reporting, I was taking notes, and passing them on to Tom Dagar, who I believe you talked to yesterday, and he was doing the main overall wrap up.

Q. All right. Go ahead, Mr. Thomas.

A. I remember, with the incidents involved about the troops being sent in and so forth, we were putting out almost a continuous news lead to the story, and I remember [fol. 134] calling to Tom, who was no more than ten feet away from me, that General Walker had just led the charge of the students against the Marshals.

Q. Is this Tom Dagar?

A. Yes.

Q. All right. Go on.

A. And he rushed over and took my notes from the typewriter.

Q. Yes?

A. And I asked Savell to give me as much detail on the information as he could. I can refresh my memory by going in here and looking at this report.

Q. Well, we will get to that in a minute, but just to the best of your recollection now, give us the details that he gave you.

A. He said that Walker had climbed on the Confederate Monument and talked to the students, and said something to them about if they retreated and went home, they would be cowards, that they should stand up and fight.

Q. All right.

A. And then that he got down from the monument and started walking toward the Marshals and the students followed behind him, and he led the group of yelling, screaming, brick-throwing group with him as close to the Marshals as they could get, until they were turned back by tear gas.

[fol. 135] Q. Now, was that the first real or formal charge?

A. No, sir. There had been other charges earlier in the night. He had given a report that cars were being set fire to. I can't, at this time, recall whether this was—I don't want to say I am certain, but it seems to me that the French newsman—

Q. Guillard?

A. He had been found before, or it may have been after.

Q. Did Savell report to you the effect that the speech Walker made from the monument had on the students before this charge?

A. He just said that they seemed to be in agreement with what he said, and ready to follow him.

Q. And did he say whether or not, prior to the time Walker had spoken to them and got an agreement, that the students were able to organize and present a mass charge, or was it sporadic activity up until that time?

A. I believe that he said that it was more of a sporadic activity, more of a mob activity. When General Walker first walked into the group, it seemed more organized.

Q. Now, after Walker had appeared on the campus, and made his speech from the monument, the charge became more organized, did it?

A. Yes, sir.

[fol. 136] Q. Would you say it became more effective? You may refresh your recollection from your wire releases there if you like. You said it became more effective after this speech?

A. I don't recall him saying one way or the other as to where it was more effective, but I think from his reports that the charges were more in the nature of a protest. And you can say whether a protest is effective or not, well—At times the Marshals were forced to sort of re-group, and several of them, of course, were wounded and injured by flying objects, but the students—

Q. Have you ever been on the Ole Miss campus?

A. Yes, I have.

Q. Had you been, as of that time?

A. No, I had not.

Q. But you are now familiar with the general layout of Ole Miss campus?

A. Yes, sir.

Q. I am going to hand you this, I believe there is a plat here in the deposition that you may use to refresh your recollection. Here is one right here."

Mr. Watts: Mr. Gooch, do you have that big plat available we agreed on?

Mr. Gooch: Yes, sir, it is outside.

Mr. Watts: Can we bring it in?

[fol. 137] Mr. Gooch: It will take the easel to put it on.

The Court: That is a magnetized board. I have some magnets. If it is not too heavy it will hold it on the blackboard. We can try it.

Mr. Watts: Yes, may I obliterate my rather miserable architectural effort here? It is not in evidence.

The Court: Yes.

Mr. Watts: At this point in the deposition, after pointing to a plat similar to this the question was asked the witness:

"Q. Is that the general lay of the land as you understand it?

A. Yes, it is.

Q. Did Savell report to you, or have you since learned, that the way Savell came was from the monument, around the Lyceum Building to Booth Hall, which is about six hundred yards?

A. No, I don't think that I know where Booth Hall is right there. Now you have him coming around to—

Q. Well, his testimony was when we took his deposition was that. . . ."

Mr. Gooch: Now, if the Court please—

Mr. Watts: —that's right. I think that is—



I am skipping from Line—Page 19 through the remainder [fol. 138] of that page.

Mr. Gooch: On Page 19?

Mr. Cravens: What line number?

Mr. Watts: I am skipping the remainder of that page.

Mr. Cravens: What line number?

Mr. Watts: 17. Now starting on Page 20, the question on Line 3, "Now, he then reported to you on this occasion when he first reported that Walker had led the charge, that Walker had made a speech from the monument, and that that speech seemed to give the boys more organization. Then after the speech, he led the charge?"

A. Yes, to the best of my knowledge.

Q. He made this report to you about the speech and the charge in the same telephone conversation and not in two?

A. In the same conversation.

Q. Right. Now, in other words, he didn't come and tell you that Walker was making a speech, and then come back and say that he was leading a charge?

A. No, sir.

Q. Nor did he tell you that Walker was leading a charge on one telephone conversation, and come back and tell you in a subsequent conversation that he was making a speech? [fol. 139] A. To the best of my knowledge, no.

Q. All right. Now, what next report did Savell give you about Walker?

A. I don't recall Savell giving me any more reports about Walker that night. I asked him later on if he saw General Walker any more, and I truthfully can't recall whether he said yes or no."

Mr. Watts: The remainder we will reserve.

Mr. Gooch: Where did you stop?

Mr. Watts: I have terminated on Line 3, Page 21.

The Court: Do you have anything to offer at this time, Mr. Gooch?

Mr. Gooch: No, sir.

Mr. Watts: Call Richard Sweat.

[fol. 140] RICHARD HARVEY SWEAT, called as a witness by the Plaintiff, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Watts:

- Q. Will you state your name, please, sir?  
A. Richard Harvey Sweat.  
Q. How old are you?  
A. Twenty, sir. Be twenty-one in September.  
Q. Where do you live?  
A. Karnes, Mississippi.  
Q. Were you raised in Karnes?  
A. No, sir, I was raised in Tennessee, in a place about twenty miles from Karnes.  
Q. Are you at this time a student at the Mississippi University?  
A. Yes, sir.  
Q. Were you such a student in September and October of 1962?  
A. Yes, sir.  
Q. What courses, Mr. Sweat, were you pursuing in college?  
A. Pre-law.  
Q. How long have you been at the University of [fol. 141] Mississippi at this time?  
A. At that time, sir?  
Q. Yes, sir.  
A. I had been there about a year and a half.  
Q. And that was almost a year and a half ago?  
A. Yes, sir.  
Q. So, you have now been at Ole Miss University approximately three years?  
A. Yes, sir.  
Q. Are you familiar with the lay of the land at Ole Miss University?

A. Yes, sir.

Q. Will you please take the pointer in front of you, take it in your hand, and step over to this chart.

May we agree, if Your Honor please, that this chart will be offered in evidence as the—actually, it is a joint exhibit. I don't know what the Court's procedure is.

The Court: If there is an agreement you can offer it. If you agree to it, both of you can use it.

Mr. Watts: All right, sir.

Mr. Gooch: That is satisfactory.

Mr. Watts: What, Mr. Reporter, is the next exhibit?

Mr. Nuss: Number 11.

[fol. 142] (Chart marked Plaintiff's Exhibit 11.)

By Mr. Watts:

Q. Mr. Sweat, you have before you Exhibit 11 which is a scaled reproduction of the University of Mississippi campus. Do you see a railroad at the right side of the chart about even with your chin?

A. I do.

Q. As it goes on forward?

A. Yes, sir.

Q. The top of the chart, of course, is north. Do you see a street, University Boulevard, as it crosses the railroad right about your chin? Much lower. Right there (indicating).

A. Here at the avenue, sir.

Q. Yes, sir, University Avenue.

A. Yes, sir.

Q. Do you see it proceeding westward?

A. Yes, sir.

Q. Put your pointer at the intersection of University Avenue and the railroad.

A. (Witness complies.)

Q. And as you proceed on westward with your pointer now about how wide is that street at this point?

A. This street?

Q. Yes, sir.

[fol. 143] A. Oh, it is wider than this room.

Q. A good big wide boulevard-type street?

A. Yes, sir.

Q. Proceeding on westward, and do you see an installation there called the Circle?

A. Yes, sir.

Q. Do you see a dot which is to the left of your pointer right there?

A. Right there (indicating).

Q. What is that installation?

A. That is the Confederate Monument.

Q. Will you describe please that Confederate Monument for the benefit of the Jury who have never been there?

A. The Confederate Monuments are quite a thing in Mississippi. Every town or every small community has one, in dedication to the boys who marched away in the War between the States. And Ole Miss has this particular monument dedicated to the University Grays that marched away in the War between the States. And it is a tall monument on a granite base that has a Confederate soldier standing there holding his rifle like this (indicating) and looking out on University Avenue.

Q. Does it have a base about two feet above the level of the ground?

[fol. 144] A. Yes.

Q. And then as you proceed to the right of that Confederate Statue will you identify some of the buildings?

A. This is the old Geology Building, formerly the old Library Building also. This is the YMCA Building.

Q. Wait just a minute. This YMCA Building will figure very prominently in the evidence. I think it is well to orientate the Jury at this time and identify it. Is there a street between the Circle and the YMCA Building?

A. Yes.

Q. What is that?

A. That is the Grove Loop.

Q. What is the street to the southwest of the YMCA Building?

A. This is still University Avenue.

Q. University Avenue curves around and makes a loop?

A. Yes, sir.

Q. What is the next building to the west of the YMCA Building?

A. The Fine Arts Center.

Q. And as you proceed on then to the southwest, around University Avenue, what is the next big building you encounter?

A. The Peabody Building and the Fullerton Chapel, [fol. 145] but it sets back.

Q. What is this building (indicating) directly west of the Circle?

A. The Lyceum Building.

Q. Did that building have any personnel around it the night of this incident?

A. Yes, sir, this building was ringed by 700 Marshals that night.

Q. Now, then, moving onto the southward, what is the next big building?

A. The next building is the Chemistry Building. Chemistry and Pharmacy Building, I might add.

Q. Then circling back toward the east, what is the next building?

A. This is Carrier Hall. This is the engineering building.

Q. All right, sir.

A. Right here (indicating).

Q. Then, returning then to the point of origin, what are the rest of the buildings?

A. Well, the Chemical Engineering Building sets right here, and the new Science Building, Hume Hall, sets right here.

Q. All right. Now, on this night in question, September 30, 1962, was the Science Building, Hume Hall, in the [fol. 146] process of construction?

A. Yes, sir.

Q. Is there any installation, street lights or anything of the kind just north of Hume Hall?

A. Yes, sir, a street light sets right here (indicating chart).

Q. Where is that with reference to the Confederate Statue?

A. With the Confederate Statue, it sets a little southeast.

Q. It is southeast of the Confederate Statue?

A. Yes, sir.

Q. All right, take your seat on the witness stand.

Now, Mr. Sweat, were you present on the Ole Miss campus on the night of September 30, 1962?

A. Yes, sir, I was.

Q. Where had you been?

A. I had been home. I was returning back from home.

Q. Had there been some school activity in Jackson that day?

A. There had been a football game the Saturday before, I believe.

Q. And about what time did you arrive back on the campus?

[fol. 147] A. I got back on the campus around 4:00 o'clock that evening.

Q. What day of the week was that?

A. This was on Sunday.

Q. And at the time you got back on the campus were the students there in force, or what was the condition?

A. No. Ordinarily the students at Ole Miss arrived back at the campus from the week-end, usually about that time, around 4:00 or 5:00 o'clock, and they were just beginning to come in.

Q. Mr. Sweat, when you arrived on the campus where did you go?

A. Well, when we arrived on the campus the first thing we heard, we were stopped by some boys and we heard the first thing we knew, we had been occupied, that we had been sold out, and that the Marshals were already

here, and the Army was on the way, so we went on up to the Lyceum Building.

[fol. 148] Q. Now, who is "we"?

A. This boy that rode with me, Jimmy Coggan. He is, also, from Torrance, Mississippi.

Q. All right, sir. Continue then with what occurred.

A. We stopped at the Lyceum Building. The Marshals hadn't ringed the Lyceum Building at that time. We stood around and talked and then a few minutes later, trucks drove up with Marshals in the back of them. These were Army trucks. Marshals standing in the back of these trucks had on white helmets, a vest—some people say they were bullet-proof vests, I don't know.

The vests had tear gas canisters in them and many of the Marshals carried big tear gas guns.

The trucks pulled up around the University Loop in front of the Lyceum Building. The tailgates were dropped and the Marshals got out and immediately ringed the Lyceum Building.

Q. Were those typical six by six Military-type trucks?

A. Yes, sir, they were all Military trucks.

Q. Go ahead.

A. The Marshals got out. They formed a double line in the front of the Lyceum Building and single line running around the back.

The Marshals stood shoulder to shoulder. They didn't say anything. You could ask them something. A Marshal [fol. 149] wouldn't say anything to you.

This was a curiosity to the students. Many of the students immediately came down. People from the Student Union Building got word that the Marshals had ringed the Lyceum Building and the people came down.

I took my things on back up to the room and took the boy that had ridden with me over to the fraternity house and he put his things up and we returned.

By this time the word had gotten all over the campus. Boys who had seen it were running around to the fraternity houses and to the dormitories, passing the word.

This made a lot of people angry because the Lyceum Building holds a very special place on the Ole Miss campus. And to see it ringed by Marshals, naturally caused resentment and drew a crowd.

Q. Could you roughly estimate the size of that crowd at that time?

A. Well, the size of this crowd at this time, I would say, three or four thousand, because this included all the students that had returned and it was a tremendous crowd down there finally, toward late evening.

Q. Now, roughly, Mr. Sweat, where was that crowd distributed?

A. This crowd was distributed, running from the En- [fol. 150] gineering—I mean the Chemistry-Pharmacy Building in front of the Lyceum Building—

Q. Now, Mr. Sweat, until the Jury gets these places pretty well fixed in their mind, I wish at this point you would take your pointer and again show them just where these installations are.

A. The crowd stretched from this point of the Chemistry-Pharmacy Building on around. We were in the street then. On around on University Circle, down here in the front of Peabody, almost to the side of the Lyceum Building.

Q. Now, where is Labuve Hall

A. Labuve? Labuve is right here.

Q. All right, sir. And at that time were there any Highway Patrolmen in the area?

A. Yes, sir, there were Highway Patrolmen.

Q. I wish you would point out to the Court and Jury where the Highway Patrolmen were stationed.

A. At first, the Highway Patrolmen, of course, were at the exits. But then the Highway Patrol moved in and they were stationed out in front with the students.

Q. Now, coming eastward from the Lyceum Building, who were the first personnel that you would encounter?

A. Coming eastward?

Q. Yes.



[fol. 151] A. The first personnel you would encounter coming this way would be students.

Q. No, I mean walking out of the Lyceum Building.

A. Oh, walking out of the Lyceum?

Q. Yes, sir.

A. The first personnel you would encounter would be Marshals.

Q. Do I understand there was a double ring of Marshals?

A. Yes.

Q. Who would be the next personnel?

A. The next personnel would be the Highway Patrol.

Q. Now, what was the number of this Highway Patrol? Can you give us a rough estimate?

A. I'm not sure about that, sir. I would say 200 probably.

Q. Was there an interval or distance between the U. S. Marshals and the Highway Patrol?

A. Not at first. Now, when the Highway Patrol moved in, they formed a line between the students and the Marshals.

Q. All right. What was the distance between the line of Marshals and the line of Highway Patrolmen?

A. At first, the distance was about fifteen feet. Ten—ten, fifteen feet.

[fol. 152] Q. And what was the distance then between the Highway Patrolmen and the students?

A. The students were right up against the Highway Patrolmen. They were wanting to get up closer but the Highway Patrol wouldn't let them.

Q. All right, sir. You may return to your seat.

Now, continuing, please give this Jury as accurate a word picture and a description of what you saw and what occurred from that time on until the Highway Patrol personnel left the campus.

A. Well, the Highway Patrol moved in, got between the students and the Marshals. The students—a lot of students were mad by this time because the Marshals had ringed the Lyceum Building. They resented this. And there was opposition growing, discontent. People were thumping cigarette butts at the Marshals and throwing pebbles at

them. I say “pebbles”, now. No rocks like a lot of people say. There are no rocks on the University Loop. It’s all paved. You won’t find rocks. You will find pebbles. Students were throwing that.

[fol. 153] Well, the highway patrol moved in between and the men started to tell us just to calm down, no reason to get excited.

Chancellor Williams came out, pleaded with the students, said break up, said go back to your dormitories, you can’t do any good down here.

Dean Love walked among the crowd, trying to persuade them to break up but the crowd wouldn’t do it. They felt by this time that things had gone too far.

Q. Now was this daylight or dark?

A. This was still daylight.

Q. All right, sir. Now where were you roughly at that time?

A. Just out in the crowd, milling around in front of the Lyceum Building.

Q. Now is that in the area marked as the circle?

A. Yes.

Q. All right, sir, go ahead.

A. Toward late evening, almost at dusk, the highway patrol suddenly formed a straight line and started pushing the students back. The reason they were doing this is because the trucks—

Mr. Gooch: Now we object to the reason.

Mr. Watts: That’s right, you possibly don’t know the reason. You’re just a pre-law student, Mr. Sweat, not into [fol. 154] the law yet. That is not proper evidence, so go ahead—

The Court: Just tell what you saw.

A. All right, I will. They were pushing us back. Well, I could tell you why they were pushing us back.

Q. But what went on in the Marshals’ mind is not proper evidence so you just tell what you—

A. Well, they were pushing—anyway, they pushed us back.

Q. You were pushed back?

A. We were pushed back and while they were pushing us back, they had their backs to us and the students were, well, they were—well, they were allowing, you know, the highway to push them back on the grass. What they evidently were wanting to do was to form an empty zone there between the Marshals and the students.

Q. And after they pushed you back, about how wide was this empty zone?

A. Well, while they were pushing us back, that's when the riot broke.

Q. Tell us what happened?

A. Well, while they were pushing the students back, suddenly the Marshals leveled tear gas and opened fire.

Q. Did you hear a command?

A. No, I didn't hear a command. I was out in the crowd. [fol. 155] I wasn't paying any attention to the Marshals. I had turned around, you know, to see where I was stepping. And all of a sudden we had tear gas.

Q. At that time was there any violence of any kind existent?

A. No, sir.

Q. Describe to the jury to the very ultimate of your recollection exactly what you saw and what occurred.

A. Well, the Marshals opened fire with tear gas. It threw a thick cloud of smoke all over the students and the highway patrol was completely stunned. Some of the men even got hit in the back—

Mr. Gooch: If the Court please—

Mr. Watts: Just a minute.

The Court: You don't know whether they were or not. You testify to what you saw and not what you are guessing at.

The Witness: Well, that's just what I saw.

The Court: You don't know whether they were stunned or not.

The Witness: One was hit in the back, sir.

The Court: Well, you just testify to what you saw.

The Witness: Yes, sir.

By Mr. Watts:

Q. Tell us, Mr. Sweat, about that one that was hit in the back. What did he look like?

[fol. 156] A. He was a big, heavy-set fellow.

Q. After he was hit, was he horizontal or vertical?

A. He was still standing up but I wouldn't care to repeat what he said.

Q. Well, don't repeat what he said just tell what he did and what you saw.

A. Well, he ran down with the students. All the students ran when that went off. All the students ran down to the Confederate statue.

Q. Now is that eastward from the Lyceum?

A. That's towards the east, sir.

Q. About that time what—could you roughly estimate the size of this group of students?

A. It was still—it was still a pretty good sized crowd.

Q. Were all the students in the circle or were some of them elsewhere?

A. Well, no, not all the students were in the circle. Most of the students, like I say, were there in front of the Peabody Building and around near Carrier Hall.

Q. Would that be northwest of the so-called circle?

A. That would be north, northwest of the circle.

Q. All right, sir.

A. Some were over at the YMCA Building, too.

Q. Go ahead and describe the events.

[fol. 157] A. Well, the students ran back to the Confederate statue. We milled around. We didn't know what was happening. We got together again and we thought somebody had done something, you know, that—

Q. Now Mr. Sweat, was there any leadership at all of this group of students?

A. No, sir.

Mr. Gooch: If the Court please, we believe that is a conclusion, that he can tell exactly what he saw.

The Court: Sustained. I instruct the jury not to consider it for any purpose.

By Mr. Watts:

Q. Tell the jury what was the organization of this group of students, how they reacted and to whom they looked for instructions and orders.

A. Well, they didn't look to anyone. They were completely bewildered. They didn't know what to do. After that first volley went off, the students got together and they started walking back up towards the Lyceum Building. That's west.

They started walking back up towards the Lyceum Building and suddenly the Marshals charged again and this time drove all the students that were in the circle past the Confederate statue and back down University Avenue almost to the Journalism Building.

Q. And what happened to the highway patrolmen then?  
[fol. 158] A. Well, some were with us but not all of them. I don't know what happened to the rest of them. There were a few down with us though.

Q. And what was the attitude and demeanor of the crowd at that time?

A. Well, after the second volley went off the crowd was ready to fight then. The boys started picking up bricks and bottles and started back toward the Marshals.

Q. Now as they went back describe to the jury how they went back and in terms of just how they looked to you.

A. Well, the way it looked to me, was that there were a few students that—after the second volley went off and we had been driven back down, they picked up some bricks and bottles and said, "We've had it, we've had it, we've had enough. Let's go back and fight."

And the people started picking up things then and the students went up almost as one body at that time, just together.

Q. Uh-huh.

A. And the Marshals started a charge again and we charged back this time.

Q. Uh-huh.

A. And pushed the Marshals back up to the Lyceum Building. This was tried getting all the students together for one, you might say, big student push.

[fol. 159] We tried that two or three times but it's too costly because each time we tried it, get up near the Lyceum Building, the Marshals would just level their tear gas guns and cut loose with a volley, so you couldn't bring a large group up near the Lyceum Building in what you might call a charge.

Q. And then what happened?

A. The students fell back to that Confederate statue. A lot of people—a lot of people really wanted to defend that statue. I don't know why. They said, "By God, this is ours. We're holding." And they did. Students milled around. They busted up concrete benches in the circle, boys went down to Hume Hall. That was the new Science Building under construction then.

They started hauling back bricks, anything you could get your hands on, coke bottles, or anything. You would pick it up, you would run back up to the circle, you would have to go through the tear gas to chunk.

Q. You said boys would do that. Now explain to the jury how that was organized or how it operated.

A. Well, everyone was on his own, really. If you wanted to throw something, you would have to get your own what you might call ammunition.

You might start out and there would be about four or five boys and they would be going your way, too, and you [fol. 160] would say, "Well, come on, let's go," and just whoever would fall in and go—that's what your charge would consist of. Now then—

Q. There was no organization?

A. There was no organization.

Q. How long did that condition continue?

A. This continued all night long.

Q. Was there ever any organization, as you say?

A. No, sir.

Mr. Gooch: If the Court please, we object to that as a conclusion.

The Court: Sustained. The jury is instructed not to consider it for any purpose.

By Mr. Watts:

Q. All right. Explain to the jury what you observed then with respect to this subject you are talking about from there on out.

A. To the riot, sir?

Q. No, this matter of the group of students and the size of the group and their actions?

A. Well, groups of students would get together. Probably the largest group you would see charged would be a group of 20. Some boys—some boys hit upon the idea that if you charged in a small group, the Marshals would charge you back; you could draw them in between two buildings where some more boys would be and you could jump them.

[fol. 161] Well, this worked, this worked for a little while. But the Marshals caught on to this and they wouldn't do that any more.

So the boys—boys throwing rocks and bottles extending all the way down from the Chemistry Pharmacy Building all the way through the grove on up to the YMCA Building were throwing and not more than groups of 20—groups of five, six, seven, things like that.

Sometimes you would just go by yourself and throw.

Q. Do you have any idea roughly of the time when the Marshals first fired the gas?

A. No, sir, I don't. I left my watch back in the room and I wasn't too concerned with time at that time.

Q. All right, sir. Did you at any time during the course of that evening encounter an individual whom you recognized from pictures or anything else as General Walker?

A. Yes, sir, that night.

Q. Could you take your pointer and point out to the jury with respect to the Confederate monument where you first saw General Walker?

A. When I first saw General Walker, he was standing about—well, I would say two to four feet right off the sidewalk here.

Q. Now what direction is that from the Confederate [fol. 162] monument?

A. Well, from the Confederate monument, it's still south, southeast.

Q. All right, sir. Now about how far would you say it was to the monument, if you could estimate?

A. From where I saw General Walker to the monument?

Q. Yes, sir.

A. Twenty feet.

Q. Now then as you have been doing and to the very best of your recollection, try to reconstruct in your mind exactly what you saw and what occurred after General Walker appeared at this point and you saw him, and tell the jury just what you saw and what occurred.

A. Well, my attention was drawn to General Walker. The cry went up, "General Walker is here, General Walker is here. We have got a leader."

And there was a crowd there at that time because we had just finished beating up a reporter—no, not a reporter. He was a chemistry professor. He was down there taking names and he was recognized. The boys didn't want reporters around because they feared if they got their picture in the paper or something, you know, it could get them in trouble—and especially professors taking names. That didn't go over too well either.

Q. You didn't like that?

[fol. 163] A. No, sir. So they had just finished beating him up and escorting him down University Avenue and there was a small crowd down there. And the cry went up, "General Walker is here."

I was standing just a little west of the statue. I looked around and saw General Walker.



Q. Now was this position where you were west of the statue in the so-called circle?

A. Where I was?

Q. Yes.

A. Yes, sir.

Q. All right, go ahead.

A. I looked around and saw General Walker. Boys were running up to him, shaking his hand. They wanted to meet him. They just wanted to see what he was like. People had heard of General Walker but we hadn't met him. I was curious, too.

I went down where he was. There was still boys charging at this time. A lot of people didn't know Walker had arrived. Just the people down in there knew it.

Q. Uh-huh.

A. Walker milled around in the crowd with the boys, shaking hands. The boys kept asking him, "Where are your volunteers?"

And he wouldn't answer that.

[fol. 164] And they said, "Well, General, what should we do? Give us some advice."

And he would just shake his head.

And the boys began to start wondering about him then. They said, "Well, what's he here for," you know. They thought that—

Mr. Gooch: We object.

By Mr. Watts:

Q. You can't say what they thought?

A. Well, anyway, I thought—

Q. You can say what you said.

Mr. Gooch: Whatever you say is fine.

A. I thought when I first—my first impression, when General Walker came up, I thought, "Well," I said, "Here we have got a leader." I said, "We have got a leader finally, somebody can lead this thing."

But I found out that General Walker wouldn't lead it. The boys found this out, too. And some of them drifted off, you know, and some of them were right resentful at it—

Mr. Gooch: If the Court please—

Mr. Watts: We withdraw it.

The Witness: I'm sorry. I'm saying the same thing again.

Mr. Gooch: We are going to protect this record regardless of the levity of this matter.

The Court: I understand.

[fol. 165] Mr. Gooch: And I object to the remarks of the witness. He's been cautioned about it and I respectfully request the Court to advise the witness to talk about things he knows.

The Court: That's what I'm getting ready to do, Mr. Gooch.

Mr. Watts: That's right.

The Court: Mr. Sweat, you will find, after you get through law school, there is such a thing as a conclusion. You can't look into somebody else's mind and determine what they think, see?

The Witness: Yes, sir.

The Court: So in describing your story, limit yourself to what you saw, what you actually observed and not what you think somebody else thought or observed.

By Mr. Watts:

Q. That's fine. Now then, son, go ahead with your description to the jury without me bothering you. You just tell this jury exactly what you saw and what occurred.

A. People were still milling around. Boys were still coming back from the charges they had made. They were coming right past Walker down to Hume Hall.

They didn't even recognize General Walker, a lot of them.

Mr. Gooch: Well, if the Court please—

[fol. 166] The Witness: I know they didn't because my roommate was one of them.

Mr. Watts: Just a minute, son.

Mr. Gooch: If the Court please—

Mr. Watts: We withdraw that.

The Court: Mr. Sweat, you are going to be in trouble with me in a minute.

The Witness: Yes, sir, I'm sorry. I just can't—

The Court: And I advise you not to do that.

The Witness: I just keep messing up, huh?

The Court: Yes, you just keep messing up. Now you just testify to what you saw.

Mr. Watts: Yes, sir.

The Court: And what you observed?

The Witness: Yes, sir.

By Mr. Watts:

Q. That's fine. Just go ahead and tell the jury what you saw.

A. The rumor was going around in the crowd, verbal rumor—

The Court: Now did you hear or see the rumor?

The Witness: Yes, sir, I heard the rumor.

The Court: You saw the rumor?

The Witness: Yes, sir.

The Court: What does a rumor look like?

The Witness: The rumor was passed by word of mouth—

[fol. 167] The Court: Did you see it? You heard it.

The Witness: I heard it.

The Court: You testify to what you saw.

Mr. Watts: All right, go ahead.

A. What I saw?

By Mr. Watts:

Q. Yeah. Just tell what you saw. Don't tell the rumor.

A. Well, I saw students pleading with General Walker to get up and speak because they thought—well, I take that

back. Anyway, we thought—I thought Governor Barnet had sold us out.

There were fights going on because of that. Finally General Walker did get up, stepped up on the base of the statue—

Q. Just a minute. Before he stepped on the statue, I wish you would go up there and take your pointer and point out to the jury where he went from the first place under the street light where you saw him. Just trace his course on the chart.

A. Well, when I saw General Walker, like I say, he was standing somewhere right in here.

Q. About how long did he stand there?

A. He stood there—I couldn't say, but he stood there a little while because there were a lot of boys that wanted to shake hands with him.

[fol. 168] He walked up towards the YMCA Building like he didn't know where he was—that's the impression I got.

He stopped and looked around and then he came back. Then he stepped up near the statue over here to the south of it, and he walked just a little north—I mean just a little west of it, stopped and he looked up towards the Lyceum Building.

And the boys were still around him, telling him, well what was going on and everything.

Q. Was anyone specifically with Walker at that time?

A. Specifically with Walker?

Q. Yes, sir.

A. I didn't notice anyone.

Q. Yes, sir. All right, go ahead and tell the jury, point out as nearly as you can roughly what the furthest west point he reached may have been.

A. I would say just about here.

Q. Now in terms—what is that installation in the middle of the circle?

A. That's the flagpole.

Q. And is that about, oh, a little over half-way between the Confederate monument and the west end of the circle?

A. Yes.

Q. Now in terms of fractions, roughly how far from the [fol. 169] monument to the flagpole did General Walker get on that occasion?

A. I wouldn't say quite half-way.

Q. All right, sir. And then how long did he stay in that position?

A. Just a few minutes.

Q. All right. What occurred then?

A. The thing was still going on.

Q. All right. You can go back then to your seat.

A. People were still rioting. Tear gas was still being fired.

About that time some boys over near the Chemistry Pharmacy Building had just made a charge and the Marshals had leveled some tear gas over there.

Q. And then where did General Walker go?

A. Then he came back to the, near the Confederate statue.

Q. Now up to that time, did General Walker lead the charge?

A. No, sir.

Mr. Gooch: We object, if the Court please.

Mr. Watts: Just a minute now, I would—

Mr. Gooch: A conclusion on the part of this witness. He can testify what happened.

Mr. Watts: May counsel approach the bench?

[fol. 170] (Conference at the bench.)

Mr. Watts: That's what I wanted to get straight. Loan me your pointer there, son.

By Mr. Watts:

Q. Now, son, as General Walker moved from this point here just northwest of the street light and southeast of the Confederate monument over to this point you have marked about not quite half-way to the flagpole, what gait did he travel?

A. He walked.

Q. He did. What type of a walk?

A. Just a slow, casual walk.

Q. Was anyone around him?

A. Yes, sir, students were still around him.

Q. Was anyone between him and the Marshals around the Lyceum at that time?

A. Oh, yes, sir.

Q. Well, would you estimate for the benefit of the Court and jury what the size of the group was between Walker as he walked in this direction and the Marshals?

[fol. 171] A. That would be hard to do, sir, because a lot of the boys in the building—there were some up there breaking up benches, some had just come back from the charge, and there was tear gas smoke. I couldn't be too sure. But just as a guess—

Mr. Gooch: If Your Honor please, we will object to the guess.

Q. That is all right. Give us your best judgment.

A. This is just a guess.

Q. Don't call it a guess. Give us your best judgment.

A. My best judgment would be forty or forty-five people in that area.

Q. All right, now, what was Walker's actions with respect to anyone on beyond him toward the Marshals?

A. There was none.

Q. Did he have any contact with them?

A. Any what?

Q. Any contact with the people out in front that were throwing things at the Marshals?

A. No, sir.

Q. Did he say anything to them?

A. No, sir.

Q. As nearly as you possibly can I wish you would report to the Jury everything Walker said to you boys [fol. 172] around him after he appeared at this point, until

he started backward up from the position between the Monument and the flagpole?

A. Well, mainly what he said, people would introduce themselves, he would shake their hands, say, "Glad to meet you," or something. People would ask him, "General, what should we do, the Marshals have got the Lyceum Building ringed now, shouldn't we get some boys and go over here and do this or do that?" And General Walker wouldn't say anything. And one boy really got mad about it, he said—

Mr. Gooch: Well, now—

By Mr. Watts:

Q. Don't get into what the other boys said.

A. Well.

Q. Did you at any time—strike that.

Did at any time during this interval between your first observing Walker as he came on the campus and the time when he came up there and walked back toward the monument, did anyone at this time have ahold of his arms, in this manner (indicating)? As he walked.

A. No, sir.

Q. Did you notice a rather portly heavy-set individual that came up to the group about that time?

A. No, sir. I did notice one. He was from Columbus [fol. 173] though. I saw him earlier that evening.

Q. Now, then, did—did or did not General Walker—strike that.

Did you hear one identified man query Walker as he approached the group, "General, will you lead us to the steps?"

A. Yes, sir. I don't know that that is the man you are talking about, but I did hear that question asked.

Q. Did or did not you observe Walker as, ". . . he loosened his tie and shirt and nodded 'yes' without speaking?"

A. No, sir.

Q. Did that occur?

A. No, sir.

Q. Did he confer with a group of about fifteen persons who appeared to be riot leaders?

A. Well, now, that was probably the group I was in.

Q. All right. Tell the Jury exactly what happened.

A. Well, if the President of the University thought I was a riot leader I wouldn't be in school very long. This was after the speech.

Q. That was what I was trying to get the timing on.

A. This is after the speech.

[fol. 174] Q. Well, now, to further fix the time on it, did Walker, after he came back from the position there approximately half way between the monument and the flag-pole, did he make a speech from the monument?

A. Yes, sir.

Q. And did anything unusual occur in University Avenue just south of the monument just before he made the speech?

A. Just before he made the speech?

Q. Yes.

A. There was a lot of confusion down there.

Q. Was there any vehicles?

A. Not that I remember. Down near the Journalism Building.

Q. At any time prior to this incident you are talking about when Walker made the speech did Walker assume command of the crowd estimated at a thousand?

Mr. Gooch: Leading and suggestive.

By Mr. Watts:

Q. All right, I was just going down the terms but, all right, we will not proceed that way then.

All right, you say Walker came back from that position and made a speech?

A. Yes, sir.

Q. Now, have you outlined to us everything that you [fol. 175] remember that he did and that you saw him do



between the time he arrived on the campus and the time he made the speech?

A. Well, I think—now, he didn't go directly from there to the Confederate Monument. He came back and was down around the Confederate Monument, and then later made the speech.

Q. Was tear gas fired at the group where he was just—strike that.

I see counsel is going to object and I don't want to ask anything remotely objectionable. All I want you to do is tell the Jury what you saw and what happened. Tell us about any tear gas being fired, if any, and where it was fired while he was up in the area west of the monument.

A. West of the monument?

Q. Yes.

A. There was still tear gas up from the flagpole, or up to the Lyceum Building, was a flat of tear gas. This was pretty thick. You could see through it every now and then. Now, there wasn't too much of a breeze that night, so it kind of hung over in the Grove. When this tear gas would clear up the Marshals would let go another salvo of it and build up a cloud.

Q. How close were you to Walker?

[fol. 176] A. Well, I was pretty close to him.

Q. How many feet?

A. Well, I was—I could reach out and touch him.

Q. Now, while you were in that position what was the nearest tear gas that came to you and to Walker?

A. The nearest tear gas?

Q. That is pellets that were fired.

A. There was one that landed over by the—facing the Lyceum Building, there was one that landed to the left of us over there near the street, almost. That was about the closest I remember. Of course, there were so many fired that night it would be hard to tell.

Q. Now, when Walker returned from that position to the area near the monument, what was his gait?

A. He was still walking.

Q. What kind of a walk?

A. It was just—my impression, just a casual stroll, just to look it over; things.

Q. And what were the students doing around him?

A. The students, by this time, had kind of, they were just—

Mr. Gooch: Wait a minute.

By Mr. Watts:

Q. What were they doing?

A. They were just walking along with him.

Q. That is what we are trying to get.

[fol. 177] A. Standing around him. Some people had just heard he was there.

Q. Don't tell us that, what they heard. And what was the gait of the students?

A. Oh, they were in a slow gait too. They were keeping up with him.

Q. What were the actions of the students in his immediate vicinity?

A. Well, they were just standing around him.

Q. Were any of that group participating at that time in throwing things at the Marshals?

A. No, sir.

Q. Now, then, describe to the very best of your ability what happened from the time you started back from the position west of the monument until he made his speech on the monument?

A. I am not too sure about that. Walker did come down to the monument and he stood around in that area and there were a lot of things still going on over around the Lyceum Building. I returned and watched that for a little while, but I know Walker stayed down in that area.

Q. Then, what did he do?

A. He made a speech on the statue.

Q. Would you outline please for the Jury to the best of your recollection what General Walker told the boys from [fol. 178] the statue?

A. General Walker got on the statue and he said something to this effect, he said, "You have a right to protest. It is guaranteed to you in the Constitution. This is not the way, it is the long way around."

He said, "You do have a right to protest, . . ." but he said something about, ". . . Cuba being yonderway." That is the best I remember.

Q. What was the reaction? Was there any sound that come from the students?

A. There was some jeers.

Q. What?

A. Jeers, boos.

Q. Then what happened?

A. Walker stepped down and the crowd dwindled off. Walker stepped to the right of the Confederate Monument and this is when I talked to him. He stepped down to his immediate right and he came passed me. This is now when the group of around fifteen boys were around Walker. The other crowds had drifted off.

Q. Tell us about that.

A. Walker stepped down and walked past, just a few feet west of the Confederate Statue, and stopped, and looked around, and he lit a cigarette, and—

Q. Are you sure of that?

[fol. 179] A. Yes, sir, I know he did because at that time I borrowed a cigarette from him.

Q. Did you have any cigarettes of your own?

A. Yes, sir, they were back in the room though. I didn't bring anything down with me.

Q. Then what happened?

A. We stood and talked with General Walker, some of us did, just a general conversation. We discussed politics. I asked him about his training program he had over in Germany and we talked about things like that; just a general conversation.

Q. What was going on further toward the west at that time?

A. Oh, further toward the west, the same thing. Boys in small groups started throwing at the Marshals and they were charging and coming back, and the Marshals were still shooting tear gas.

Q. What were the group of boys immediately around Walker doing?

A. The boys immediately around Walker were just standing around.

Q. Were any of them at that time throwing things?

A. No, sir.

Q. At this point, could you take the pointer there and show the Jury where this conversation took place?

[fol.180] A. Right about in here (indicating chart). That is about southwest of the Statue.

Q. And about how long did that session there take place?

A. I would say twenty minutes.

Q. Where did Walker go from there?

A. Walker started out over this way (indicating), and I still stood there and watched him. I was watching him because a boy had asked me to keep an eye on him.

Mr. Gooch: Now—

By Mr. Watts:

Q. Don't say what the boy told you to do. Just tell us—

A. He walked up this way (indicating), and stopped and stood around. He seemed to start back. At this point I lost him. I got interested in something else.

Q. Did you have any more contact with Walker from that time on?

A. No, sir, I didn't see him any more that night.

Mr. Watts: Take your seat. I believe that is all.

The Court: We will recess before cross examination. Ladies and Gentlemen, we will recess until a quarter until 11:00 by this clock in here.

[fol.181] (Thereupon, Plaintiff's Exhibit No. 11, was marked for identification.)

## Cross examination.

By Mr. Gooch:

Q. In September of 1962, you were approximately 18 years of age, is that correct?

A. No, sir.

Q. Nineteen?

A. Nineteen.

Q. All right. You had been a student at the University of Mississippi, I believe you testified, for about a year and a half?

A. Yes, sir.

Q. Now, do you recall when the school year opened in the year 1962?

A. Yes, sir.

Q. When was that?

A. In September.

Q. Do you remember what date?

A. No, sir, I am not sure about that.

Q. Do you remember what date, about what date, you got on the campus for the Fall Semester for 1962?

A. What day I got on the campus for the Fall Semester?

Q. That's right.

A. No, sir, not the exact date.

[fol. 182] Q. Well, prior to the time that the Fall Semester began at Ole Miss in 1962, it was general knowledge in the State of Mississippi and elsewhere as to the Meredith case, was it not?

A. Yes, sir.

Q. You were aware, when you entered school in September of 1962, that the United States Court of Appeals had ordered Meredith on the campus in the status of a student, were you not?

A. Yes, sir.

Q. You knew that Governor Ross Barnett exercising his prerogatives as Governor of the State of Mississippi was using considerable force to prevent the entry of Meredith into Ole Miss, did you not?

A. Yes, sir.

Q. You knew that Meredith, on more than one occasion, had been turned away from registering in Ole Miss by both Governor Ross Barnett and Lt. Governor Johnson, did you not?

A. Yes, sir.

Q. Were you on the campus on September 25th, 1962, when the Governor, in connection with certain law enforcement agencies, refused to admit Meredith to Ole Miss?

A. Yes, sir.

Q. At that time, an angry resentment came up from the student body in support of Governor Ross Barnett, did it not?

[fol. 183] A. A resentment to Governor Ross Barnett?

Q. No, a resentment to the entry of Meredith?

A. Yes, sir.

Q. And the students—I will confine it to you. You felt that Governor Ross Barnett was right, did you not?

A. Yes, sir.

Q. You felt that the United States District Court or the United States Court of Appeals was wrong, did you not?

A. Well, not necessarily, sir.

Q. All right.

A. I felt that they were wrong in this case.

Q. All right.

A. Because of James Meredith's Air Force record. The doctors had testified he was in a nervous state of condition. And I felt that Mississippi had a right, and—as a state, on behalf of the people, to take their case before the Supreme Court, before a full tribunal.

Q. You did know, however, that a final judgment had been entered by the Fifth Circuit ordering Meredith admitted, did you not?

A. Yes, sir.

Q. You did know that Governor Ross Barnett, Lt. Governor Johnson and all of those persons acting in concert had been enjoined from interfering in any way with the entry [fol. 184] of Meredith as a student at Ole Miss, did you not?

A. Yes, sir.

Q. All right. You also knew those things on September the 30th, 1962, did you not?

A. Yes, sir.

Q. Now I believe you have testified that you are a pre-law student?

A. Yes, sir.

Q. Did you enter the University of Mississippi for the purpose of becoming a lawyer?

A. Yes, sir.

Q. You knew at that time that the Court's Decrees, edicts and injunctions had to be obeyed until overruled, did you not?

A. Yes, sir.

Q. Are you still of that same opinion?

A. Yes, sir, I am.

Q. All right. Now the reason I alluded to your youth—I say this in all fairness. That's something that we have all had, some of us have passed on beyond past that but something we cherish deeply.

Eighteen, nineteen-year-old youth is capable of perception and remembering what things have happened, is he not?

A. Yes, sir, he could be.

[fol. 185] Q. You consider yourself one of those, do you not?

A. Well, I remember certain things—I mean—

Q. All right. I believe you testified that you arrived on the campus somewhere around 4:30 in the afternoon of Sunday, September 30th?

A. 4:00 o'clock.

Q. 4:00 o'clock. And at that time was there any activity on the campus at all?

A. By what. . . "activity"?

Q. Were there any students around the Lyceum Building or down in the circle?

A. There were a few, yes, sir.

Q. Was there anything unusual occurring at that time in the nature of any rock throwing or things of that sort?

A. No, sir, not at that time.

Q. Now did you leave the area from the time you arrived on the campus around 4:00 o'clock until after the first burst of tear gas was fired?

A. No, sir, I was there before the first burst of tear gas was fired.

Q. All right. Then you remained constantly—

A. Yes, sir.

Q. —on the campus until the tear gas was fired and for some time after that?

A. Yes, sir.

[fol.186] Q. All right. Now do you know about what time the Marshals came on the campus?

A. I would say 5:00 or 5:30. Now I didn't have my watch at that time.

Q. I understand, and I am not holding you to times. I'm just giving you an approximation.

A. It was daylight.

Q. Still daylight. Now you knew why the Marshals were there, don't you?

A. Yes.

Q. You knew that the Marshals were there for the purpose of enforcing a court decree, did you not?

A. Yes, sir. But the court decree that I understood that they were enforcing was one that was handed down by Hugo Black over the telephone, mobilizing them.

Q. That makes a difference to you?

A. Yes, sir.

Q. As to whether or not it's written?

A. It did.

Q. And you didn't know that the Fifth Circuit Court had ordered Meredith into that University?

A. That the—the Circuit Court had—I can't think who it was—somebody had given the State of Mississippi a stay. Might have been Judge Sidney Miles, I'm not sure.

Q. Or Judge Cameron, to be exact?



[fol. 187] A. Or Cameron.

Q. And the stay had been revoked by Justice Black, is that correct?

A. Yes, it was a stalemate and Justice Black broke it.

Q. And Justice Black is on the Supreme Court of the United States, is he not?

A. Yes.

Q. And Justice Cameron is the District Court of Mississippi, I mean Justice Cameron is on the Circuit Court?

A. Circuit Court.

Q. You do realize, as a pre-law student, that the Supreme Court has a higher power than a Circuit Court, do you not?

A. Yes, sir, but one man—

Q. All right. One man or ten, it matters not.

Mr. Watts: If Your Honor please, this is an awfully unequal struggle between a lawyer of the experience of Mr. Gooch and a pre-law student.

Now within limits, I have no objections but it becomes argumentative after so long a period of time.

The Court: Is that in the form of an objection, Counsel?

Mr. Watts: Yes, sir, it's argumentative at this point.

[fol. 188] The Court: Then it's overruled.

By Mr. Gooch:

Q. Now I take it that you did not attend the football game in Jackson?

A. No, sir.

Q. You had come from your home at Karnes?

A. Yes, sir.

Q. Now when you saw the Marshals come on the campus, about where were you with respect to the Lyceum Building?

A. I was in front of the Lyceum Building, standing on the grass in the circle.

Q. Were the highway patrolmen there at that time?

A. There were a few there.

Q. More came later?

A. More came in just right after the Marshals started—

Q. Then without going into a great number of details, I believe you testified, and I would like for you to elaborate a little more, if you will, on whether or not things started being tossed at the Marshals, as you put it, or thrown, pebbles, cigarette butts, et cetera?

A. Yes, sir, pebbles and cigarette butts were tossed at the Marshals.

Q. Now there had been no gas fired prior to that time, had there?

A. No, sir.

Q. The tenor of the crowd, did you hear some cursing?  
[fol. 189] A. Yes, sir.

Q. And abuse—

A. As a matter of fact, our school yell has a few words in it and they were giving that.

Q. You hurled that at the Marshals?

A. Yes, sir.

Q. Did the Marshals answer back? I believe you said they remained silent?

A. Yes, sir, they did. They remained silent. People would ask them something and they wouldn't say anything. They would just look at you.

Q. Then the students, or whoever was there, started throwing a few rocks and pebbles at them?

A. A few pebbles and cigarette butts.

Q. All right. How about, anything catch afire? Did anything catch afire?

A. No, sir.

Q. You didn't see a canvas top on one of the automobile—Army trucks catch afire from a match or cigarette that was tossed into it?

A. That—I read that in a report somewhere. There was no fire at that time.

Q. All right. At least, if there was, you didn't see it, is that correct?

A. I was standing there. I would have seen it had there [fol. 190] been—

Q. While you were standing there, were you doing some of the pebble tossing?

A. No, sir, I was with a bunch that was yelling.

Q. You were yelling?

A. Yes, sir.

Q. And you say your school yell has a few words that amount to taunts, is that right?

A. Yes, sir.

Q. All right. Some of the language, though, was beyond the taunting stage, was it not?

A. Well, that depends upon the person, I guess.

Q. Very well. Now would you attempt to estimate the time—I know you didn't have a watch—attempt to estimate the time or about the time that the first tear gas was fired?

A. Oh, it was about—it was close to about 40 minutes after the Marshals had ringed the Lyceum Building.

Q. Was it still daylight or was it dark?

A. It was just—just a little daylight left.

Q. Just a little daylight left?

A. Yes, sir.

Q. And were you hit by the tear gas?

A. No, sir, I wasn't hit by it. I got some of it, though.

[fol. 191] Q. You hadn't thrown anything up to that time?

A. Not up to that time, no, sir.

Q. But after that time, you decided to really join in the riot, didn't you?

A. After the second volley.

Q. After the second volley?

A. Yes, sir.

Q. That's when you made up your mind to do what you could do, is that right?

A. That's right.

Q. And you set about to direct whatever havoc you could towards the Marshals, didn't you, Mr. Sweat?

A. No, sir, I didn't direct any havoc.

Q. Did you throw anything at the Marshals?

A. Yes, sir.

Q. Well, that wouldn't be havoc?

A. Well, it was havoc but I wasn't directing any.

Q. You weren't throwing at the Marshals?

A. Yes, sir.

Q. All right. A choice of words. Now do you know about how long things were thrown at the Marshals that night?

A. All night long, sir. Even up through dawn, even at the Army when they came in.

[fol. 192] Q. Was that throwing at the Marshals almost continuously and constant throughout the night from the time of the second salvo of tear gas was fired?

A. Well, looking at the night as a whole, it was continuous and constant, because there was always somebody running out there throwing something.

Q. Now, you did participate in some of this—would you call this a mob?

A. Well, not really.

Q. Would you call it a riot?

A. I would call it a riot.

Q. All right, was it obvious a riot was occurring there in front of the Lyceum Building?

A. Sure, a riot was occurring.

Q. Now, let's go a step further in your dissertation, and come down to the question of your moving away from the Lyceum Building, and get down to the time you were in the party, or I believe you said you were in the party that beat up a chemistry professor.

A. I was down there at the time. I was still standing behind the Confederate statue because they beat him up east of the Confederate statue, on the east—East Avenue.

Q. I must have misunderstood you. I understood you to say, "We . . . "?

[fol. 193] A. Well, "We". I consider myself part of the student body. But I didn't beat him up.

Q. You didn't participate in that?

A. No, I didn't.

Q. But some of your group did?

A. Yes, sir. Not my group. I mean the students did.

Q. Was anybody else beaten up?

A. Yes, sir, there were reporters beat up that night, people with cameras.

Q. Did you witness the beating up of a reporter and see his camera smashed and his car kicked around a good deal?

A. Yes, sir.

Q. That was before General Walker arrived on the campus, wasn't it?

A. Yes, sir, that was still in the evening. The reporter was from Texas, driving a station wagon?

Q. I believe from the Dallas News, if I am not mistaken.

A. Yes.

Q. You say that was in the evening?

A. Yes, sir, that was still—that was still in the evening, kind of. That was before the volley of tear gas was fired. The reason the students beat this reporter up—

[fol. 194] Q. Never mind about the reason. If you will stick to the facts, please, sir, I think we will get along a little bit better.

Now, you said on direct examination, and correct me if I am wrong, that when you first saw General Walker was just after this chemistry professor had been beat up, and escorted down the University Avenue?

A. Not just after. I explained there was a crowd. That is why there was a lot of people down there. They had witnessed the beating, and some of them were still hanging around.

Q. Now, give me again, if you will, please, the place on the campus, or near the campus, where you first saw General Walker?

A. It was right here (indicating).

Q. You are pointing to a place a little bit east and south of the Confederate monument?

A. Yes, sir.

Q. Describe General Walker's movements from the time you saw him until I ask you another question.

A. Yes, sir. Well, like I said, I saw General Walker here,

coming up, and people were introducing themselves. General Walker walked toward the YMCA Building and stopped and came back in here (indicating chart), walked [fol. 195] over here, not quite halfway. He came back again in this area, still moving around.

Q. Let's dwell on that a moment, if you will, please. You may resume your seat. When General Walker arrived on the campus, I believe you stated that quite a number of the students rushed up to him and started saying various things, "Here is General Walker, we have a leader, where are the volunteers," and things of that sort?

A. Yes, sir.

Q. Was it obvious to you, with your perception, that you and the crowd was rather glad to see General Walker?

A. Yes, sir.

Mr. Watts: Excuse me, if Your Honor please. If we want to throw this open, what this man thinks the crowd was thinking, that is fine with me, but I want it understood that if he goes into it I will.

The Court: Are you objecting to it?

Mr. Watts: I just want it understood that I will go into it.

The Court: No, we are not going to do that. Are you objecting to it?

Mr. Watts: I don't care. It is all right with me. I want to bring out the whole facts. We can bring out anything.

[fol. 196] Mr. Gooch: If the Court has ruled, may I have the answer to the question?

A. Will you repeat that question?

Mr. Gooch: Read it back to him, Mr. Nuss.

(Question read.)

By Mr. Gooch:

Q. I will reframe that question. Were you glad to see General Walker?

- A. Yes, sir, I was glad to see General Walker.
- Q. Had you heard about General Walker before?
- A. I had heard about General Walker before.
- Q. Did you make any outcry to the General as he came on the campus?
- A. No, I didn't.
- Q. But you did hear it said, "Here is General Walker?"
- A. "Here is General Walker."
- Q. "Here is our leader?"
- A. That's right—wait, take that back.
- Q. Did you hear it said?
- A. Yes, sir, they said, "We have got a leader now."
- Q. Then was a question asked General Walker among that group as to where his volunteers were?
- A. Yes, sir.
- Q. What did he say?
- [fol. 197] A. He didn't say anything.
- Q. Had you heard by news releases and otherwise that General Walker was coming with ten thousand strong?
- A. Well, I heard that for weeks.
- Q. You mean before?
- A. Yes, sir, I heard the Alabama National Guard was on the way, the Louisiana Highway Patrol was coming up—we heard things.
- Q. I will ask you to talk about General Walker rather than wandering off to Louisiana and other places. You had heard General Walker had said he was coming with a group of volunteers?
- A. Yes.
- Q. All right, and he was asked where they were?
- A. Yes, sir.
- Q. And he made no statement?
- A. He made no statement.
- Q. Did you shake hands with him at that point when you first saw him a little bit south and east of the Confederate statue?
- A. No, I didn't shake hands with him until he stepped off the statue after his speech.

Q. All right. Now, at the time you first saw him was there a group of students around?

A. At the time I first saw him? Yes, sir.

[fol. 198] Q. And that was part of the group that had gone down and escorted the chemistry professor who had been beaten up, off the campus?

A. Some.

Q. Some of them?

A. Some of them.

Q. How many people would you estimate were down there around the Confederate monument and there where University Avenue comes on the campus, at the time you first saw General Walker?

A. Just in that area I would say seventy-five.

Q. All right. Now, how many would you put on the campus in the circle at the time General Walker came on the campus?

A. On the campus in the Circle? People? I would say one thousand now. Now, that is including around the YMCA Building, and just a little behind it. Those were people standing around, now. Not all were participating in the riot.

Q. You said something on direct examination you thought there might have been three or four thousand?

A. I said that evening.

Q. That evening?

A. That evening when the people first arrived. We had people from Oxford that come in to see what was coming [fol. 199] off.

Q. At the time General Walker got there, how many people would you estimate were on the campus? One thousand, two thousand, five hundred, two hundred and seventy-five?

A. On the campus itself?

Q. Yes, sir.

A. On the campus itself, on the entire campus itself, not including people in the dormitories?

Q. I understand.



A. I would say two thousand. This is including everything from the Alumna House on down University Avenue, on up to the Lyceum Building.

Q. Let's confine ourselves to the area in the north bounded by Peabody and the Y, on the east by the Confederate monument, on the south by, I believe you said, the Engineering Building, and on the west by the Lyceum, including the roadways and the circle. How many people would you estimate was on the campus, or in that area at the time General Walker arrived?

A. Around six hundred.

Q. All right. Now, when this group, you among them, went by General Walker, and when he was south and a wee bit east of the Confederate monument, how many people gathered around General Walker there?

[fol. 200] A. There were about fifty people gathered around him there.

Q. As he started toward the YMCA what did those people do?

A. Well, they followed him.

Q. As he cut back from the YMCA? And westward toward the flagpole what did that group of people do?

A. He didn't cut back that way.

Q. All right, he came back?

A. Down University Avenue Street.

Q. He came back down University Avenue?

A. Yes, sir.

Q. Then is when he walked west to the flagpole, or Lyceum Building?

A. There was a pause there.

Q. I will say after the pause.

A. People were still shaking his hand.

Q. Were they following him as he went west toward the flagpole?

A. A few did. A few went back to Hume Hall to get more bricks.

Q. Now, that brings up a very interesting subject. As a portion of these students followed General Walker west toward the Lyceum Building, the rest of them went over to Hume Hall to get more bricks, or some of them; is that [fol. 201] right?

A. Well, a few of them that had already returned from previous charges. Some of them didn't even know General Walker was on the campus.

Q. You say they went to Hume Hall to get more bricks?

A. Yes, sir.

Q. How did they transfer those bricks from Hume Hall? Carry them in their hands, a wheelbarrow?

A. Just anyway you could. If you had a box to fill them up, that was all right.

Q. When you brought those bricks on into the Circle area, what did you do with them?

A. Into the Circle area?

Q. Yes, sir.

A. Well, we would generally wait for the Marshals to charge.

Q. Then what?

A. Then we would charge back. The thing to do was catch them right after they had shot their tear gas guns so they couldn't let a salvo go in your face, you know, directly at you.

Q. Then what did you do with the bricks and stones you had gotten from the Hume Building?

A. Well, we would throw at them.

[fol. 202] Q. At the Marshals?

A. Yes, sir.

Q. And you were in that group?

A. I was. Not at that time. Now, earlier that night I had been. But by that time I had been nicked in the thumb and my arm was stiff.

Q. Were you nicked in the thumb before you saw General Walker?

A. Yes.

Q. After?

A. Yes.

Q. About how long before?

A. It wasn't too long before I saw General Walker, because a boy had just brought me back.

Q. From the Infirmary?

A. Yes.

Q. Well, now, before you went to the Infirmary had there been charges and hurling of brick and stone at Marshals?

A. Yes, sir, bigger charges at that time.

Q. When you came back from the Infirmary what did you find?

A. I found the things had changed, that the people were not charging in the old type Confederate line, like they used to, because it was too costly; that they had split up into [fol. 203] groups of five, seven, or twenty, and just coming out from anywhere they could.

Q. Toward the Marshals?

A. Yes, sir. But to attack the Marshals you had to get past the flagpole, you had to go through the tear gas smoke, and you had to hold your breath and run at the same time.

Q. Do you know about how far it is from the Confederate monument to the flagpole?

A. Oh, I guess it is about two hundred and fifty yards.

Q. Two hundred and fifty yards? Step down there and look at the scale on that map.

A. I am not sure. Being around the campus you never really pay any attention to distance.

Q. I realized that and that is why I asked you to check the scale on the map.

A. Two hundred and fifty feet.

Q. That is just one third of two hundred and fifty yards, isn't it?

A. Yes, sir, that's right.

Q. Now, how far is it from the flagpole up to the Marshals?

A. That is a little further.

Q. From the flagpole up to the Marshals?

[fol. 204] A. Oh, I thought you were talking about from the Confederate statue.

Q. No, no, no. Talking about from the flagpole up to the Marshals.

A. The Marshals were directly in front of the Lyceum Building on the steps. They still stayed back in the line.

The Court: The question, Mr. Sweat, is how far is it?

A. How far is it?

The Court: Yes, sir.

A. It is still two hundred and fifty feet.

By Mr. Gooch:

Q. Two hundred and fifty feet from the flagpole?

A. I am going by the scale on the map.

Q. That is what I am going by. Two hundred and fifty feet from the flagpole up to the Lyceum Building? Take this pencil, if you will, please, and project it. That is the back of the Lyceum Building where you are putting the pencil.

A. No, sir, this is the front.

Q. That's right. Put your pencil point here. You had it past what you were talking about. You did overguess considerably.

A. Yes, sir.

[fol. 205] Q. It is not much more than one hundred feet from the flagpole up to the Lyceum Building?

Mr. Watts: Now, if Your Honor please, I object to that as argumentative. If he overguessed Mr. Gooch is underguessing. This is argumentative.

The Court: Mr. Sweat, are you able to calculate the distance?

The Witness: No, sir.

The Court: You are not able to use that scale and calculate it?

The Witness: I could tell if you would give me a ruler.

The Court: Do the best you can with the pencil and tell the Jury what you find.

Mr. Watts: As I understand, the question is from the flagpole to the Lyceum Building?

The Court: That is right.

Mr. Watts: Yes, sir.

The Witness: Hundred and twenty-five feet is what I come up with.

By Mr. Gooch:

Q. And the Marshals were out in front of the Lyceum Building?

A. Yes, sir.

Q. So, the Marshals would have been some closer?

A. Yes, sir.

[fol. 206] Q. To the flagpole than the Lyceum Building?

A. Yes, sir, but you still had to go past that flagpole to get to the Marshals. You couldn't throw it.

Q. That depends on the throwing arm of the individual, doesn't it?

A. No, sir, the trees and limbs actually prevented you from tossing bricks or bottles. You couldn't see.

Q. All right. Now, at the time General Walker arrived on that campus and you saw him let's look at it through your eyes, Mr. Sweat. Were the Marshals being thrown at?

A. Prior to the time General Walker arrived?

Q. At the time.

A. Yes, sir.

Q. At the time he arrived on that campus were the boys bringing up bricks and stones from Hume Hall?

A. They had been doing that all night long.

Q. Was that obvious to you as you stood near General Walker?

A. Well, I didn't pay any attention to that. That had been going on all night.

Q. It was continuous?

A. It was continuous.

Q. It was perfectly obvious to you that it was going on?  
[fol. 207] A. Yes, sir, but after I saw it I didn't pay much attention to it, an—after that.

Q. Was it obvious to you there was tear gas in the air? Up somewhere around the flagpole and the Lyceum Building?

A. Yes, sir.

Q. And further back into the Circle?

A. Yes, sir.

Q. Was that easily discernible?

A. Sir?

Q. Was that easily discernible, just by looking?

A. Yes, sir, you could see it.

Q. Were there boys or groups going in and throwing missiles at the Marshals at the time General Walker walked on that campus?

A. Yes, sir.

Q. Was that obvious to you from where you stood down near the monument?

A. Yes, sir.

Q. And it was obvious to anybody that looked around, that there were bricks being carried on the campus, on the circle, that they were being broken up into half bats, that the boys were gathering up those missiles and bricks and stones and coke bottles, whatever they could find, and going toward the Marshals and throwing those missiles at the [fol. 208] Marshals? That was obvious, wasn't it?

A. Yes, sir.

[fol. 209] Q. It was obvious at the time General Walker walked on that campus, wasn't it?

A. Yes, sir.

Q. Now the General, as he walked, after he had gone over towards the YMCA, and according to you had come back down to the Confederate monument, he walked some distance, which you estimate as half-way?

A. Yes, sir, not quite half-way.

Q. Not quite half-way?

A. No, sir.

Q. Trying to be accurate on your testimony. Walked about half-way from the Confederate monument up towards the flagpole?

A. Up towards the flagpole, yes, sir.

Q. And you say he was followed by a group of these students?

A. A group.

Q. Did those students have anything in their hands?

A. No, sir.

Q. They all had dropped them just before they started up there?

A. Yes, sir, most of them dropped them so they could shake hands with him.

Q. I see. Did he—did they pick them up?

A. If they didn't, someone else did. I couldn't speak for [fol. 210] the people that dropped the bricks.

Q. Some of them dropped them and some of the rest picked them up?

A. They were more interested in talking with General Walker.

Q. I understand. But they did walk towards the Marshals?

A. Yes, sir, they walked up towards the Marshals—but not half-way.

Q. All right. Now this leadership you were talking about, you have mentioned in answer to a question by Mr. Watts that you were a part of a group of about 15 leaders that conferred with General Walker?

A. Well, we were—

Mr. Andress: Just a moment, we are going to object to the form of the question. He did not testify there were 15 "leaders". He testified there were about 15 people.

The Court: If he didn't, he can say so. Overruled.

The Witness: That's right, they weren't leaders. That's the account that Mr. Watts read to me and I said that might be what whoever wrote that was talking about.

By Mr. Gooch:

Q. Mr. Watts asked you, read you an excerpt from an article in which it said that General Walker conferred with about 15 people who appeared to be the riot leaders and [fol. 211] your answer was, "That was part of the group I was in."?

A. I think—I think that's the one he's talking about.

Q. All right. How long did that conference take place?

A. Not too long.

Q. And when did it take place?

A. It took place while they were standing there. They stopped—

Q. While who was standing there?

A. While General Walker and a few of the boys were standing there.

Q. Was that when he first came on the campus?

A. No, sir. Now I am talking about right after the speech he made.

Q. We haven't gotten down to the speech yet.

A. Well, no, this—then this isn't the thing we are talking about then, the 15 people.

Q. Well, the 15 people you say was after the speech?

A. Yes, sir.

Q. Could you be mistaken on that?

A. No, sir.

Q. As a matter of fact, didn't General Walker, the minute he finished his speech and without hesitancy come down [fol. 212] off the monument and walk towards the Marshals and toward the Lyceum Building with a group of people following him?

A. No, sir. When General Walker stepped off the statue, he stepped to the right and walked just a little past the statue and that's when we talked with him.

Q. And he didn't walk on up then towards the Marshals?

A. No, sir.

Q. At no time?

A. Not then.



Q. Then did he later?

A. He did, now, before that. Like I told you, when he came back from the "Y", he started up that way, but he stopped half-way and he stood and looked and then he came back.

Q. Did General Walker after that first advent, when he walked toward the flagpole with this group you described, before the speech, did you ever see General Walker walk at the head of a group any more west toward the Marshals?

A. Walk at the head of a group?

Q. Yes, sir.

A. He could have now but I didn't see it.

Q. You didn't see it?

A. No, sir.

Q. And when General Walker stepped down off the [fol. 213] monument, you say that he stopped there and conferred at length?

A. Yes, sir, we talked with him.

Q. How long would you say he conferred?

A. Long enough for me to smoke a cigarette and have it put out and still stand there and talk with him.

Q. Now that was after the speech?

A. After the speech.

Q. Now you are positive about that?

A. I am positive about that.

Q. All right. Now let's get down to the speech that General Walker made on the monument. Would you detail again for the benefit of myself, as well as the Court and jury, what you heard General Walker say.

A. Well, I heard General Walker say something to the effect that, said, "You have a right to protest. It's guaranteed to you in the Constitution."

Said, "This is not the right way. It's the long way around but," said, "You have a right to protest."

And he said something about Cuba being that way (indicating).

Q. Do you remember him making a statement as follows: "This is wrong but you have a right to protest"?

A. He said that. Yeah, he said something like that.

Q. That was after he had come on the campus and had [fol. 214] seen all of these bricks and bottles and stones and sticks being hurled at the Marshals?

A. Yes, sir.

Q. Wasn't it?

A. Yes, I guess he was—he saw that.

Mr. Watts: If Your Honor please, I still object to him asking this witness what Walker saw.

The Court: Sustained.

Mr. Address: We request that the jury be instructed not to consider it.

The Court: The jury is instructed not to consider the last question and answer.

Mr. Gooch: Well, now I don't want to transgress on the Court's ruling but I do want to ask him one more question and I'd better say it to the Court.

The Court: You asked him a while ago, Mr. Gooch, what he saw and what was taking place out there at the time that the General came up there.

Mr. Gooch: I can't ask him about what Walker said?

The Court: Oh, yes.

Mr. Watts: Oh, I have no objection to that.

The Court: Yes.

Mr. Watts: I just don't want him to ask him what Walker saw.

The Court: That question related to what he saw and [fol. 215] not what Walker said.

Mr. Gooch: Let's go back to cure that objection, then.

By Mr. Gooch:

Q. I asked you and you answered as to what General Walker may have seen. I want that question stricken because I want just strictly what you know.

At the time that General Walker came on the campus, the very time he came on the campus, before he made a

speech, tell us whether or not there were sticks and stones and bottles hurled at the Marshals?

Mr. Watts: If Your Honor please, I object to that as repetition. The witness has testified that at least four times from Mr. Gooch's testimony (sic), that when Walker came on the campus, there were being sticks, stones and missiles—

The Court: Sustained.

By Mr. Gooch:

Q. Did you hear General Walker say these words: "Keep up the protest."?

Mr. Watts: Just a minute, if Your Honor please. I object to that unless he fixes where and when.

Mr. Gooch: On the monument.

Mr. Watts: Now I have no objection to it.

A. No, sir, I honestly didn't hear that.

By Mr. Gooch:

Q. We will get to that in just a minute. I will ask you if this happened: Walker, right after that—and I'm talking [fol. 216] about the speech—stepped down off the statue, a crowd of people still around, Walker walked up due west towards the flagpole?

A. He walked a few steps due west past the Confederate monument, going toward the flagpole but not far enough to really make any difference.

Q. All right. Just a moment. Let me ask you this question:—

Mr. Watts: Might I fix what place you are reading from the deposition, please? The pages are numbered.

Mr. Gooch: Well, I will just put that in now.

Look on Pages 16, of Mr. Sweat's deposition.

Mr. Watts: All right.

By Mr. Gooch:

Q. Mr. Sweat, do you recall your deposition having been taken over in Oxford, Mississippi, sometime in March of 1964?

A. Yes, sir.

Q. March 13th, to be exact. Now, if you will, please look on Page 16, the question was asked:

“Who came down here to a meeting?” And the answer?

A. Walker said—you want me to read it?

Q. Yes.

A. Walker said something about a meeting here in Oxford courthouse that Birdsong had withdrawn the highway patrol and I didn't get all of this speech because someone [fol. 217] near me started talking to me and I didn't hear that clearly.

Walker right after that stopped—stepped down off the statue, a crowd of people still around—these are the 15 boys I was talking about.

Mr. Gooch: Please read your testimony, please, sir.

A. Well, Walker walked up due west towards the flagpole. Well, he did, he walked a few steps up.

Q. All right. Could you give us the benefit of your very best estimate, not in the whole area but in the crowd that immediately surrounded Walker.

A. Right after the speech?

Q. Yes, sir.

A. Right after the speech, Walker lost the crowd.

Q. Read your answer.

A. Fifty people. There were 50 people around the statue.

Q. Go ahead and read the rest.

A. Fifty people. General Walker was a curiosity. He was a well noted person. People were there to see what he looked like. Many had never seen him before.

Q. Next question: Did anyone say anything about leading them before he started up the grove?

Mr. Address: Before he started west.