

|                    |                     |
|--------------------|---------------------|
| JUDGES             | JUDGES              |
| HON. J. D. ENSIGN  | HON. H. A. DANCER   |
| HON. W. A. CANT    | HON. BERT FESLER    |
| HON. MARTIN HUGHES | HON. EDWARD FREEMAN |

**COUNTY OF ST. LOUIS**  
OFFICE OF  
CLERK OF DISTRICT COURT

Duluth, Minn.,                  June 30<sup>th</sup>                  1921                 

J. P. JOHNSON:  
CLERK

Mr. C. W. Vasaly,  
Superintendent, State Reformatory,  
St. Cloud, Minnesota.

Dear Sir:

I am enclosing certified copy of the testimony and impressions of the court in the case of State VS John Carl Alfred Hammerberg who was committed and delivered to you some time ago.

Yours truly,  
J. P. JOHNSON, Clerk.  
By           I. S. Moody            
Deputy

Inmate Case Files.

No. 5148 (Carl John Alfred Hammerberg): Trial Transcript, June 1921.

District Court (Saint Louis County) case no. 5723. [Transcript]

I n d e x :

| Witness                  | Direct      | Cross        | Redirect     | Recross |
|--------------------------|-------------|--------------|--------------|---------|
| Barber, E. H.            | 18- - - - - | -21          |              |         |
| Brown, John C.           | 31- - - - - | -33- - - - - | -38- - - - - | -38     |
| Carson, Austin J.        | 23- - - - - | -27          |              |         |
| Davis, Fred F.           | 1           |              |              |         |
| Forsman, Jonh A.         | 44- - - - - | -44          |              |         |
| Hammerberg, Carl         | 46- - - - - | -51          |              |         |
| Harris, Edward           | 45- - - - - | -45          |              |         |
| Holm, William            | 43- - - - - | -43          |              |         |
| McHugh, Francis          | 39- - - - - | -42          |              |         |
| O'Brien, Herbert J.      | 15- - - - - | -17          |              |         |
| Olson, Oscar             | 4- - - - -  | -11- - - - - | -14          |         |
| State Rests- - - - -     | 42          |              |              |         |
| Defendant Rests- - - - - | -61         |              |              |         |
| Charge- - - - -          | -63         |              |              |         |
| Examination- - - - -     | 81          |              |              |         |
| Sentence- - - - -        | 90          |              |              |         |
| Impressions- - - - -     | 91          |              |              |         |

STATE OF MINNESOTA  
County of St. Louis.

DISTRICT COURT  
Eleventh Judicial District.

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STATE OF MINNESOTA

vs.

Crim. 5722.

John Carl Alfred Hammerberg,  
indicted under the name of  
Carle Hammerberg, Defendant.

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This case came duly on before the Hon. William A. Cant and a jury on Friday, September 10, 1920, at the Court House in the City of Duluth, in said County and State, Mr. Warren E. Greene appearing in behalf of the State, and Messrs O. J. Larson and George B. Sjoselius appearing on behalf of the defendant; the jury having been duly impaneled, Mr. Greene opens the case to the jury on behalf of the State, and the following proceedings were taken:

FRED F. DAVIS, sworn as a witness in behalf of the State, testifying as follow, in answer to questions:

ON DIRECT EXAMINATION:

My name is Fred. F. Davis. I live in Duluth. I am not now connected with the police department but I was on the 15<sup>th</sup> of June last as special policeman, for about 30 days. At seven o'clock in the evening of that day, June 15<sup>th</sup>, or at 7:30 rather, I was at Fifth Avenue west. I had been at West Duluth earlier. There was a truck on Superior street that attracted my attention somewhere in the neighborhood of 7:30 I should judge, when I was at Fifth Avenue west. I had not seen the truck before that time. It was proceeding east. I was standing at Fifth Avenue west when this truck came along going east; there was someboys riding on the truck at that time and hollering. After the truck had passed I walked

down to Lake Avenue and the truck then came back west. There was, I should judge, six or eight boys riding on the truck hollering, "Come on down to the police station to the neck tie party." I first heard them holler that when they passed me at Fifth Avenue. They were doing quite a lot of hollering but I don't remember anything else they said than that. They were riding on this truck and hollering to the people on the street, I should judge, to them along the street. I heard them holler this remark several times; they were hollering quite loud. They were doing the same when I saw them the second time at Lake Avenue going west as the first time at Fifth Avenue west going east. They had a rope attached to the hind end of the truck when they came back the second time, going west, when I saw them at Lake Avenue. I went up to the police station. I did not see the truck afterwards. If I remember right there were three men, young fellows, had hold of the rope at this time. When I got to the station there was a few people standing around the station; there was not a big crowd around there then. I was at Fifth Avenue about 10 or 15 minutes, probably: I only saw the truck there once; I believe that was the first trip when they came from West Duluth and at that time I judge there was six or eight fellows on the truck; I didn't pay muck attention to how many was on there. I didn't count them then; when I met them again at Lake Avenue I should judge there was about the same number on the truck and two or three behind, if I remember right. When I got up to the police station I stood around outside there; there was only a few people there then but they kept on coming; I was down on Michigan Street for awhile. I was a plain clothes man. Nothing took place on Superior Street in front of the station before I went down on Michigan Street; the crowd kept gathering; they kept coming right along. There was a lot of loud talk out in front. There was nothing in particular said, just loud hollering for people to come on up to the police station. Then there was a few boys went down behind there and I went down to see what was going to take place on

-2-

Michigan Street. They smashed in the back doors of the police station, the garage doors. I should judge there were 25 or 30 people there at that time; there may have been more. I was standing on the corner of 2<sup>nd</sup> Ave and Michigan Street. I think there somewhere about 25 or 30 there then but it kept growing larger right along. I couldn't say how long it took them to get in from the time they started exactly; I should think it was an hour's time. I was still there when the doors were finally broken in. Bricks was thrown through the windows above the door and I believe a bolt or bar of iron was used to smash in the door with. I did not see them crowd inside the garage after they broke in the door. I did not stay there until that attack was discontinued by the crowd. I was walking around, first one place and another amongst the crowd. When the water fight took place I was on the Avenue next to the Knudsen garage. There was an attack made by the use of hose. The police had a stream of hose playing on the crowd there and the crowd was playing a stream of hose into the police station. I couldn't see exactly where the crowd got its hose. It was straight across from in front of the station where they were standing with the hose. I saw the hose when it was brought down by the fire department. I believe one stream was connected on Michigan Street and one on Superior Street, if I remember right, for the police. I can't say how the crowd got their hose. I think they grabbed it away from the police. I don't know exactly how they got it, but I saw streams being used by the police and by the crowd. I think I was telephoning in Knudsen's garage at the time the crowd went into the station. I was not in the station till late in the evening. I was down beyond the corner of Michigan Street on the Ave- when the first Negro was brought out and I didn't see him brought out. After I got up on the Avenue they said they had hung one of the niggers ten: somebody was saying it in the crowd. I did not see anything that took place in the police station, and did not see any of the niggers. (NO CROSS EXAMINATION)

OSCAR OLSON, sworn as a witness in behalf of the State, testifies as follows, in answer to questions:

ON DIRECT EXAMINATION

By Mr. Greene:

THE WITNESS: My name is Oscar Olson, and I am a sergeant of polic> On the 15<sup>th</sup> of last June I went on duty at four o'clock in the afternoon and from that time on during the riot I was in charge of the police station. At that time I had in custody six Negroes and among them were Elmer Jackson, Isaac McGhie and Eli Clayton; five of them were in the large jail in cells, on the Superior Street floor, and one was in the boys' department jail on the second floor. I recognize State's Exhibit A as a blueprint of the location of the police headquarters, and I think it is a correct representation of the lay out there, including the police headquarters, the shrine building and he electric light pole and the streets and avenues as marked. State's Exhibit B is a plan of police headquarters interior, and the basement, and is a correct representation of it.

Exhibits A and B are offered in evidence and received without objection.

THE COURT: It may be noted that C, D and E are correct representations of the matters delineated thereon.

THE WITNESS continuing: The front entrance to the jail, the main hall and the men's jail are correctly represented on the plats. The entrance from the main hall into the men's jail is at the point marked "jail door." The cells I referred to in the men's sjail are these marked here "lock broken". The door between the main hall and the cells room was a sheet iron door, solid; you could not see through it, and inside this solid door was an iron barred door.

THE COURT: All witnesses in the case, either for the State of for the defendant will leave the room and remain outside until they are called.

-4-

O. Olson

THE WITNESS continuing: The stairs from the main floor to the garage are here, marked "down" on Exhibit C, and the stairs from the main floor to the second floor are here marked "up". On Exhibit D. which is a plan of the second floor, the place indicated here as the boys' jail is correct; here is the door as marked "door". The door marked A on the plan is the door leading to the hallway that takes you to the waiting room of the ladies' jail and also to the boys' department; in going up to the jail on the second floor you enter into a sort of a balcony ; then you go through the door that brings you into a small hall way, the door marked A. When you go into that hallway at your left hand is a door marked B leading into what is known as the waiting room. From that waiting room, to go into the women's jail you go through a sheet iron door inside of which is a barred iron door, at the place marked "C" on the map. From this hallway, you go through this door marked "door" to get into the boys department. On the right of the hallway is a door leading into what is known as the store room; at the time of the riot there were two or three lockers in there and nothing else to my knowledge; the lockers took up more than half of one side of the room next to the boys' jail, a trifle better than half towards the west wall and extending out about close to two feet. There was nothing on the other side of the room to my knowledge. There was a peep hole in the wall between the store room and the boys' jail, near the west wall of the store room, at the place marked peep hole on the plan. It was a funnel shaped affair. The peep hole is shown on State's Exhibit I, down at the bottom. This is the peep hole that was in the wall of the store room and the wider part is on the inside of the boys' jail. The picture, Exhibit I is taken from the wall of the boys' jail. The hole in the wall shown in the picture was not there before the riot but was here after the riot; that was the place where the funnel was set in the wall, which was of tile, Exhibit I is a correct representation of how the place looked the morning after

-5-

O. Olson

Direct

the riot.

State's Exhibit I offered in evidence.

Received without objection.

THE WITNESS continuing: Those are cells in the boys jail, shown in Exhibit D. The door marked "A" was a sheet iron door; there was no barred door inside it: the doors marked "doors", the outside is sheet iron and the inside is an iron barred door. The one marked "B" is a frame door and the door between the hall and the store room is also a frame door. The single Negro that I have referred to as being on the second floor was in the boys' jail here, but I don't know which cell. There were no Negroes in the women's jail. The doors down in the garage opening on Michigan Street were large solid wood core doors; in one of the large doors is a small door used in going in and out, but the main doors are big swing doors like in a barn of garage.

Recess is here taken until two o'clock.

Two o'clock; hearing resumed:

THE WITNESS Continuing: As I stated before, I was on duty from four o'clock on the day of the riot, and I was in the station when the truck went by; as near as I can remember that was 7:30 or shortly after. I see it going west on Superior Street. I did not hear what the people on it were hollering, but I did hear a noise from it, a number of voices; they were shouting and hollering; I couldn't distinguish what they were saying. I had 11 policemen at the station at that time. I stationed six of them at the front entrance and five of them to the rear entrance in the garage on Michigan Street. When the truck went by there was an unusual number of people out in front, and the crowd kept increasing. It was shortly after the truck went by that I made the disposition of the policemen that I mentioned, and when I did so there was quite a number of people out in front, more than there had been when the truck went by and when I put the policemen out there I could

-6-



O. Olson

Direct

hear a number of voices shouting and hollering. I could hear different remarks, such as, 'Bring them out here' and 'Let us get them' and 'Let us go' and the likes of that. They attempted to get in the front way and they later went around to Michigan Street entrance and started to throw stones, brick and other things, breaking down the large doors and breaking windows. The building was damaged considerable by brick and stones and water. The cars were also damaged some, the windshield being broken on one and the top broken on one of the; I don't know which one, but they weren't badly wrecked but they were damaged as I stated. The garage doors were broken; quite a bit of damage done to the doors. The mob on Michigan Street were throwing stones and bricks and other things and got into the garage and attempted to come up a small stairway when the hose was turned on them and they were kept from coming up the stairs. We got the hose from the city fire department and it was attached to a hydrant on Second Avenue East and Superior Street on the lower corner but I don't know whether it was the east or west corner; it led into the front entrance of the station and brought to the stairway leading down to the garage, to the basement and we were using water on the mob and fought them off from there with the water and later they went around to Superior Street and broke; they broke windows and broke down the door and don considerable damage to the building inside by brick coming in. The attack on Michigan Street was before the water fight on Superior Street, but before the water fight they used sticks and stones and bricks in front of the building; they broke all the large windows in police headquarters and one or two of the smaller windows up above these large windows. When the attack started on the front of the building I brought the hose to the front and turned it on the mob. Shortly after that they got some water; they had a hose of their own that was taken away from the fire department.

-7-

O. Olson  
Direct

They had the nozzle on the opposite side of the street some distance; they were quite near Second Avenue East at the start and they wowed closer towards the station. Myself and one or two other policemen heal our hose out in front of the station and we was to the edge of the sidewalk and keeping the mob back sometime, and the crowd plying their water onto us again, with stones and bricks and other things that could be thrown and we were finally backed up into a corner and it was there I was left alone with the hose and finally I had no more water. At that time I was right in the front door. The water failed because the hose was cut. Before that I had stationed the policemen that I could find and instructed them to guard the hose so that it wouldn't be cut by the mob; they were stationed along the hose as it came from the hydrant to the front door. I was backed-up to the front door when the water quit on me, but the crowd still had water. After I had no more water I staid for a short time with an arm up in the air thinking the mob would understand that I had something to say but I was forced away from there and I ran into the basement, to the garage. I went down in the basement for help. The water that came from the hose of the mob, and the stones and bricks forced me away from the outside door and I went down stairs for a fear minutes and then came up and then the mob was right close to the door and I again attempted to get outside and finally the mob came into the hallway of the station, with a rush, in the front door of the station. At that time there was a lot of brick on the floor and the paper was loosened in places on the walls and hanging down, and the station had been damaged bar water and there was maybe four or five inches of water on the floor; the pictures were knocked off the walls and scattered about the rooms. When the crowd came in they ran to the stairway leading up to the different floors; some of the mob stopped at the large jail door and some of them stopped at the jail doors up stairs.

-8-

O. Olson  
Direct

They came in and went up stairs, and the hall down stairs was packed with men, and about that time there was some speech making there. I could hear pounding on the doors; I think it began about five minutes after -the crowd first started in there, and I think it began up stairs if I remember correctly, and it kept up until about midnight. I think the crowd came into the hall around between 10 and 10:30 and when they took the first negro out, as near as I can judge, it was after 11, and close on to half past, I should think, and I should think it was close to 12 when they took the last two. From the sound of the pounding, I should say the mob was pounding on the iron doors; as a result of what was done by the mob, one door on the second floor was torn from its hinges, the iron door leading into the hall way that takes you to the boys' jail and the waiting room of the ladies' jail. That is the door marked "A" on State's Exhibit D. Of the two doors leading from the hallway into the boys' jail, the outside one was kind of sunk but I don't remember if it was torn off. It was opened. The inside door was not damaged. There was no entrance from the hall into the boys' jail through those two doors marked on the plat; at the doors marked "C," the outside iron door was broken off the hinges and the inside barred door was broken, the lock was broken so they gained entrance. The door marked "B" the top was broken off completely, and the door marked "D" was also broken. There was a hole made in the wall leading from the store room into the boys' jail, the hole shown in the photograph, Exhibit I. There was no damage done inside of the cell room. The cell rooms have doors on them with locks; the doors can be opened without breaking the locks by using the lever; if you lift up on the lever the door opens; when you close the door the lever hooks over the locks and they can be opened from the outside by lifting up the lever.

-9-

O. Olson

Direct

Down stairs the outside iron door leading from the main hall into the men's jail was broken from its hinges and the barred door was damaged some; the locks were broken off, and they gained admission into the jail that way. In the men's jail down stairs the locks were broken off or knocked off the door. That was necessary to gain admission to the cells, if they were locked with a key; they couldn't be opened otherwise without knocking them off. I don't know whether they were locked with a key that night or not; anyway the locks were broken from the doors. The stairways were crowded, and while they were battering down, these doors some of the crowd were hollering and jumping around. They were using a large timber, part of a railroad rail and crow bars, sledge hammers and several other instruments to batter down the doors. As near as I can tell they were at work breaking in the doors from sometime around 10 or 10:30 up to half past 11 when the first negro went out, roughly speaking. I was not looking at a time piece; they took the first negro from the large jail down stairs, I think, but I didn't see where he came from. I could hear the mob hollering, "They have got the first one." At that time I was in the secretary's room; after they got outside of the station I see the crowd moving east; they were hollering and pushing and walking and running up Second Avenue; they were just turning the corner when I see the whole mob going in that direction; it was sometime around 35 or 40 minutes afterwards before they got the other two. I didn't see that. I think I was in the secretary's room. I didn't know until after they were taken out that they were gone. I could hear the mob or some of the men about the building saying that "they have got them" or things of that sort. I didn't see where they took them. I didn't go up to see any of the hanging. The Chief came there about a quarter of 12, as near as I remember; he was there before the last two were taken out.

-10-

O. Olson

ON CROSS EXAMINATION, by Mr. Larson:

At 4:20 on that day I learned that there was likely to be some trouble at the police station, after I arrived there. I got in the station about 3:35 and I went on duty about seven minutes of four. I didn't learn the names of the negroes until after they were hanged; I first learned the names when I see the names in the News Tribune in the morning. Isaac McGhie was hanged first; I heard it talked of after the lynching, just general talk. I have no way of finding out positively that he was the first negro. I thought he was taken from the large jail down stairs. I don't know why I thought so. I didn't know who they were down stairs; I knew one of them was up in the boys' jail, and which one of the six I didn't know. There were six negroes in jail at that time; those six that were there in the evening were placed in there between 7:30 and 8 o'clock the morning of the 15th, with six or seven others, but they were not all there at the time the crowd came; they had been released but I don't know when. I took part in the arrest; it was between four o'clock and 7:30 in the morning. They were arrested in the yards of the Canadian Northern down at West Duluth, I left the negroes in the jailer's room. I assisted in taking them from the railroad yards to the police station. I left them in the jailer's room, and it was his duty to put them in cells. Jailer Harling was there that night. When I heard there was likely to be trouble that night, the first steps I took I called in a motor cycle policeman and a detective and instructed the motor cycle officer to run about the different streets to see whether he could see a group of people or a number of people any place, and to run out in the west end and West Duluth and see what he could see there and come back and report to me what he had learned, and I instructed the detective to go down street and drop into different places where he thought there might be a bunch of

-11-

O. Olson  
Cross

youngsters talking, such as in places like pool halls and they come back and reported that it was no more than what had been going on all afternoon. They didn't see any unusual number of people any place or any bunches of people or they didn't hear any other talk than what they had heard during the day, which was a remark such as some talk about lynching the niggers. Their report to me was that they didn't learn any more than what they had heard or seen during the day. I sent Motor-cycle Bailey and Detective McKenna. When I got the report I instructed the operator to notify all men off duty to report at Headquarters at once and I also notified the Sheriff and Commissioner of Public Safety and the Chief of the fire department. I notified the Commissioner of Public Safety by telephone at his residence around seven o'clock or shortly after, and I notified the Sheriff about the same time. By that time three or four of the officers had reported to the station, and Mr. Murnian came down; he came after 7:30; I did not see him after the crowd got into the police station; I see him at different times before the crowd came in, about the building, in the hall way and the office. I had some talk with him about what was the proper thing to do under the circumstances. There was something said about using fire arms. I outlined my plans and instructions to the men to Murnian, the Commissioner, and he thought they were all right. I instructed the men to attend strictly to business and not to talk to anybody and to keep the crowd from coming into the station and not to shoot until you have to; be careful and do not get into trouble, and those lines. There was nothing said about making any arrests that I remember. As I said, I assigned six officers in front of the station and five in the rear. Three of the officers in front were Isaacson and Lading and Nystrom; I don't remember the names of the other three. Officers Sorenson, Mahlon

-12-

O. Olson  
Cross

and Shannon were assigned to the basement; that is all I remember. I didn't see the crowd on Michigan Street that made the attack on the garage; in front, they were standing all over the street and sidewalks and on Second Avenue East, but I don't think it extended to First Avenue; both sidewalks were full and a considerable number of people on the street proper between the sidewalks; probably between four and five thousand people. I don't know if the remarks mentioned came from that crowd but it came in the direction where the crowd was. The remarks were, "Let us have them" and "Let us go, and things of that sort, "What if it were your sister." There were a great many people, young and old, laboring men and businessmen, and women, and they seemed to be considerably excited; there was loud talking and hollering, moving back and forward in all directions. When we put the hose on them, it had some effect and they started back for a time until the water was gone. With me at the hose was officer Sorenson and a special policeman by the name of Webster and I also called a fireman over to my help, by the name of Dunn. I don't know what became of them when I went into the police station; they disappeared; then I went down stairs; when I left no one was guarding the front entrance of the police station. When I got down stairs I saw some policemen down there and tried to get them to come up and assist me, with no success, and then I came back up stairs. The hallway was packed and there were people in the general office and the jailer's room, but the room between the jailer's room and the jail proper was not packed, but there was a number of people there; the stairway was packed. I recognized different people in the crowd. One was Leonard Hedman and Dondino, and I saw Attorney McClearn and some newspaper men, one by the name of Carson and another by the name of Gallup. There were several faces I know but I don't know their names. I saw police-

-13-

O. Olson  
Cross

man Harry Sorenson in the hallway, on in the entrance to the jailer's room from the hallway, at the place marked H on State's Exhibit C. I don't know whether there was any effort on the part of any policeman to prevent the first negro from being taken out of the building, I did not see any. There was an effort made to prevent the second and third men from being taken out of the building; this was done by Officer Nesgoda and Sandberg and Walker and Lieutenant Barber. I don't know what they did. I didn't see them do any thing. There were no arrests made that night concerning the lynching; no one in the crowd either out doors or in the building was arrested.

ON REDIRECT EXAMINATION by Mr. Greene:

I don't know why no arrests was made; there was other things to attend to besides arresting them; I thought that would be taken care of later; that was my opinion of the affair. After the crowd got packed in there it wasn't possible to make any arrests with the number of officers we had there; there was a crowd there of four or five thousand people on Superior street beside the people on Michigan Street, and it increased during the evening and from what I could see during the time I was out in the water fight there was people as far as I could see east and west, blockading all traffic. I did not go up to the pole when the negroes were taken down. I was not in that bunch.

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-14-



HERBERT J. O'BRIEN, sworn as a witness on behalf of the State, testifies as follows in answer to questions:

DIRECT EXAMINATION, by Mr. Greene:

THE WITNESS: My name is Herbert J. O'Brien; I live at Nopeming Sanitarium; my family live in West Duluth; I was living there on the 15th of June last, at the Cody Hotel. I came down town on Dondino's truck that evening; I got on the truck at Bristol Street and Central Avenue out in West Duluth; at that time there wasn't anybody else in the truck, but we picked up some boys as we came in; there was four or five jumped on as we were pulling out; the driver was on the truck when I got on and then others got on. It was just a common dray truck, just a common truck behind. The driver sat in the front seat, and back of him was an open truck. We drove straight down Central Avenue; I think we struck Grand Avenue and then we come down Grand Avenue until we got to the ore docks and then we turned down to Superior Street until it was 30th Avenue end we drove up Superior Street I think it was to 3rd Avenue East, up through the central part of the city. The fellows on the truck were hollering around the west end; they were just hollering they were going to have a neck tie party. Then they drove to 3rd Avenue East and then turned around and went back west on Superior Street to 7th Avenue West and then turned around again and went east to Lake Avenue and then turned around and went west to 2nd Avenue West and then they turned around and went right up to police headquarters, in front of the police station and got out. When they were driving up and down Superior Street there was a lot of talk, this and that, among the bunch on the truck; they weren't hollering at the people very much the first round, not until the crowd all got on the truck; all that could possibly get on got on the truck. I didn't see the rope at all; you couldn't flee back at all

-15-

O'Brien

Direct

there were so many on the truck so I didn't see to rope; there was probably 16 or 20 on the truck when we were going up and down the street, and than we went down in front of the police station; then we went easy the first time to 3rd Avenue East there was quite a bunch on the upper side; I judge there would be probably five or six fellows inside looking outside of the police station but there was nobody outside at all. When we got back finally and got off the truck there was quite a crowd at the police station then; it had grown from the first time till we finally got off. When I got off I came right down in front of the police station and there was six policemen standing in front of the door but I didn't know none of them only Isaacson; then I crossed across the street to the cigar store, and I didn't see anyone around there that I knew of the bunch and I bummed around there awhile and then I went across the street again. The crowd was hollering once in awhile, "Hand out the niggers" and one thing and another like that, that that was what brought them there. I was not down on Michigan Street at the time of the attack; I was down as far as the corner but I couldn't get no further; that was just before they started the water hose on Superior Street. I couldn't see what they were doing on Michigan Street. I saw the water fight on Superior Street. I was in the station during the evening; I got in a couple of feet past that big safe that is in there; there was such a crowd that you couldn't get no more in. All those that was down in the hall ways down stairs they was all right; they wasn't moving at all because they couldn't move very much either way. They were very quiet, some of them, but there was lots of noise. The stairways and gallery was full up stairs and there was some fellow saying: "Just go easy; just keep quiet until we get him. We have got the first door down and as soon as we get the other doors down we will hand the

-16-

O'Brien

Direct

niggers down to you and then they all cheered and hollered and clapped. I was right opposite the safe in the main hall when the first negro was brought down, I can't say where he came from; I thought he came out of the first floor. They passed right out just like a shot out of a gun and I was standing in that hall way for about an hour and forty minutes or an hour and a half when I was just caught right in the jam and I was swept right out with them. I saw the lynching; one negro was hung at first it was about ten minutes later before the other two were hung; the last two came together; they were hung on the pole at 2nd Avenue East and 1st street right by the Shrine Auditorium; I was about 25 feet or so away from the pole when the first negro was hung, out in the crowd; I was 40 or 50 feet away when the second two were hung, up on 2nd Avenue.

ON CROSS EXAMINATION, by Mr. Larson,

I had a good opportunity to see the crowd on Superior Street in front of the police station before they went into the station; I would think there was probably 10,000 people altogether; their were men and women both; lots of women with babies in their arms, lots of baby carriages; there were laboring men and business men and young boys, and young and old, men and women, rich and poor, and working men and girls and lots of excitement; lots of women hollering and clapping their hands and saying, "Good for you, boys. You have got the backbone in you. Stick up for the women's rights", and all of them was hollering that.

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-17-

E. H. BARBER, sworn as a witness in behalf of the state, testifies as follows, in answer to questions:

ON DIRECT EXAMINATION, By Mr. Greene:

THE WITNESS: My name is E. H. Barber; I am lieutenant in the police department in this city. I was at the station the night of the 15th of June last; I arrived there about ten minutes after nine and at that time there was a great crowd of people in the street and several policemen in front of the station and they had a line of hose running into the station from some hydrant on the corner from the city hall there, and I went into the station and came out and there was some more policemen over here trying to keep the crowd back; that was after nine o'clock; the water fight started after I came, and I was in it; it started possibly 15 or 20 minutes after I came. I was right in front of the police station when it started; there was a fire wagon came down, an automobile, and the crowd took the hose away from the firemen and connected it up; the fire wagon was right in front of the police station when the crowd took the hose away, just a little bit west of the entrance; about even if the fire rig was headed east. They ran up 2nd Avenue with it towards 1st Street. I don't know where they connected it, but up there someplace and they used it on the front of the police station. I tried to take the hose away from the men that was using it and they turned it on me and I got the worst of it. They had full pressure head on it. They turned the water from the police station on the crowd out of the police station door and it was vice versa, both was going, streams of water from each. The water fight ended in victory for the invaders; they got the best of it; the water from the police end of the hose gave out for some reason and when they saw that they turned their hose right into the front hall way and then the crowd went right in. I was at the corner of the city hall, right near the city hall entrance, when they got in, and after that I went

-18-

Barber

Direct

back into the police station myself; I crowded my way in the front door and then I seen Sergeant Olson at the desk and I asked him what we could do and he said "Nothing" so I went around through the hall way to the back end of the jail or the back end of the hall way by the jail and they were already at the jail doors then, down stairs and up stairs too, and I went up stairs to the boys department and they were at the outer door then, and I talked to the crowd there for awhile and while I was standing there somebody threw a chain around my neck; I don't know who it was. I told the crowd not to do that when I talked to them; I can not remember the exact words but as near as I can recollect I told them the niggers was in that jail there and some of them were innocent and this fellow especially in this upper jail we wanted him because he was the principal witness against the ones down stairs; and the crowd said, "We are going to get the niggers; going to get them all" and they hooted and hollered "Get them out of there", and I couldn't do nothing, I was alone, so I went down stairs again and I talked to the men down stairs. "When I was up there somebody from behind threw a chain around my neck and pulled it up; I don't know who it was. I got the chain off; it was a chain four or five feet long, part of an automobile chain; it looked as if it might have been used on a truck; it was a single chain. When I was talking to them all evening I told them to go home and leave the niggers for a trial the way they should be, or words to that effect; I spoke about the same up stairs as I did down below. They were pounding the doors with bars, or sledge hammers and they also had a timber there, a small round log that they were ramming the door with, the steel door after I talked to them upstairs I went down stairs and talked to the men there at the big jail door; they had a railroad iron probably about 8 or 10 or 12 feet long and they also had a

-19-

Barber

Direct

piece of square timber about 8 by 8, and I talked to them there; they were then at the big steel door and they wouldn't listen to me. Do you want me to name the individuals I talked to? I did not recognize this defendant, but I talked to some of them; I talked to everybody that was there that could hear me; they stopped beating the door while I talked to them, then when they got tired of listening to me they resumed and I left and when I came back again they had the door down, that outside steel door on the main floor and they had the barred door next to it busted too; they broke the lock off that and they were inside the jail on the main floor. When I got down from the boys' department and talked to those at the door there, I went into the jailer's room to get some help; I couldn't do nothing else, and I got several policemen and I started with them back to the jail and thought I could clean it out, and when I got into the big jail there was a lot of people in there and some of them was taking care of the grated door, so I went to the left hand side as you go in, the east side, and they were pounding on the locks of the cells at that time when I got in there and the policeman that was in there with me and we staid there at that cell for awhile, but they didn't like it and somebody in the crowd hollered, "Get them out of here. Get them out of here", and they did put the other policeman out and I stuck there and afterwards let in officer Walker and he come in with me, but we couldn't get up to the cells, and we recognized several that was in there, and they got the negroes out while I was in there; they got the negro out from up stairs. I heard them taking him out. The first negro was taken out of the boys' department through the little room right next to the boys' department that opens off this hall way. I heard them taking out the one from upstairs before they got the two from down stairs; there was three left and there was six negroes, one

-20-

Barber

Direct

up stairs and five down. I saw the hanging. After they had taken these other two negroes out I ran up there but I didn't get up as quick as I should have. They had the last negro hung up then; he was hanging on the pole and from where I was behind the crowd I saw the fellow on the pole and the negro was being hauled up then and I saw the fellow roll the negro around the pole a little and kick him in the face with the heel of his shoe. That was the last negro up; I suppose that was one from the down stairs; there were three hung on the pole, three that had been in the jail. I don't know their names. One of the names was McGhie and I don't know what the other names was. I think I would recognize the names if I heard them. Elmer Jackson and Eli Clayton was two of them and Isaac McGhie was the other. I think McGhie was the fellow that was up stairs; he was the fellow that was supposed to be innocent anyway, the one that was up stairs.

ONCROSS EXAMINATION, By Mr. Larson:

The fellow up stairs was the first one taken out. As I recollect and from what I heard, but not from my personal knowledge, the first fellow was taken up 2nd Avenue East and the last two was taken down to 1st Avenue East and taken up there the 1st Street and brought over there to 2nd Avenue East. I don't know that from my own knowledge. Down in the main hall in the police station I recognized Stevenson, the man who was tried in the other Court Room here; he was helping to batter down the door on the first floor. I also recognized a man named McElligott and a fellow named Rozen and a man named Davis; he is a detective and special police, I believe he was at that time, and Mr. McDevitt, the assistant County Attorney, and Mr. McClearn; I mean Mr Elmer McDevitt and Mr. Hugh J. McClearn; I also recognized several policemen; I don't recall any others at present; there was quite a few people I saw there

-21-

Barber

Cross

that I knew; I suppose they are old residents. I remember now there was a fellow by the name of Ellis I saw there and Natelson and Bergson and Carson and Wilkie and maybe some more; I mean Frank Wilkie, connected with the wood yard, and Nick Perry, and Mr. Murnian the Commissioner of Public Safety. Mr. Carson is a newspaper reporter. It was after the men were taken out that I saw Mr. Murnian; he came from up stairs when I saw him. I don't know where he had been while the attack was going on. The boys department is a half story and then there is the first and second floor beside; there is a third floor over the boys department but there is not a third floor over the police department proper. The assembly room would be the third floor over the boys' department but it would be the second floor in the front part over the police department. When I was out in the water fight I saw some people I knew. I wouldn't say they were all classes. I recognized Chief McKercher; he was standing in the entrance to the City Hall, and this Frank Wilkie, I saw him out in front, but I don't know just at the present time who else I saw outside of police headquarters. I probably knew a whole lot of people that was there but I don't recall them. It seemed to be everybody there in general like there is in a crowd of people that was on the streets that evening. Certain ones of these I saw doing things and certain others I didn't.

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-22-



AUSTIN J. CARSON, sworn as a witness in behalf of the State, testifies as follows, in answer to questions:

ON DIRECT EXAMINATION, by Mr. Greene:

THE WITNESS: My name is Austin J. Carson I live in Duluth, have for about a year; I am a news reporter on the News Tribune and have been about a year. I was in the city can the 15th of June. The first I saw relative to the trouble was a truck going east on Superior Street between 7:20 and 7:30. I had been at the News Tribune and was going up street and saw the truck between 1st and 2nd Avenues West; it was going east then. I didn't see the truck until it was almost opposite me; we were going west and all I saw was a truck with the men on it and a rope dragging behind and several, men hanging to the rope and inviting the men on the sidewalk to come with them; they asked us if we had cold feet, and where our manhood was; that is all I remember. I didn't hear anything about joining the neck tie party. They said, "Come along; we are going to get the niggers." I went on up to the Spalding to eat and didn't see the truck any more. After I got through dinner I went down to the police station directly. When I got there there was quite a crowd outside and several policemen were stationed in front of the main entrance to keep people from going in and there was a crowd circulating around. As I remember the street was pretty well filled in front of the police station and extended around down on 2nd Avenue East to Michigan Street. I don't know exactly how far west it extended from the police station, but east to 2nd Avenue East; west of the police station, was an automobile establishment and they were sort of circling around across the street there. I went in the police station first and talked with the officers a little and went outside and down around to the Michigan Street entrance. There was quite a mob down there and they were trying to get into the police station there. They probably had been

-23-

Carson

Direct

in once, I took it for granted, because the door was smashed down and the glass transom over the door had been broken, but when I got there the policemen were lined up pretty close to the doors and there was no one inside. They began using stones and bricks and anything they could throw, I guess, and they got in. I went around to the front of the station later on, a few minutes afterwards; I just circulated around through the mob there, and I was over in front of the station when the police department came down with two hose reels and they were taken off the reels and disappeared on the avenue, and the mob was so thick at that time all the way up to the avenue that all you could see was the hose disappearing; you couldn't see who had hold of it or where it was going except it was going up the avenue. Sometime later there was two streams of water turned on in those hose; the police were using one stream in front of the station and they had a sort of water fight; part of the time that was going on I was in front of or right beside the station door and part of the time on the other side of the street and part of the time over in front of the City Hall and I also made one trip up into the City Hall. I was circulating all around there. I just went down to see what the excitement was but after I got there one of our men was there and he said I was to report to him and left; he didn't issue any orders, and I just staid there and picked up what I could for a story, and I moved around among the crowd a good deal. In describing the actions of the crowd I would say in a more or less jovial way they seemed to sympathize with the men who wanted to get into the station; that is, the people who were not taking any active part, who were scattered on the other side of the street without the circle of the police department seemed to be trying to keep clear; they seemed to be in sympathy with the men who were trying to get into the station.

-24-

Carson

Direct

The great mass of the people were merely spectators and stood their ground pretty well. It would be hard for me to say what proportion of the crowd was active. The only way I would have of judging would be by the number of people probably who followed into the police station and who were inside of the police station and inside of the cell room later on. There were several hundred. That is as near as I can get it, I suppose. Over a hundred anyway. When the water fight was over the crowd went into the main hall of the police station. It was pretty well jammed in there so I went in through a window in the front office and was around the front office and to the rear office where they took the prisoners, what they call the cell room. I was around there during the speeches of two or three men who apparently tried to dissuade the mob from their purpose. They were Mr. McDevitt and Mr. McClearn, I believe. I don't remember Oscar Olson making any particular speech but there is no question about him several times speaking to the men. I don't know as he made any speech but throughout the evening he made efforts to try to stop it. Before these speeches I heard were finished they began to pound on the doors, of the cell room and when I decided they were in earnest about trying to get into that cell room on the first floor I went over there and staid there until they got in. They were using a piece of steel railroad iron for a battering ram and I was between the ram and the wall. (Indicates point marked A1 with a circle around it on first floor plan of jail.)

The end of the rail almost touched me each time it came back. The door was warped in so that on the side where the lock was it bent out so they could get a piece of 2 by 4 and pieces of pipe and things like that in between the edges of the door and the jamb, but they couldn't spring it out that way so they got sledge hammers and broke the hinges and got the door off.

-25-

Carson

Direct

As I remember they jammed in the barred door on the inside; I think they broke the hinges off it and they went through it too, and I went through with them and I went around to the cells to get the names of the negroes who were in the cells. I went clear around and saw the negroes. They were under their bunks when I first went around there; that is, they were out of sight, and I heard the crowd shouting around that the police had fooled them, that the niggers weren't there, and finally they found one under a bunk and different ones would shout, "Here is another one "as they crawled out. As I remember they started breaking in the first cell on that east side, the one farther north first, but I continued around and stopped at the second cell at that side; there was a white man in there and I talked to him for awhile, asked him how he felt and got his name and so forth and I continued on around the cells to the other side and asked each of the negroes in turn what their names were and they gave me what they said were their names, and Isaac McGhie was among them. I didn't do anything in particular except roam around there until some minutes later I went to the second cell; I think it was the second cell from the rear on the west side and they had two or three of the negroes in there that they had taken from the other cells and I went in there and they were questioning them and while I was there they brought in two more and after they brought in those last two I went out and I just was out a few minutes when they brought two of the negroes out to hang them but I didn't see them; after I got out of the cell room I didn't see them. I went across the street and when I came back there again afterwards to telephone to the office for instructions I then went back to the cell room again and they had left three men in that cell where they had been examining them, and I asked them their names to try to check up and every time I asked them I got

-26-

Carson

Direct

different names. I was trying to check up what their actual names were, and the police came in about that time; I think there was a policeman stationed in the corridor of the cell room when I got in there, and he told me to get away from that door and a minute or so later Captain Fiskett came in and ordered all the policemen over to the City Hall. When I saw them this Isaac McGhie a was crying and trying to pray and wringing his hands and hanging on to the bars and he was trying to make the mob believe that he was innocent; he was protesting his innocence. As near as I could check up afterwards he was one of those taken out and hung. When the first one was taken out from up stairs I was in the cell room below and someone hollered that they got the first one, and it was a very short time after that that I got out.

ON CROSS EXAMINATION, by Mr. Larson:

I did not see any of the negroes hanged. I don't know which was the first one taken out except from what I just said I heard some one in the mob down stairs holler that they had got the first one. I know he wasn't taken from the floor I was on, the first floor, so he must have been taken from the second floor. The man who gave his name to me as Isaac McGhie was on the first floor. I wasn't up on the second floor at all. I would just have to guess roughly how many men were in the jail during the time I was there. Both sides of the cell room outside of the cells was packed, (illustrating by plat) to the rear, at the south side of the cells there was only an occasional one, but on the east and especially on this north side it was pretty well filled. I was there when they held the so-called mob court. I am not positive in any mind whether it was held in the

-27-

Carson

Cross

last cell on the west side or the next to the last but I think it was the next to the last cell. I don't know who was holding it. I asked the negroes in there their names. The first time when we first got into the jail room and I asked them their names, they gave me one list of names and the next time they gave me-- Well, it corresponded to a certain extent but it didn't-- The first time I think I got two by the name of Green and the next time two by the name of McGhie and I came back later on and tried to check them up and I couldn't, that is I couldn't definitely. There were probably three or four white men engaged in that kangaroo court proceeding, but I didn't know any of them. I don't know how long the proceedings lasted. When I came there they had three men already in there and I don't know how long they had been there; I don't think it lasted more than 15 minutes after I came. I took no part only to ask their names. I don't know if there were any policemen there when they were holding this kangaroo court. There had been some while they were breaking open the first cell, some of the officers tried to grab this sledge hammer, and some one yelled, "Get them out of here. Rush them", and they seemed to crowd around the officers and crowded them to the door. I think Lieutenant Barber staid there but I am not positive. The others went out. After I got through asking the names of the negroes I staid there until the mob began to get pretty thick, that is insistent, and the cell door which was closed when I went in, closed after me, was opened and then they brought two more negroes in while I was there and the mob began to jam into that cell and it got pretty tight and pretty hot and I had an overcoat on, and I thought I had better get out of there, and I did get out. I don't know that the crowd got larger but they began to pack pretty well around

-28-

Carson

Cross

that door and became more insistent as time went on; they wanted to get into the cell and were wanting to get the negroes out. I think it was five or ten minutes after the mob got into the police station that they began pounding on the doors. I made no note of the time but I think it was while McClearn and McDevitt were talking that they began pounding, before they finished speaking. When I got over there they were using a railroad tie. I had been in the jailer's office before the pounding began and then I went to where they were pounding and I got pretty close to them; they were working right in front of me. There was probably four or five men on each side of this railroad steel rail when they got to that and they would swing it probably for a minute or longer pretty fast and as hard as they could and they would drop out and another bunch grab hold of it. The room was jammed full of people looking on. While one bunch would be active the rest would stand there and the minute those who were using the battering ram and sledges would get tired there could be others jump in and take their place I staid there till they broke in the door. I think it took them about half an hour. I saw Lieutenant Barber come in there several times and he grabbed hold of this battering ram and different things that they tried to break down the door with, he grabbed hold of them and grabbed fellows by the arm, but they did not stop. He is the only one I remember specifically that tried to stop the affair. No civilians tried to stop it outside of those who spoke there, McClearn and McDevitt. I didn't recognize any others. As for the crowd outdoors that were active, I said there was over a hundred; that is just a guess, of course. There was a crowd immediately in front of the police station and then an open space and then a sort of an open ring, you might say,

-29-

Carson

Cross

and the biggest proportion of the mob was outside of that ring; I would say they were spectators; that is, all I could see, of course, There was noise coming from everybody. I don't remember any special remark that was made, nothing in particular. I suppose I heard them say "Get the niggers." I don't think any such remark as "What if it was your sister" came from the mob itself, that is, any that I heard. They would cheer when the mob seemed to be getting a little the best of the police officers perhaps in the water fight, why they would cheer, and vice versa; they seemed to be in sympathy with those who were engaged in the water fight against the police, and they manifested their sympathy by cheering.

I went into the police station several times through the window; there were three windows in a sort of bay window, as you call it, and I went through the one on the east.

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-30-



JOHN C. BROWN, being duly sworn as a witness in behalf of the state, testifies  
as follows, in answer to questions:

ON DIRECT EXAMINATION, by Mr. Greene:

THE WITNESS: My name is John C. Brown; I live at 1711 London Road, Duluth; I am deputy sheriff of the county, attached to the county attorney's office, and have been since the first of January of this year, and I have my office in the county attorney's suite. I remember the time when we had the Grand Jury investigation of the lynching. Mr. Greene was the county attorney present in the Grand Jury room during that investigation. My work during that investigation was interviewing witnesses, and names of people that were brought out in the course of the Grand Jury investigation and the names of people that were obtained from outside sources. Those men would be brought into the office and I would question them. I took statements from a large number of people at that time. During that work I took two statements from this defendant Hammerberg on two different occasions. I cannot recall just how his name was suggested. He was brought into the office, I don't remember now where we got the information or the lead that we followed up and had him come in. I can't recall. We had numberless leads at that time. State's Exhibit J is the first statement I took. We were seated in the further room now occupied by Mr. Searls. I had a typewriter on the table and I was on the further side of the table and the witness on the side nearer the door and I would start in and ask him questions to get a starting point. You had requested me to cover one subject with this man as I now recall it, and I think there were two or three other boys in the room at the same time and they were all relating what they knew in reference to this one particular subject. Now in the course of taking that statement I found out that Mr. Hammerberg had some personal knowledge and was down there that night, and I made

Brown

Direct

a lead pencil note on the bottom of this type written statement and took it down the hall to Mr. LaVaque and asked him to deliver it to you immediately in the Grand Jury room, which was done. You were in the Grand Jury room at the time; I was doing the work on the outside and that is how I come to send a note instead of delivering it personally.

MR. GREENE: I want to say this concerning this particular statement: It has nothing to do with this defendant as far as having any connection with this case is concerned. It was in reference to what he might know about another case and he told what he knew about that other case, and it was merely by way of introductory to that other statement which was later on taken. I don't know that this has anything to do with this case at all; there is no particular objection to it going in but I do not think it has anything to do with it. I will show it to counsel and unless he desires it I do not think we shall offer it. It has to do with one of these other cases.

MR. LARSON: (After examining statement:) It does not seem to have anything to do with this case.

MR. GREENE: In view of the fact that it has nothing to do with this particular case I will not put it in the record, if that will be satisfactory to every one.

THE WITNESS: That night after the Grand Jury adjourned I told you what that note referred to at the bottom and you directed me then to interview Mr. Hammerberg further and get another statement from him in reference to what he knew and what he was doing that night, and I did so the next forenoon. The second statement was taken in the same room and under the same circumstances except that there were not so many present. The way I took the statements, I would ask them where they were that night and lead up to the time they first got knowledge

-32-

Brown

Direct

of what was going on down town or what information had got out around their names, and when I would get a starting point then I would write that down on the typewriter, which I operate and as I covered each phase of the situation I would read it over as it was being made before I would start on something else. Each section of it was covered and read over to see whether there were any corrections to be made or any additions to be made. I read it over aloud to the person who was furnishing the information, to see whether or not he had any corrections or additions to make, and I went along through the statement that way, and then when I had it all typewritten, I would hand it to him and let him read it. Usually I had them sign it. I didn't have this signed but I usually did. When I handed the statement to this defendant he handed it back and said it was all right. State's Exhibit K is the typewritten statement that I prepared setting forth the statements made to me by John Hammerberg. That is the statement I referred to as made in the manner I told you about, the one I handed to him and he said it was all right. The pencil notation in the corner is my handwriting. It is 6-28 J. C. B., meaning June 28th; that is the date the statement was taken and those are my initials; they were put on right after it was taken.

State's Exhibit K, consisting of five typewritten pages, is offered in evidence.

MR. LARSON: I wish to ask some questions with reference to the competency of the proposed testimony.

THE COURT: Very well.

ON CROSS EXAMINATION, By Mr. Larson:

THE WITNESS: I am the deputy sheriff connected with the county attorney's office and have been since the first of last January. During the investigation by the Grand Jury of these so-called rioting and lynching cases I was assisting

-33-

Brown

Cross

the county attorney in securing witnesses for the Grand Jury and work of that nature, getting information in general about the riot and lynching. I had the talk with the defendant on which the statement Exhibit K is based on the forenoon of June 28th. I fix the time from the date I put on the paper, the lead pencil mark 6-28. That is the only way. I have no independent recollection of it. The way I came to talk to Hammerberg, I had been assigned by the county attorney to interview him and four other boys in reference to the identity of the man on the pole that had kicked the negro in the face. I interviewed him in the county attorney's office. I am not certain just how we got his name or how we happened to bring him in; he was in the custody of the sheriff is my recollection and I think he was in jail. It is my recollection now that he was in jail at the time I took this statement, under arrest. I think so because I know there was a number of those boys, and if I am not mistaken it was the four or five boys that were present when that first statement was made; I think they were all in jail at that time and they were all brought down each morning and left adjacent to the Grand Jury room and as I could get to them I took their statements. I don't know why he was in jail. He was in jail, I think, the first I knew anything about him but I was not advised why. I knew he was wanted as a witness, for the purpose of getting such information as he had in reference to the riot. That is the way I presumed it was. I was not advised just why he was held. I don't know whether he testified before the Grand Jury. When he was brought there on June 28th I couldn't say who his companion's were. I presume likely it was Morgan and Brotherton and Smith and I think there was one other in the crowd but I can't recall his name now. They were in the room at the time I took the first statement of Hammerberg, but at the time of the second statement

-34-

Brown

Cross

just he and I were there. I told him I wanted to know what he knew about the riot and he just started in talking about it. I can't recall anything else I said; there may have been some commonplace remark made but I can't recall what it was. I did not advise him at all. I didn't tell him that it was a serious matter and that he ought to consult somebody before talking about it. I presumed he was brought from the jail though I didn't know it, but he was left in the county attorney's office and when I got to it I asked him to go into that private office and I went in there with him and took that statement. I had some preliminary talk, getting to a starting point, that was not put into the statement, I don't know that I can recall what that was; it would be impossible. I took a number of these statements. I can't recall it but I presume there was some preliminary talk; there usually was. "Now we will get started" or "We will do something." I don't remember what the remark was. Maybe there was one or two or maybe not any. I asked him to tell me what he knew about it. I presumed of course he would tell me the facts. I don't know any reason why he wouldn't tell the truth. There was no reluctance about giving the statement; he gave it freely. I believe he was telling the truth as he understood it. He made that impression on me. I usually had the statements signed and I can't recall just how it happened that I didn't get this signed. Anyway Mr. Greene was in the room one day just as I was finishing a statement, I don't remember whether there wasn't any pen or any ink there, but there was something in the way, and he said, "Well, never mind that. As long as you have them read those over and acknowledge that it is all true and correct, it is not necessary to sign. You can testify to it anyway. Go ahead and never mind having it signed." I wouldn't say that happened with Mr. Hammerberg, but that is the way it came about, and I continued in that way without having them signed and then when the Grand Jury

Brown

adjourned and I went back to my own office I resumed having them signed again.

Adjournment is taken until 9:30 September 15, 1920.

9:30 A.M. Wednesday, September 15, 1920.

MR. LARSON: May it please the Court, the question now is whether State's Exhibit K, which is a private memorandum made by the witness of an alleged verbal statement made to him, is admissible. I object to it as incompetent.

Argument by counsel on the objection.

THE COURT: I think we better treat this as an ordinary memorandum. That may not mean, however, that it will be excluded from the evidence, but I mean to say,- find out from the witness if he knows it to be correct,- I think perhaps you have covered that,- and whether he can recall the various items thereof; whether his memory is refreshed by referring to the memorandum. Of course it is almost impossible,- like one of these cases referred to here,- that he can do so, but perhaps he can do so. If he cannot recall the statements in the memorandum, it is admissible in evidence upon your showing that it was made by him at the time and that it was and is correct.

BY MR. GREENE:

Q. Well, Mr. Brown, I will ask you whether or not at the time you made this statement, State's Exhibit K, which has been referred to, it was correct? A. Could I answer that question rather fully?

THE COURT. Yes, go on.

THE WITNESS: I will state over again what I stated last night that the method of preparing such statements was to ask a number of questions until I had come to a certain point, as I regarded it, and then read that and ask him if he had

-36-

Brown

Direct

any corrections to make or any additions to make. If not we went on to another small phase, and reduced that to writing, not only in this statement but in every statement. That was the procedure. He was given every opportunity to make corrections if he wanted to. It is a correct report of what he stated to me. There are only one or two points I have in mind without looking at the statement. I would not be able to give you the contents of the paper from my independent recollection of it, even after looking the paper over, from an independent recollection of what was said at the time. (witness reads over State's Exhibit K.) There are certain things in there that I remember definitely but the major portion of it is a repetition of what had been told me by a number of witnesses; that is, as a general story of what happened there that night. But I am sure that it is exactly as he told it and as it was read to him, and he read it all over, the five pages; they were not fastened together then, not till after he read it and after he read it he handed it back to me and said, "That is all right"; Just as he handed it back he said, "That is all right." I had read, certain portions to him as it was written out on the sheet in the typewriter but he couldn't see it at that time. Possibly I didn't read it sentence by sentence, but as we covered one section of his progress, some point. He went home for supper and then he went over to the street car. We covered that and then I would read it after I had reduced it to writing, and then after writing it all he read it over again. In reading it over sometimes something occurred to him he wanted to make clear or something to add; in fact there was often additions made. I don't know that there was in this statement. No, there are not. I did not make a copy of it for him. I would have given him one if he had asked it, or anyone else. This is not the language

-37-

Brown

Cross

exactly that the defendant used, it is my own language. There are words there that the defendant did not use.

MR. LARSON: I stand on the objection I made as to the incompetency of the proposed exhibit.

THE COURT: I think the objection better be overruled, because if that were not so, we would be in a position where no evidence, in many cases, would be immediately at hand of a character which was, let us say, well authenticated, and which we simply could not use at all because the man had lost his memory of the matters. I think the objection should be overruled.

Exception by defendant.

State's Exhibit K read to the jury by Mr. Greene.

(Recess is here taken.)

ON FURTHER DIRECT EXAMINATION, by Mr. Greene:

THE WITNESS: Since I was asked questions yesterday as to whether or not at the time of taking this statement on the morning of June 28th the defendant was in custody, I have checked that matter up since we adjourned yesterday, and the jail records show he was first taken in custody at five o'clock on June 28th; that is the same day I took his statement in the forenoon of the same day, and he was arrested at five o'clock in the afternoon of that day.

ON CROSS EXAMINATION, by Mr. Larson ;

That is the information I got from the jailer. I don't know what day of the week the 28th was. I see by the calendar it was on Monday. I don't know that he was in custody for two or three days prior to that. My impression is now that he was brought in on a subpoena before the Grand Jury, a Grand Jury subpoena. I don't know whether he testified before the Grand Jury before that or whether he has since at all. I didn't have anything to do with bringing him into my office, but my impres-

-38-



Brown

Cross

sion is he was brought in on a subpoena to appear before the Grand Jury. I presume he was in charge of an officer. There was Hammerberg and three or four others. Well, there was quite a number; they were all using my office, that is, room 301. I was using another office. It is just an impression I have that he came there in response to a subpoena from the Grand Jury. I cannot say that I am remembering, because I didn't have anything to do with it. I haven't the least idea of how they first started to bring him in.

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FRANCIS MCHUGH, sworn as a witness in behalf of the State, testifies as follows in answer to questions:

ON DIRECT EXAMINATION, by Mr. Greene:

THE WITNESS: My name is Francis McHugh; I live at 722 18th Avenue East. I do not work any place; I go to school; during the summer I worked at the Orpheum Theater as stage hand; I am 19 years old. On the 15th of last June I was working at the Orpheum; they had a show there that night and I was working as stage hand at that time I saw something of the riot that night. The first thing I knew of it somebody came in and said there was a truck going up and down the street, and then about the lynching, that is all I know.

Defendant moves to strike out as hearsay. Granted.

THE WITNESS: I went out in the street after that; I went out a couple of times I think in the first act and I saw the crowd out there. I did not see anything of the water fight. During the first act I went out twice and during the second act when they said the water fight was going on I had to work, but when I could get away from my work I would run outside to see what was going on and then go back in. I don't know what time

-39-

McHugh

Direct

the show closed that night, but it was usually about a quarter of 11 when they got through, from there on. I was out on the street when they brought the first negro out. I was right in front of the Orpheum Drug Store when they began yelling that they got a negro and I went out on the street and I met them somewhere about on the car tracks from 2nd Avenue down to the jail and I went on up with the crowd up 2nd Avenue East to 1st Street and I got up on a street sign right opposite the pole, I mean one of the iron posts that has the sign, 2<sup>nd</sup> Avenue East and 1<sup>st</sup> Street, a pole with a cross arm on it; I think it was only the sidewalk width from the pole; it is the one marked "street sign" on Exhibit A, and I staid there and just watched the negroes go up. I was just the width of the sidewalk from the pole on which they were hung; I was sitting right up on top of the street sign. I could see what was going on down around the foot of the pole. When I got up there first the negro had not yet reached 1st Street; he was just below it; I ran up ahead and climbed up this sign and they brought the negro up and in maybe 10 or 5 minutes they got a rope up. Well, they had a wire, somebody had a wire and they said that would cut him and so they got a rope up. There was three or four fellows on the pole and they got the rope up and had a rope around his neck and they tried to hang him and I guess he was going to say his prayers or confess or something and then I saw a priest come through the crowd,- there was two or three of them,-and a couple of men tried to assist them up on the pole, and the priest,- I forget his name- he got up on the pole and he tried to quiet the mob down and they began to yell and there was a man standing there,- and I guess there was only one man on the pole, and he was kind of directing them, kind of trying to make the people keep quiet, and when he saw the

-40-

McHugh

Direct

people wouldn't pay any attention to the priest he said "Go on." When the priest had been talking they got the rope off the negroes neck and then the priest got down he got maybe 10 feet away from the pole, the negro did and they had the rope off his neck and then somebody had the rope and put the rope over the negro and they began kind of fighting there and two or three men pulled the negro back to the pole and they said "Go ahead" and they pulled the rope, the crowd on the upper side, and they pulled him up and then the rope broke when they got him three or four feet up and he fell and they began kicking him when he fell to the ground. He fell near the pole; there was a little space there when he fell down and he lay there with his face towards the street right near the foot of the pole and when he either got on his feet or somebody put him on his feet and his left eye was hanging out on his cheek and his face was all bloody; then a me man hit him to the face and then the man that hit him in the face, same fellow hit him; then they took a short thick rope and they put it around his neck and lifted him up and tied it on an arm of the pole; that was the first negro. Just about the t time they tied the first negro up I saw two more negroes; I was up right in the street, right at the corner. I couldn't tell which way they came from; I just saw them in the middle of the intersection at 1st Street. They just brought them up and they turned the second one around and just put the rope around his neck and pulled him up a little ways and the third negro watched him go up and then they took the third negro and strung him up, and so they hanged all three of them.

-41-

McHugh

ON CROSS EXAMINATION, by Mr. Larson:

THE WITNESS: I believe since you suggest it, that it was Father Powers that made the speech. He was above the crowd when he made the speech. Somebody held him or he was on a stake, I don't know which, but he was above the crowd. I Just happen to think that somebody held him up now. He said something about law and order; wait until tomorrow or something, let the law settle it. The crowd paid attention for awhile and then they began yelling. There was a priest ahead of Father Powers. I think there was three in all but there was one ahead and he was a yelling "Boys, Boys" and then he gave way and then Father Powers went up on the pole. He went up the pole and made way and then Father Powers came after. I think there was a third priest but Father Powers is the only one that spoke that I recall. Some of the people in the crowd were trying to protect the negro and when Father Powers was speaking they got him away and were trying to get him away from the crowd that wanted to hang him and when Father Powers got through there was a little fight. The only one I saw struck in the face was the man that hit the negro. He had his back to me; the negro was facing me and he hit him, but I couldn't see who he was. The only one I recognized on the pole was this Edward Jackson, the street railway employee; he was towards the bottom of the pole; there was three or four people on the pole and he wasn't the top one when I saw him and I wouldn't say he was the bottom one but he was about the middle; he was about even with me when I saw him; When I saw him there was no negroes on the pole, it was before they were on the pole, and I didn't see what the other fellows that were on the pole did.

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THE STATE' RESTS.

-42-

WILLIAM HOLM, sworn as a witness in behalf of the defendant, testifies as follows in answer to questions:

ON DIRECT EXAMINATION, by Mr. Larson:

THE WITNESS: My name is William Holm; I live at 112-14th Avenue West; I have lived in the city 13 years; my business is grocer, The West Duluth Mercantile Company; I am manager of that concern and have been 13 years. I know Mrs. Hammerberg and her son Carl; I have known him for it must be 7 or 8 years. His reputation in the community in which he resides is good.

ON CROSS EXAMINATION by Mr. Greene:

I am in business in West Duluth and do business with his family and have been for 7 or 8 years, ever since they came to Duluth. I am not a bondsman in this case; he has no bond. I have not contributed to the fund that was raised out in West Duluth for the defense of these men. I don't know anything of the defendant but of my own personal knowledge and the general feeling around West Duluth. I never heard anybody talk anything but good about him before this thing happened. I have heard about him; they always make remarks about the boys around there.

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-43-

JOHN A. FORSMAN, being sworn as a witness in behalf of the defendant, testifies as follows in answer to questions:

ON DIRECT EXAMINATION by Mr. Larson:

THE WITNESS: My name is John A. Forsman; I live at 5210 Wadena Street; I have lived here 8 years the 2nd of last July. I am in the real estate business in West Duluth. I know the defendant Carl Hammerberg and have for between 7 and 8 years. I know his reputation in the community in which he resides is s good.

ON CROSS EXAMINATION, by Mr. Greene:

My place of business is 5410 Ramsey Street in West Duluth. I know Hammerberg's mother and sister and have for about the same time. I have perhaps known his mother for a little longer, between 7 and 8 years, possibly 8. I have seen the boy now and then, I have seen him on and off, and I know him from my personal contact with him. I never heard anything bad, I was not solicited to contribute to the fund that was raised in West Duluth to defend these boys, and I am not interested in the matter at all.

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-44-

EDWARD HARRIS, Sworn as a witness in behalf of the defendant, testifies as follows in answer to questions:

ON DIRECT EXAMINATION, by Mr. Larson:

THE WITNESS: My name is Edward Harris. I am 18 years old and go to Denfeld High School. My father is David Harris; he is a clothier at West Duluth; we live up stairs over the store at 208 Central Avenue and have for about 14 years. I have not known Mr. Greene before the trial; but I have met him in connection with the trials, in the Hedman trial. I was a witness in that trial. I know Hedman and Hammerberg. On the 15th of June I rode on that truck up as far as 4th Avenue West. I got on at Central Avenue, and I didn't see Hammerberg on the truck; if he had been there I might have seen him; there were 6 or 7 on the truck when I got on. I recognized Leonard Hedman.

ON CROSS EXAMINATION, by Mr. Greene:

I got on the truck at West Duluth and rode in and got off at 4th Avenue West on its first trip going east; that was all I rode on it and I was not on or connected with the truck afterwards/

ON REDIRECT EXAMINATION, by Mr. Larson:

I am not under arrest. I don't remember what time it was I notified the authorities I rode on the truck, About a week or so before the Hedman trial.

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-45-

CARL HAMMERBERG, sworn in his own behalf as defendant, testifies as follows in  
answer to questions:

ON DIRECT EXAMINATION, by Mr. Larson:

THE DEFENDANT: My full name is Carl John Alfred Hammerberg. I am 18 years old; I was born in Sweden and have lived in the United States 10 years; I live at West Duluth. I went to school to the 4th grade and quit school when I was 15 and from that time I have been working; I started to work for Radford & Wright in this city; that is a sash and door factory; I worked there about a year and a half; at the time of my arrest I was working at the ship yards at the Riverside plant; I live at 5219 Wadena Street with my mother, the lady who sits over there. Her name is Betsy Hammerberg. I have one sister, but no brothers; my sister lives in the state of Washington. I was working on the 15th of last June; I came up town on the evening of that day; I started from Central Avenue. I went down to call on some of my chums and they had heard about a big crowd coming up to lynch them niggers that was taken in custody and they asked if the rest of us was going up and we all agreed to come up and we went up Central and we heard some more about it and we started walking back and I didn't have money with me and I had to go home and get street car fare and then after I got my street car fare I went back ,and met the fellows in front of the church on 53rd Avenue and we walked up Central and took the car; they were George Morgan and Lawrence Brotherton and Lester Smith, and we boarded the car. I don't remember just how far I did ride, but about 3rd or 4th Avenue West and got off there and we saw a truck near there and they hollered for us to get on and have a ride and we went and jumped on and the truck started going east and went down to Lake Avenue and turned around and they had a rope on the back of the truck and they told the fellows to come on,- the fellows that was on the track told them to come along and get

-46-



Hammerberg

Direct

hold of the rope and I got off with the fellows that did get off and hung on for awhile until I got a side-ache and I couldn't hardly walk any farther and then I had to jump on the truck and I rode the rest of the way. I don't just exactly remember whether we got off before we got to the police station or not but there was a crowd there at the time, in front of the police station. I staid right where I got off the truck for awhile and then when the crowd started going around back of the jail I went around back to see what they were going to do back there and I seen them break a door down there and throw a few bricks. I did not throw any and I did not take any part at all in breaking down the doors. I don't know how long the crowd was there before I got there or after I left there but I staid there about 20 minutes, I guess, 20 minutes or maybe more. I would have to make a rough guess at the size of the crowd when I got there; there was 200 anyway I would guess. The crowd got into the police station down stairs, the windows was broken in, the glass, and I seen a policeman hit a couple of fellows on the head with a billy club. When the policemen showed signs of resistance most of the crowd turned around and walked out and I walked out and went around in front and the water fight was already started when I came around in front, at least the policemen were using the hose, anyway. I did not engage in that water fight in any way. The only time I had connection with the hose was after the water fight; finally I started to pick up the hose and they asked for help to pull it out from the truck and me and George Morgan and Lawrence Brotherton,- I don't remember whether Lester Smith was there or not,- we took and pulled the hose out from under the truck. It was the first truck that was parked on the street on the other side, right across from the Orpheum, on Second Avenue. After that I went up in front of the jail. I heard there was

-47-

Hammerberg

Direct

thousands there. I don't know just exactly myself what amount of people there was there, but it was a large number. I went with the crowd in the jail, I walked in with the crowd, the crowd pushed me in and we got inside the jail there and the crowd some of them started going up stairs and I went up stairs and went up on the 4th floor, or the 3rd floor; I don't know how many floors there are; anyway it was the top floor and I walked around to see what it looked like and when I had seen what was on the top floor I started down again and when I got about half way down the stairs the crowd was there and I couldn't go no further. I was on a sort of balcony there and the fellows was battering at the doors, using sledge hammers and I heard some of the statements that was made about letting bigger fellows get hold of the tools to break the door with and after they had broken that door then they crowded in there and of course I went in with them; I wanted to see what it looked like; I never been in one before, and I seen them break them doors down. I didn't know any of the fellows that was breaking the door; they were older men and not boys. After I got in there they went into what they call the ladies department there and started breaking the doors in there and they got to hollering a few times before they did break through the doors, and they shoved a little fellow through and he come back and said there was nobody in there and then they started for the boys' room there; they couldn't break that door so they went in the room right on the other side of it. At that time I was in the hall right in front of the ladies' doors where the cells are and I staid there until after the crowd started going in there and I see the crowd going in and I went in to see what there was in there and they was all going through the hall and I went in there and went into where the niggers were and staid there and looked at them for awhile

-48-

Hammerberg

Direct

and then I walked back; I don't know exactly how many men were in there, but at least 40. There were no white men in the cells. There was some fellows asking the niggers whether he had any hand in it at all. I didn't hear what he answered; the fellows started hollering just as soon as he got through answering; they hollered "Take him out." I went right out in the hall. I couldn't get down any further on the stairs; that was as far as I could go the crowd was so thick, jammed in and they come out with the nigger that was in there and started taking him down and I went right in behind until I got outside and then I waited to see if any of the fellows that I knew would come out, and they took the nigger up 2nd Avenue East to 1st Street; I went up too and I saw the nigger hung. There was a priest there making a speech. I just heard the last of what he was saying. I was right below him. I wasn't trying very hard to listen. He was, standing on our arms, my arms and another fellow. I don't know if that was Father Powers; I don't know him. We had our arms crossed something like this and was holding each other's arms and we was standing up close and he was standing one foot on each of us. That was the priest that was talking to the crowd to try to get them to stop hanging the niggers, but the crowd wouldn't stop. I didn't t take any part whatever in hanging the nigger, or have hold of the rope, or help in any manner whatever. I can't remember who I did see there only Lawrence Brotherton that I was with; he wasn't, far behind me at the time. There was a fellow there in a sailor suit but I don't know who he was. When I see him he was holding the nigger by the shoulder; after the first nigger was hung I walked back a ways and then they came with the other niggers; I don't know if they had them both together. Maybe I had walked about half a block from there and maybe not quite that far

-49-

Hammerberg

Direct

I didn't know there was going to be any more to do, I thought that was the end of it and I see them coming with the other niggers and I see a fellow carrying a sledge there. It was Ed Goneau; I walked back a little ways towards the pole and then I see that they were going to hang him, and they hung him and they come with the other one and hung him too. I did not take any part at all in the hanging of those two niggers. After that I walked down to 1st Avenue and Superior Street and met some of the fellows down there that I had come up with and some of them had some other fellows with them from West Duluth. I was there when the picture was taken; it might have been 20 minutes or half an hour after they were hung, after the niggers had been hung; then we walked down to Superior Street and met some of the fellows there and started talking together and some of them was going home. There was still a large crowd on Superior Street and on the avenues. I don't know who took the picture; I walked to 3rd Avenue West and took the car and went home. I am now under arrest and in jail; I have been indicted for rioting. I don't remember what date I was arrested; it was on Saturday night; it was the Saturday night before I went to Mr. Brown's office; they held us in the police station down in West Duluth for maybe an hour and then they took us to the police station up town here and I was taken from the police station to the Court House here and had a talk with Mr. Brown who testified this morning. I don't know that it was Brown's office but it was the last office on that floor towards the outside of the building, in this Court House here. He told me that he wanted my story and told me to tell the truth; it would be best for me to tell the truth and I told him what I knew about the lynching and what I had done during that time I had been up there. He asked me some questions about how we happened to get started to come up and all, that, and I told him. We were alone in his office.

-50-

Hammerberg

Direct

I don't remember in the statement I made Brown that I said, "I staid around there until somebody took the hose off the fire wagon and started up the hill with it and the crowd yelled 'Get hold of the hose and help pull' and I grabbed hold of it, and helped to pull the hose." I told him the crowd was hollering that but I didn't tell him that I took hold of the hose at that time. I told him what I testified to here about the hose being under the truck. I have told here as nearly as I can remember what happened there that night. I can't say I was cool at the time of the lynching but I was pretty excited. Mr. Brown talked to me an hour and a half or two hours; I read the statement over after; I might have been excited and nervous, but I wanted to give him the truth as I recalled it. I am still in jail; I have been unable to furnish any bonds. I have never seen my father. I don't recall that I said anything in the statement about having taken hold of the hose when the crowd yelled to take the hose. When I said 15 or 20 minutes, I didn't profess to give the exact time; that was just the best I could recall it. I did not know the girl that was raped.

Recess until two o'clock p.m.

Two o'clock. Hearing continued:

ON CROSS EXAMINATION, by Mr. Greene:

THE WITNESS: I am 18 years old and went to school in the city till I was 15 years old, out at West Duluth. I came down town on the street car and got off at 3rd Avenue West. When I first saw the truck it was between 3rd and 4th Avenues West; I saw it when I was still on the car; it was going east then and the car was going east and it was a little ahead of the car when I saw it and when I got off it was at the side, right on the corner in front of the American Exchange Bank, where I got off, on the east side of 3rd Avenue West , and the

-51-

Hammerberg

Cross

truck had stopped there, and some of the boys on the truck hollered to us to get on; I don't know who hollered. They didn't call us by name and I don't know who they were. They said "Come on and have a ride." That is all I heard then. I might have seen them before but I don't remember of seeing them, not one of them. I don't know the name of one of them and I didn't recognize any of them when I saw them. They were strangers to me and they hollered to come on and have a ride and I went and got on with them. I didn't have any idea where they were going and I didn't know what they were about, and the truck drove east on Superior Street to Lake Avenue East and turned around. While the crowd on the truck were going along the street they were hollering once in awhile, "Come on with the lynching party." I don't remember now that I heard anyone say "Come on and join the neck tie party." I don't remember of hearing them say anything about they were going to get the niggers, or words to that effect. I heard the word niggers mentioned while I was on the truck by some of the fellows on the track but I don't know who and I don't remember just what was said. I can't now give you any idea of what they were saying; I don't remember that far back. I wasn't interested in that thing. After we turned at Lake Avenue we went west and I was on the truck or with it all the time. I don't know just where it was that they hitched on the rope; I don't remember if they stopped the truck and hitched the rope on; I remember they hitched the rope on but I don't remember just at what particular point it was. They hitched it at the rear end of the truck some way, I know that. After they turned at Lake Avenue and were going west I got off and walked not quite to First Avenue and then I got on again, and the crowd on the truck was hollering, "Come on to the neck tie party." I don't remember just what else

-52-

Hammerberg

Cross

they were hollering. I think we went as far west as 3rd Avenue. After I walked a block I got on because I had a side-ache because the truck was going kind of fast when I got off and I started out at a kind of a fast gait; we was walking at a fast gait or half running, and then I got on the truck again when I walked about a block and rode until we got to 3rd Avenue West and we turned again and went East again and up somewhere near in front of the police station, When we were going east on the last trip the crowd on the truck was hollering the same way they had done. I don't know who they was hollering to; they must have been hollering to somebody that was on the sidewalk or walking along the street. I don't remember whether the fellows hanging on to the rope were hollering or not. I was sitting down on the truck all the time. I was with the crowd from the time we got in on at 3rd Avenue West to Lake Avenue and then back west to 3rd Avenue West and then east again to the police station and I was either on the truck or walking or running behind as I have stated and all the time we were making these trips the fellows on the truck were hollering "Come on and join the neck tie party", "Come on to the lynching" or "Come on and lynch the niggers." I don't remember hearing them holler "Don't have cold feet." "Where is your manhood," and things like that. I wasn't paying much attention to what the fellows on the truck was doing. I was watching the people on the sidewalk just seeing if there was anybody there I knew but I didn't see anybody I knew. When I got off the truck at the police station it hadn't stopped yet; it was just going slow; I Jumped off a little before we got to the station and I don't know just where the truck stopped. Brotherton and Morgan and Smith were sitting right on the back of the truck talking with me and none of us were hollering at all.

-53-

Hammerberg

Cross

I don't know any of the fellows that was on there; I wasn't looking around to see if there teas anybody; I was looking to see if there was anybody on the sidewalk I knew. I didn't go up in front of the police station when I got off; I just staid where I was when I got off . We stopped and talked for awhile and when the crowd started to going around we started around with the crowd and was walking around. We never staid in one place very long. I lost my chums in the crowd five or ten minutes after I got off the truck; before that I was with them; we stood where we got off for awhile, just maybe past door to the station. I didn't go on the curbing any; I walked up there when I see the crowd go down behind the jail. I wasn't standing on the curb in front of the police station. I saw the police there. I didn't hear what they were saying; they was pushing the mob back all the time. I didn't hear them advise the mob to break up and go home. I didn't state that to Mr. Brown. The statement in State's Exhibit K to the effect that I staid around in front for 10 or 15 minutes and during that time the police were advising the crowd to break up and go home. I didn't state to Mr. Brown nor anything like that that I remember. I am quite certain about that, that I didn't say anything of that kind to Mr. Brown. We were just watching what was going on. Then we went down on Michigan Street to see what was going on down there; when the crowd went down there we knew there was going to be something doing. The crowd started down there from in front of the City Hall; when we got there the policemen were putting water on the crowd in the street. The crowd didn't have their hose then; they might have had it away up on the hill but I didn't see it; they weren't squirting water with it. I staid there until I see what the crowd was doing up the hill and then I took and run up there; they were trying

-54-



Hammerberg

Cross

to fasten the hose to a hydrant up on 1st Street; I ran clear up to 1st Street. I don't remember if anybody was with me at all at that time; I staid there and watched them for awhile and then turned around and went back again. They was hollering at each other and fighting about putting the hose on it. They didn't have the hose hitched on when I got up there, but I staid till they got it fastened on and then I walked down the hill back to the corner of the City Hall. The mob was standing out just across from the station and the policemen were squirting water over them, but the mob didn't have water then. When the water fight was going on I was standing right on the corner; well, I might have been a little further out from the corner; I might have been out in the street a little ways. The policemen ran out of water, I guess, or some thing; the policemen didn't have no more water and couldn't squirt no more water on the crowd and the crowd still had water. When that happened I was in the street, just off the curbing from the corner of the City Hall, near 2nd Avenue and Superior Street on the lower side of the Street. I was east of the door of the City Hall, nearer the corner and I started going up the hill to 1st Street and staid there 5 or 10 minutes. The firemen was going to take the hose off the hydrant there. There was a crowd around there chewing the rag with the firemen; then I started walking down hill to Superior Street and I staid there watching what they were doing. I was on the upper side of Superior Street across from the Orpheum, on the west aide and I must have been there pretty near half an hour and some of the firemen asked some of the crowd to help pull the hose out from under the truck, and I helped them, and then after that I went right in front of the station about the middle of the street, and then the crowd started going into the jail; the fellows that had the hose

Hammerberg

Cross

hose might have been in there before but what I mean is there wasn't any crowd in there. I wasn't the first to go in; there was quite a crowd ahead of me. The crowd pushed me in but I might have been a little anxious to get in myself and see what was going on. I did not state to Mr. Brown that I was in front; that part of the statement is not correct; I was in the middle of the street when the crowd started to go in. I was not just exactly forced in; of course the crowd kind of crowded me in but then I walked along myself. I didn't try to stand in one place any. I went in at that time and through the hall and up stairs to the third floor and then came down and saw them battering at the doors of the jail on the second floor. I staid there all the time they were battering the doors, and it took a long time and then I went in the door; I was just going inside the door they had broken down when they started breaking down a couple of doors to the ladies room. I was in the waiting room four or five feet from the door when they forced this kid through the bars and he came out and said there was nobody in there. There were other fellows in the room with me but I didn't know any of them. After the kid came out I staid right there and they were working on the door into the boys' department; there was about 10 or 15 fellows right in front of me and I was looking over them watching them working on the door. (Witness illustrates position on blue print.) I was standing on a broken chair or locker and I was on that. They knocked the hinges off the steel door, I guess. I don't remember just what they used to knock it off; they had different things, sledge hammers and crow bars. They couldn't break the inside door so they went over to the other place and broke a hole in the wall. I didn't see them break that hole. The first I knew of it was when I started walking over there and seen the crowd going in. I went through the hole and I was in the

-56-

Hammerberg

Cross

boys' jail; the negro that was in there was in the second or third call, I don't know just which. I don't know what was said. There was so much noise I didn't t hear very much. I don't remember whether I made the statement that they were asking the niggers if they had a hand it. I can remember some parts as well now as on my direct examination; I don't remember everything. I guess I said it when they asked some questions but I don't remember what the questions was. They did ask the niggers if they had a hand in it. When they were asking this I was standing maybe two or three feet away from the cell. One negro is all I seen up there. I didn't look around for any more, in all the cells; I only stood before this one cell; I was in there maybe 5 or 10 minutes. I don't remember of hearing the men in front of the cell ask more than one or two questions. I can't just say what the questions was except if the negro had any hand in it. That is the only question I remember of hearing asked. They might have asked more but if the negro answered that question, why the crowd yelled so much that you couldn't hear nothing. I don't know what he answered. The crowd made so much noise I couldn't hear him. There was quite a crowd in there then, something like forty or more at least, jammed in close. I wasn't just exactly in front of the cell; I was standing more than four or five feet away from the cell door; there were people in front of me and behind me both. Then I crowded back through the hole and went out and stood in the hall in front of the battery room and waited until they brought the negro out. I heard the crowd inside, when they were talking to the negro, yell, "Take him out." I didn't know any of those men in there that I knew. When they went down stairs with the negro I went right down behind the negro. I don't remember of saying there was only two or three ahead of me.

-57-

Hammerberg

Cross

There was more than that. I might have said that in the statement but I know there was more than that, more than two or three ahead of me. I was nervous when I was up in front of Brown and I don't know just what I did say. I was before Mr. Brown an hour and a half or two hours. I might have known what I was saying but I said it in an excitement and I don't know just what I did say; I can't remember it now. If I said that I was wrong, because I know there was more than two or three fellows ahead of me. I was five or six feet away from him. I went down stairs right behind him as I told you, and through the main hall outside and then I staid there where I could see if there was any of my pals in there; I staid there maybe two or three minutes on Superior Street. The crowd with the negro was walking up the hill, just turning the corner by the Orpheum when I started to go along with them; they were some distance ahead of me. I didn't just exactly run to catch up but I walked fast. When we got up to the pole I was four or five feet away from it. I was right in there and saw everything that took place. The crowd was not so very thick at that time when I just got there. When I joined them they were standing right in the middle of the corner there; they didn't know just where they was going to hang him; they was figuring on hanging him to a tree there and I went over to the pole and the crowd went right over to the pole, so I was right in there at that time. I didn't see the rope put around his neck, but I saw somebody threw the rope and it got on somebody else and then that fellow took it off. I was about three or four feet from the pole at this time but the negro was close to the intersection of the street at that time. At the time they brought him up to the pole with the rope around his neck there were possibly two persons between me and the pole. They had the

-58-

Hammerberg

Cross

rope up over the spike on the pole and around the nigger's neck and they pulled him up once and the rope broke and they put the rope around again and pulled up the Second time. I said it was hard for him to get his wind after he fell the first time, when he was standing on his feet. I can't just say exactly the blood went on my face; I got it all over--It went all over the crowd; it didn't go out in no stream; it just scattered all over. I told Mr. Brown that every time he blew his breath out the blood would come with it. It don't go very far and it would go on the crowd that was close; I got some of the blood on my face just as I described it because I was pretty close to him, right in front of him; that was after the rope broke and he fell to the ground and the men had been kicking him and they got him on his feet again and he was standing in front of me, a little to that side, but he was facing me and I was close enough so the blood came on me. I was standing right in front of the pole when they were kicking the nigger on the ground; the nigger fell to that side of me, six or seven feet away from me anyway; his feet was right in front of me but his head was further away from me than that. There was a whole mob jumped right over there; I didn't see no special person kicking him; everybody around there was kicking him. I wasn't kicking him but I was right there. Not just exactly everybody but me was kicking him, but there was quite a few fellows did kick him. I was holding up Father Powers before the first nigger was hung, before they pulled him up on the rope the first time when the rope broke. I heard some of what he said; I didn't hear it all; I heard him making the statement to let the law take its course. I and some other boy were holding him up on our arms crossed; he talked two or three minutes, maybe more, maybe five minutes. It may have been nearer ten minutes

-59-

Hammerberg

Cross

that he talked; at first when he got up above the crowd he had quite a time to get them quiet. He had to appeal to them quite awhile before they got quiet and then after they were quiet he went on and made a speech and appealed to them for law and order; he talked somewhere about ten minutes after he got them quiet. I don't know who the other boy was; that was the first time I had seen him and I haven't seen him since; he is an utter stranger. Father Powers stood with his feet on our arms. He is a man that weighs something around 200 pounds and he is somewhere around six feet tall, a big, broad shouldered man. I claim that I and this other boy held him up all the time he was trying to quell the mob and all the time he was making his speech. And after he got through we still staid there while they hung the first nigger, and after that I crowded away from the pole a little distance back into the crowd and stood back there and watched them until the crowd started away and then I went down by the tree and I was there in the outskirts of the crowd when the other two niggers was hung. I didn't say anything to Mr. Brown about assisting Father Powers that I remember. I saw the statement in the hands of Mr. Brown and went over it; parts of it were wrong. He says I took the car at 57th Avenue West right in front of the big church where I met the boys. I took the car on Central Avenue; I took the car on 55th and Ramsey, right on the corner of Central and Ramsey. I understood he said I took the car on the corner of 57th by the big church. (Witness continues reading statement made by him to Mr. Brown.) He says I made a statement to him about the police advising the crowd to break up and go home; I never told him that. I never made the statement that somebody took the hose off the fire wagon; I didn't see anybody take the hose off the fire wagon. The hose was already off the fire wagon when I

Hammerberg

Cross

got there I told him the crowd started up the hill with it and the crowd yelled, "Get hold of the hose and help pull." I did not tell him I grabbed hold of the hose and helped pull it. I did not tell him, "When I took hold of it they had the first end of it pretty near the hydrant at the corner of First Street and Second Avenue East." I never made that either. Everything in the statement in regard to my taking hold of the hose and helping to pull it up the avenue is wrong. I don't remember either of saying that there was three or four fellows in between me and the nigger. That ain't right. That is when they were going out of the Jail. I don't remember of saying there was only two or three fellows. I don't remember of making a statement how many there were at all. Then he is wrong on the last page where he says the nigger blew the blood over me after he was pulled up the second time; it was before he was pulled up the second time. I don't think I made the statement to Brown that the second nigger came up Second Avenue; I thought he came up First Avenue and then east on First Street. I didn't make the statement to Brown that I saw Ed Goneau at the pole with a sledge; he was coming up First Street. I was not at the pole when I seen him carrying a sledge; I was about half a block from the pole. I don't think I made that statement in front of Brown. With the exception of the corrections I have made I think the statement is correct as I gave it to Brown. When they pulled the first nigger up the second time he was not much above the crowd; he was just lifted off the street so his feet didn't touch the ground. I don't remember exactly how it was done whether he was lifted or pulled but I think there was a fellow lifted him up and then he was or the rope was tied around a spike and he hung there just with his feet off the ground.

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DEFENDANT RESTS. \*\_L\*

-61-

CHARGE OF THE COURT:

MR. GREENE: I wish to offer in evidence this subpoena for Father Powers with the return of Not Found upon it. It was issued this noon on behalf of the State; it is s marked State's Exhibit L.

MR. LARSON: I do not see the object of putting it in evidence.

MR. GREENE: Merely to show that we have not been derelict in failing to find Father Powers.

MR. LARSON: I want to say right now as far as the defendant is concerned we will wait until Father Powers gets here. We tried to get him here and we will wait for him.

MR. GREENE: There was no subpoena issued as far as I know. I offer this for what it is s worth.

THE COURT: It may be received.

STATE RESTS IN REBUTTAL.

CASE CLOSED.

Mr. Greene argues the case to the Jury in behalf of the State.

Adjournment until 9:30 A.M. Thursday.

9:30 A.M. Thursday, September 16, 1920; Hearing resumed.

Argument to the Jury by Mr. Larson in behalf of the defendant.

Argument closed at 11:40 A.M, and recess is taken until two o'clock P.M.

Two o'clock P.M. Hearing resumed.

The Court charges the Jury as follows:



### CHARGE OF THE COURT:

Gentlemen of the Jury, Mr. Greene, representing the prosecution, and Mr. Larson representing the defendant, having assumed that the case would be given to the Jury this morning, made arrangements which prevent their being here this afternoon. They expressed sincere regret to the Court at their inability to be present and asked that such expressions on their part be transmitted to you.

By the indictment in this case the defendant is accused of the crime of rioting. Under the law of this state whenever three or more persons having assembled for any purpose, shall disturb the public peace by using force or violence to any other person or to property, they shall be guilty of a riot, and every person who shall be guilty of riot or of participating therein by being present, or by instigating, promoting or aiding the same, shall be subject to punishment in various ways. To this charge made in the indictment the defendant entered a plea of Not Guilty. That completely meets the charge made in the indictment.

Some of the jurors whom you heard examined seem to have most confused notions about the force and effect of an indictment and seem to have minds so constituted that they could not lay aside the indictment, but claimed that therefrom they acquired such knowledge of the ease as raised in their minds some presumption with respects to the merits thereof. This, Gentlemen, is nonsense. That is the short word for it. That is nonsense. The charge in the indictment is completely met and checked by a denial on the part of the defendant, and the matter comes before you for trial and determination without any presumption of guilt arising from the indictment itself, but calling for your determination of the truth of the charge upon the evidence adduced here.

At the outset the defendant is presumed innocent. That is the normal state of men and women all about us and when any one says that they are to be set apart and charged or convicted of crime, the burden has upon those making the accusation to prove the charge so made. That is nothing but fair and a matter of good sense. The burden is upon the State to prove the charge and this it must do by evidence which satisfies the Jury beyond a reasonable doubt. The presumption continues throughout the case until it is overcome, if it shall be, by the evidence.

When the Court charges you that to warrant a verdict of Guilty you must be satisfied beyond a reasonable doubt, this does not mean that you must be satisfied beyond all possibility of doubt or to an absolute certainty. Such things are not practicable or possible among men. We must dispose of these things with as much certainty as is humanly possible, but we are not required to go beyond those limits. Some men seem to have doubts about every matter with which they have to deal, including their own existence. We are assuming, of course, that among you twelve men are none whose minds are of that peculiar character. We expect you to exercise good sense. We expect you to acquit if in your minds, after fairly considering all this evidence, there remains a reasonable doubt of guilt, as that expression is generally understood by reasonable men. We expect you to convict if, after hearing this evidence, you are satisfied beyond such reasonable doubt that the defendant did those things with which he is charged.

You are the exclusive judges of the questions of fact which arise in the case. You are not engaged in precisely this kind of work from day to day. Some of you have served as Jurors before and have had some experience therein; some of you perhaps have not so served.

Gentlemen, the work of trial jurors is of a most exacting character. It calls for intelligence; it calls for

conscience; it calls for painstaking effort on the part of every man and if you fail to exercise your abilities in any of these lines, in just so far do you fail to be model jurors as we understand they should be. And so here your good judgment, after having considered the evidence, is called for with respect to the questions, both main and subsidiary, which arise in the case. It is your judgment which finally must determine what the sum total of this evidence is, and what the proper deductions are which should be made therefrom.

You are the exclusive judges of the credit which you will give the witnesses who have appeared and testified. You would be very simple minded men if you felt that you must take the story of each witness, as he appears and details it here upon the stand, at its full face value, because if you acted upon that theory, we would never attain the truth; there would be no possible reconciliation of the stories which are sometimes told. You must carefully scan these witnesses and consider who among them are telling the truth and who, if any, are not, and you must determine in your own mind what deductions would be made from the stories which respectively they have told, because witnesses here on the stand are of all grades and are entitled to be considered in a great variety of ways. Some witnesses see those things which occur immediately before them; the incidents register themselves fairly well in their minds and thereafter when they attempt to recall them, they can do so with accuracy and can tell us in a truthful way, - give us in a truthful way a picture of what transpired. But running down from that high standard are men of all classes and conditions until you get down to those who neither see nor register in their minds, nor can recall or tell, and you must have sense enough, Men, to make the proper classification in this or any other case

-65-

in which you may sit, and you are to search for and seize upon those parts of the testimony which are true, and you are to reject as absolutely as you can those parts which, you think are not, and are to say from all that you regard as trustworthy what the truth is in reference to this matter which is charged on the one side and which is denied on the other.

From the beginning, Gentlemen, you will take on, I am sure, and have had throughout the hearing, a spirit of perfect fairness. We are not here to convict this defendant if under the evidence he could not be convicted and we are not here to excuse and acquit him if he should be held. The truth really is that everyone must stand on his own feet and stand the consequences of his own acts. If we invoke or apply in part any other rule the whole fabric of society is demoralized thereby, but if we have everyone understand that right living is to be applauded and rewarded and that wrong doing inevitably must bring its unwelcome consequences, we apply a most wholesome rule against which no one can raise objections and the effect of which is to purify and strengthen society at every turn.

So here, in the consideration of this evidence you will be entirely fair to this defendant and you will be entirely fair to the State, and while you need not cast aside sympathy because, Men, we should be sympathetic,- We are not to become inhuman merely because we are called upon to sit here as Judges or Jurors. Not at all. But we are supposed to have both sympathy and sense at the same time and we are not to allow our judgment to be influenced by our sympathies.

If we were to indulge in sympathy, for example, in this case, we should think not only of the living here in Court but of the dead who are laid away, and I mention

this only that your minds may be entirely in equilibrium with reference to this element to which I now refer. We may have an abundance of sympathy but we are to decide what the truth is according to our good judgment in reference thereto.

At the time and place in question a most serious riot occurred in the city of Duluth. The defendant was there present. There is no dispute with reference to these matters. The important question is, Did the defendant participate in that riot? Did he have a part therein? It is not necessary that he have thrown bricks or that he have struck an officer or battered down the door, but did he do anything of a substantial character which aided in the defiance of the officers, or in overcoming their authority, or in obstructing them in the performance of their duties, or in bringing any of these things to pass. It was, of course, at the time the duty of the officers to protect those who were in their custody, as the negroes were, and it was the duty of those officers to preserve from harm the public property which was then in their charge. There were great wrongs of this character committed by some persons on the occasion in question. There may have been some who were in much greater fault than the defendant; others may have been less at fault; the defendant may not have been at fault at all, or he may have committed a serious crime, according as your judgment shall say upon this evidence.

You are not to understand, Gentlemen, that in the opinion of the Court, you are entirely free to find either one way or the other. No. This defendant is either guilty or he is not guilty and jurors are not privileged at haphazard to find one way or the other. They are called upon to exercise their sound judgment and discretion upon this evidence and with respect to this charge, and say what the truth is.

The defendant may be acquitted with this understanding, or he may not, according as you may judge of the evidence which has been adduced.

The fact, if it be so, that others took a more active part than did the defendant is no excuse for him if in fact he actually took a substantial part in the disorder which then took place, or in bringing it about. What was his part in connection with the truck? Did he assist in dragging the fire hose so as to assist the rioters in turning the water against the officers and thereby obstructing them in the performance of their duties? If he did assist with each base for such purpose, he took a substantial part in the riotous acts. The defendant was in the police station and in various parts thereof. Was he forced therein against his will or kept there against his will after gaining entrance or did he voluntarily enter, knowing that it was against the will of the police officers and in defiance of their authority, and did his action in that regard, and his presence there amount to throwing the weight of such presence against the officers and against the exercise of their authority, and did such action on his part amount to a substantial participation in the riot which there took place?

No one had a right voluntarily to enter the police station against the will of the officers, and under such circumstances that he must have known that such entry was in defiance of their authority, and anyone who did so enter may or may not by that act have been guilty of participation in the riot in question, according as you may characterize his acts from a consideration of all the evidence bearing thereon. Those who entered with the hope or desire of aiding the officers, and those who entered hoping that they might assist in dissuading the mob from further action, or who hoped in some way to resist or overcome the mob, were of

course not rioters although they voluntarily entered the building. Those who entered as mere spectators were not necessarily rioters if they entered at a time when their physical presence did not add to the show of resistance made against the officers and when their presence had no effect in causing the officers to cease resisting the mob, or if they entered after the officers had ceased to resist the mob, if they did so cease, they were not rioters by reason of such entry, but those who voluntarily entered at a time and under such circumstances that their presence must be considered as part of the resistance of the mob against the officers and in defiance of and against their will, must be considered as rioters and dealt with accordingly.

Those, if any, who were forced into the police station against their will were not rioters by reason alone of such entry. The length of time that any particular person remained in the station, what he did therein, and his opportunity, if any, to escape therefrom, may all be taken into consideration in determining whether he entered voluntarily or entered against his will.

Taking into consideration all the evidence which has been adduced, the circumstances under which the defendant left West Duluth, his connection with the truck which was driven through the streets of the city, what he did outside of the police station indicating his connection, if any, with the hose of the fire department, the circumstances of his entering into the police station, the length of time he remained and what he did there,- what do you say? Was he guilty of participating in the riot in question or was he not?

If you find that he was not, that he had no substantial part therein, your verdict will be Not Guilty and the case will of course then be at an end. If you find that he was,

you will find him Guilty as charged in the indictment, and if you find him guilty you will specify in your verdict that he is guilty under the provisions of a certain section of our statute which relates among other things to riots wherein it is the purpose of those participating therein to obstruct officers in the discharge of their duties.

Such, Gentlemen, is the main body of the law in which it is necessary to instruct you in this case. There are a few subordinate matters to which your attention should be called and briefly they will now be given attention.

It is not at all important whether the crime of rape was committed at West Duluth on the occasion in question or not, and it is not of the slightest interest whether these negroes had any connection with this offense, if such offense there was. Under our laws no man may commit riot. Those men in the custody of the law were entitled to be protected where they were and they had a right to look forward to their vindication if they were innocent, and to their punishment if they were guilty, in the usual course through the administration of the law; and no man or set of men had a right to lay their hands upon them, or to gather in crowds for that purpose, either at the police station or elsewhere, and use violence of any kind in the furtherance of their designs; and no man under a charge such as this may be held to excuse himself or to justify himself in any such way. Men may be safe if they will obey the law. Men should learn that if they do not obey the law punishment or discipline is sure to follow.

As already indicated it is not important whether many others or few were engaged in the commission of this particular offense, nor is it at all important whether others may have been leaders and the defendant one of those far down the line, though still participating therein. The



question is not any such as this but whether or not he had any substantial part in the distressing offense of that night.

Some suggestion has been made that the police officers failed to perform their duty, and some of you may think that such was the case. It may have been so or it may not. We do not pass upon that, but the law is that it makes no difference a whether they did their duty or did not. We are concerned with the question of whether or not this defendant did his, and it is no excuse for him that you or I or any other man, whether he be police officer or not, failed in the performance of the duty which was then resting upon him.

Evidence of good character has been adduced in favor of the defendant, and, this is always proper, because a person of good character, if he really has had such, is less likely to commit a crime or crimes of certain classes than if he did not have such character; and yet, of course, this is not at all conclusive, because men may have had a previous good character and yet in some way commit a serious crime. It is, however, to be considered for what it is fairly worth as bearing upon the probability of whether or not he committed the crime with which he is charged, and in this case you will take it into consideration for what you think it is fairly worth, weighing it with the other evidence in the case for and against this question of whether or not he did this thing with which he is charged.

Various others of these so-called riot cases have been on trial in other court rooms on this floor. You are not to concern yourselves with the results in any of those cases. We are to try this case upon the evidence adduced here, and you are called upon to exercise your judgment and your discretion and your conscience with reference to this matter, and if the evidence was different in other cases, or

if jurors there failed to do their duty either by convicting when they should not or acquitting when that was wrong, you cannot draw inspiration therefrom. You must look at this case end at what has occurred here and say upon your oaths and your consciences what the truth is with reference to the charge here.

At or near the very end of these instructions, Gentlemen, the Court turns again to what was said in an early part thereof, that you maintain the spirit of fairness, which does not mean at all a spirit which would lead you to overlook or excuse crime on the one hand or to run with too great a fervor into conviction on the other, because if you convict this men when he ought to be acquitted under this evidence, that would be unfair, and if you acquit him when under the evidence he should be convicted, that is equally unfair.

You need not especially concern yourself with his past except as it has a bearing upon whether he is likely or not to have committed this crime, and you need not concern yourself with his future. Concern yourselves only with the question of whether or not he did this thing with which he is charged. You will find that it works out best in the long run to ascertain the truth in reference to these matters, and if some other juries at some other time or place may be harsh and cruel on the one hand or weak or wicked on the other hand, see that you keep the middle and sensible course.

You will take with you to the Jury room two forms of verdict. One in case you find the defendant not guilty, the other in case you find him guilty as charged in the indictment. You will select one of your number as foreman and when you shall have agreed upon your verdict, the same will be signed by your foreman. The verdict must be unanimous in this, a criminal case an you do not disperse, as in civil cases, but must remain in session

but must remain in session until your verdict is delivered in Court.

You may be without serious difficulty in reaching a conclusion in this case one way or the other. You understand, Gentlemen, enough of the theory of these cases to know that it is part of the Court's purpose not to indicate its views upon the question of facts unless it indicates in some unmistakable way, in which case you are bound thereby, but no such thing has occurred in this case. The Court has instructed you, of course, that there has been a serious riot at this place. That is a question of fact. You are not to gather from the Court's mind what you should do, but you should exercise your own judgment upon these matters.

If there is a difference of opinion among you upon your retirement, see that you listen to the opinions of your fellow jurors and that you consult together and that you come step by step to a right conclusion in the case.

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The Jury retire at 2:30 in charge of the officer, taking with them to the Jury room the Exhibits in the case.

-73-

7:25 P.M. Thursday, September 16, 1920.

At this time the jury return into Court for further instructions, whereupon the following proceedings take place:

THE COURT: Who is your foreman, Gentlemen?

MR. W. K. GILL: I am, Your Honor.

THE COURT: An indication has reached the Court that you desire further instructions.

THE FOREMAN: Yes, sir. We would like to have a repetition of that part of the charge what refers to "substantial participation in the riot," or words is that effect, and a further enlightenment, if possible.

THE COURT: The expression "substantial participation in the riot" occurred at various points throughout the charge. The fact of course is that to warrant a verdict of guilty, it must be shown that the defendant participated in some appreciable way, let me say, some substantial way or degree. That expression usually conveys its own meaning fairly well, and I may not be able to give you the help which you wish.

It is very likely that there were men there at the scene of the riot concerning whom it would be straining matters a good deal to say that they had any part therein. Men who were stopped on their way home, without any knowledge that there was a riot there, and for a time were held in the crowd. That is a somewhat strained illustration, but a man might have had a most accidental connection with what was done there, as, for instance, if a man were standing innocently by and the hose had fallen upon or been thrown upon his feet or foot and he had kicked the same about, or had even picked it up and thrown it away from him. That you see is in no substantial way a participation in the riot, assuming that he was there innocently; and as you proceed from

-74-

those illustrations nearer and nearer the real wrongs which were committed, there were people very likely of all grade of participation. Some of course were very active, pounded the doors, took out the negroes, dragged them, or partly dragged them to the place where they were so unceremoniously put out of the world. Others, perhaps, did much less,- may have helped carry in one of the pieces of iron used in ramming the doors, or one of the sticks of wood. Others may merely have helped to get the crowd together for the purpose in question.

That was a great riot, and in so far as there was a riot at all, there was violation of the law. The law is designed for the protection of all the people, and anybody who had a part in that riot, whether it was in battering the doors, or in supplying the material therefor, or encouraging any to participate therein by gathering at the place for that purpose, or who did anything which in an appreciable way tended to resist the officers or overcome their authority, or obstruct them in doing what they should do at that time and place. Of course it was their duty at that time, in view of the threatening mob outside, to keep people out of that station, and anybody who forced himself into that station against the will of those officers under such circumstances that his presence amounted to making a greater show of resistance may, as you were instructed, if he voluntarily entered under those circumstances have been guilty of participating in that riot. The idea of course is that good people, good citizens, should have been doing their utmost to quell the riot, or should certainly not be doing anything which amounted to making a show of resistance against those who were in authority at that station.

That police station was for this city a citadel of

authority, and anyone who by his acts, his voluntary acts, did those things which tended to break down that authority, tended to resist those officers or to make it impossible for hem to perform their duties, or more difficult for them to do so, was participating in the riotous conduct of that mob. You were told that of course any one who was crowded into that station, if any such there were, against his will, could not be held a rioter on account of the set of entry only, because that was not his voluntary act.

Not all people on such occasions come up to the very highest standards of American citizenship, and it is not the purpose of the Court and should not be that of the Jury to hold a man guilty of slight irregularities of conduct, but this was a terrible night, these were awful deeds, and those who participated therein, even around the fringes, if they did so in a way which furthered the general purpose of that mob in some appreciable way, - some substantial way, - should be held on account thereof, while those who had no such participation, as for example in some case the claim is that the wrong man altogether is charged, that he was somewhere else. Of course a person somewhere else had no participation, and a person might be there present under some of the circumstances to which I have referred, and might not be liable as a rioter.

The Court said to you, for example, that if the defendant was one of those who took hold of this hose and assisted in carrying it to or towards the place where it was to be attached to the hydrant for the purpose of setting water to throw upon the officers, of course he was participating in a very substantial way; that is a very substantial way because that was one of the means that the mob used to break down the authority and to resist those officers, but

it is not necessary to do any such thing as that to be participating substantially, and it is not the design of the Court to leave in your minds the idea that to hold a man as a rioter it must be shown that he threw a brick or struck an officer which you were told. If he did anything the effect of which was to overrun authority against its will, to make a show of resistance or to assist in making a show of resistance against those in authority,- that is rioting of a pronounced type. Sometimes a person does such things without quite appreciation at the time all that he is doing. That is not important. We are liable for what we do often times whether we fully appreciate what we are doing or not. Some one might think that he is doing a noble act to knock down an officer and seize those negroes, but if necessary a jury must tell him that he is incorrect in his views; and see a mob might do so, believing that shouldering officers aside and disregarding their directions or commands was all very fine, and it might be necessary to hear the voice of a jury to correct that impression, because all those who did so would be rioters within the meaning of the law.

Now there may easily be other questions. I may not have given you the help you desire, just passed by the point or something of that kind. We are here to help you, Gentlemen, and if there are further inquiries on the part of either the foreman, speaking for you as a body, or on the part of any individual juror, let questions be asked.

THE FOREMAN: If you please, Your Honor, would there be a contrast between the definition "substantial " and "active" participation? Might we ask that question,- Is there a differential.

THE COURT: I would hardly think there would be, although active must of course not be understood as involving the

doing of some of the more serious acts. There is active participation all the way from the most violent of the acts shading away down to a comparatively slight participation.

There is no such thing as take it, Gentlemen, for example as passive participation as opposed to active. That is, a man is not to be punished for standing on the street corner half a block away and wishing in his heart that the rioters might succeed. You see he is in entire sympathy but he is so far away that it could not possibly be said well, put him far enough away so his presence could not have any appreciable effect on anybody's else conduct. That would be a sort of passive interest and passive participation, but when you get all that you move into a field soon of active participation, or the 'doing of something which has some substantial bearing upon the carrying on of this riot.

Sometimes we find out after a verdict that something has been overlooked or the jury have gone off on some point that has not been understood. That does not often happen; they generally do good work, but let nothing of that kind occur if you can avoid it.

JUROR HOXIE: Mr. Greene in speaking to us said that the matter of sense or age, possibly as I under understood, he possibly included with that a man who is intoxicated or possibly is mentally defective, might necessarily be considered,-might not be considered in rendering a verdict on the facts regarding the participation in the riot that are considering. Now can you assure us that that statement is correct?

THE COURT: Well, it does not occur to me at once how it fails of being correct as applied to a case like this. The idea is, to put an extreme case,- We are concerned here with a mob or with rioters who resisted those in authority. Now it does not make any difference at all as to the mentality

-78-



of the person who threw a brick, let us say, at an officer. You would all understand that whether he was an old man or a young one,-a boy in his teens or a girl just growing up,- anybody that has any sense at all, (We don't hold idiots, you know, or crazy people or defectives of that kind), any particular person who did those things which add to the effects with which we have been dealing is to be held therefore. Certainly so far as this defendant is concerned no such question arises. Of course he is an ordinary person, so far as we know, or can see, an ordinary eighteen year old young man.

The Court does not urge you, because it is not its duty to urge you, does not urge you to find this defendant guilty, and it does not urge you to find him not guilty but it is not unfair to say to you that a boy eighteen years old who does those things which are riotous within the definitions which have been given you, is not to be excused from the consequences of his act, but that eighteen year old boy and every eighteen year old boy must understand that the safe thing to do is the right thing to do. That is what keeps us all safe, doing the right thing.

Now if you are not fairly satisfied from the evidence of his participation either outside or inside, either in connection with the truck or the hose or to his entry into the police station that he had some appreciable part, some substantial share,- not as one of the leaders; we know he was not that, but as one of those who had to do with the riot,- if you are not so satisfied, find him not guilty because that is the fair and right thing to do and it would be a shame to do otherwise if that is your candid opinion, if that accords with your sound judgment in this matter; and on the other hand if that same candid opinion and sound judgment lead you

to the other conclusion and you are satisfied thereof to the degree required by law, it is equally your duty to find him guilty because in that way only do we do justice and stop crime. We do not wish to halt crime by convicting innocent men and we do not want to do that here if this young man is innocent, but we do want to halt crime by convicting the guilty men every time they come before us, and you cannot do business any other way than by observing these two rules, those which have consideration for the defendant, those which have consideration for the good order of society of which we are a part.

Are a there others who have questions? (No answer.) Of course if there are any other questions or if there are points which have not been elucidated or if they have not been made as clear as they should be let us, you may ask again, but if the matters have been covered as you think, you may again retire.

Jury again retire to their room for further consideration of the case.

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-80-

STATE OF MINNESOTA  
County of St. Louis

DISTRICT COURT,  
Eleventh Judicial District

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STATE OF MINNESOTA

vs.

Carl, John Alfred Hammerberg, Defendant.  
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Saturday, December 18, 1920.

At this time the defendant in the above entitled case was brought before the Hon. William A. Cant for sentence. Mr. O. J. Larson and Mr. George B. Sjoselius appeared in behalf of the defendant, and Mr. Warren E. Greene in behalf of the State. The defendant having been duly sworn, is examined by the Court as follows:

By the a Court:

Q. What is your full and true name? A. Carl, John Alfred Hammerberg.

Q. Your first name is Carl? A. Yes.

Q. Not John? A. No, sir.

Q. Where were you born? A. In Sweden.

Q. What place in Sweden? A. I don't remember what place.

Q. What was the date of your birth? A. 1902, February 9th.

Q. Do you not remember the locality from which you came in Sweden? A. I don't remember what it was now.

Q. What is your father's name's? A. Alfred, I think it was.

Q. Alfred Hammerberg? A. Yes, sir.

Q. Is he living? A. No, sir.

Q. When did he die? A. Well, I don't know just when he did die. About eight years ago, I guess; maybe more.

-81-

- Q. Where? A. In Minnesota here, I think.
- Q. Was he living with your mother at that time? A. No, sir.
- Q. Had they been divorced? A. No, sir.
- Q. What is your mother's name? A. Betsy Hammerberg.
- Q. You call her Betsy. Is that her real name or is her right name Elizabeth?
- A. Well, I think her first name is Betsy; Betsy Elizabeth, I guess.
- Q. Where does she live? A. She lives 431-60th Avenue West, in West Duluth.
- Q. Have you any brothers? A. No, sir.
- Q. Have you any sisters? A. Yes, sir , I have one.
- Q. What is the name of your sister? A. Vanda Hammerberg she is married now. Her name is Isaacson.
- Q. Where does she live? A. I couldn't say, for sure. In Washington state, some place.
- Q. What is his first name? A. I don't know.
- Q. How long has your sister been married? A. A year.
- Q. How old is she? A. Nineteen.
- Q. When was she nineteen? A. I couldn't say that for sure of either.
- Q. Is she older than you? A. She is a year and a half older than I am.
- Q. Do you know where she lives in the state of Washington? A. No, sir.
- Q. Hoe does that happen that you don't know where your sister lives? A. Well, she moved and I didn't know where she went and she don't write to me now so I don't know where she is except that my mother said that she is in Washington.
- Q. Your mother is not remarried? A. No, sir.
- Q. When did you come to the United States? A. In 1908 I think.
- Q. And where have yon lived since that time? A. I lived

in Superior for three years and the rest of the time here in Duluth, in West End and West Duluth both.

Q. What schools have you attended in Duluth? A. Irving and Longfellow.

Q. Which did you attend first? A. Irving.

Q. How far did you go with your school? A. The 4th grade, or 5th grade.

Q. You mean that you passed through the 4th grade? A. Yes.

Q How does it happen that you didn't get farther than that? A. Well, my mother needed my help and I had to go out to help her making a living for both of us.

Q What did you do? A. I worked at the box factory, Zenith Box Factory at West Duluth.

Q. What age did you begin working there? A. Fifteen.

Q. Well, had you only gotten to the 5th grade at the age of fifteen years? A. Yes, sir.

Q. How long did you work at the Box Factory? A. Pretty near two years.

Q. And then what did you do? A. I worked for Radford & Wright.

Q. How long did you work there? A. About a year and a half.

Q. Radford & Wright is a-- A. Sash and door factory.

Q. Were you working for that company when you were arrested? A. No, sir.

Q. After working for Radford & Wright what did you do? A. I worked for the ship yard.

Q. And how long did you work there? A. About out a year and a half.

Q. You are giving us rather imperfect information, aren't you. You have now gotten yourself up to 21 years of age and you are not yet 19. Perhaps you began work a little earlier than you said you did? (No answer.)

Q. Do you think you worked at the box factory as long as two years?      A.  
Well, I didn't take no certain-- I just made a rough guess at how long I was at the box  
factory; it seems as though I did; I worked there a long time.

Q. And with these other places you have given us your best recollection, have  
you?      A. Yes, sir.

Q. Where were you working at the time you were arrested on the charge which is  
involved here?      A. At the ship yard.

Q. What did you do there?      A. Passing rivets.

Q. What wages did you make?      A. \$4.80 a day.

Q. For how many days in the week?      A. Five days in the week.

Q. Why didn't you work the sixth day?      A. Well, we never any of us got a full  
week in there because when it rained we didn't work, I don't remember one full week I  
put in there.

Q. You mean to say that it averaged about five days?      A. Yes, sir.

Q. Did you save up some money?      A. Well, I had a little bit; not much.

Q. How much money did you have when you were arrested either in the bank or  
anywhere else?      A. Well, I had a bank account of \$10 after I was arrested and I  
don't know whether my mother drew it out or whether it is still there. I had more in there  
before I got arrested, but I bought some clothes just before I got arrested and it left my  
bank account \$10.

Q. Are you a member of any church?      A. Yes, sir, Bethel Lutheran.

Q. Where is that?      A. It is on the corner of 53rd Avenue West and Ramsey  
Street.

Q. Are you really a member of that church or do you merely go there sometimes?  
A. I am a member of that church.

Q. Is your mother a member of that church?           A. Yes, sir.

Q. Who is the pastor there?   A. Well, I don't know if Olson is there now or not.  
Olson is the one that was pastor there when I was arrested.

Q. Are you quite well acquainted in West Duluth?   A. Yes.

Q. Give me the names of just a few fairly well known men who know you?

A. William Holm.

Q. What does he do?           A. He is a groceryman. He is working in a  
mercantile; I think he has got a share.

Q. Some other names?       A. John Forsman.

Q. What does he do?       A. Real estate.

Q. Some other man?       A. C. G. Frost; he has a confectionery store.

Q. Were you ever arrested before your arrest on this charge?   A. No, sir.

Q. Never were in any trouble?   A. No, sir.

Q. You have never learned any trade?   A. No, sir.

Q.     You are here before the Court for sentence after conviction by a jury of a  
most serious offense. Do you desire personally to say anything to the Court before  
sentence shall be pronounced upon you?   A. Yes, sir.

THE COURT: You may proceed.

THE DEFENDANT: Well, I didn't think I was going up there to violate the laws  
any. I just went up there to see what was doing up town that night and I didn't help in any  
way to cheer the crowd any or break in the jail, just merely standing around looking at  
them. I have had plenty of time to think up there. I think I ought to have a parole because  
I have got a mother to take care of and I don't think she is in very much of what you can  
call a good condition, and I think she needs my help.

THE COURT: Anything further you would like to say?

THE DEFENDANT: No, sir.

THE COURT: Mr. Larson, representing the defendant, what do you wish to say in his behalf?

MR. LARSON: I don't know as I can say anything that would assist the Court in the matter. I think the Court is familiar with my views. I tried to express them in the trial of the case as clearly and as forcibly as I could in order to bring about a verdict of acquittal, but my efforts were unavailing. I feel that this boy did not go there with any idea of violating the law. He went there as a matter of curiosity. He should not have gone, but he saw mature men present and engaged in a riot and it probably did not occur to him that he was violating the law by being present. My recollection is that he did nothing. There is no evidence that he assisted in any way in lynching the negroes or that he made any remark to anybody present encouraging or aiding or abetting the commission of the crime. Probably if his father had lived his home influences might have been better, but it does not seem to me the boy has had a chance in life. It is largely a matter of environment. I don't know whether there is any way that he can be paroled but if it could be it seems to me it would be in furtherance of justice, taking everything into consideration. I think it would aggravate the situation to have him committed to some institution. That is all I have to say.

THE COURT: Mr. Greene, your statement for the record.

MR. GREENE: May it please the Court, the facts, of course, are as familiar to the Court as they are to the rest of us. I don't suppose it will be necessary for me to make a long and detailed statement as to this boy's connection with the crime. He was on the truck that went up and down the streets; he was around the place afterwards in various parts of the building;



he was up at the hanging, as the Court will recollect the particular details as to just what he did in these particular instances. I do not myself recollect just the details of what he did but I do know he was present from the start to the finish and thereafter and I don't know that I can add anything to the proposition. I know nothing about his family life except that he has been living with his mother, as I understand it and there isn't anything wrong that way as far as I am aware. I don't think there is anything further I know about the young man.

MR. LARSON: May I add just a word? The Court may perhaps recall that this defendant made a statement about what transpired,- made no effort to conceal what was done; he made a long statement to Mr. Brown of what he did from the moment he left West Duluth until he returned there. He has been in jail for,- I think it will be six months the 28th of this month. Mr. John Forsman here is his Sunday School teacher and he has talked to me about him.

THE COURT: I think the case should be disposed of without further delay. It would be better had the matter been disposed of at an earlier time. The Court does not wish the young man or his friends to believe that the Court thinks him to be a terribly bad young man or that there are no hopes for him in the future. That is not the idea with respect to him. He has got along in a fairly normal way except that he has not been very far along with his studies and he is probably a little obtuse, but his obtuseness,- that is, his failure to see things in the right light, and possibly it is a lack of training,- led him into a terrible crime and it would not do at this time after these matters have been threshed out in the Courts, to consider at all the idea of paroling him. The young man in his remarks to the Court just now said he thought he ought to have a parole. Well, of course if he were really

bright and were really felicitous in his expressions, he would not say that, but to gratuitously advise the Court that he ought to have one is, of course, evidence of his own shortcomings. He ought not to have a parole at all and he should not think it. In the contrary he should entertain the idea that the manly thing for him to do since he was foolish enough and perhaps bad enough to get into this thing, is to stand the consequences, - to stand them like a man, and to make up his mind that come what may in the future he will keep out of anything of this sort. Men much worse than he and leaders far beyond what he was in this unfortunate matter will go entirely free. That is a great shame and a great reproach upon the administration of the law that it should be so, but the fact to which I have alluded is no justification for sparing him, even for his lesser real guilt, what he should stand as a consequence of what he did at that time; and if he, thinking the matter over, comes to the conclusion that he ought to be paroled, or in some way rewarded for his participation in what he did, he has to be told by the Court and he should be told by his friends, that he is merely falling into a foolish error. That is not the way we do business in this country; it is not the way white people do business anywhere in any country. The rule is that men young and old, if they are in their right mind, must stand the consequences of wrong doing. That is what keeps some of us straight and free from evil, and it must have its influence with this defendant.

You are about to be committed to an institution where you will be cared for and helped. The Court states to you this, that no promise is now made as to the length of time you will be detained there. Do not write to the Court within a few months, as occasion may arise, that it was stated to you that you would be detained only a short time and that the Court

would help you to be released, and all that sort of thing. Nothing of that kind is held out. The Court hopes you will not be detained longer than is fair and right under all the circumstances and has no idea that you will be. They will know you far better than you know yourself, within a very short time after you get there. They will have in mind the character of this offense which you have committed, and although your participation therein was not by any means as blameworthy as that of many others, yet you did wrong in a very, very marked way and you will have to be disciplined and trained in a consequence thereof in the hope that when you are released you will be a stronger and better young man in every way and ready to do your part as one of the citizens of this commonwealth. When you are so released good men every where will give you a hand to help you forward, if you show the right spirit yourself.

It is suggested to you that you do not cherish the thought that you are being made a martyr of, or anything of that kind. No martyrdom about it. You will not be punished anything like as much, perhaps, as you might be for such an offense as this. If there is to be any error you will be underpunished rather than overpunished. Really what you will undergo will be training and discipline rather than punishment in any of its stricter forms. Be a man; don't be a coward, and don't complain in a foolish way because that shall come to you which you fully deserve. It will show a marked lack of sense on your part if you fail to get the ideas which the Court is now trying to communicate to you. If you are going to be a good citizen hereafter, and you may well be, see to it that you exercise good sense in seeing this terrible crime in its right light and be ready to abide the consequences that follow therefrom, and profit by them if possible.

[Page 90 is missing.]

### IMPRESSIONS OF TRIAL JUDGE.

The condition of the defendant both physically and mentally is good except that the young man is evidently somewhat unsophisticated and perhaps easily led. He does not know quite as much as a person of his age should know, and yet he is not lacking in ordinary mental qualities. His capacity for service is limited to ordinary manual labor; his disposition is good so far as we know; he has no bad habits. He needs training and discipline and it would be well if he could be taught some useful trade.

Inmate Case Files.

No. 5148 (Carl John Alfred Hammerberg): Trial Transcript, June 1921.

District Court (Saint Louis County) case no. 5723. [Transcript]

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STATE OF MINNESOTA }

DISTRICT COURT

}SS

COUNTY OF ST. LOUIS }

Eleventh Judicial District

I, J. P. Johnson, Clerk of the District Court, St. Louis County, and State of Minnesota, do hereby certify that I have compared the foregoing papers writing with the original Testimony and Impressions of the Court

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in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original Tesitmony and Impressions and the whole thereof.

WITNESS, My hand and seal of said District Court, at Duluth, this 30th day of June A. D. 1921

J. P. Johnson, Clerk of District Court,

By J. S. Moody Deputy Clerk.

STATE OF MINNESOTA,}  
  }ss.  
COUNTY OF ST LOUIS. }

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**DISTRICT COURT ,  
ELEVENTH JUDICIAL DISTRICT**

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State of Minnesota

Plaintiff

vs.

John Carl Alfred Hammerberg

Defendant

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Certified copy of  
Testimony and impressions  
of the Court