

Q. If such a charge had been led and had occurred prior to the speech on the monument, from the position you were, you would undoubtedly seen or heard something of it, wouldn't you?

A. No, sir, I was—I don't really know when it happened but I was outside the Lyceum there for quite some-time.

Q. How long were you outside?

A. I am sorry, I meant the YMCA. I didn't mean the Lyceum.

Q. How long were you outside the YMCA before you saw [fol. 1685] General Walker on the monument?

A. About 10 minutes, 15 minutes, perhaps.

Q. Tell the jury exactly where you were, what direction you were looking and what you saw during that 15-minute interval before you saw General Walker.

Stand up there at the board with your pointer and brief the jury.

A. Before I saw General Walker, before I saw General Walker, sir?

Q. Right.

A. After I walked out of the YMCA?

Q. Right.

A. Well, I was standing right here in this area right here beside the YMCA and I was looking over mostly in this area through here (indicating).

There seemed to be like there was a lot of people coming on the campus that weren't students at that time and I wanted to know who they were, what they were doing there and then there was a lot of noise over in this area right through here, too, right in through there, there was a constant charge, people running up there and you could see them if you looked through here, you could probably see a few people running up there every once in a while or maybe large groups run up and there was a constant din of a battle going on plus the people over in this area [fol. 1686] right through here, is pretty much what I saw (indicating).

Q. Was Walker standing or moving when you first saw him?

A. When I first saw him, he was just getting up on the monument.

Q. You don't know then where he had come from?

A. No, sir, I don't.

Q. Do you know where LeBuve Hall is?

A. Yes, sir.

Q. Do you know where LeBuve Hall is?

A. LeBuve is a men's dormitory. It's down here, I believe.

Q. Within the period that you were standing at the YMCA, would a man have time to run from LeBuve Dormitory over to the flagpole, if you know?

Mr. Gooch: Just a minute. If the Court please—

Mr. Watts: Well—

The Court: Mr. Watts, I will permit him to give distance and things like that but I won't permit him to testify as to what somebody else might have done.

By Mr. Watts:

Q. All right, sir. Do you know how far it is from the monument to LeBuve Hall, going around behind the YMCA and the Fine Arts Building?

A. Going behind the YMCA through here, sir? I know roughly what the distance is.

[fol. 1687] Q. About 600 yards, isn't it?

A. Probably something like that.

Mr. Watts: That's all.

Mr. Gooch: That's all.

Stand aside. Thank you.

The Court: I will release you, sir.

Mr. Gooch: Call Mr. Travis Buckley.

TRAVIS BUCKLEY, called as a witness by the Defendant, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Gooch:

Q. Please state your name.

A. I am Travis Buckley.

Q. Where do you live, Mr. Buckley?

A. I live in Louin, Mississippi, and I practice law down at Bay Springs, just south of Louin.

Q. Spell "Louin".

A. L-o-u-i-n.

Q. And you practice law at Bay Springs?

A. Yes, sir, I practice law. That's in Jasper County.

Q. Do you hold any public office there?

A. Yes, sir, I am County Prosecuting Attorney of Jasper County.

Q. When did you become the County Prosecuting Attorney?

[fol. 1688] A. I was elected in August of last year and took office in January, the 6th, of this year, on January the 6th.

Q. All right. Did you run for office?

A. Yes, sir, it was an elective office.

Q. All right. How old are you, Mr. Buckley?

A. Twenty-nine years of age.

Q. Are you a married man?

A. Yes, sir, I am married and have two children, two girls.

Q. Do you hold any other office or positions in your home town?

A. Yes, sir, in Louin I am General Superintendent of the Sunday School and a Sunday School teacher, also.

Q. In what church?

A. In the Convention Baptist Church.

Q. All right. Were you a student in the University of Mississippi on September the 30th, 1962?

A. Yes, sir, I was at that time.

Q. Was that your last year?

A. Well, yes, sir, that was my last semester. I graduated in the following January.

Q. Yes, sir. Did you happen to be on the campus of Ole Miss on September the 30th, of 1962?

A. Yes, sir, I was on the campus during part of the [fol. 1689] day, part of the night, rather.

Q. Had you been down to Jackson to the football game?

A. No, sir, I had not. I had been to Memphis. A friend's home that day.

Q. Did you live on the campus with your wife?

A. Yes, sir, I lived on the campus with my wife. My wife was not on the campus at the time. We had housing facilities—

Q. Did you have any military training?

A. Yes, sir, I spent two years in the United States Army, 15 months of which were spent in Korea, 1957 and '8.

Q. All right. Now tell me about what time—well, let's shorten this thing up. Were you around the Lyceum Building when the tear gas was fired that evening?

A. Yes, sir, when a great deal of it was fired, I was.

Q. Were you there when the first outburst occurred?

A. No, sir.

Q. Do you know where you were?

A. No, sir. I presume I was on my way home from Memphis but I'm not positive as to where I was.

Q. In other words, tear gas had already been fired when you got back to the campus?

A. Yes, sir, it had, a great deal of it.

[fol. 1690] Q. All right. Now, during the course of that evening, did you see General Edwin A. Walker on that campus?

A. Yes, sir, I did see him.

Q. Where was he when you saw him, Mr. Buckley?

A. When I first saw him, he was in the vicinity of the area which is called the grove, just beyond or, rather, just east of the monument.

Q. All right. Now describe, if you will, please, sir, what action he took and what he said that you heard from the time you first saw him.

A. Well, it first drew my attention by the fact several students commented on the fact that General Walker was in the vicinity.

I asked them where he was and several would say, "Well, he was right there a minute ago," but after a while I did see him and shortly thereafter, the students began to holler or yell, "Speak to us, General Walker."

And after having done that several times, General Walker—the students—or, rather, the students and people around—maybe not all of them were students—said, that he mounted the lower rim of the monument on the—that's the east side of it—and made from there a speech.

Q. Did you hear that speech?

A. Yes, I heard it.

Q. Will you try to recall as best you can the things you [fol. 1691] heard General Walker say in the speech that night.

A. Yes, sir, I will. I don't know that this would be in sequence he said the speech but as—after he mounted the monument, he said, "If there be any bloodshed, let it be on the hands of the Federal Government."

And he said, "This is the long way to Cuba."

Somewhere in around that time, the Reverend Duncan Gray appeared and asked General Walker to stop this; he said, "You can stop this because the boys think you are on their side. Please stop it."

Several of the students—well, General Walker said, "I am ashamed of the fact to admit I am an Episcopalian and belong to the same church that this man does."

He was an Episcopalian minister.

And several students said, "Kill him, get the traitor out of here."

Some of the crowd began to hit, or rather hit at, strike at, and grab Reverend Duncan Gray and when they did,

two or three of the boys stepped in and asked them to stop it and led him away. One of them, I believe, was a very large man and he and another student—or he and another individual—whether he was a student or not—led him away.

There were several students had their hands on him, leading him away to begin with, but as it finally turned [fol. 1692] out, I believe there was only two.

But at any rate, he resumed after that, he said that, I believe, he said this was a long way to Cuba. He said, “You are exercising your Constitutional right to protest by your presence here.”

And he said, “You are exercising a Constitutional right by protesting this unconstitutional mandate of the Federal Court in putting Mr. Meredith in.”

At that time several students began to holler and jeer in a rather sarcastic manner, “Mr. Meredith, Mr. Meredith.”

And of course, during most of the rest of it, the atmosphere seemed to be congenial to General Walker. That was the only jeers I heard then.

Shortly thereafter, a minute or two, lapses, maybe more, General Walker went around one side of the statue or the monument and I walked around the other side. I was standing on the southeastern side of it. He went around—I believe he went around to the northeastern side of the—anyway, the next I saw him, he was on the other side of the monument.

Q. What do you mean “the other side”?

A. The other side would have been the west side.

Q. All right.

A. And several students or a good many of those present [fol. 1693] began to yell, “Lead us on, General Walker. Be our leader,” and made that remark several times.

And after a minute, General Walker nodded his head and said, “All right, all right, I will.”

And the students gathered around him and he proceeded toward the Lyceum, I believe, or what is the Lyceum

Building, toward the flagpole at any rate. A good many students were around him.

And as it turned out, a lot of them had rocks, were throwing in the general direction of the United States Marshals, and they proceeded on up for, I suppose, at least 250 yards, or more, toward the Lyceum Building, at which time I turned to the left and toward my apartment in Veterans Village. That would be south.

And General Walker veered to the north. How far he went after that, I don't know. I lost sight of him shortly because it was dark and there was also a great concentration of tear gas.

It was not very dark but there was some light but still it was dark enough that I could see—

Q. Did you see General Walker any more?

A. No, sir, I didn't.

Mr. Gooch: Your witness.

Cross examination.

By Mr. Address:

[fol.1694] Q. Mr. Buckley, you say the first time you saw General Walker, he was east of the monument?

A. Yes, sir, he was east of the monument.

Q. How long was it before he got up on the monument to make his speech?

A. Well, after I first saw him, it was only a short period of time. Oh, I would say five minutes, maybe a little longer.

Q. And he stayed over there east of the monument for that five minutes?

A. Well, sir, now I don't exactly recall. He was walking around, commenting to several students. There was a bunch of them trying to get to him and talk to him at the time. They were yelling, hollering, "Here is General Walker. Speak to us."

Q. Was he just kind of milling around through the crowd?

A. Well, yes—the crowd was milling around him, you might say more properly, yes, sir.

Q. He was moving around a little, wasn't he?

A. Well, he was moving around a little.

Q. Folks coming up to him and shaking hands and introducing themselves to him?

A. Well, they were shaking hands with him. Whether or not they were introducing themselves to him, I don't know.

[fol. 1695] Q. But from the time you first saw him until the time he got up on the monument, it was about five minutes, you would say, then?

A. Well, I would say approximately. But of course, this has been a long time and I don't remember the exact length of time or anywhere near, but I would say approximately five minutes, yes, sir.

Q. All right. Now before you first saw General Walker where had you been for the preceding, oh, let's say, 30 minutes?

A. I had been—well, I came on the campus off of Highway 6—I believe it is Highway 6. Anyway, through Sorority Row, approximately 45 minutes to maybe as much as an hour and a half before, and I had proceeded slowly in the direction of my apartment in which I was going to—in Veterans Village.

Q. Well, how long had you been, shall we say, in the circle area prior to the time you saw General Walker?

A. I had not been in the circle area prior to that time.

Q. How did you get down to the monument? What was your path?

A. I walked from the Law School down behind the Fine Arts Building, behind the Y, and then across to the Y Building and then across to the area just south—I mean [fol. 1696] just east of the monument.

Q. So you hadn't been on or within sight of the circle up until just before you saw General Walker?

A. Well, within sight of it, yes, I had been, but not in the circle.

Q. Well, how long had you been in sight of the circle, then, let's say that?

A. Well, I would say before I saw General Walker, approximately 15 minutes, not more—

Q. During that 15 minutes, did you—well, of course, you had seen General Walker then until that time, so you didn't see General Walker lead a charge of a thousand people across the circle, did you?

A. At which time are you speaking, sir?

Q. Before he made his speech from the monument?

A. No, sir, I did not.

Q. And you were in such a position that if there had been a charge of a thousand people before he made his speech from the monument across that circle, you would have seen it, wouldn't you?

A. No, sir, I would not have seen it.

Q. You would not have seen it?

A. No, sir, I would not have.

Q. You mean a thousand people could have moved across the circle without it attracting your attention?

[fol. 1697] A. Why, very easily, because of the fact I was behind the Y Building and in the vicinity of the Law School. I could only just vaguely see the circle area, which there was a great concentration of tear gas at the time.

Q. Do you know what time of day it was or what time of night, I should say, when you first saw General Walker?

A. No, sir, I do not. I know that I came on campus somewhere around 8:00 o'clock. It could have been earlier, it could have been later.

Q. Did you hear the President's speech?

A. No, sir.

Q. How long a speech did he make?

A. General Walker's speech, I presume?

Q. Yes.

A. Well, sir, I would say that the speech itself and the things that happened in connection with it, like Duncan Gray, Reverend Duncan Gray coming up, probably took 10 minutes—not much more.

Q. Well, you would call it a short speech, wouldn't you?

A. Yes—I wouldn't hardly consider it a speech, in a sense. It was just a group of comments.

Q. Uh-huh. And that was done in response to demands that he talk to them or say something to the crowd?

A. Well, he did it in response to—when the students [fol. 1698] kept yelling, "Speak to us," yes, sir.

Q. Do you know when that was with reference to the Highway Patrol leaving?

A. It was shortly after.

Q. Did you hear—

A. In fact, I arrived just about the time the Highway Patrol came through, just about that time.

Q. Did you hear a bunch of comments there, cries through the air that, "Ross has sold us out"?

A. I don't remember having heard that. I do remember the General, General Walker, one of the first things, I believe one of the first things he said when he got on the monument was that, "I understand that one of your State leaders sold us out. I just returned from a meeting downtown where I learned that."

And the best I remember, he didn't know who it was at that time and he leaned over to a boy in the crowd—the students and other persons there began asking who. He leaned over to the boy in the crowd and whispered something in his ear, or it appeared it was, and he straightened back up and said, "It's Col. Birdsong."

[fol. 1699] Q. Now, you said something nobody else had mentioned here about "unconstitutional mandate of the Federal Court"?

A. Yes, sir.

Q. Are you definitely sure you heard the General say "Unconstitutional mandate of the Federal Court"?

A. Yes, sir, I am absolutely positive that that was the essence of the words. I don't attempt to recite any of it verbatim.

Q. You don't know whether he used the words "Unconstitutional mandate of the Federal Court"?

A. Well, sir, of course, those are legal words that I would term in my own phraseology, but it was to that effect. I am certain the word unconstitutional—the word “unconstitutional” was used. As to whether he said mandate or order, I wouldn’t—I don’t distinctly remember that.

Q. In other words, when you used the term “unconstitutional mandate of the Federal Court,” that was an impression or conclusion you got from what he said?

A. No, sir, it was not an impression or conclusion that I got from what he said in the sense that I think you are referring to. It was words to that effect. I may have gotten them out of order, but—or I may not have used the exact words, but I haven’t changed them in any material way.

[fol. 1700] Q. How close were you to him?

A. I was within two or three feet of him in distance. Close enough I could have touched him, most of the time.

Q. Now, then, I gather from statements we have heard here that there must have been quite a large number of people within two or three feet of him?

A. Yes, sir, there were. They were just as close around the monument as they could pack.

Q. And if he used the term “unconstitutional mandate of the Federal Court,” it was sufficiently audible that anybody around there could have heard it, couldn’t they?

A. Yes, sir, I think so, very definitely.

Q. Let’s see. He got off the monument, and which side of the monument did he go on to get away?

A. Well, sir, I don’t believe I said. I said I thought he went over to the north side. I don’t know for sure. But I think he did. I know I went on the south side.

Q. You went on the south side?

A. Yes, sir.

Q. And went on the opposite side?

A. I don’t know that he went on the opposite side, but [fol. 1701] I think he did.

Q. Now, after he went around the monument there you say he stopped and talked to some people?

A. No, sir, I don't believe I said that. But the students started talking to him, or rather yelled to him to "lead us, be our leader".

Q. Was there a group that stood there and talked to him briefly?

A. Well, I don't recall any groups standing there talking to him. I don't see how they could have talked under the circumstances. There was too much hollering and yelling going on.

Q. Were there rebel yells going on?

A. Well, I frankly don't know what you mean by "rebel yell".

Q. You don't know what a rebel yell is?

A. No, sir, I really—I really don't.

Q. Where were you born, Mr. Buckley?

A. I was born in Mississippi, south central Mississippi, Jasper County.

Q. And where did you go to school?

A. Ole Miss.

Q. Where did you grow up and go to high school?

A. Stringer, Mississippi.

Q. And how long had you been at Ole Miss?

[fol. 1702] A. Three years almost. Be about two and a half years.

Q. And you don't know what a rebel yell is?

A. Well, I have heard different yells that were supposed to be rebel yells. I don't have any idea what they are referring to.

Q. Well, at any rate, you didn't hear things you would refer to as rebel yells when the General got down from the monument?

A. Well, I heard all manner of yells, noises, cursing, and talking at the Marshals and Federal authorities. Cursing them. And I just heard all kinds of noises. Frankly, I don't see how anyone there under the circumstances could make a sentence out of any of it.

Q. Well, what were these jeers you heard?

A. The only jeers I had heard, I believe I repeated a while ago, was when—rather—other than those directed at the Marshals—

Q. I mean the ones you heard directed at General Walker?

A. The only ones I heard directed at General Walker was when he said, when he referred to James Meredith as “Mr. Meredith”.

Q. Oh, he called him Mr. Meredith?

A. Yes, sir.

[fol. 1703] Q. And that got jeers from the crowd?

A. Yes, sir, there were jeers, repeated it several times, “Mr. Meredith, Mr. Meredith”.

Q. What kind of jeers were they?

A. They were just bad. “Mr. Meredith, Mr. Meredith,” and the kids were hollering, “Oh-h-h-h,” like that.

Q. Sort of a boo or something of that sort?

A. Well, I suppose you could call it boos, yes, sir.

Q. Did you hear the General say violence is not the answer?

A. No, sir, I didn't. I believe the statement I made a while ago was what I heard him say, about peace or violence, was that if there was any violence or bloodshed, let it be on the hands of the Federal Government.

Q. And when was that with reference to the time you heard the boos or jeers?

A. I don't remember the sequence of events that distinctly, frankly.

Q. Now, your deposition has been taken in this case on the 5th of February, 1964?

A. Yes, sir.

Q. And at that time didn't you say that General Walker walked off on the opposite side of the statue from where he [fol. 1704] was standing, a few feet from me, and walked around on the opposite side, and I believe he talked to a member of the group briefly.”

A. Well, I believe he did. And I also said in my deposition these statements were general and I don't intend to be specific on any of them.

Q. Well, we are asking you to be as specific as you can.

A. Well, I will.

Q. You are a lawyer and you understand what we mean by being specific in a question.

A. I was as specific as I possibly could be.

Q. Also, didn't you say, I believe, he had some students with him around there, and some of them started hollering, "Lead us and be our leader,"?

A. Yes, sir, he said that.

Q. Well, now, how long would you say he talked to some members of that group there?

A. I don't believe I said he talked to any particular member of the group. I said they were around him talking to him.

Q. Did he start to walk off away from the group?

A. Not that I recall, no, sir. He walked away in the group with him as he led the charge up toward the Marshals, I mean up toward the Lyceum.

[fol. 1705] Q. What was his gait?

A. Well, it was rather brisk, I will say.

Q. Did you ever see him run?

A. No, I didn't see him run.

Q. Now, I believe you said that—did he go over there to the, right along the walk, up through the center of the Circle, or did he go off to the north?

A. Well, at what time, now? Eventually he went off to the north, yes, sir.

Q. Where was he when he went off to the north?

A. He was—when I last saw him he was headed north, but was just a piece south of the—well, I would say south and east of the flagpole.

Q. East of the flagpole?

A. Yes, sir.

Q. That is the last time you saw him?

A. Yes, sir.

Q. How far east of the flagpole would you say he was when you last saw him?

A. Well, it would only be a rough estimate. I would say fifty feet.

Q. Fifty feet east of the flagpole?

A. Maybe a little further.

Q. That was the last time you saw him?

A. Yes, sir, he turned—I saw him shortly after that, but [fol. 1706] that was the point he turned. I turned one way and he turned the other.

Q. Which way did he turn?

A. He turned north, slightly north.

Q. Did anybody have ahold of him?

A. Not at that time. Now, there had been before, at the time he left the area of the monument. They had their hands around him or on him.

Q. This, of course, was all after the speech, wasn't it?

A. Yes, sir.

Q. Did I understand you to say he went 250 yards towards the Lyceum?

A. No, sir, I said approximately 250 feet. Or that is what I intended to say.

Q. Then, when he turned off when you were fifty feet east of the flagpole, and he turned off, which direction did he turn?

A. North or northwest.

Q. You turned south?

A. Yes, south or west—southwest.

Q. Is that the last time you saw him?

A. Yes, sir.

Q. Now, where—all the time you saw General Walker there were there a lot of students telling him what had happened, [fol. 1707] asking him questions, urging him to do things and so on?

A. Sir, I was only close to General Walker at the time he was making the speech and at the time he started toward the Lyceum Building and I don't know of any conversation, personal conversation that was carried on with him. I don't think anyone could have, under the circumstances, as much noise and confusion as there was.

Q. But you did hear him say up there one time when they were yelling at him to lead them, you did hear him say, "Riot, riot," sir?

A. No, I don't remember that. I don't recall it.

Mr. Andress: All right. That is all.

Mr. Gooch: That is all.

The Court: I am going to excuse this witness.

KINGSBY KINGSLEY, called as a witness by the Defendant, having been first duly sworn, testified on his oath as follows, to-wit:

Direct examination.

By Mr. Gooch:

Q. Please state your name?

A. Kingsby Kingsley.

Q. Where do you live, Mr. Kingsley?

A. Memphis, Tennessee.

[fol. 1708] Q. How old are you?

A. Thirty-five.

Q. What do you do for a living?

A. Reporter for The Memphis Commercial Appeal.

Q. Where were you born?

A. Tupelo, Mississippi.

Q. Did you attend any schools in Mississippi?

A. Yes, sir.

Q. Which ones?

A. East Tupelo High School and University of Mississippi.

Q. Did you graduate from the University of Mississippi?

A. Yes, sir.

Q. When?

A. 1953.

Q. All right. Now, were you working—what did you say, the Memphis Appeal?

A. The Memphis Commercial Appeal.

Q. Memphis Commercial Appeal, on September 30, 1962?

A. Yes, sir.

Q. Did you have occasion to be in Oxford, Mississippi on any time on September 30, 1962?

A. Yes, sir.

[fol. 1709] Q. Do you remember when you got there prior to September 30, 1962?

A. You mean that particular day?

Q. Yes, sir.

A. About 2:30 in the morning, between 2:00 and 2:30 in the morning.

Q. That was on Sunday morning, September 30?

A. Yes.

Q. Do you remember where you were staying?

A. At the Henry Hotel.

Q. All right. At any time during that day did you see General Walker?

A. Yes, sir.

Q. Where?

A. At the Mansion, a restaurant uptown, then he had a press conference in this parking lot, or in the middle of the Ole Miss Motel down on Highway 6.

Q. Did you cover that?

A. Yes, sir, I did.

Q. Now, after the news conference did you thereafter see General Walker?

A. Yes, sir.

Q. Give us an account of that, please.

A. It was later this night that I had come back—we had gone in—we had rooms in the hotel, and we had written [fol. 1710] some stories that afternoon and sent them out at Western Union, and then we made arrangements to get back on the campus that night, and then we made arrangements—and I went on about between 6:00 and 6:30, and we had been working all night in different areas of the campus, and it was around 9:00 or sometime there that I saw General

Walker coming on the campus, walking down in front of the Journalism Building.

Q. Where were you at that time?

A. This was on—I was almost in front of the Journalism Building on the sidewalk.

Q. Did you recognize General Walker at that time?

A. Yes, sir.

Q. What was he doing?

A. He was walking down the sidewalk toward the Circle and the Lyceum.

Q. Where did you—did you have any conversation with him?

A. No, sir, I was en route to the telephone that we were trying to use in the building, and I saw the General and some other people walking toward the Lyceum. I saw him wave his arms to some other people. By this time there were a good many students on the side of the street. He waved his arms and he said something to the effect, “Come on . . .”—

[fol. 1711] Mr. Address: Just a minute, we will object to the effect.

The Court: Unless you are using the exact words—

The Witness: He waved his arms and motioned to these people to come on with him.

By Mr. Gooch:

Q. All right, did you stop there at that time, or did you keep going to the Journalism Building?

A. I turned around and watched them as they proceeded on down, then I went in. I was using the 'phone inside the Journalism Building.

Q. How long would you say you were in the Journalism Building, Mr. Kingsley?

A. I would say anywhere from thirty-five to forty-five minutes. I am not sure of the exact number of minutes. Time didn't really mean too much at this particular time.

Q. Did you then come back from the—come back to the campus from the Journalism Building, after you got your 'phone call through?

A. Well, the Journalism Building is on the campus.

Q. I mean, did you come back toward the Circle, is what I am trying to say.

A. Yes, sir.

[fol. 1712] Q. Did you see General Walker when you got back to the Circle?

A. I saw the General in the Circle close to, or—there is a monument right at the edge of it, and I saw him about fifteen or twenty feet toward the Lyceum Building, off to the left at that time, yes, sir.

Q. And what was he doing?

A. He, and there was just a mass of people in this area, and they were proceeding up toward the flagpole and trees, up toward the Lyceum Building at that time.

Q. When they got up a distance there do you know what happened?

A. Well, they got pretty close to the flagpole, and then in the tree area the United States Marshals fired another series or round or rounds of tear gas, and they retreated back.

Q. Did you see General Walker there after that night?

A. At this particular time I was—I saw him behind a—as they retreated, then they got behind the trees and after that I may have seen him somewhere during the night, but General Walker was just one—I was covering other things, and was not really concerned with his activities.

Mr. Gooch: You may have the witness.

[fol. 1713] Cross examination.

By Mr. Watts:

Q. You were coming east along University Avenue when you first saw Walker?

A. East is toward Oxford, yes, sir.

Q. Take the pointer please and step up to the map and

identify the location. First, put your pointer on the statue. Now, locate the journalism building. Keep coming. A little more.

A. Right in here?

Q. No, it is down below that. Can you read the letters on the building there?

A. Journalism Building. Here it is.

Q. All right. Now, at exactly what point were you when you saw Walker?

A. I was on the sidewalk, and I would say I was about fifteen feet—it would be west of the walkway to go up to the Journalism Building.

Q. Were you on the north or south side of the sidewalk?

A. I was on the street—toward the street. I don't know whether that would be north or south.

Q. Which way is the top of the map?

A. I would presume that would be north, and I would be—

[fol. 1714] Q. All right, sir?

A. On this side of the sidewalk (indicating).

Q. You, then, were on the north side of the sidewalk?

A. Yes, sir.

Q. On the left side of the sidewalk going east?

A. Going east it would be the left, yes, sir.

Q. And General Walker was walking on his left side of the sidewalk going west?

A. He was walking on the side of the sidewalk going toward—well, he would be on this side here (indicating), and I was coming back up on this side. He would be down on this side, or maybe in the middle of the sidewalk. He wasn't—it wasn't all that large.

Q. Just a regular GI sidewalk?

A. Yes, sir, just a regular street sidewalk.

Q. And you were walking east on the north side of the sidewalk?

A. Yes, sir, back toward the Oxford area, yes.

Q. And Walker was walking westward on the left side of the sidewalk?

A. Yes, sir.

Q. So, you were both meeting each other on the left side of the sidewalk, rather than on the right side?

A. We were both meeting, I mean, on the walk, the [fol.1715] sidewalk. You just automatically meet. I mean he would be—I would be on the street side and he was on the Journalism, or grass side, this side of the sidewalk (indicating).

Q. Do you ordinarily walk on the left side of a sidewalk when you go anywhere?

A. I don't even remember how I walked on the sidewalk.

Q. The question, sir, do you ordinarily walk on the left side of the sidewalk, or the right?

A. I think I walk on the left.

Q. How do you drive your automobile?

A. I—

Q. Do you drive on the right side of the road, or the left?

A. The left.

Q. Left. Were you raised in England?

A. No, sir. You drive on the right side, in an automobile.

Q. All right. And did you walk on the left side of the sidewalk?

A. I think I did.

Q. And you think General Walker, being a soldier, normally would occupy the left side of a sidewalk?

A. I think General Walker, at this particular time, was [fol.1716] going down the sidewalk and I wouldn't say, just two or three feet this way or two or three feet the other way, no, sir.

Q. Okay, take your seat. Walker waved to them to come on, you say?

A. Yes, sir.

Q. Who is "them"?

A. People on—he was walking down the sidewalk and there were people up on automobiles, sitting on the sides of cars, and that kind of stuff, yes.

Q. Now, would they be on the left or right side of the sidewalk?

A. Sir?

Q. The ones he waved to?

A. They were people sitting on cars, they were out in the grass. I mean, they would be on both sides. The cars were on the street side.

Q. Well, how do you know, then, whether he waved to them or to one individual to come on the campus with him?

A. Well, I wouldn't say that he waved to anyone or one hundred, but he waved, and then I saw these people that had—some of them getting off cars and off the grass, and they just followed him on down.

Q. As I read your testimony you say, "I saw Walker [fol. 1717] wave his arms at these people."

A. Yes, sir.

Q. That was the testimony?

A. Yes, sir.

Q. Do you know whether he had a single friend behind him?

A. I wouldn't know if he had one single friend, or who his friends were.

Q. Well, how do you know, from your observation, that he didn't wave his hand at a man in the place of "these people"?

A. He could have waved it at one particular individual, if he knew them, yes, sir.

Q. So, all you can say, you were walking on the left side of the sidewalk, Walker was approaching you on his left, his left side of the sidewalk, and you saw him wave his arm?

A. Yes, sir.

Q. And you don't know whether he waved at one man or one hundred, do you?

A. No, sir, I wouldn't say if he waved his arm at one or a hundred.

Q. Was he alone, or was someone with him?

A. No, sir, there were two or three other people. The General was in the center, and there was a man or two on [fol. 1718] each side of him, or right behind him, or there was about four or five men in one little group, yes, sir.

Q. Somewhere around him?

A. Yes, sir.

Q. You didn't have to get off the sidewalk as you met that group?

A. No, sir.

Q. Did they all pass you on your right, then, as you went eastward?

A. Well, I was coming—I was coming back, and they passed me. We didn't have to run into each other, no, sir.

Q. Did any of them have ahold of him by the arms, like this (demonstrating)?

A. I don't believe—I don't remember whether they did or not.

Q. That would have been rather singularly positioned for a man to be walking in, wouldn't it?

A. I don't think that the General would walk down with anybody holding his arms when he was waving, no, sir.

Q. You would have certainly noticed it if he had been waving at somebody with one arm and somebody else had ahold of his other, wouldn't you?

A. I am not sure whether I would have noticed whether [fol. 1719] anyone was holding his arm. It is possible.

Q. You didn't see anybody holding his arms, though, did you?

A. No, sir.

Q. I wish you would walk back up to the monument there. After you came out of this Journalism Building did you go back toward the monument?

A. Yes, sir.

Q. And you saw a group of people around the monument?

A. Yes, sir, up in the area, right in here (indicating).

[fol. 1720] Q. And where was General Walker?

A. He was about the monument—he would be about 15,

20 feet probably, or an estimate anyway, I wouldn't say, right in this area of the site of this walkway up through in there, yes, sir.

Q. Was he conferring with anyone at that time?

A. No, sir.

Q. Was he north or south of the sidewalk?

A. He would be on the south side, yes, sir.

Q. Where were you?

A. I was cutting across right through here and I was going over to the Y.

Q. How far from him?

A. Oh, maybe 20 feet or something like that.

Q. Did anyone have ahold of his arms at that time?

A. I don't know, sir. He was in the front, up in the front and I was cutting around behind.

Q. You didn't see anybody holding on to his arms, did you?

A. No, sir.

Q. Did he cut off to the north and follow you or to the south, the opposite direction, or go straight?

A. He went up in this area up in here, up into this area, and I cut across and went over to the Y because there was a telephone in there that I had to call into the office on [fol. 1721] something.

Q. In other words, then, he was just walking straight alongside that sidewalk?

A. He was over in here and they were walking up through this way, yes, sir.

Mr. Watts: All right, that's all.

The Court: Do you have any further questions from this witness?

Mr. Gooch: No further questions.

The Court: All right. I will release you then, sir.

Mr. Gooch: Let me see if I have got a witness. Would you give me just a minute?

The Court: Yes.

Mr. Gooch: Mr. Sheriff, call Mr. Gregory.

TOM GREGORY, called as a witness by the Defendant, having been first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Gooch:

Q. Will you state your name?

A. Tom Gregory.

Q. Where do you live, Mr. Gregory?

A. Meridian, Mississippi.

Q. How old are you?

[fol. 1722] A. Twenty-nine years old.

Q. What do you do for a living?

A. I am a reporter for the Meridian Star.

Q. Is the Meridian Star located in Meridian, Mississippi?

A. It's a daily newspaper of Meridian, Mississippi.

Q. How long have you been in the employ of the paper there in Meridian?

A. A little more than three years. Three years and three months, about.

Q. Prior to that time, did you have any educational background?

A. Yes, sir, I am a graduate of the University of Mississippi in Journalism and English.

Q. All right. Did you keep up with the, shall we call it, the Meredith incident that came to a climax along in September of 1952?

A. Yes, sir, I covered much of it.

Q. Were you at Oxford frequently or infrequently during the month of September, 1962?

A. Three times, as I recollect.

Q. Well, we will not go into all those others because we have had so much background.

Were you on the campus of Ole Miss on September 30th, 1962?

[fol. 1723] A. I was.

Q. Did you know about what time you got there on that date?

A. I went on campus about 6:45.

Q. That's P.M.?

A. That's P.M. 6:45 or 7:00 o'clock, I'm not exactly certain of the time.

Q. Prior to the time you went on the campus that day, had you seen General Edwin A. Walker?

A. No, sir, I had not.

Q. Did you know who he was?

A. From pictures only.

Q. All right. Did you observe the Lyceum Building and the Marshals, and so forth, up there at the time you got to the campus?

A. Yes, sir, the Marshals were already lined around the Lyceum Building at the time I got on campus.

Q. Did you observe any brick throwing or rioting or anything of that sort?

A. After about 8:00 o'clock, I did.

Q. All right. Were you there when tear gas was fired?

A. Yes, sir, I was. I was in front of the Lyceum.

Q. Could you describe what happened before the tear gas was fired relative to any contacts between the crowd [fol. 1724] and the Marshals?

A. Prior to the time the tear gas was fired, I did circulate in the crowd and I saw some cigarette—lighted cigarettes thrown in the direction of the Marshals. I saw some Coca-Cola bottles or drink bottles of some sort thrown—these I saw were thrown over the heads of the Marshals in the direction of the Lyceum Building.

I also saw Marshals and students talking during that time.

And other than that, two different kinds of contact.

Q. Well, eliminating—after the tear gas was thrown, describe generally what was going on there in the circle around the Lyceum Building?

A. After the tear gas was fired, it became almost a proc-

ess of the students gathering in groups, in the lower part of the circle, and they would rush up in the direction of the Marshals, some of them would throw bottles or bricks in the direction of the Marshals and the Marshals would fire tear gas at the students and the students would retreat, regroup and then go forward again.

Q. Was that more or less continuous? After the tear gas was fired?

A. More or less a continuous process. There would be lapses of time between the charges.

[fol. 1725] Q. All right. Now did you see General Edwin A. Walker in the circle there that night?

A. Yes, sir, it must have been about 9:00 o'clock, about an hour after the thing had started, I was standing almost in front of the YMCA Building, inside the circle but in front of the, the area in front of the YMCA Building, when Van Savell came up to me and said, "General Walker is on the campus," and I turned around and I recognized him and walked in his direction.

That was the first time I had seen Walker.

Q. Had you known Van Savell before?

A. Yes, sir, I met Van Savell previously in Meridian during the trial of Chancellor Williams.

Q. All right. Have you seen him since that time?

A. We both covered a football game at Starkville and other than that, I don't recall having seen him.

Q. All right. When you saw General Walker, what did you do?

A. I went in his direction. Walker—a group was forming around Walker and I joined the group that was forming around Walker.

Q. Did you hear anything that General Walker might have said at the time you joined that group?

A. Well, yes, sir, I heard some things that were said to Walker.

[fol. 1726] When I arrived at the group shortly after, I remember some students had ganged around and there was

a commotion as other students called out that General Walker was on the campus.

And there begin to be a crowd around him and one of the students asked General Walker when he would bring his men that he had promised onto the campus and he said, "They will be available when they are needed," and he also asked, says, "Well, where are they now?"

He says, "Oh, they are around town. We can bring them in if we need them."

Q. All right, anything else?

A. There was also some discussion at that time about weapons that went on around General Walker.

Q. Well, now unless General Walker said it, let's don't go into that.

A. Well, General Walker, as I recall, did not participate directly in this conversation. He was listening.

Q. Well, never mind what he was listening to. Just keep it to what General Walker said.

A. Now shortly after this conversation with the students took place, Reverend Duncan Gray came up to the group and Reverend Gray asked Walker if he wouldn't leave the campus, if he wouldn't help to calm the mob and specifically I recall he asked him, "If you will go off the campus, the [fol. 1727] students will follow you."

And going—and General Walker told him that he wouldn't leave, that he intended to stay.

And Reverend Gray made other entreaties to Walker and Walker always refused him, declined to leave.

And at one point Walker asked him if he were not the Reverend Duncan Gray?

And he said that he was and Walker said, "You make me ashamed to be an Episcopalian," and after that Gray left the scene, this crowd around General Walker, and about that time I moved away from it, too.

Q. Did you thereafter see General Walker?

A. It was very shortly thereafter. I was standing in the same general area when I began to hear cries of, "Follow General Walker," and I turned around and I saw a very, a

much larger group forming around the General and there were other cries of, "He's going up to the monument— He's going up to the Marshals," and "he won't let"—"General Walker won't let the Marshals stop him," cries like, "Gas won't stop General Walker."

And at that point the General, in the front row of a group, began striding at a rather fast clip in the direction of the Lyceum Building with the crowd, which I estimate at the time to be about 200 behind him and following him. [fol. 1728] Q. And how far did they go westward?

A. Well, I was off to the side, not directly in the crowd, and I walked past the sidewalk that crosses the circle I believe in a north-south direction.

I walked past it about 15 yards, I would imagine, and they went well ahead of me to what I would estimate to be maybe 15 or 20 yards, within 20 yards of the driveway that circles the Lyceum Building.

Q. What happened then?

A. At that time there were—there was a burst of tear gas from the Marshals that obscured the crowd from our vision and they began to disperse.

I saw them running out of the crowds and retreating and I did, too.

Q. All right. Now did you thereafter see General Walker that night?

A. Yes, sir, I saw him somewhat later when I had gone to the foot of the circle where the Confederate monument is and just as I arrived there, I heard someone say, "General Walker is going to speak to us."

And about that time Walker stepped up to the foot of the monument and began speaking.

Q. Did you hear any of the speech that General Walker made?

A. Yes, sir, I was within several feet of the General and [fol. 1729] I heard parts of it. There was quite a commotion in my area of rather loud-mouth people who would clap and cheer and for that reason I could not hear all of

the speech and my memory of it is, therefore, in disconnected phrases and sentences.

Q. All right.

A. I heard him, I can recall him saying, "This is a long road to Cuba," and something about, "A splendid protest," quote, "splendid protest, quote.

I also recall him saying, "Give them protest, give them casualties."

And later on he said, "told the students that he had just come from a conference with the representative of Governor Barnett and he said that Governor Barnett did not want the Marshals on the campus and that there had been a sell-out and the students asked, "Who, who," were crying out, they wanted to know who sold them out.

He conferred with some man at the foot of the monument there and then he said, "Col. Birdsong," and there was a great deal of booing at that time.

It was shortly thereafter that Duncan Gray again appeared on the scene on my and as I recall, it was saying, asking the General to stop his speech and someone pulled him away from the foot of the monument, pulled Gray away from the foot of the monument, and began to pull [fol. 1730] him out of the crowd and again I heard General Walker say, "There is a man who makes me ashamed to be an Episcopalian."

At that point there were a number of the people in the crowd directly around me who began to follow Duncan Gray away from the monument and so I went with them. But two men took charge of Gray and I don't recall who they were, outside of the crowd, maybe 30 yards away from the monument, and convinced him that he should leave the campus or told him he should and he began to leave the area.

At this point I, too, left the area of the circle and went to the YMCA Building.

Q. Did you see Walker after that?

A. Later on during the night, I would see him at various

places in the circle as various other assaults were launched at the Federal line.

He would be watching and perhaps occasionally speaking to somebody in the area but I did not hear him say anything after that time.

Q. Did you write a story for the Meridian Star on what you saw on the campus that night?

A. Yes, sir, I wrote one the next morning, which was probably showed the next day.

Q. Did you write it from what you saw or from any news service?

A. I did not—at the time I wrote my story, I had seen [fol. 1731] no other reports of what had occurred. I wrote it strictly from what I saw and heard.

Mr. Gooch: What's the next exhibit number, do you know?

(Thereupon, Defendant's Exhibit No. 29, was marked for identification.)

By Mr. Gooch:

Q. I hand you what's been marked as Defendant's Exhibit 29, and ask you if this is a photocopy of the story that you wrote in the Meridian Star?

A. Yes, sir, this is my story.

Q. Is that based on the things that you saw and heard there on the campus that night?

A. It is.

Mr. Watts: We have no objection.

Mr. Gooch: I won't take the time to read this at this time.

By Mr. Gooch:

Q. Did you call the march by Walker a charge, as he went towards the Lyceum Building?

A. Yes, sir, I did.

The Court: Are you offering 29?

Mr. Gooch: Yes, sir, we offer 29.

The Court: Defendant's 29 is admitted.

Mr. Gooch: We pass the witness.

Mr. Address: Your Honor, we would like to have a conference before we start, since it is 3:15, could we have a [fol. 1732] recess right now.

The Court: All right. Ladies and Gentlemen, we will recess until 25 minutes until 4:00.

* * *

[fol. 1733] Q. Mr. Gregory?

A. Yes, sir.

Q. Just before the recess did I hear Mr. Gooch stand there and caution you not to talk to anyone during the recess?

A. Yes, sir.

Q. And after you got out in the hall didn't you talk to Mr. Fred Smith, the gentleman sitting here, and Mr. Travis Buckley, another witness who has been in here testifying?

A. I talked to Mr. Smith. Mr. Buckley is to carry some stuff back to the hotel room for me.

Q. So, you did talk to Buckley?

A. Yes, sir.

Q. Where and when did you first know Van H. Savell?

A. The contempt trial of three Ole Miss officials, Chancellor Williams, Dean Lewis and Registrar Ellis, was held in Graham, Mississippi, in the Federal Court, and I covered that, that trial for my newspaper. Van was covering it for the Associated Press, and we met during the process of that trial.

Q. Now, about when was this?

A. As I remember it, well, it was on the Friday preceding the Sunday of this riot. I may be a day or two off. [fol. 1734] I don't recollect.

Q. Did you get pretty well acquainted with Savell?

A. No, sir, we—as I remember, we sat at the press table side by side and I met him. I know or knew his name, it

was just an acquaintanceship through the reporting side by side at the trial.

Q. You knew him as you were both newsmen?

A. Yes, sir.

Q. Both were in the same general fraternity?

A. Yes, sir.

Q. Were you friendly there with him?

A. Like I say, I never—during the process of the trial was the only time I knew him. We didn't have any opportunity to converse at that time. I—we introduced ourselves as we sat down, as I remember it, and had very little other opportunity to converse.

Q. As I remember your testimony, you saw Savell one time that night?

A. Yes, sir.

Q. Near the YMCA?

A. Yes, sir.

Q. Would you step to the chart, please, and take the pointer? Would you point to us exactly where it was?

A. Exactly, sir, it would be difficult. It was just about [fol. 1735] in this area.

Q. Somewhere in the northeast quadrant of the Circle?

A. In this area I am pointing to (indicating).

Q. About how long before Walker's speech was that?

A. That would be difficult to say in point of time.

Q. Well, let's see, do you remember when the Highway Patrol left?

A. As I remember it, it was sometime between the time of Walker's speech at the monument and the time that the tear gas was fired.

Q. It was just almost coincident with Walker's speech, wasn't it, just before he made his speech?

A. Not as I remember it.

Q. Where were you when the Highway Patrol left?

A. I was standing at—it would have been right here when they drove by (indicating).

Q. Now, then, put your pointer up there where you met Savell?

A. (Witness complies.)

Q. Where had you been just before that?

A. I had been over this general area. I had been following the wave of students as they went forward toward the Lyceum Building.

[fol. 1736] Q. In other words, you, yourself, had been in that northeast quadrant for some few minutes before you met Savell?

A. Now, exactly, whether I was in this northeast quadrant a few minutes, or how long I had been there, I don't know. I had been over this entire general area just moving around.

Q. You have a distinct recollection of meeting Savell and he told you Walker was on the campus?

A. Yes, sir.

Q. You can mentally close your eyes and relive the point and the incident, can't you?

A. Yes, sir.

Q. All right. Now, then, you have put the pointer right where you were when you met Savell?

A. Yes, sir.

Q. Could you tell us where you were for the previous, or preceding fifteen minutes?

A. As I say, sir, I was over this general area. It is—during that preceding time, between the time I met Savell and the time that the tear gas was first fired, I moved around generally. I was, oh, down in here, I was up in here, and I was over the general area, and where I was at any other point of time I could not say.

Q. What attracted your attention to Savell?

[fol. 1737] A. Savell walked up to me, and as I say, I remembered him, and he spoke to me first and he says, "General Walker is on the campus."

Q. Now, this occurred, as I remember, and as I noted in your testimony, this contact with Savell occurred after you had seen General Walker in contact with Rev. Gray?

A. No, sir, it—it occurred prior to that time.

Q. Oh, before. I see. In other words, then,—

A. I had not seen General Walker before Savell came up to me and told me that General Walker was on the campus.

Q. I see. After you saw Savell in the northeast quadrant, you walked down in the southeast quadrant and saw General Walker talking to Rev Gray?

A. No, sir, in point of chronology, I remember incidents that occurred during the night. Now, this has been better than a year and a half ago.

Q. But, now, young man, you have talked to people connected with this lawsuit almost immediately after this thing happened?

A. No, sir.

Q. Mr. Smith?

A. No, sir, no.

[fol. 1738] Q. When did you first talk to Mr. Smith?

A. Oh, I first talked to Mr. Smith perhaps a month or two ago.

Q. Is that the first time you talked to anyone connected with the lawsuit?

A. No, sir, I had talked prior to that then with an attorney out of Jackson, and that had been last fall, as I remember it.

Q. Was that someone out of Mr. Thomas' office?

A. Yes, sir.

Q. In the fall of 1963?

A. Yes, sir, about that time.

Q. Did he take a tape recorded statement from you?

A. No, sir, he did not.

Q. Was that the first man you talked to?

A. I talked to an FBI agent within a matter of a few weeks after the riot.

Q. Did you testify at the Grand Jury?

A. Yes, sir, I did.

Q. So, these incidents since the occurrence have remained fairly clear in your mind, haven't they?

A. Well, as I say, the incidents that I have been asked about, the incidents I have talked about, I had reason to remember those incidents.

[fol. 1739] Q. Now, you do distinctly remember seeing Savell?

A. Yes, sir, I distinctly remember seeing Savell.

Q. And you do distinctly remember his telling you General Walker was on the campus?

A. Yes, sir.

Q. You distinctly remember that after learning that General Walker was on the campus, a short time thereafter, you saw General Walker talking to Rev. Gray?

A. It was sometime after that. Like I say, my chronology is a matter of incidence that occurred during the night, and chronologically I am not exactly certain how these incidents did take place.

Q. Now, when you—when you saw Savell and he told you that Walker was on the campus you didn't say, "Well, yes, I know it, I just saw him talking to Rev. Gray?"

A. No, sir, I did not. I turned around, as I remember it, and saw Walker at that point.

Q. So, undoubtedly, then, when you saw Savell and he told you Walker was on the campus, it was before you had seen Rev. Gray talking to Walker, that is a fair conclusion, isn't it?

A. Oh, yes.

Q. Now, then, after you saw him in the northeast quadrant, you went down and saw him talking to Rev. Gray [fol. 1740] in the south—southwest quadrant.

A. Now, as I recall it, sir, when I saw Gray talking to General Walker, it was in an area still in this same quadrant.

Q. In the northeast quadrant?

A. Yes, sir, as I recall.

Q. All right. Anyhow, you saw him talking to General Walker, and you distinctly remember Rev. Gray telling General Walker that he ought to leave the campus?

A. Yes, sir.

Q. And Walker distinctly refused to leave?

A. Now, I don't recollect any words that Walker said at this point. I do remember that Walker declined to go. I do remember that Walker did say something to Rev. Gray.

Q. At that point, and at that incident, did you see Gray before you saw Walker, or did you see Walker before you saw Gray?

A. I saw Walker before I saw Gray.

Q. So, you then saw Gray coming up to Walker?

A. Yes, sir.

Q. The Rev. Gray, being a minister, did he stick out his hand and shake hands with General Walker?

A. I don't recall that he did.

[fol. 1741] Q. You don't know one way or another?

A. I just don't recall. I don't really believe that he did.

Q. Then, about how long did they talk?

A. Oh, it was just a matter of a couple of minutes, as I recollect it.

Q. And did Rev. Gray leave?

A. Yes, sir.

Q. And your next testimony was that later you saw Walker in the same general area, and you saw a large crowd standing around him?

A. Well, now, whether, at this point, that occurred prior to the time he talked to Gray, or after the time he talked to Gray, I am a little bit hazy on that.

Q. Since your first testimony, or since you left the witness stand, you went out and talked to Mr. Smith?

A. Mr. Smith talked to me.

Q. Yes, sir, he talked to you, and he told you that you got your time fouled up, didn't he?

A. Well, now, as I told Mr. Smith, and—and the attorneys I have talked to throughout this trial, or prior to this trial, sir, my chronology on many instances is not good.

Q. Young man, that was not my question. My question to you, please, was did Mr. Smith tell you—

[fol. 1742] A. —Mr. Smith came up to me and said that my story pointed it out a different way, and I wrote the story the next day, and I am testifying sometime later.

Q. And he pointed out to you out in the hall, between the time you testified a while ago and right now, that you were getting your timing fouled up, on this charge.

A. He said my timing did not coincide with my story?

Q. And your testimony was before you went out and talked to Mr. Smith that later, and you testified immediately after you saw the Rev. Duncan Gray, and Walker talking, that General Walker, a large crowd formed around General Walker, and then you saw General Walker walking fast with a crowd of 200, about 200 around him as they went on west fifteen or twenty yards from the curb around the Circle.

A. That was an estimate as to distance, sir.

Q. Sir?

A. That was an estimate as to distance.

Q. As to what?

A. Estimate as to distance.

Q. I understand, but this was after you had seen Gray talking to Walker.

A. Now, like I say, sir, my chronology is not good on [fol. 1743] some of these points.

Q. Well, when you testified before it was good.

A. Well, when I testified before there was no specific reference to chronology.

Q. Well, didn't you testify when you were in here fifteen or thirty minutes ago that after General Walker talked to Rev. Gray, you then saw the crowd gather around General Walker, you then saw a crowd of about 200 people move toward the Lyceum and get within fifteen or twenty yards of the curb, the tear gas was fired, and they went back; and then you testified, if I am mis-quoting your testimony, stop me, you testified, "And then at the foot of the monument you heard Walker speak."

Now, wasn't that your testimony a while ago?

A. As nearly as I can recall the testimony.

Q. And since then you have talked to Mr. Smith?

A. Since then I have talked to Mr. Smith, yes, sir, but—

Q. What is your testimony now?

A. Well, my testimony now is that I am trying, as I am trying to get it.

Q. Sit down over there and give it to us.

A. I tried to tell you—

Q. I don't want to know what you are trying to tell me. I say now what did happen, in the proper sequence starting [fol. 1744] with talking to Van Savell.

A. Well, Van Savell—

Q. Just a minute, please, let me finish the question. You started with meeting Van Savell southwest of the YMCA in the northeast quarter of the intersection, and take it from there in the absolute chronology, because this is critical and important. You relive it and testify for us as you remember, who said what to who and who did what.

A. I met Savell, rather Van Savell came up to me, and he spoke to me and he said, "General Walker is on the campus." I don't recall that I said anything to Van, but I turned around and at that point I remember seeing General Walker, as I testified before. I believe that there was a period of time when a crowd was gathered around Walker, and in that same period of time Duncan Gray came up to General Walker.

I have tried to tell you as truthful as I know how that my chronology is not good.

Q. Well, now, I am not talking about that. Tell us what you saw?

A. Well, I can only restate what I said before. As to when these things happened, I can't be that exact.

Q. But you were exact a while ago.

A. I was not pressed on points of chronology.

[fol. 1745] Q. Go ahead and tell us what you told us before you talked to Mr. Smith.

A. I can only re-tell what I told you a while ago.

Q. All right. Will you tell it, then?

A. At the time I moved into the crowd.

Q. Where was Duncan Gray when you moved into the crowd?

A. Duncan Gray was not present at that time.

Q. How long had he been gone?

A. He was not there.

Q. You said he had talked to Walker and you had seen him?

A. But you are asking me to tell it as I told it before, which I am trying to do.

Q. Go ahead.

A. All right.

Q. All right.

A. All right, at that time there were students gathering around, and there was a great deal of hullabaloo, and a student, I remember asked him, said, "General Walker, where are all these men you promised us?"

And General Walker said, "They will be here when the time comes."

And the student asked him, "Where are they?" And [fol. 1746] General Walker said, "They are around town. They will be here when we need them."

Then there was some conversation around about weapons, and which I don't recall General Walker joining. At some point shortly thereafter Duncan Gray—Rev. Duncan Gray came to the scene, and Duncan Gray began to ask General Walker if he would leave the campus, and he asked General Walker specifically, "If you will go off the campus, the students will follow you."

And I can't recall General Walker's words, but he did decline to go, and it was—

[fol. 1747] Q. Just stop right there, or excuse me, let me stop you. Did you hear Reverend Gray say, "You could stop this if you could, if you would"?

A. I don't recall that specifically, no, sir.

Q. All right, go ahead.

A. It's possible he said some things that I did not recall specifically.

Q. Go ahead.

A. General Walker then asked him if he were not Reverend Gray and he said he is, an Episcopal minister, and he said he is, and General Walker said, "You make me ashamed of being an Episcopalian."

Whatever conversation may have taken place between them, I don't recollect now.

But Gray did leave, and I left the group shortly thereafter.

At a period of time around that time, I saw General Walker at a time when I was not immediately close to him, and a group of men gathered around him and I estimated at the time the total to be about 200, it's purely an estimation again, and then Walker began to move in the direction of the Lyceum Building at the head of this group of people.

And he was not in front but he was in the front row of the group and they began to walk in the direction of [fol. 1748] the Marshals with people crying out, "The Marshals won't stop General Walker," and, "Gas won't stop General Walker," and that sort of thing, a great deal of activity and I did not follow them all the way up to the front.

I went to a point across in the Lyceum Building side of this north-south crosswalk that crosses the circle and stopped there.

Q. Would you go over and put your pointer on it, please?

A. As nearly as I can recollect, I must have stopped right about here (indicating).

Q. Now where was Walker then?

A. Walker at the time was moving in this direction, past me and I was slightly ahead of this crowd that was coming until I stopped and then—

Q. Excuse me right there. Where had this movement formed up? You said this group—

A. To the best of my recollection, down in this area (indicating).

Q. I see. Go ahead.

A. And I stopped about here. The group did not move

in a straight line but, rather, in a very tight arc in this direction but always toward the Lyceum Building.

Q. They were—

A. They passed me and with me remaining there (indicated [fol. 1749] cating) and when they got up in this area, the tear gas began to fall.

And then they—

Q. Did they throw anything, anyone?

A. Now I did not see anyone throw anything. There was a great deal of movement. There might have been something thrown, I personally did not see it.

Q. Now the nearest you can tell, how long after you first saw Savell by the YMCA did this incident happen?

A. Chronologically, sir, I don't know.

Q. Well, could you estimate? Ten, fifteen, thirty minutes?

A. It could have—it could have been five minutes. It could have been ten minutes. It could have been a shorter time. I am just not exactly certain on the chronological order of some of these events.

Q. You know it wasn't as long as 30 minutes, don't you?

A. Oh, no, it wasn't that long.

Q. Now, as you saw Walker going by there, you say he was in the front rank of this group?

A. Yes, sir.

Q. Did anybody have him by each arm?

A. From where I was standing, sir, I could not tell that anybody did.

[fol. 1750] Q. At least, if they did, you couldn't see?

A. If they did, I couldn't see it, no, sir.

Q. Did you see a young man waving a big Confederate flag out in front?

A. Not at this time, no, sir. That had occurred somewhat earlier than what I saw.

Q. What did you do after Walker passed you with this group going west?

A. I stayed where I was.

Q. What did Walker do?

A. They continued going this way until the tear gas came and I lost sight of General Walker (indicating).

Q. What happened then?

A. Well, the crowd around him began to disperse. I saw those from the crowd moving back in my direction away from the clouds of tear gas and I moved backward, too.

Q. When did you next see Savell—strike that. When did you next see Walker?

A. Oh, well, as far as I can recall, it was at the monument.

Q. Now then prior to the time you saw Savell, you were in the general area of the circle. Stand there for just a minute. Put your pointer on the monument.

A. Here is the monument, I believe.

Q. Move it out about 10, about a hundred feet down [fol. 1751] eastward on University Avenue.

Assuming that General Walker had approached the campus, striding westward toward the monument, had been met by a group of leaders of the mob a little to the west of where you are—now move slightly to the west—more yet—back, no, back to the east a little—had been met there by leaders of the mob and had encountered a large portly, well-dressed man, had been welcomed by the crowd, had been requested to lead the crowd to the steps, had then and there loosened his tie, nodded yes without speaking, conferred with a group of about 15 persons who appeared to be riot leaders, assumed command of the crowd estimated at 1,000 people, was taken by each arm, by two leaders of the mob, marched westward—first northwestward and then southwestward across the northeast quadrant and then into the northwest quadrant from where you were, you could not have missed any movement that dramatic, could you?

A. If they moved in my direction, I would have seen it, yes, sir.

Q. Well, you know, do you not, that all during that period of time, before you saw Savell and after you saw

Savell and before Walker's speech on the monument, had an incident that dramatic occurred, you couldn't have kept from seeing it, could you?

A. That's correct, sir.

[fol. 1752] Q. Wouldn't you say, in fairness, from what you saw and where you were, that such an incident did not occur? Yes or no.

A. That Walker went toward the Marshals?

Q. At that time, with a man on each arm and a thousand people behind him?

A. I didn't see any thousand people behind him. I saw General Walker from a point of about here (indicating).

Q. Yes, sir.

A. In the forefront of a group, a crowd, which I personally estimated to be about 200, move in the direction that I have stated, to a point somewhere around there (indicating).

Q. All right, I understood your testimony on that. And that was between the time you talked to Reverend Gray and the time you heard the speech on the monument?

A. I still say that my chronology is not perfect on that time.

Q. All right, sir. Take the stand. Was General Walker walking fast, slow or medium?

A. I would say he was walking at a fast military clip. He was not walking slowly, he was not running.

Q. Do you have a military background?

A. I spent three years in the Army.

Q. You know what cadence is, don't you?

[fol. 1753] A. Yes, sir.

Q. Was he walking pretty much in cadence?

A. As far as any particular cadence, he was walking at a, what I would call a rather fast clip, was standing rather straight and walking at a rather fast clip.

Q. Was anyone else in step with him?

A. I did not notice anybody, whether anybody kept step with him.

Q. Now if at the end of that march that you have outlined there, the crowd had been met with a barrage of tear gas and then went a few feet further and hurled their weapons, bricks, bottles, rocks and wooden stakes, a crowd of that size, you couldn't have helped seeing them hurling these weapons, could you?

A. I testified, sir, that I do not recall seeing anything thrown there. Tear gas fell and tear gas obscured my vision. Whether they were thrown after the tear gas was fired, I don't know.

Q. So you then lost sight of Walker as he proceeded southwesterly up in the northwest quadrant of the circle?

A. I am not too clear, sir, on your directions.

Q. Well, let's get it clear. Get your pointer and let's go up there and get clear. Put your pointer on the point where you lost sight of Walker.

A. Sir, it must have been generally in this area right [fol. 1754] here (indicating).

Q. From there, where were you?

A. I was down in the direction just north of this crosswalk here, just about in this area (indicating).

Q. Then where did you go?

A. I went backwards.

Q. Back where?

A. Back in this direction (indicating).

Q. And where did you next see Walker?

A. My recollection of next seeing Walker was at the monument.

Q. All right. From where did you leave to go to the monument? Put your pointer on it.

A. I don't know. Again I moved throughout this area pretty generally throughout the night (indicating).

And I came from this area over here to a point somewhere along in here when I first heard somebody say that General Walker was going to speak.

Q. And you went over and heard his speech?

A. Yes, sir.

Q. Take the stand. Did Walker say anything at all during this movement he made to this group you testified about?

A. During the movement I couldn't say whether he said anything or not. I was not close enough to him to even hear [fol. 1755] him if he had said something.

Q. Did you hear the start of Walker's speech on the monument?

A. I heard—I was standing there when all of it took place up to the time that Reverend Gray left. Now as to my recollection of what was said at various points is rather limited.

Q. How near Walker were you standing?

A. I must have been 10 or 15 feet.

Q. Which direction?

A. It would have been, as the monument faces east, then I would have been to the north of the easterly direction. I would have been on Walker's left.

Q. Did you see Reverend Gray when he attempted to get on the monument?

A. Yes, sir.

Q. Had you known Reverend Gray before?

A. Yes, sir.

Q. Closely or—

A. No, sir, I only knew him as a face and that was all.

Q. I see. Now what did you do when he started to get up on the monument?

A. When Reverend Gray started to get up on the monument?

[fol. 1756] Q. Right.

A. I didn't do anything.

Q. Now you testified you heard loud boeing. Was that before or after Reverend Gray started to get on the monument?

A. Oh, Reverend Gray appeared and there was a great deal of noise as they pulled him back and away from there.

Q. Oh, was that when the boeing was?

A. As I recall it, there was some booing at that time, yes, sir.

Q. So you figured the booing was at Reverend Gray?

A. Yes, sir.

Q. But there was very definitely booing?

A. There was—there was uncomplimentary sounds, yes, sir.

Q. Well, you know what a boo is, don't you?

A. Yes, sir.

Q. Was there or was there not a boo?

A. As I recall, there were some boos.

Q. All right. Now, then who brought Reverend Gray down?

A. I don't know, sir.

Q. Did you see a heavy, portly sort of an individual with him?

A. No, sir.

[fol. 1757] Q. Where did you see Reverend Gray?

A. At that time?

Q. Yes.

A. He came from my right, from the edge of the crowd and—somebody pulled him back down and they began to move away from the crowd and went over there with them. Now who was with him at that time, I did not know the people and had no reason to . . .

Q. Where did you go?

A. From that point?

Q. Right.

A. I went to the YMCA Building.

Q. Did you go in?

A. Yes, sir.

Q. How long did you stay in?

A. As it turned out, I stayed for some time. I was in there and at a period of several minutes after I went in, the Marshals came down and threw tear gas all around and it got into the YMCA Building and I couldn't get out.

Q. Now you wrote a report for your paper?

A. Yes, sir.

Q. That has been offered in evidence as Defendant's Exhibit 29.

EXCERPTS OF DEFENDANT'S EXHIBIT 29 READ INTO RECORD

Refreshing your recollection from this, "Into the mob walked Edwin C. Walker, former Major-General of the [fol. 1758] United States Army."

Now where was the mob when he walked into it? Go up there and let's identify and orient this.

A. This was a reference to this point here, when I saw him at this point here (indicating).

Q. All right. The mob then was already formed?

A. Well, there was a mob all over the campus.

Q. No, I am talking about at this point.

A. Well, there were groups of people all around here. When I first saw him, he was with a large group of people.

Q. All right. Oh, well, you didn't see him then walk into this group of people?

He was already with them, is that right?

A. Well, there was—when I first saw him, he was in this group of people.

Q. Well you have stated here, "into the mob walked Edwin C. Walker".

I want to know from which direction he walked and where the mob was when he walked there?

A. Well, when I first saw him, he was walking in this direction and the mob was around him (indicating).

Q. I see. Well you then didn't see him walk into the mob, did you?

A. Well, he was inside—walking in the mob when I saw him, yes, sir.

[fol. 1759] Q. In other words, rather than "into the mob," he was walking with the mob, wasn't he?

A. He was—I had wrote that, sir, on the morning after it occurred.

Q. I understand it.

A. And—

Q. Well, which time is right, then or now?

A. I am trying to explain to you as I recall the thing—

Q. That's what I want.

A. —how it happened. Now there was a crowd, there was Walker (indicating).

And he was in the crowd when I saw him, yes, sir.

Q. He was in the crowd and he did not walk into the crowd after you saw him?

A. Well, he was walking among the crowd and walked to the front of it, yes, sir.

Q. —“around him swirled a whirlpool of humanity and human emotion. Two hundred yards away, a line of gas-masked, club and tear-gas-armed Federal Marshals had turned the ancient Lyceum Building into a Federal fort.

“‘Now we have a leader,’ screamed somebody. ‘Rally to General Walker!’”

Now where did you hear that?

A. From the crowd behind General Walker.

[fol. 1760] Q. And that's when he was already in the crowd?

A. Yes, sir.

Q. “Walker, wearing a Texas hat and a dark blue suit, walked toward the Lyceum, with perhaps 200 men following him.”

Now he walked and didn't run?

A. No, sir, I never did say he ran.

Q. “‘Tear gas won't stop him,’ another person yelled. ‘Follow General Walker.’

“About 50 yards from the Federal line, tear gas bombs began falling around the group.

“General Edwin Walker (retired),—”

Did you understand he was retired?

A. Yes, sir, that was my understanding.

Q. You didn't know he had resigned?

A. It was my understanding he's retired at that time.

Q. All right. "General Edwin Walker (retired), who wouldn't retreat, did."

Did you see him retreat?

I thought you said you didn't see him any more?

A. Well, I saw him later. He didn't get to the Federal lines.

Q. You didn't see him retreat, did you?

A. I did not see him retreat. I did not see him stop. I did not see him go forward.

Q. In simple language, that's somewhat extravagant [fol. 1761] words, isn't it, young man?

A. Extravagant? The things that occurred around that thing would lead you to believe that he did not go forward.

Q. Well, anyhow, you didn't see him retreat, did you?

A. I did not personally see him retreat, no, sir.

Q. You have stated here, "General Edwin Walker, (retired) who wouldn't retreat, did."?

A. Yes, sir.

[fol. 1762] Q. You may sit down now.

"The former Army officer was just one of the number of outsiders—how many will probably never be known—who egged and aided a hard corps of Ole Miss students into a rock flinging, destructive riot that left two dead, seventy-five to one hundred injured, at least thirty-one arrested and seriously damaged the reputation of a university. I walked through that howling, passionately unthinking mob for more than four hours during the violence here last night. I saw the rock throwers and the agitators. I stood under a Confederate flag hoisted on the flagpole before the stately Lyceum and watched students and outsiders rush the Marshals' lines, retreat before tear gas, regroup and charge again, all without any attempt at control."

And nobody had any leadership whatsoever over this mob, did they?

A. Nobody exercised any leadership.

Q. "Most of the rioters were students, although the number of Ole Miss men steadily decreased through the night. The number of outsiders, non-students, steadily increased. Denim-trousered adults and teenagers from nearby towns furnished the impetus that kept the college boys at their job of injury and destruction."

I am leaving some out.

[fol. 1763] "About an hour after the rioting started, General Walker entered the scene. After his abortive attempt to reach the Marshals' line, he confined his activity to speech making and watching."

That was your understanding? He participated no more after this first attempt?

A. I did not see him participate in any—any more, no, sir.

Q. A crowd gathered around him at the edge of the Grove and he finally said, "All right, I'll speak to them."

Were you down there when that occurred?

A. Yes, sir.

Q. Now, did—I understood you to say that you were attracted to him on the monument as you left the YMCA?

A. No, sir, I did not say that.

Q. Well, what—well, start back up at the YMCA then and tell me what you did immediately before the speech?

A. Well, I had come down to this general area around the monument and I had come down from the direction of the YMCA Building. I see it. I did not say I came from the YMCA Building, whether I was there immediately after, or exactly, I don't remember.

Q. Take the pointer again and point where you were [fol. 1764] when you next saw Walker.

A. I seen him from somewhere up in this area. I had tried to follow things as they went along, and I came down into this area here, and was standing by the monument when next I saw Walker. And he was walking toward—

Q. Well, now, you drew a circle. I wish you would put the pointer where you were standing and where Walker was standing.

A. Well, that is difficult to do, sir. I will try. The best of my recollection, I was standing about here, which is about the same area I remained in, and I moved up and saw Walker, and Walker was standing somewhere over in here (indicating).

Q. Did you see the Highway Patrol go past about that time, or shortly before?

A. I had seen the Highway Patrol go past, but whether it was about that time or shortly before, I don't know. I believe it was prior to this time.

Q. What did you hear Walker say?

A. Walker—I heard some students say, or somebody say, "Walker is going to talk to us." And Walker was standing here. He says, "All right." He turned around, and I could see Walker, and he said, "All right, I will talk to them," and he stepped to the monument.

[fol. 1765] Q. You say, "He finally said 'all right, I will speak to them.'"

What do you mean by "finally"?

A. I don't recall, sir.

Q. Prior to that time had he refused to speak to them?

A. Not to my knowledge, or I don't know.

Q. Take your seat.

"Just prior to that an Episcopalian Priest, Rev. Duncan Gray, Jr., had tried to talk him into leaving and taking the crowd with him. 'They'll follow you,' Gray said. But Walker stood at the foot of the old Confederate monument and began speaking. He told the crowd there had been a 'sell-out'. He said a representative of the Governor's office had told him that Ross Barnett's orders were not to let the Marshals on the campus. After an impromptu whispered conference with a blue-coated follower, Walker said that a member of the Highway Patrol had been responsible for the sell-out. Again there was a conference and Walker said, 'the name is Birdsong.' Col. T. B. Birdsong is the head of the Highway Patrol and was in the car that led the first group of Marshals to the campus during the after-

noon. Then referring to the Episcopal Priest who had asked him to leave, 'I am ashamed that I am an Episcopalian.' At this point Rev. Gray appeared in front of the [fol. 1766] crowd and was forcibly taken from the area by men who feared that he would be injured. Later a group of students attempted to arrange a truce, but were unable to make the deal."

Walker was not part of this, was he?

A. Not that I recall.

Q. Where were you when that occurred?

A. When the truce occurred?

Q. Yes, sir.

A. I was up in the area where the truce talk was taking place.

Q. How long after the speech on the monument did this truce incident take place?

A. I couldn't say. I don't recall.

Q. You have no idea how long you were in the YMCA?

A. In the YMCA?

Q. Yes.

A. Oh, it was ten or twelve minutes, until the gas had cleared around the YMCA, until I could get out.

Q. Was Walker's speech just started, just finishing, in the middle, when Rev. Gray was taken out?

A. When Rev. Gray was taken out? Now, anything that was said after Rev. Gray appeared I don't know, because I left with Rev. Gray and I did not hear any more [fol. 1767] Walker.

Q. Did you hear Walker say Governor Barnett had betrayed the people of Mississippi?

A. No, sir, I didn't.

Q. Did he say not to let up now, "You may lose this battle, but you will be heard?"

A. I don't recall that.

Q. Did he say, "This is a dangerous situation, you must be prepared for possible death, if you are not go home"?

A. I don't recall that.

Q. There were cheers, apparently Walker had complete command over the group. Anything like that?

A. Yes, sir, there were cheers, now. And it was evident to me that the group seemed to be behind General Walker.

Q. Also there were boos?

A. Well, there were boos at the time Rev. Duncan Gray came up.

Q. Did you ever hear General Walker beg the students to cease the violence?

A. No, sir, I did not.

Q. As a newsman, did it come to your attention that the United Press International report written by Mr. Alfred B. Kuettner said that, "During a lull in the riot, General Edwin A. Walker mounted the Confederate statue on the [fol. 1768] campus and begged the students to cease their violence, and was met by one massive jeer". Did that come to your attention?

A. No, sir, I never saw that.

Q. Did you ever hear of it from that day to this?

A. No, sir, I have not. This is the first time.

Q. This is the first time?

A. This is the first time I have heard of it.

Q. You never even heard any discussion of that around the newspaper?

A. No, sir, I haven't.

Q. That is all. Just a minute.

Did you see General Walker after he got off the monument?

A. As I recall it, I saw him in the general area. I did not hear anything.

Q. Will you tell us about what you saw him doing in the general area after the speech on the monument?

A. Well, sir, after the speech was over on the monument, my recollection is I did see him in the area walking around, occasionally talking to somebody, and I was never very close to him after that.

Q. No charge then after the speech on the monument?

A. I did not see one.

Q. Now, there is a headline on this dramatic account [fol. 1769] here, "Walker charges then falls back." Did you write that?

A. No, sir, I did not.

Q. You never did see him charge, did you?

A. I saw what I called a charge in my story, sir, which would be the move toward the Lyceum Building.

Q. Pardon?

A. I saw the move that I—that that charge is referring to, is the move toward the Lyceum Building.

Q. Would you read to us, please, sir, out of that story anything you wrote that said that Walker led a charge?

A. I did not say anything—I did not say that he made a charge, no, sir.

Mr. Watts: That is all.

Mr. Gooch: That is all.

The Court: I am going to excuse this witness. You may be excused.

Mr. Gooch: The defense rests.

The Court: What says the Plaintiff?

Mr. Watts: The Plaintiff is ready to start reading depositions, sir.

The Court: All right.

Mr. Watts: Might we have a five-minute recess to get these depositions assembled?

[fol. 1770] The Court: All right, Ladies and Gentlemen, the Defendant has rested, and the Plaintiff will offer probably some rebuttal evidence, so step into the Jury room for about five minutes until I call you back.

(Short recess was had.)

[fol. 1771] Mr. Watts: This is the deposition of Louis Milner, Associated Press employee, taken at New Orleans, on March 30, 1964.

LOUIS MILNER, testified by deposition as follows:

Direct examination.

By Mr. Watts:

Q. Your name is Louis Milner?

A. Yes, sir.

Q. Your profession?

A. Newsman.

Q. For whom? And how long?

A. For the Associated Press. Since January 27, 1946.

Q. What is your education, Mr. Milner?

A. Bachelor of Science in Journalism from the University of Illinois.

Q. When did you graduate?

A. 1934, on July 11th—make it June 11th.

Q. During your undergraduate days, give us all the organizations to which you belonged?

Mr. Watts: I think we can skip that. Wait just a minute. On Page 144, line 10.

Q. What was your assignment in the New Orleans AP Bureau?

A. As of the present?

[fol. 1772] Q. What has it been since you have been with them?

A. Well, we have several shifts here. There is a radio assignment, day rewrite, day editor, overnight, night editor, night filing editor, night radio.

And first of all, my time has been spent on the night side.

At present, I am night editor.

Q. How long have you been night editor?

A. I couldn't give you an accurate answer.

Q. Since before or after September 30, 1962?

A. Long before.

Q. Where were you on September 30, 1962?

A. I was on the night desk.

- Q. Where were you working that day?
- A. That day?
- Q. Yes.
- A. That night, you mean?
- Q. Yes. I will make it more specific. Were you on duty from 8:00 o'clock through midnight of that night?
- A. Let me check and see. And what time did you say? From 8:00 p.m., through midnight?
- I reported at 5:30 p.m., and I left at 8:30 a.m., the following day, 8:30 a.m., yes.
- Q. What was your assignment and duty?
- A. Night desk.
- [fol. 1773] Q. What is the nature of that duty?
- A. Was that a Sunday or a Monday?
- Q. That was a Sunday.
- A. Yes, I was correct. Night editor and night editor has charge of the night desk, and, also filing the wires.
- Q. Did you do anything else during the course of that evening?
- A. What do you mean by "anything else"?
- Q. Other than handling the night desk and filing the wires?
- A. No.
- Q. Did you operate the telephone at any time specifically?
- A. No, sir.
- Q. Could you take your copy here from the night of September the 30th, and pick it up and let me ask you some questions about it?
- A. Yes. Is this the original copy or a teletype copy? What specific story?
- Q. Well, I am interested in any stories during the course of the evening with which you had any contact that to do with General Walker.
- A. Well, here—
- Q. Well, I have some others here that were apparently [fol. 1774] presented to me at the time of the taking of the Savell deposition.

A. Well, that would be difficult to—you see, unless I saw the original typewritten copies so as to see whether it passed through my hands or not, because the normal procedure on a normal night, the story comes to me and then it goes on the wire after it has been edited for grammatical errors and ready for the wire.

And in times of stress, it is possible for someone else of equal, shall we say, experience to put it on the wire directly.

Q. How long had you known Van Savell?

A. I had known him ever since he had joined the Bureau.

Q. Did you consider him to be an experienced news reporter on the night of September the 30th, 1962?

A. I did.

Q. What did you understand his experience to be?

A. The past performance.

Q. Did you understand that he had only one year of college and less than a year of full experience?

A. Yes.

Q. What past performance are you referring to now that indicated his experience?

A. Well, his general performance in the Bureau.

[fol. 1775] Q. Outline to us what you mean.

A. Well, just his handling of various stories nearby in comparison with the others.

Q. I wish you would turn to the earliest release there that you can identify that may refresh your recollection and tell us what happened that night.

A. I recall having read this story and this is noted as XAB, and I don't recall whether I was the one who put it on the wire or not.

Q. What is the timing on that?

A. 3:45 a.m., on the morning of October 1st.

Q. Who handled the incoming calls to the New Orleans Bureau that night?

A. I don't know. There were several people.

Mr. Watts: Now, if Your Honor please, in connection with this, I would like to read that communique, XAB, to the jury, but it will involve considerable shuffling of papers and if it is acceptable to the Court, I would like to pick that out over the evening and read it the first thing in the morning, referring back to this portion.

The Court: All right.

Mr. Cravens: Is that the only number you have got on that?

Mr. Watts: That's the only one I have so far.

[fol. 1776] Mr. Cravens: I mean is that the only number designation you have, just XAB?

Mr. Watts: That's his designation.

Mr. Address: It's capital X dash capital a parenthesis small b parenthesis close.

Q. What is the timing on that?

Mr. Gooch: Where are you reading from now?

A. 3:45 a.m., on the morning of October 1st.

Mr. Watts: I am reading—

Mr. Gooch: Mine shows 3:54. I don't know whether you are right or not.

Mr. Watts: 3:54 is what it is.

Mr. Address: 3:54. Isn't that what I said? I'm sorry. I reversed it. 3:54 a.m., on the morning of October 1st.

Q. Who handled the incoming calls to the New Orleans Bureau that night?

A. I don't recall. There were several people.

Q. Do you know any of them?

A. I would know anyone who was there but I don't recall who was on duty at this time.

Q. Could you give us the name of anyone that you do know that was on duty?

A. No.

Q. What was the first you heard that night that Walker

[fol. 1777] was alleged to have led the charge against the U. S. Marshals?

A. Well, these stories here are out of order and I don't recall the time.

Q. Have you ever heard of anyone other than Van Savell who reported or has purported to have seen General Walker lead a charge on the night of that riot?

A. Normally I wouldn't.

Q. So the answer is no?

A. No, it isn't no.

Q. Well, what is it?

The question is, please, sir, have you ever heard of anyone other than Van Savell that purported to have seen General Walker lead the charge? Just say yes or no. I think you can answer that yes or no.

A. Well, it's like the question, "have you stopped beating your wife?"

Q. No, it isn't.

A. It is to me. Could you rephrase it?

Q. Did you hear that Van Savell reported that he had seen Walker leading the charge?

A. Yes, sir.

Q. Did you hear anybody else other than Van Savell make such a report?

A. Not to the New Orleans Bureau.

[fol. 1778] Q. Have you heard anyone, to the New Orleans Bureau or elsewhere, that anyone else made such a report, that Walker was leading the charge?

A. I understand there have been reports.

Q. Could you give us the name?

A. No.

Q. I mean of any individual who made such a report?

A. No.

Q. Where did you understand that there had been such reports?

A. Just rumors, reports that had drifted to the Bureau since then.

Q. That have drifted where?

A. To the Bureau.

Q. Has anyone made an investigation of such reports?

A. I don't know.

Q. So that you at this time know, or I should say, do you know at this time of any individual other than Van Savell who claimed that he saw Walker lead the charge?

A. You mean person?

Q. You personally?

A. No.

Q. As of October 1, 1962, from your observation of the news bulletin that went out through the office where you were working, was the news disseminated that Walker had [fol. 1779] led a charge of rioters on Mississippi University on the night of September 30th?

A. Whatever is contained in these stories, it was disseminated.

Q. Did you hear anyone in the Associated Press Bureau or anyone connected with the Associated Press ever at any time discuss the fact that UPI reporter, Mr. Al Kuettner had issued a report in form as I point out to you now on Page 32, of Mr. Kuettner's deposition, starting with Line 17?

A. I have never seen this before.

Q. Have you ever heard of such a report being issued by the UPI wire service?

A. No, sir.

Q. As far as you are concerned, then, you never heard any question as to the veracity of the Savell report?

A. No.

Q. Where were you assigned from September—I mean from October 1 through October 6th, 1962?

A. To the New Orleans Bureau.

Q. Were you doing the same type of work there that you were doing on the night of September 30th?

A. Yes, sir.

Q. During that period of time did it come to your atten-

tion in your official position as evidenced by the certified [fol. 1780] copy, or copies, of the original complaint of the United States against Edwin A. Walker that Van Savell had furnished to the Government the information upon which its complaint was filed against Walker?

Mr. Gooch: If the Court please, I don't know what relevance this has to the case.

The Court: Let me look.

Mr. Gooch: But it's far afield from anything—I don't know what limits we are going to on rebuttal. This does not occur to me to be rebuttal testimony and I object to it.

If he wanted to put something in in his case in chief, but this is not rebuttal of anything that I know of.

Mr. Watts: This man is an official of the Associated Press and it's rebuttal against all these witnesses that have testified.

Mr. Gooch: Mr. Watts, let me finish my objection.

The Court: Just a second, Mr. Watts. Go ahead, Mr. Gooch.

Mr. Gooch: There is no pleadings to support any such issue as now is sought to be taken before this jury, and for the further reason that in connection with the filing of the Complaint, the witness, whoever he has, has no choice as to whether his name is put on a Complaint or [fol. 1781] not, or a list of witnesses; it's done entirely by the law enforcement officers.

Mr. Watts: I will save the controversy and withdraw it. Question on Line 22.

Q. Were you at a later time assigned the responsibility of covering a sanity hearing involving General Walker on November 21st and 22nd, of 1962?

A. In part, yes.

Q. Who else was responsible for that?

A. Van Savell.

Q. And were you and Van Savell collaborating in the coverage of that sanity hearing?

- A. I would say divided responsibility.
- Q. To whom did you look as your immediate superior?
- A. You mean in Oxford?
- Q. Anywhere?
- A. That would be to the Bureau Chief in New Orleans.
- Q. That was Ken Davis?
- A. Yes, sir.
- Q. What order did he give you when you went to Oxford?
- A. To cover the hearing.
- Q. And where did you stay in Oxford?
- A. At the Ole Miss Hotel.
- Q. Did you encounter Van Savell there?
- [fol. 1782] A. Yes, sir.
- Q. Did you visit with him concerning this incident?
- A. Did I what?
- Q. Did you visit with him concerning the Walker incident, discuss it with him in any way?
- A. No.
- Q. You mean you went to Oxford to cover this hearing and met Van Savell, who had written the original report, and didn't have a word of conversation with him about what he had seen and what he had written?
- A. No, sir.
- Q. Where did you first see Savell?
- A. Where?
- Q. Where in Oxford?
- A. I don't recall. Possibly at the motel.
- Q. Where was he staying?
- A. I assume at the motel.
- [fol. 1783] Q. Did you see him there?
- A. At the motel?
- Q. Right.
- A. Yes, sir.
- Q. What did you say to him and what did he say to you?
- A. About what?
- Q. About anything.
- A. I don't recall.

Q. Do you recall anything? At all you said to him or he said to you?

A. No.

Q. You mean you have not one iota, not one solid recollection of the conference you had, or conversation you had with Savell when you went to report on this hearing?

A. Why no.

Q. Did you arrive the day of the hearing, or the day before?

A. I would have to check my work schedule to find out.

Q. What did you think of General Walker when you went up there—before you went up there—

* * *

Mr. Watts: I think that is probably not—
[fol. 1784] Mr. Gooch: Go ahead and read it.

* * *

Q. Before you went up there did you have any idea about him?

A. No.

Q. Had you read anything about him, or have any concept about him at all?

A. Why naturally I had read stories which had appeared. He was prominent.

Q. All the stories you had read were adverse to him, weren't they?

A. I don't recall any. Purely objective.

Q. You were not one of his admirers?

A. I have no feeling toward him either way.

Q. You were just completely negative, have no feeling pro or con?

A. Naturally.

Q. And you were performing your duties?

* * *

Mr. Address: You missed one.

Mr. Watts: Skip to the next one.

* * *

A. Why sure.

Q. Now, do I understand that you arrived there the day before the hearing?

[fol. 1785] A. I didn't say. I said I would have to check my work schedule.

Q. And when and where can you check it?

A. I was probably on overtime and my overtime blanks are at home.

Q. Well, would you bring those with you tomorrow?

A. What time?

Q. Whatever time you come. Let's see. What time do you think you will arrive?

A. It will probably be in the afternoon. I think that is about the only plane connection.

* * *

Mr. Gooch: If the Court please, in the interest of time, I can't see any rebuttal in this.

The Court: What is the purpose of a lot of this?

Mr. Watts: The purpose of a lot of this, if Your Honor please, they have brought in a lot—a lot of witnesses. I won't comment on the testimony, Your Honor heard them, and here is a man in the Associated Press, New Orleans Bureau, one of the officials.

The Court: I am not talking about—

Mr. Watts: And the purpose of it is to show the confusion and the disafusion (sic) of information that circulated about the district office where this thing was all being related form.

Mr. Gooch: If the Court please, we are trying a case about a story that we admit Van Savell wrote. I don't know the purpose of going a long discourse about what was discussed after the story was written.

The Court: I think, Mr. Watts, you can reduce a lot of this.

Mr. Watts: I think perhaps I can skip some of it as I go along.

The Court: Do that and I will overrule the objection for the time being.

Mr. Watts: Let me have a quick look then. A lot of this is preliminary, and of course this was a discovery deposition, and a lot of the things there I have since learned.

All right, on page 156, line 19. This is offered for the purpose of showing either malice or reckless disregard of the truth.

* * *

Q. Did you ever at any time during your reporting of the Walker hearing on November 21st and 22nd bother to go to the Clerk's office and check the file to see what issues were involved in the hearing you were covering?

A. I believe Savell filled me in on it.

[fol. 1787] Q. What did he say?

A. I don't recollect at this time.

Q. And you didn't consider it worthwhile yourself to go in and check the file?

A. I depended upon him.

Q. I see. Are you sure of that?

A. Positive.

Q. Did Savell tell you that he had been listed on the Government's complaint as a complaining witness?

* * *

Mr. Gooch: If the Court please—

The Court: That wouldn't have anything to do with this.

Mr. Gooch: The Jury should be instructed not to regard that. A witness has no earthly way—

The Court: Ladies and Gentlemen, you are instructed not to consider that in any way. A witness doesn't have any choice of whether or not he is going to be called as a witness. That is not up to him. That is up to the governmental agency involved.

Mr. Watts: I will skip on over here.

The Court: I tell you what I think I will do. I believe I will go ahead and recess and let you look over the depositions tonight.

Mr. Watts: All right. That will give us a better chance [fol. 1788] to eliminate preliminaries.

The Court: Ladies and Gentlemen, we will recess until 9:00 o'clock tomorrow morning.

(Thereupon, at 4:25 p.m. an adjournment was taken until the following morning, Thursday, June 18, 1964, at 9:00 o'clock a.m.)

[fol. 1791]

PROCEEDINGS

The Court: Good morning Ladies and Gentlemen.

The Plaintiff had a witness which he wanted to offer but he isn't here and I told him we had waited what I considered to be a reasonable length of time for him. So what says now the Plaintiff?

Mr. Address: The Plaintiff closes.

The Court: What says the Defendant?

Mr. Gooch: I would like to offer in evidence, if the Court please, two instruments which are—will you mark this, please, Mr. Nuss, as the Defendant's Exhibit, next number, and this.

(Thereupon, Defendant's Exhibit 30-A and 30-B, were marked for identification.)

Mr. Gooch: This will be 31.

(Thereupon, Defendant's Exhibit No. 31, was marked for identification.)

Mr. Gooch: We offer in evidence at this time news releases of the UPI under dateline of October 1, 1962, in connection with the testimony of Al. Kuettner, of United Press, who testified by deposition.

The Court: What numbers are those?

Mr. Gooch: Numbers 30-A, 30-B, and 31. I will read excerpts from them.

The Court: They are admitted.

[fol. 1792]

EXCERPTS OF DEFENDANT'S EXHIBITS NOS. 30-A, 30-B
AND 31 READ INTO RECORD

Mr. Gooch: Reading from a portion of 30-A and 30-B, which are reports of United Press International under date-line of October 1, 1962, "The Justice Department announced today that Major-General Edwin Walker, resigned Army General who has become a vocal advocate of right-wing causes, has been arrested at a roadblock in Oxford and charged with a number of offenses, including inciting rebellion.

"Walker was seen during the riots egging the students on."

And from United Press International under date October 1, 1962, this excerpt, "Students were waving the Confederate flag during a lull in the rioting. Edwin A. Walker, former Army Major-General who commanded troops at Little Rock, mounted a Confederate statue and advised the students to cease their violence. 'This is not the proper route to Cuba,' Walker, who was wearing a big Texas hat, said. The crowd jeered. Later, Walker mounted the statue again and said: 'I want to compliment you all on the protest you make here tonight. You have a right to protest under the Constitution.'"

That concludes the evidence of the Defendant.

The Court: Ladies and gentlemen, that concludes all of the evidence. Now we haven't wasted our time this morning. We have already finished preparing the Charge, so [fol. 1793] we will be ready to argue the case at 2:00 o'clock.

We will recess until 2:00 o'clock. At that time be back in the jury room, please.

(Thereupon, at 11:45 o'clock, a.m., a recess was taken until 2:00 o'clock, p.m., of the same day.)

* * *

[fol. 1794] Afternoon Session

2:00 P. M.

The Court: Ladies and Gentlemen, I will first read you the charge of the Court in the case.

(Charge read.)

The Court: Now, after argument of counsel I will deliver this charge to you and you will actually take it into the Jury room with you. I believe Mr. Address will open for the Plaintiff.

OPENING ARGUMENT OF PLAINTIFF BY MR. ADDRESS

Mr. Address: May it please the Court, I will charge on the Jury.

Ladies and Gentlemen of the Jury, we have now reached nearly the final stages of nine long days of presenting testimony. Some of it, unfortunately, we have had to rather present over and over again to see the picture. We have tried our best to bring you all of the portions of the picture, all the paint, brush, all the soap of it, and everything of the sort.

The picture is not complete.

The reason it is not complete is not the fault of General Walker and his attorneys. There is one big portion of this picture missing. That portion is to hear from the witness stand live, presented to you where we can cross examine [fol. 1795] him, the story of the man who started all this, Van Savell; the hired hand of the Associated Press who brought witness after witness, a preacher, the Dean of the college, other newsmen, radio people in here, but they didn't bring in the one man who could stand up here before you and tell you that he acted in good faith, that he thought he was writing a fair comment. That he was telling what he believed to be a truthful story, or who, perhaps, on cross examination, would break down and admit that as a sports writer with the Associated Press for about a year

he fell into this confusion and completely lost his objective and he painted the kind of picture that he wanted to paint, and he sold it to his superiors.

Why isn't he here? We don't control Mr. Savell. He doesn't work for us.

Now, there is another thing that is missing here. Another thing that is missing here. Van Thomas, the first witness who testified by deposition, the re-write man down in New Orleans told you by the deposition that he talked to their photo people up in Oxford; that they had a wire photo network set up down there in the hotel, and they were behind the Marshals where they could take at least [fol. 1796] a couple of pictures in the dark of the Marshals.

Why didn't they bring in here a single solitary picture of General Walker supposedly leading a charge of 1,000 students across that campus to attack or attempt to attack United States Marshals in an act of insurrection against the authority and the President of the United States?

Why didn't they bring those pictures in? We didn't have a photographer to do it, or a photograph network. They had it. If they could take those pictures that they offered here in evidence, I submit to you that if any such charges had been made or led by General Walker that they would have had pictures. Can you imagine, can you conceive of anything more newsworthy under high Heaven, any greater scoop that any news media could possibly have than to have a picture of a former Major General in the United States Army violating every code or canon of ethics that he had been brought up with, to lead in insurrection, a charge against Marshals of the United States right after the President of the United States had made a speech and executive proclamation.

We really submit that that didn't happen.

Now, you are asked here a number of questions, eleven of them. That is just one more than one question per day [fol. 1797] for the time we have spent here. The Court gives you some definitions. I want to call to your attention

a couple of those definitions, and point out the fact that the first one you have is "lead a charge". This paragraph defines both "lead" and "charge" and, of course, the newspaper report was that he led a charge. So that is one phrase. [fol. 1798] So that that's one phrase. "Led," means activities by a person who directs, moves to action, or encourages in some action or movement toward the Marshals or a group of body of people moving toward an objective.

Well, now bear in mind that every time anybody down here at the monument turned and walked west, that is technically speaking a movement toward the marshals.

Is it a Charge?

Where—well, I was brought up on the Charge of the Light Brigade, pickets charged at Gettysburg and Teddy Roosevelt's charge up San Juan Hill and I can't see where there was any such movement that could be defined as a charge or one that General Walker led on the campus of Ole Miss that night because there is one thing, there is one thing on which people are practically unanimous—I hesitate to say "unanimous," because I don't want to mislead you and there were so many witnesses here that, very frankly, I am not sure but what somebody testified to almost everything—but the witnesses were practically unanimous in saying that General Walker never got out of a walk; that some of them said he moseyed along and some said he milled around and some said he strolled around the campus and some said he walked here and around but the best we have ever gotten was a brisk pace—and then only by two [fol. 1799] members of the news media, people who are in the same field of endeavor as the Associated Press.

Now one thing you want to remember about this—these witnesses is, who's got an axe to grind?

Did these kids that were on the campus and for whom disciplinary action and all threat of disciplinary action has apparently passed, have they got an axe to grind or are they telling it to you, laying it on the line the way they saw it?

You saw young Sweat, Dick Sweat, the first boy that testified here today, got himself all scared of the Judge and said, "I take it back," when he was going a little bit farther afield than he ought to go.

Those boys didn't have, haven't got anything to gain by it.

Now what about somebody that's in the news field, that's on the radio or working for a newspaper where the Associated Press controls their news and where their future in the newspaper business, certainly isn't going to help them any if they have been in here fighting the Associated Press.

So bear that in mind when you consider the stories that these various witnesses told you.

[fol. 1800] Now, we only have an hour to the side and Mr. Watts is going to give you most of the details in trying to summarize the manner, so let me go on to these questions.

The first question that was asked of you, "Do you find from a preponderance of the evidence that the statement, "Walker, who Sunday led a charge of students against Federal Marshals on the Ole Miss Campus" was substantially true?

We submit to you that from a preponderance of the evidence, that question ought to be answered "No", he didn't lead a charge.

The most that anybody has said is that he was with a group who walked up—Savell's own story, by deposition, is that he started from the monument here and he walked up—where is that pointer?

Well, at any rate, he walked up on a diagonal, off at an angle here until he got up here, and then he walked along the inside edge of the circle until he got some place over in here (indicating).

And he walked. Now, a thousand people takes up a lot of room. That actually is not such a big area. It is about 500 feet across. The scale is a foot to an inch and you all can have this map, you can have it moved into your Jury

[fol. 1801] room and look at it and study it and look at the scale of things on there.

That's not a very big area. And it's full of trees, as, if you get up here close, those dots are trees, that will tell you pretty much about what kind of a place it was.

He didn't lead a charge. There wasn't a charge in the sense of the word that we think of charge and never did he lead one.

Nobody, even those who say he was in the forefront of a big mass movement, the defense witnesses, no one of them ever says that he issued any commands or purported to say, "Bring it up on the right, come up here on the left, all right, now double quick," or anything of that sort. Nobody says he issued any commands.

Now, certainly, if you lead a charge, you are telling people what to do. And we submit that Special Issue No. 1 should be answered "No".

Special Issue No. 2, "Do you find from a preponderance of the evidence that the statement, 'Walker, who Sunday led a charge of students against Federal Marshals on the Ole Miss Campus,' complained of by Plaintiff, constitutes fair comment describing the Plaintiff's activities on or about September 30, 1962, at the places described in the [fol. 1802] evidence and under the then attendant circumstances?"

Well, there isn't but one person, really and truly who can say whether what he wrote is fair comment and that's Van Savell and he is not here to tell you that, in his opinion, that was fair comment on what he actually saw.

We don't see how you could possibly, under the evidence, without Savell telling you that he thought it was fair comment on what happened, answer it yes—so we think the answer to it must be "No", that it isn't fair comment.

There was a confusion, a disorderly, disorganized confusion with lots of mad boys that had been tear gassed running up and throwing anything they could lay their hands on, but there wasn't anything of concerted action,

anything bigger than small groups of half a dozen to a dozen who were sporadically running forward and throwing rocks.

Special Issue No. 3, "Do you find from a preponderance of the evidence that the statement inquired about in Special Issue No. 1 was made in good faith in reference to a matter in which the Defendant had a duty to report to its members and then to the public"?

[fol. 1803] Well, that phraseology, of course, is very pious phraseology but it boils itself down to one thing, good faith. Whose good faith? The good faith of the man that wrote the story. Did he come here and tell you folks, "That's the way I saw it, and I was doing my best to do my duty and I think that what I said was fair comment on what I saw and certainly my intentions were good. I did this in good faith?"

You would have to speculate to say that, yes, it was good faith because you don't know from the witness who did it, who wrote it.

We say then that the answer to Special Issue No. 3, from the preponderance of the evidence, we believe, should be "No," it was not in good faith.

It is necessary to establish that it was good faith and unless you think it's established, you should answer that question, "No."

Special Issue No. 4, "Do you find from a preponderance of the evidence that in publishing the statement set forth in Special Issue No. 1, the defendant, Associated Press, was actuated by malice as that term is hereinafter defined?"

And the Court tells you that "malice," is meant ill will, bad or evil motive, or that entire want of care which would raise the belief that the act or omission complained of was [fol. 1804] the result of a conscious indifference to the right or welfare of the person to be affected by it.

" * * * * entire want of care which would raise the belief that the act or omission complained of was the result of a conscious indifference to the right or welfare of the

person to be affected by it," well, in a certain sense of the word, of course, all of us are dependent for what we believe about what goes on in the world and in our country upon what we read in the newspaper. We get to the point where, if we see it in print, we are inclined to believe it's so.

And I suppose when you come right down to it, very few of us have ever analyzed what goes on behind that and I don't imagine that there are very many citizens who have had the opportunity that you folks have had here in the course of the last nine days to see just exactly how much care or lack of care goes into the printing of a story that can affect an individual and his reputation and his standing in the community as much as this story affected General Walker.

[fol. 1805] Now, we have got a most peculiar situation here. At least I hope it is peculiar. I still want to believe in my own mind and my own heart that most of these things I read in the newspapers are so. But, in this case we have got it real clear, that this young fellow with short experience, and most of that writing sports run out onto this campus and he painted a big beautiful picture as to what happened out there. And I have always heard it said that every newspaperman wants to be an author, and many of them do achieve it.

But, I don't think they ought to start their career in their first year by writing fiction, and I submit to you that from what you have heard from this witness stand, the story Van Savell wrote out there is mighty close to fiction; that there is just lots and lots of inaccuracies on his hands; lots of things that in his excitement and in the confusion that he thought he saw and that he put down.

I am going to leave to my colleague, Mr. Watts, to point out to you the differences between the story that Savell told by his deposition, and that he told to his re-write man about when the charge occurred, and the great discrepancies there are in the stories, about when the incident took [fol. 1806] place, as to whether it was before or after the

speech on the monument, not even including the third story by Mr. Graham.

But, to me, the fact that Van Savell, with his light amount of experience, wrote this story and that nobody checked him, and that Van Thomas said that he got only one report about the speech and the charges and that Savell was the only person who ever reported, so far as he knew—no one but Savell reported the charge, and that Relman Morin, by his deposition, said that when he wrote the follow-up story he just picked it up from Savell and had no information except from Savell.

You have got a situation here where General Walker's reputation has been harmed and ruined by one unsupported, unsubstantiated, uncollaborated story, where nobody ever went back to check on the situation and see whether this story full of gory details could be backed up by anybody except this inexperienced young reporter, just one step beyond a cub reporter.

We think that to dissemble a story like that over the wires of the world without making any attempt to check up on it, we think that that comes under the heading of that entire want of care which would raise the belief that [fol. 1807] the act or omission complained of was the result of a conscious indifference to the right or welfare of the person to be affected by it.

Now, let me point this out. The mere publication of the story, the original story, is not itself evidence of malice. But, it was followed up, Relman Morin wrote another story and repeated all this, then along comes the story about when the General was thrown into the mental institution without warrant, and when the charges were ultimately dismissed against him, the slanted story that sticks out of context, the things which were unfavorable to the General, and failed to give the same circulation throughout the world to those stories that showed that the one psychiatrist said he was operating under a superior intelligence, and

the fact that those charges were dismissed without any qualification.

[fol. 1808] So we think that when you take all of those together and look at the entire attitude of the Associated Press in this case, that your answer to Special Issue No. 4, should be "Yes," they were actuated by malice.

Now malice is either of these things, ill will, bad and evil motive—I am not going to stand here and attribute an association of many newspapers all over the world to petty gossip or evil motive and so on.

We say that it is a conscious indifference to the rights of General Walker. That is what it is.

Special Issue No. 5, do you find from a preponderance of the evidence that the statement, "Walker assumed command of the crowd," was substantially true?

We think the answer to that is no. Nobody ever testified he gave any orders to the crowd. There is nobody that ever testified that anything more than a fact that with a group around him he was walking around that campus, and nobody said he ever said, "This way, come on, or let's go," or anything you would do if you were assuming the command of the crowd. We think the answer should be "no".

Special Issue No. 6, similar to Number 2. Do you find that the statement, "Walker assumed command of the crowd," was a fair comment.

[fol. 1809] The man that could tell you whether it was a fair comment isn't here. He hasn't stood up and been counted. He is unwilling to let this jury pass on him, his truth, his veracity, his—how he answers questions, whether he dodges, whether he hesitates, whether he equivocates, whether he has the appearance of truth like most of these young fellows from the University of Mississippi before you. Why you could look at those people and tell they were telling the truth.

That is what you haven't had the opportunity to do with Van Savell, and that is what the Associated Press failed to produce for you.

Number 7, do you find the statement made in Special Issue No. 5, was made in good faith. That is the same thing. We think the answer ought to be no. The man who could say it was in good faith is not here, the man who wrote it didn't come in here and tell you he did it in good faith.

[fol. 1810] And "If I hurt somebody, I am sorry."

Do you find that the statement "assume command" was actuated by malice. And the same definition of malice. We say again that the statement was made with gross indifference to the rights of General Walker.

Number 9, what sum of money do you find would compensate him. What sum of money would compensate him for the damage done to the reputation and honor of an Army General accused of insurrection. I don't know, that is the kind of thing that is so very difficult to say. One of the things that is almost impossible to say, by me.

However, we do know the story had wide circulation here through the Star Telegram. We know the Star Telegram is the Bible of the cattle country and West Texas. We know that out in the West here everybody reads the Star Telegram. We know that it's circulation is widespread. How many people read each one of these newspapers? I don't know. But, I strongly suspect there are very few homes that take more than one copy of this paper, and I suppose that almost everybody up to reading age reads that paper. Must be three or four people read every issue, every copy of it, on the average.

[fol. 1811] If the paper has got a circulation of a quarter of a million, say 250 thousand, and four people would read it, the damage that the General is asking is one buck, one dollar bill for everybody that saw and read these false stories about him.

Approximately—using those figures, and I think they are not unreasonable, that is about one million people that saw it in the Star Telegram. That is what he is asking for, one dollar for everybody that saw the story that hurt him, that ruined his reputation, creating a definite impression that

here is a man, who has served his country all these years now leading an insurrection.

The question of the right of somebody who has been in the United States Army to subsequently withdraw from that Army, resign his commission and do battle against the United States has been forever settled one hundred years ago. The Civil War said you can't do it.

So, today the General Walker was doing, was leading an insurrection against his country, is a damaging statement, for a man in his position, and one for which he should be compensated.

[fol. 1812] Special Issue No. 10, do you find that this is a case in which exemplary damages should be awarded. And exemplary damages are, as the Court defines it to you, penalty or punishment.

They are in your judgment, to be awarded if you want to say to the Associated Press, "Don't do it again; don't do it again."

"Don't ruin a man's reputation without checking your story before you put them out all over the world."

We think the answer is yes, that it is a kind of a case where the punitive or exemplary damages should be allowed, and what they amount to is what you are asked in Issue No. 11.

Ladies and Gentlemen of the jury, I wouldn't attempt to tell you what amount of damages to find to punish the Associated Press, that is, if you believe he is due.

But if you view this evidence as I view it, and as I think it comes to you from the witness stand, I think you will agree with me that it is a bad, bad situation, and our knowledge of what goes on in the world can be made to depend on an unchecked, uncollaborated story that paints a man with a long career of patriotism and service to this country as, in essence, a traitor, leading an insurrection. Thank you.

[fol. 1812a] OPENING ARGUMENT OF DEFENDANT BY
MR. GOOCH

Mr. Gooch: May it please the Court and Ladies and Gentlemen of the Jury. Mr. Address, as I view it, has spent most of his time critical of our not bringing Van Savell here to testify in this case. I would respectfully call to your attention the fact that the Plaintiff in the case, through his Chief Counsel, Mr. Watts, took Van Savell's deposition, in which he was tendered to him to ask all of the questions under the sun that he might want to ask him. You heard the testimony offered by the Plaintiff in this case in which,—and we read all of the answers of Van Savell to the Jury, on the questioning by Mr. Watts, Chief Counsel for General Walker.

He says we brought no photographs. Believe you me, if we had had them we would have brought them. We couldn't find any. We brought all we could find. And I might also state to you, Ladies and Gentlemen, that from what we understand and from the witnesses' understanding, it was not very healthy to have even a pen and pencil out there on that campus that night, let alone photographs to try to take a picture.

He also says that the Associated Press should be criticized because they didn't put out that story of the type that during the sanity hearing of General Walker, that General [fol. 1812b] Walker was operating under a superior level of intelligence.

Ladies and Gentlemen, we introduced in evidence in this case, which we did not read to the Jury, but which you can take into the witness (sic) room, if you desire, a verbatim—verbatim report of Dr. Stubblefield's report, wherein it contains that phrase. The Associated Press didn't skimp by just saying "That is what one of the psychiatrists testified to," Ladies and Gentlemen. Associated Press carried the entire story, or the entire statement of Dr. Stubblefield, which contained that statement. It is there and I will not be challenged on the fact that it was introduced in evidence in this case.

Ladies and Gentlemen, at the outset of this case Mr. Watts, the lawyer from Oklahoma City, stated to you, and I quote, "A Deputy Sheriff who will be here to testify will testify that at no time did Walker lead or participate in anything remotely approximating a charge."

That is a direct quote from Mr. Watts' opening statement to this Jury.

He also said, "The Associated Press deliberately smothered the testimony that Dr. Stubblefield's report showed [fol. 1812c] that Walker was of superior high intelligence." That is a direct quote.

I have answered that there is an exhibit here wherein the Associated Press published the entire Stubblefield report, and I will get down further to Mr. Watts' promise to you in the opening of this case, that he had a Deputy Sheriff who would be here to testify, and would testify that at no time did Walker participate in anything remotely approximating a charge.

Ladies and Gentlemen of the Jury, with this nine days of testimony in which there have been some thirty witnesses heard, including depositions, the case has now died down to three simple issues. One,—and I am paraphrasing—did Walker lead a charge?

Two, as to whether or not General Walker, by his actions and the reasonable inferences you draw based on the Court's definition, assume command over a crowd there on the campus of Ole Miss.

As to whether those statements are true.

Basically that is where the case now stands, and goes into your hands.

If I may, and I don't want to impose on this Jury, I would like if I may to review some of the testimony that has been [fol. 1812d] developed before you.

You cannot decide this case on the statement of lawyers, nor can you decide the case on the innuendoes the lawyers make and the inflection of their voices. All lawyers are advocates. It is their duty to present to you all the evidence

available in a way that it will be understood by all persons hearing the testimony.

Let's start out now, if I may, and I shall do my very best to stay within the record in this case as that is, of course, the way in which this matter must be determined, under the instructions of the Court.

[fol. 1813] General Walker, in November of 1961, after a distinguished career in the Army, having attained the rank of Major General, a position that not many men attain—it has to be attained on ability, on leadership study and you have to be a man of those attributes, in my opinion, to reach that high a standard in the Army of the United States—General Walker, for some reason, he explains it, he says, among others, he said, he resigned in November of 1961, and I quote him again, this is General Walker's testimony, "I resigned in order that I might speak out."

Now, I don't criticize in any way General Walker or any other man who says he has a right to speak out.

The Constitution of the United States says a man has a right to speak out. The Constitution refers to freedom of speech and freedom of press. I assume that's to what General Walker alluded.

Now, let's take step by step, though, if you will, please, and see if it was speaking, speaking out, that he was doing or whether there was another connotation, particularly—and I will confine myself now—to the Mississippi incident.

The evidence is quite clear that by September 25th, 1962, [fol. 1814] it was evident to everybody in the world that the highest Court having jurisdiction of this matter had said that Meredith was to be entered as a student at Ole Miss University.

The court had said so, an injunction had been granted against all of the officials of Mississippi and others having knowledge of that Court decree.

What do we find? We find General Walker—and this is his testimony, if you please—calling, as he said he did, a Shreveport radio station and issuing the following statement:

Now, this statement has to come to a listener in the concept of how the listener wants to receive it, but by the same token there are some words that have such a clear meaning that they could not be misunderstood by anybody.

Let's live again, if we will, or hear again a portion of General Walker's address that he asked the radio station over in Louisiana, Shreveport, to carry, his first sentence:

"It is time to move." Now, does "move" mean to anybody in the world that he is to talk?

If you can reach that connotation from that word "move", let's go further and see how General Walker, in his statement, interpreted it:

[fol. 1815] "We have talked, listened and been pushed around far too much by the anti-Christ Supreme Court. Rise."

Now, if there was any doubt in anybody's mind as to what General Walker meant when he said "move" he certainly clarified it in the following portion of his statement.

He goes on down, "Bring your flag, your tent and your skillet. It's time. Now or never. The time is when and if the President of the United States commits or uses any troops, Federal or State, in Mississippi."

I don't think that that needs too much argument as to the connotation to be placed on his statement when he invited the world at large to move.

[fol. 1816] But let's take and see if it calmed that down any. Here is an interview—oh, let's make this chronological. He spoke from Dallas on the next night and it was almost identical, when he said the same things:

"We have talked, listened and been pushed around far too much by the anti-Christ Supreme Court."

Then he goes on down to talk about the flags, the tents and the skillets. And then he's asked this question, and do you remember the TV tape on this, "General, if the forces go, would you lead this force?"

General Walker says, "When I introduced this," well, there is stars, there is pauses, so to fill up those pauses,

we play to you the full speech and the moving mouth of General Walker.

“General, if the forces go,” inquired a reporter, “Will you lead this force?

for patriotic Americans for patriotic Americans all over the nation. It is a movement of freedom. I will be there. Rise to stand. Now is the time to be heard. Thousands strong from every state in the Union, rally to the cause of freedom.”

Again he says, “We have talked too much. Let’s rise. Let’s get along.”

On the 28th of September—mind you, these follow in [fol. 1817] the sequence from September 25th, the day when Meredith was forcibly barred from the University of Mississippi by the Governor, or Lt. Governor Paul Johnson, under the orders of the Governor, all of which General Walker knew—he testified that he knew that.

He goes on to say in this interview, “Sir, what has been the general reactions to your plans of going to Mississippi with troops of citizens? I am sure you have heard from quite a few people throughout the United States.”

General Walker, quoting, “We are just utterly swamped here with telephone calls and offers of help and assistance and notifications that people are moving to Mississippi and that they want to assist in every way possible, that they are opposed to what the Administration is doing in opposing the Governor of Mississippi.

“I can assure you that the telephones never stop ringing, calls are backed up six and eight deep. People are telling me it’s taking five or six hours even to get into our telephone system and we have seven phones in the house.

“Messages are coming in offering support of groups of 10 to 20 to even 2,000.”

[fol. 1818] “Interviewer: Do you have plans, sir, for rallies if and when the Federal troops are entered in Mississippi of a certain point in the State where all your followers will then meet with you to protect the integration, if it does comes about?

“General Walker: I intend to join the movement. There are thousands of people I am sure already in Mississippi. Probably hundreds of thousands there that are already standing beside their Governor Barnett.

“The best place to do this would, of course, be the Capitol or at Oxford, at the University, since that is where the issues involved, and I am sure that is where most of the movements will move to, to show the grass roots in this movement.”

Let’s go a step further, if you will, please. That’s Exhibit 12.

Down at Jackson, Mississippi, where he had gone on the 29th, after he had received a call, as testified from Mr. Leman, who was in Mississippi reviewing the situation for him, he has an interview at the Sun & Sands Motel. Here is what he said:

“I am in Mississippi beside Gov. Ross Barnett. I call for a national protest against the conspiracy from within. Rally to the cause of freedom in righteous indignation, [fol. 1819] violent vocal protest and bitter silence under the flag of Mississippi at the use of Federal troops.”

He didn’t stop at Federal troops. “This day is a disgrace to the nation in dire peril, a disgrace beyond the capacity of anyone except its enemies. This is the sovereignty of the crucifixion by the anti-Christ conspiracy by the Supreme Court in their denial of prayer and their betrayal of a nation.”

That was from Jackson. This is still a part of this matter.

The next one, if you will, please, and I don’t want to bore you, but to merely get this in context. This is the one that General Walker made from his home in Dallas around 9:00 o’clock, he testified, on September 30th, 1962, and again at the Ole Miss Motel that afternoon at his press conference when he said—and the heading of it, “On to Mississippi,” here is what he said:

“As the Armed Forces of the New Frontier assemble to the north, let history be witness to the courage and deter-

mination that calls us to Oxford to support a courageous Governor. His lawful stand for state sovereignty is supported by thousands of people beyond the state borders [fol. 1820] now on the way to join you at Oxford.”

Now, nobody sought out General Walker to issue this call after these orders had been confirmed on September the 25th. By General Walker’s testimony, he called the various news media and suggested to them that he had something to say that was of vital interest to the people within the sound of his voice over the various news media.

At that time he was calling upon the news media, of which the Associated Press is one, to let the world know that he was on the move, that he was going to Mississippi, that he was going to join the movement, that he was going to stand behind Governor Ross Barnett.

[fol. 1821] He testifies in his own testimony that at the time he got to Mississippi, that at the time he got on the campus of Mississippi, that he still knew that Governor Barnett was opposing the entry of Meredith and that he had so far, or thus far, barred Meredith’s entry into the campus of the University of Ole Mississippi by force.

General Walker, after he got to Mississippi—and let’s take his version, not anybody else’s—he calls on the Sheriff, and let’s see what General Walker said:

“I tendered my services to Sheriff Ford.”

At that time he testified that he knew that the National Guard of Mississippi, the police officers, the Constables and the Sheriffs were under the direct control of Governor Ross Barnett.

He testifies that he knew that those three governing bodies or law enforcement bodies had successfully, under the direction of Governor Barnett, barred the entrance of Meredith to the campus of the University of Ole Miss. He tenders his service to Sheriff Ford.

Now he has stated that he heard that there were troops in the vicinity. Yet, he was bound to admit, because of his training as a soldier, that troops in a matter such as this

could be called out only by the President of the United States.

[fol. 1822] He first testified—and I quote him correctly—that he didn't know for sure that Meredith was on the campus when he went there at the time the rioting was going on, on September 30th, 1962.

Yet he finally did admit, because he knew he had to, that he had been told by the representative of the Governor at the Sheriff's office around 6:00 o'clock that night, that Meredith was on the campus.

He was, also, told—and he admits that—he heard President Kennedy's speech that night, the very first of President Kennedy's speech, advising the nation that Meredith was on the campus at the University of Ole Miss.

So at that time, at that time, Ladies and Gentlemen, he knew that Meredith was in the residence on the campus of the University of Mississippi.

What did he do? He said he heard there was some trouble out there and he went out to see it as an observer.

Now Ladies and Gentlemen, let's see if he was an observer and let's see what his actions were and how he had contrasted his actions.

When General Walker was commanding the troops in Little Rock in 1957, at the Little Rock integration, he identified from this witness stand a speech he made there.

[fol. 1823] He refers to the question of integration. "This decision," I quote from General Walker's speech, "This decision by the highest court in the land is, of course, an authoritative interpretation of our Constitution. It is binding on all citizens and government officers, both State and Federal and may not under our law be changed except by amendment to the Constitution.

"What does all this mean to you students? You have often heard it said, no doubt, that the United States is a nation under law and not under men. This means that we are governed by laws properly decided upon by duly con-

stituted authority and not by the Decrees of one man or one class of men.

“Since this is true, it means that we are all subject to all the laws, whether we approve of them personally or not and as law-abiding citizens, have an obligation in conscience to obey them. There can be no exceptions.

“If it were otherwise, we would not be a strong nation but a mere unruly mob.”

[fol. 1824] Let’s take up next, if you will, please, what President Kennedy said on this same subject, and I think you will note a rather strong similarity. I quote from President Kennedy’s speech that General Walker heard at the Mansion House Cafe, 8:00 o’clock on September the 30th, 1962:

“Americans are free, in short, to disagree with any law, but not to disobey it. For in a Government of laws and Government of men, no man, however prominent or powerful, and no mob, however unruly or boisterous, is entitled to defy a Court of Law.

“If this country should ever reach the point where any man or group of men by force or threat of force could long defy the commands of our Courts and Constitution, then no law would stand free from doubt, no Judge would be sure of his Writ and no citizen would be safe from his neighbors.”

Now, Ladies and Gentlemen, it was with that speech of the President which is very closely similar to the one that General Walker made in Little Rock, Arkansas, in 1957, to which General Walker gave utterance, according to his testimony, “nauseating, nauseating.”

At about that time he says that he heard of this trouble on the campus, he went out to see. Did he go out to see? [fol. 1825] Ladies and Gentlemen, he testified that he got on the campus, that he asked or sought what was going on. The testimony shows that he was informed that it had been going on in a riotous manner for about an hour.

He was asked in connection with casualties what he said, one witness said he said, "Good, good." He said he does not know whether he said that or not. That's his testimony.

We find, then, according to General Walker's testimony, reluctant though it was, that he did go toward the Marshals with a group.

The testimony on that varies from anywhere from five to six, according to the witnesses, to fifteen to twenty-five to fifty to seventy-five and on up to the astronomical figure of a thousand. I don't know. I wasn't there.

The witnesses have testified, though, without any conflict on those that saw General Walker that he made a movement toward the Marshals that night, before he made his speech in which some number of followers went with him.

Now, let's see what this Deputy Sheriff that Mr. Watts so dramatically portrayed says. He says "The Deputy Sheriff who will be here to testify, will testify at no time [fol. 1826] did Walker lead or participate in anything remotely approximating a charge." This Deputy Sheriff whom he identified in his pleadings, a man by the name of Witt.

And I take some of this statement, in getting at the pertinent parts:

"Somewhere along during this time, it seemed that all of the State Highway Patrolmen left the campus, as did also some of the law officers, that is, Sheriffs or Deputy Sheriffs, but I stayed on to render any assistance that I could.

"Sometime around 8:00 o'clock or a little later, I began to hear different ones say, 'Here comes General Walker'."

I did not know him prior to that time. And when I first saw him, he was walking toward the Confederate monument, which was several hundred yards in an easterly direction from the Marshals at the Lyceum Building.

"People in the crowd around General Walker began to say different things. Several of them began to say 'We have got a leader now,' or 'Here is our leader.'"

“I had on my deputy sheriff’s badge and shortly after General Walker arrived in the territory of the Confederate [fol. 1827] monument, he came up to me, shook hands and said, ‘I would like for you to deputize me, to help in this matter.’ I told him I did not have authority to do that, that I was a Deputy Sheriff, was not a Deputy in that county.

[fol. 1828] Let’s pause right there a moment. Earlier in the day, General Walker had tendered his services to Sheriff Ford. At that time Sheriff Ford, according to General Walker, was under the orders of Governor Ross Barnett, to keep Meredith from becoming a student on the campus of Ole Mississippi. In his speech that night, and you will all recall that, he told them that Barnett had not sold them out, that Birdsong had acted contrary to his wishes and to his orders and had let the Marshals on the campus and, therefore, was disobeying the wishes of Governor Barnett.

General Walker now says that that was facetious. That’s the first time we have heard that. The Deputy Sheriff was dead serious, apparently, from what he’s testified to.

Let’s go on with Talmage Witt, the Deputy Sheriff. “I was close to General Walker all the time, from the time he first arrived until a considerable time thereafter.

“Some few minutes after this, various people were asking General Walker to lead them and to make a speech and tell them what to do. Then after a while, he got up on the side of the Confederate monument and made a talk.

“I cannot recall all of the things he said, but I do re- [fol. 1829] member these things: ‘Violence is not the answer. Cuba is that way,’ and pointed south. He said, ‘Protest, protest all you want to. You have a right to protest. They may run out of gas.’ He said, ‘Help is on the way, thousands are coming.’”

Does that ring true with the statement, when he asked thousands to come, ten thousand from every state to join him, to stand beside Governor Ross Barnett in Mississippi?

“A preacher had been following General Walker,” again quoting from the witness, “asking him not to lead the crowd but to get them to stop what they were doing. This preacher said to Walker, ‘They will listen to you and do anything you say. Please get them to stop and go home.’”

That’s pretty nearly what Reverend Gray testified to.

“And Walker said, ‘I am here to watch what happens. I am not interested in stopping it.’”

A portion of that was confirmed by Reverend Gray.

“Walker said, ‘You make me ashamed I am an Episcopalian.’” And talks about the threats to the preacher and he took him away.

“After some in the crowd had asked Walker if he would lead them, he stepped down from the side of the monument [fol. 1830] and said, ‘Keep protesting and see if we can get closer. . . .’

“He then started towards the Marshals and the crowd of at least a thousand by that time followed him. This crowd was armed with sticks, rocks, Coca-Cola bottles and things as I have heretofore said. They seemed to have everything they could get their hands on. And when they got close enough, they would throw towards the Marshals.

“When the front of this crowd which General Walker was with got within about 200 feet of the Marshals, they fired another blast of tear gas and the crowd ran back with General Walker with them.”

At all times during this, I was near or in sight of General Walker and stayed in sight of him until 5:00 a.m., the next morning.

“On a number of occasions, Walker would walk toward the Marshals or in that general direction and whenever he did, a large crowd would follow—would fall in behind him and follow him. In fact, wherever Walker went, the crowd followed.

“During the time after the first march towards the Marshals with Walker at or near the lead, I heard different statements, many of which I cannot remember. But at

one time in talking with the group about the protest they [fol. 1831] were making, he said, 'Good, good, keep it up.'

"I heard people asking how to snuff out tear gas and so forth."

He goes on to describe the various rioting that he saw there that night. Now let's see just what must have been in the minds of those people, students, or what-not, at the time General Walker arrived on that campus, according to his testimony, around 8:45 p.m., on September the 30th, 1962.

Here was a group of howling, mobbing students. [fol. 1832] General Walker was immediately informed of what was going on. He could see, and he tells you he saw that they were rioting, there were bricks being thrown at the Marshals. What does he do? Let's take a look at the situation, from the people that he accosted there on the campus there that night. These boys were of an impressionable age. If they were not students, so they were Walker's Army. These boys on the campus, 17, 18, 19 and 20-year-old boys, wrought up about this thing, they felt very strongly because their Governor had been challenged. They felt that they had been let down. What a beautiful position for a man to take command over the crowd, to walk in, a former Major-General of the United States Army, who had announced publicly on four occasions that he was coming to Mississippi to stand beside Governor Ross Barnett and prevent the entry of Meredith into the University of Ole Miss, what a thing to—what a lift it would have made, what a lift it would make to anybody to have a man of that stature stride on the campus, an imposing figure in the midst of riot and turmoil.

He says they didn't welcome him. Yet he admits to all persons concerned they said, "Here is our leader. Our leader, lead us," said, "will you lead us up to the steps"? He says he didn't. Let's take his action.

[fol. 1833] He says he went up there with the group. He knew that they were throwing rocks, bricks, stones and

bottles at the Marshals. What more encouragement to the group of this impressionable age, than to have the man of the stature of General Walker walk in there amidst them, discuss their problems with them, and then tell them to keep on protesting, keep up the protest, you have every right to protest under the Constitution of the United States. If there is going to be any bloodshed let it be on the hands of the United States Marshals. We have got casualties. You will be heard around the world.

I can't think of any more inviting statement than for a man of that stature to walk on that campus with that group, cast himself in the role, haven't I promised them support, and at that time, the witnesses, some of them, say that he answered, in response, "Where are your troops?"

"They are coming; they will be around when necessary."

As to whether or not they were students or not, I don't know. I can't prove it, I can't attempt to prove that they were General Walker's students, but there is testimony in this case by Dean Love that 160 were arrested and of that [fol. 1834] group 25 were students. Mathematically, you can figure that only 17 percent of those arrested were students. I am not trying to project that over the entire campus. There is no way of knowing that, but statistically that is what it shows. We do not—we do know, according to Dean Love, that there was rifle fire, bullets whistling around the heads of some people. We know that a number—I believe Dean Love said 10 or 11 bullet holes were imbedded in the front of that Lyceum Building. We have General Walker's statement that what he said from the monument—I would like to quote that, if you please.

General Walker said—here is General Walker's quote. "I decided to make a speech to about 150 students at the monument."

Now mind you, Ladies and Gentlemen of the jury, the Court has not made inquiry in this matter as to whether or not the charge was before the speech or after the speech. It says was the charge made?

Therefore, under the Court's charge, it is whether or not in your opinion, according to the evidence, the charge was led by General Walker.

You heard him say that—this is what General Walker said, that nobody came to Mississippi for violence, that no violence was intended. Now how does that contrast with [fol. 1835] some of the statements of some of the witnesses attempting to testify on General Walker's behalf that no violence—that there should be no violence, that they should not engage in violence.

Now these are General Walker's words. This is the past tense. No violence was intended. Yet at the very time he was making this statement about no violence intended, the rocks were being thrown, the gas was being shot, and the various activities you heard so graphically described that have been laid out before you were going on. Let's see what else. "If there is any blood shed in Mississippi, or Oxford, let it be on the hands of the Federal Government. Cuba that way." He says he told them, and this is where he says he was trying to appease them, he told them that the "Governor's orders and his desires have not been carried out."

He says who violated them? He leaned over, and he said, "Birdsong."

Now, Ladies and Gentlemen, is it conducive to quieting down a rioting mob to tell them that the Governor's orders that Meredith was not on the campus, that Meredith still shouldn't be there, that Governor Barnett was saying even at that moment, according to General Walker, "It is my order and desire that those Marshals and Meredith not [fol. 1836] come on that campus. The man who sold you out is Col. Birdsong."

I can't imagine any more of a call to arms than to tell those students who had been supporting their Governor Barnett throughout all this time, who had backed him in every way, to keep Meredith out of that University, than to tell them "Barnett says still keep him out; still keep him out."

General Walker says Barnett has not changed his position. He has not sold you out. It is Birdsong.

Now we get down to the conflicting testimony in this case. Not too much conflict. I am not going to try to quote from the testimony of these some 30 witnesses who testified here personally, or by deposition, but at least three-fourths of them told you that all that they saw on the campus that night, they put General Walker walking in the direction anywhere from a saunter to a fast clip from the monument toward the flagpole and beyond, followed by a group of that howling mob.

The Court has not differentiated, if you will notice, between the time that the Charge was made. The Court has defined very properly what a charge is, "a movement toward the Marshals," and they had the General ahead of them, and we had witness after witness putting him there. [fol. 1837] The numbers have varied, but the movement has not varied materially.

Now, Ladies and Gentlemen, again, this case is entirely in your hands. You are the Supreme Court as far as the facts in this case are concerned. You can write in this verdict that a man has the right to take unto himself the law in his own hands; you can write in this verdict the man has the right to flaunt Constitutional authority, flaunt the Courts, by a one-man rule, or you can say that is not the way, the American way in this life to act.

Mr. Andress has told you that in connection with these questions—but before I get to that, many, many times Mr. Watts questioned the witness, "Did you see an AP (sic) report, in which it stated an AP (sic) writer by the name of Kuettner had written a story in which he said Walker begged the students to quit their violence or cease their violence during a lull."

No such newspaper release has been introduced in this record. Just before we closed today we put in this record the UPI story he says Kuettner wrote.

I may have said Associated Press. I meant UPI.

No UPI report purporting to say what he said it said is in evidence in this case. The UPI report says that Walker mounted the statue (sic) I never can pronounce [fol.1838] that word statue, and said something about violence. I will read it to you. I can't quote it. Then he comes along and says in a paragraph down here that General Walker again mounted the statue and complimented the students on what they were doing that night.

Which are you going to believe? Going to believe both? General Walker says no violence was intended. That is General Walker's statement. Is that urging people to cease their violence? My interpolation of that, and I am entitled to interpolate what I hear the same as you, he says, "Perhaps we shouldn't have had any violence, we didn't intend there to be any, but now that you have got it keep it up, keep it up, you have got a right to protest. Keep up your protest, you are doing all right, you will be heard, let the blood be on the hands of the Federal Government."

As I stated at the outset, I shall not attempt to re-read the vivid instructions that the Court has given you. The first issue inquires whether or not in substance the story stating that General Walker led a charge was true.

I believe that under the evidence in this case that you will find that the true answer to that story is "Yes."

Number 2, as to whether or not the statement that General Walker led the Marshals, (sic) on the campus—or led a charge against the Marshals is a fair comment. I believe that under the evidence that you certainly should answer that question yes.

The next question is whether or not the statements were made in good faith. I don't see how you can answer it any way other than yes, in that connection.

Now Mr. Andress criticized this 21 or 22-year old boy. Mr. Watts took his deposition all day, which is rather evident. He would seem to think that nobody but a middle-aged man should be allowed to express himself on any matters of important news coverage.

Let's back up just a moment and consider that. Here is General Walker, who according to his testimony, is somewhere around 52, 53 or 54. Let's take his action. Let's take his report. Is youth so bad that youth cannot see and understand the nature and import of an event that unfurls itself in his very presence? I say to you youth is not—is no curse. It is something we all lose after time comes, and something we treasure greatly, and I have great respect for the youth of this country.

Number 5. Did you find from a preponderance of the evidence that Walker assumed command of the crowd?

How much more could a man do of Walker's stature, [fol.1840] a retired Major-General in the United States Army, after having called four times for people to come to Oxford to assist him in keeping Meredith out of the University of Mississippi, getting on that campus, and there were those rioters. "You are doing all right, keep up the protest."

There is testimony, he said, "I will lead you."

There is testimony "Let's go up and see what is happening." How? Regardless of what he said. I would say at least 15 of the witnesses have testified that Walker went with a howling mob from an area near the statue on the campus of Ole Miss, up, some of them said he didn't get quite all the way to the flagpole, some of them said he got to the flagpole, and some said that he got way up here, but they all said that when General Walker walked in that direction that mob of students, regardless of how many were in it; that the tear gas was shot by the Marshals, and the crowd was forced to retreat.

Now Ladies and Gentlemen, I am reasonably sure, having had some experience in these matters, that long since you have come to a conclusion about how you feel about this entire matter. I am reasonably sure you feel the lawyers are taking up your valuable time in attempting to stand here and tell you their version of the case. I sincerely [fol.1841] hope not, because I think you should do

as you see fit, based on the evidence, with any guidance the lawyers can give you, of course, is what they are for as is the Court.

The Court told you here about malice. Well, who was mad? Ill will? Here is a man that has acquired the stature of Major-General of the United States. He has called in the press. He says, "Tell the world what my plans are, to go to Mississippi. Tell the world, and I will tell the world, come on, bring your flags, your tents and your skillets."

He testified very truthfully he knew his going to Mississippi and to the campus would create publicity. Why else would he call in the news media and ask for these volunteers to come join him there? Why, Ladies and Gentlemen, he hadn't but one purpose in the world, to advertise his going, to seek help to his cause, and to attempt to carry out the directive of Governor Ross Barnett. Let's stop right there a moment.

He testified he let Governor Barnett know where he was, but he says he never was contacted by Governor Barnett. Then he makes the call, "On to Oxford from Jackson." I take that as commanding these hoards that he had sought to come. He says, "Don't go to Jackson as we first planned [fol. 1842] the action—the action is all at Oxford. Come on over to Oxford; on to Oxford; on to Mississippi."

Who could have been mad? Not a question of being mad. A citizen of the prominence of General Walker, who according to his testimony has made speeches throughout the length and breadth of the land—incidentally, he testified there had been a constant demand on his time for speeches from the time he resigned in November, 1961, and that there had been no lessening of that since the Mississippi incident—here is a man who offered himself as a candidate for Governor of the State of Texas, in which he had every right in the world to exercise his views, and I don't criticize that.

I am reminded somewhat of the philosopher Voltaire's statement. I am sure you have all read it, when he stated

with respect to a controversy—I believe these were his words, “Sir, I do not agree with the words you have said here tonight but I will defend with my life your right to say them.”

That, in effect, is what the Constitution of the United States says. You can say whatever you please if you can find a forum to listen. General Walker testified he has been able to find listeners, both from the podium and through the media. He says he has no trouble getting press releases. A man of that stature who would call for [fol. 1843] volunteers, who would go and get himself mixed up with the stature that he had in a situation like that, telling the students, “Keep on protesting, your Governor is still behind you, he has not sold you out”—how much more of an incentive would these students want than to be told by a man of that stature, a man of that public action, “Here I am to help you, keep on protesting, you have got a right to protest. Let’s go there, let’s go up there.”

Is there any malice? Is anybody mad? Why, Ladies and Gentlemen, that is the very purpose he went there for, was to get publicity to his avowed purpose of standing shoulder to shoulder with Governor Ross Barnett in defying the orders of the Federal Court and the Constitutional authorities.

Now he has said repeatedly that he only intended to go on that campus to do anything about this matter when Federal troops were used. By his own statement he knew when he went on the campus that night that there were no Federal troops on that campus, and all of his testimony is that Federal troops were not brought on that campus until such time as the Marshals had been almost completely exhausted; that the troops did not come in until about midnight. So his excuse that he was going to take part in [fol. 1844] this matter when and if troops were used is not valid, because he knows and he testified the troops cannot be called in that situation except by order of the President,

and that order shows that no troops was issued (sic) until September 30, 1962.

Malice? Reports? Ladies and Gentlemen of the Jury, this is my firm conviction, based on the evidence and not from a biased standpoint, that the evidence almost without exception shows that General Walker led a charge towards the Marshals there on that campus that night, and that by his actions he commanded the crowd, by voice, by his statements and by his injunction, "Keep up the protest, you have a right to protest."

Ladies and Gentlemen of the Jury, I believe that you will find from a preponderance of the evidence that the story printed by the Associated Press and carried in the Star Telegram was true, substantially true, as the Court defines it. That Walker assumed command of the crowd, as proven by virtue of his speech, by virtue of his taking out and being followed by this massive group that went forward. I don't believe you can say any malice was there.

The way a man stays prominent in public life is to have [fol. 1845] his activities reported by the press. The press owes it to the public to see to it that the activities of public officials are published, or revealed as to their actions to the general public. I don't believe that you can find that any malice occurred. I believe you will find, I sincerely believe these statements as made were true.

Again I address myself, because Mr. Andress made such a point—it was not a question in this case of what Savell has said, or—although he testified fully by deposition. At the very outset of this case the Associated Press stood before you and said, "We stipulate that this story that appeared in the Star Telegram on October 1st, 1962, was the story written by Van Savell. Van Savell was an employee of the Associated Press. And that is the story on which we are trying this case, as to whether the facts as stated therein are true and correct. I don't know what it gives you to bring in a man, even though he was brought to them for all the questions they wanted to ask, and I