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Got a father and mother here in Wilmington. Comes from Albany. She's been down here for a number of years. Got married in high school. Didn't graduate. Goes down to Savannah. Marriage breaks up. She has a job down there in Savannah. She goes from Savannah to Key West, Florida, on a job. Someone had promised her a job. She goes down there. She stays there for a little while, sometime about 2 and a half or 3 years ago she returns to Wilmington. I think her father loaned her the money to come here. She goes to live, she and her two young daughters, to live with the parents, and she finally finds housing over in Houston-Moore. It is low income housing, integrated housing, a lot of people over there on relief, a lot of people are just not that wealthy.

She has a tough job. She gets a job. She goes to work. Somehow along the line she gets a job in this Office of Economic Opportunity Program. You all have probably heard of it. A lot of people, I guess, regard it as some Communist Front. It is an organization that has done and continues to do a lot of good for people in this world, and particularly in this country. I think it was one of Kennedy's things. I can't recall. It is part of her responsibility for the Office of Economic Opportunity. She is a Community Developer. What a Community Developer is a person that is kind of like a social worker. She goes out in the community. Her

responsibility is to apprise people who are not well educated, who are not well informed of different civic organizations, different health organizations, different community organizations, who are responsible for the administration of health programs, for the administration of food stamp programs, for the administration of many social welfare programs. That is what she is doing.

Sometime during the course of her stay at this Community Developer in Houston-Moore she does meet Jerome Mitchell. She meets many, many other people at some points along this time, February 5 or February 4; someone by the name of Houston invites her out to the church. The theory under which the invitation is extended is this. There is a lot of difficulty in the school system. The kids are boycotting the schools. There have been meetings with the Superintendent of Schools. Meetings are scheduled through the auspices of Templeton, Bellamy and some kind of meeting was held during the week. That is why she is out there. She is not out crashing that church. She was out there by invitation.

She was out there, and you have to believe this has not been discredited on the stand. She was out there to supervise some of the youngsters. She was an adult. She has children of her own. There were other adults out there. I believe she said there were not

many whites. She said that she stayed there - I think she said she stayed there on Thursday night. I believe she said she stayed there on Friday night and left Saturday morning and came back Sunday morning. She also said upon on that stand that she was not there Saturday when she purportedly made the statement that has been attributed to her by two people, Allen Hall and Motor Mouse. She has denied making that statement.

Under cross examination by the State of North Carolina, the State of North Carolina found it incredible to believe that there was sniping at the church; that there were bomb threats on Rev. Templeton; that there were threats on the life of Rev. Templeton.

The State of North Carolina found it hard to believe what Mrs. Shephard could possibly be doing out there.

The State of North Carolina found it hard to believe that anyone could, by their mere presence, protect a brick building, the inference being that a brick building, any brick building is not worth protecting.

Whether Mrs. Shephard used bad judgment or not in staying out there on Thursday or Friday is not in question in this trial. She may have. She might not have.

I would say to you that in history people you

all know, we all know; that people have died; people have given up their lives for not only churches but flags, country, children, houses. It is not the physical structure that is important. It is the idea of church as an institution that I think is the critical issue here. I am sure that there were before thatched houses or buildings or mud buildings to house religious institutions that people gave up their lives in defense of their beliefs. We all know that. So I don't find it incredible that some people out there kept the women there, kept the children there because what kind of a wild man, quack, would go out there to the church and throw a bomb in there knowing that, and it was common knowledge that there were a lot of young people in the church at that time. So the theory of defense I think is a sound one.

Now whether you would do it or whether I would do it I don't know. I probably wouldn't have, but I am not on trial and my credibility is not being attacked.

Mr. Stroud, the State of North Carolina, also brought into question or attempted to bring into question the credibility of Mrs. Shephard in light of the fact that she had left her children at home and I can't recall how old her children were. I think she said one of them was 14 or 15. Another one was 8 or 9, but one is 14 or 15, and she said she made calls to report things to take

care of this. I don't find this incredible. I was making and directing when I was 14. I had 3 sisters. I had sisters who were out working out of the house by themselves turned loose in neighbors' houses at 11 and 12 to baby sit. I am 31 years old. That is, you know, 15, 20 years ago. I don't know how long ago. But I mean children when they get up about 14 or 10 or 11, then can kind of take care of themselves. My sisters did it. They assumed responsibility, and children today are assuming responsibility at an earlier age than they did when I was a youngster, and I think you all know that.

So the position of the State is finding it untenable that Mrs. Shephard would leave her own children and go out to a religious institution and stay in there to prevent it from getting bombed. I think the position is questionable.

You hear Mrs. Shephard say she was involved in community enrichment programs. She is a member of some Human Relations Counsel. I don't know when she was in this thing. If it were at the time she probably considered it a part of her responsibility. She knew that there was trouble in the school. Her children are in the school system. Maybe this was her own personal way of going over there and trying to remedy some of the broken relationships and some of the discord in the

community. I don't know, but anyhow she gets out there. I think the reasons that she gave are satisfactory.

I don't think a woman that is in community development work has a couple of little children, I don't think that type of person who testified the first time she gets out there was on February 4, I can't believe that that type of woman will go out there and try to preach revolution, would try to preach arson, would try to preach and recommend to youngsters that they go out and loot and burn. It is difficult for me to imagine. O K.

One other thing. I just had a thought. Remember. There is in evidence right now that my client was not indicted on this charge accessory before the fact to the burning of Mike's until August 7, 1972. Going back to that letter, ladies and gentlemen, I'll make you an exact quote of this letter. No, I won't either. I just don't have it here. O K.

This is important. The letter is written to Ann Shephard. In that letter and search your minds for what this letter says. In that letter Allen Hall never ever said she did or said anything, but in that letter Allen Hall says that he will put it on her. He never says, "You burned any place or made any statement." But he says, "If you don't do what I say, I'll put it on you."

"Put it on you" were the exact words. And that is precisely what Allen Hall has done, and that is why my client is up here today.

I'd like you to listen to the chronology of the events that took place here. The arrest of Hall, May 30, 1971; the first statement of - No, that is wrong. The arrest of Hall sometime in May of '71; first statement May 30, '71; the sentencing of Hall back in January '72; the threatening letter one week later; the second statement about a week or a couple of weeks after that, approximately 18 months after the alleged offense that my client committed Ann Shephard is arrested and charged with this crime. At this time this is about 15 months after Allen Hall's first statement, 8 months after Hall is sentenced, 7 months after Allen Hall's second statement, 7 months after the threatening letter and approximately 5 months after the other defendants were charged. O K.

My client denies that she ever went to the Annex. My client denies that she ever had any pellet gun. My client denies she ever went to that Community Center.

I'd like you to consider this, too. I thought Mrs. Shephard did a pretty good job on that stand, especially in light of the fact she has never been on a

witness stand in her life unless it was when she got divorced. I never asked her of that. I know she has never been convicted of anything. She has had a divorce, and usually you have to take the stand when you are divorced. O K.

I am close to the end. You all just bear with me a little longer. One of the things that I don't really know how to approach is this. Now the State of North Carolina on cross examination - you heard all those objections. You heard all of my motions to strike. You heard all of my requests and motions for a mistrial. The State of North Carolina in the course of the trial started to examine my client about things that allegedly happened in her apartment, and you will remember this. This is February 9, I think they said it was. Something about firebombs in her apartment. And I have to address myself to that issue because I just can't ignore it. I know the State of North Carolina will bring it up. I am really not sure how to handle this particular phase of the trial, and I hope that my way of handling it does not adversely color Mrs. Shephard's best interest.

It is my position, ladies and gentlemen, that if, first of all, I don't want to spend a whole lot of time on this, but the mere possession of firebombs in a person's place, to the best of my knowledge, is not a crime. It may be, but if it is I am not aware of it.

She said that there were firebombs, I believe, in her apartment on February 9, but I would argue this to you ladies and gentlemen of the jury. I believe that that - Strike that. My client again is charged with being an accessory before the fact of the burning of Mike's Grocery store on February the 6th of 1971, and I say to you, ladies and gentlemen, if the State's argument is this, if at night you are charged with speeding or driving under the influence and 5 days later or 4 days later you are charged again with driving under the influence, I maintain that this is not evidence in any court in this State of North Carolina of guilty. And I maintain that this sort of evidence should not be used against any person. The second offense happening 2 or 3 days later in my mind and under the law, as I understand it, is not evidence of guilty of the commission of another offense.

I know I have to address myself to that problem, and I don't know whether I can very properly. But it is my position that you must not and you cannot consider that in any way as pointing a finger of guilt towards my client.

There is another difficult thing I have to do in this argument, and I am not really sure how to go about approaching this. I am going to have to argue to you in the alternative, My whole argument, my whole

case is based on this. The State has nothing with the exception of Hall, Motor Mouse and Mitchell.

My client's position is that she is not there, but - and I think the evidence unequivocally demonstrates that she is not there. I think the evidence to the effect that she is there is highly speculative and coming from perjurers and hopefully will not be considered by you to be trust worthy.

But if you find after your deliberations, if by some quirk of faith, by some stretch of the imagination after hearing everything that all defense counsel have said, after hearing the State and the summations of the jury you in your own minds determine that Ann Shephard was there, which I maintain that you should not and cannot under the evidence in this case, I would maintain and argue to you, assuming even that she did make the statement that was purported to her, that there is not enough evidence of criminal intention; there is no evidence that anyone relied on anything she said, if she said it, which she denied, flat out denied. I think that is another thing that is important is that she is only gone to the church one day or two days after she purportedly made the statement which she denies making, and I think that it would be impossible in light of the evidence, totally unbelievable that she did make the statement.

But if she did make the statement and you find that she did make the statement, I don't believe that the State of North Carolina with the statement and the 4 renditions of the statement that you have heard from the 2 witnesses has enough to hold her criminally liable. I'd like to make one more comment. I hate like heck in this trial to keep going back to this business that the State of North Carolina brought out about these firebombs in her apartment. Now something like that in a case like this I am aware of the fact that she was charged and has been indicted for these offenses. And I considered the possibility and if you remember what the Judge says. An indictment is nothing. It is just a piece of paper to tell you that you are charged with doing something.

I would argue this to you. If my client was a liar, a perjurer; if my client were a criminal, the first thing, the last thing she would ever do, the last thing she would ever do would be to admit that those things were in her apartment. That is the last thing Mrs. Shephard would do, and she did not flinch. I didn't really expect it, but she did not flinch. So remember that in your deliberations. I think that is important.

I am going to close and end this by making a

couple of further remarks which won't take much time. Remember all this business about reasonable doubt. Please remember that.

The State I think has a weak case. The State knows it has a weak case. I would say this. I have never seen a case in the history that I have been in any courtroom where there has ever been such a tremendous parade of official looking people before you. 39 witnesses. And what do they say about Mrs. Shephard? Not one of those 39 say anything about my client. There are 3 witnesses in this State and the State knows it is desperate. The State has known all along it is desperate. The State realizes that there is no way in the world for reasonable prudent men to find beyond a reasonable doubt the guilt of my client, taking those 3 people themselves. So that when they resort to this array of officialdom - and I'd like you to keep that in the back of your minds - what the State of North Carolina is trying to do, and I think Mr. Ballance brought this up when he was speaking to you earlier today, the State of North Carolina has tried, and I maintain unsuccessfully, to try every horrible thing that happened in Wilmington on February the 5 and 6 of 1971.

Again I will stipulate that every single thing as far as my client is concerned that the 30 people other

than the triumvirate, I am stipulating everything they said is true. I know it happened. I have been down here in Wilmington practicing law 2 years. I was there in February of '71. I read the papers. You all read the papers and also saw the television programs. So it happened. So the State of North Carolina is trying their best to muddy the water, to cloud the issues and pile inference upon inference, conjecture upon conjecture, surmise upon surmise in hopes that all this reign of official personages will help buttress the testimony of these 3 people.

Now I am just about finished. One more observation. I might be completely off base when it comes to this. But I sort of feel it rather deeply. I have had people come up to me and say and maintain that this is a political trial. I have had other people come up to me and they say and maintain that this is a criminal trial. Well, I have just about seen it all, and I kind of think it might be a combination of both of them. Horrible things happen in Wilmington on February 5 and February 6 of 1971. There was a killing. Well people were killed and people were shot. Buildings burned. We all know what happened down there. The only thing that has really happened in Wilmington, North Carolina, to the best of my knowledge since February of 1971 is this.

Today in Wilmington, North Carolina, I believe

they have Sheriff's Deputies in the school. I don't think you had that before February 5 and February 6, 1971.

I think there have been a couple of groups formed, a couple of commission, couple of study groups coming into Wilmington studying what has happened, trying to figure out how to prevent something like this from ever arising again.

I'd like to just remind you of something I read back in mid '60's, and this was after Watts erupted, after Newark erupted, after Detroit and some of the other major cities in the country. They blew apart. And I believe it was during President Johnson's administration, I believe President Johnson formed a Presidential Commission. The Presidential Commission wrote a report. I think the report was called the Presidential Commission on Civil Disorders. I think it came out a year or so later. And on this Commission were some of the most liberal people in the country, some of the most conservative people in the country and some straight down the road sort of people, middle of the line. In all these people on this Commission were civil - Strike that. Were responsible people from various communities in the United States and they made many recommendations. The thing I most remember about this report was the statement or paragraph in there by a guy by the name of Kenneth Clark, Dr. Kenneth Clark.

And Dr. Clark is probably the single most important person who brought about the passage or the reversal of the Supreme Court decision Plessy (~~Spelling~~) vs. Ferguson, which was supplemented by Brown versus Board of Education. You all remember that Dr. Clark submitted psychological studies which demonstrated certain inequalities and to the best of my knowledge primarily was studies. Board of Education came into being in 1954.

Setting back to the Presidential Commission on Civil Disorder, Dr. Clark likened this blue ribbon Commission. He likened it to a movie picture that you go to Cinema I or Cinema II to see that continuously revolves, that plays over and over again the same cast of characters, the same plot, the same producer, the same director, the same actors, actresses, but nothing ever really happens. Now that is how he characterized that.

With that in mind, I would say that nothing really has happened down in Wilmington, North Carolina, and I question whether what you are seeing and what you are trying up here is the solution. I think that the State of North Carolina is convinced they know these things happened. They know somebody did them, and they have gotten hold of 3 people who are just some of the worse witnesses you will ever see in all your life, who have repeatedly perjured themselves on the stand. You have heard everything,

The State of North Carolina was forced in a position where they must demonstrate something to the public and they have tried to do this with 3 incredible sort of people who I maintain are not worthy of belief.

One of the finest points I have ever seen made in a summation and the thing that really comes to grip with the problem of reasonable doubt was Ballance here yesterday. This was what it's all about. Getting back to my client, Mrs. Shephard. Hope you consider everything that I have talked to you about today, what the other defense counsel have talked to you about. I hope you resolve them because what a reasonable doubt is what Ballance says it is or Harmon. I am sorry. John Harmon - says it is. He says it is a point in a road, a fork in a road, and I maintain that if you get to that point in the road and there is no reasonable doubt in your mind, you ought to convict Mrs. Shephard.

I have done My job. It ends here. We are seeking for justice. I have done everything I could. State has just about done everything they could 'til they sum up. So I won't feel bad if you convict Mrs. Shephard. I have played my role in the administration of justice. But I maintain, ladies and gentlemen, that what you have seen and what you have heard in these last several weeks demonstrate unequivocally that there is reasonable doubt.

Remember, as Ferguson says, you have to be convinced beyond a reasonable doubt, a moral certainty; and if there is any reasonable doubt you must acquit.

And even more importantly than that, if you get to that point in the proverbial fork of the road and you are in a dilemma and you feel in your heart and you feel in your soul that Mrs. Shephard could be guilty, that Mrs. Shephard might be guilty, that Mrs. Shephard probably is guilty, if you reach that point; and even if at that point you are in this dilemma and you have these feelings you must acquit. It is your moral responsibility. It is your legal responsibility.

THE COURT: Members of the jury, we are going to take a recess until 9:30 Monday morning. I am going to again instruct you not to discuss these cases with anyone nor allow anyone to discuss them with you or in your presence. And do not discuss them among yourselves until you have the case for your deliberation. I again instruct you not to read, do or listen to any report or any account of this trial if such should appear in the Press, television or radio. Members of the jury, let me again request you when you leave the courtroom to go immediately to your destination, and when you come back Monday morning,

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

PENDER COUNTY

STATE OF NORTH CAROLINA)

-vs-)

BENJAMIN FRANKLIN CHAVIS)

SUMMATIONS

MARVIN PATRICK)

CONNIE TYNDALL)

JERRY JACOBS)

WILLIE EARL VEREEN)

JAMES MCKOY))

REGINALD EPPS)

WAYNE MOORE)

JOE WRIGHT)

ANN SHEPHARD)

BURGAU, NORTH CAROLINA

SEPTEMBER 11, 1972.

Before: Robert M. Martin, Judge Presiding,
and a jury.

Appearances:

JAMES T. SEROUD, Assistant Solicitor and DALE JOHNSON,
Assistant Attorney General, representing the
State of North Carolina.

JAMES FERGUSON and CHARLES BECTON, Esq., Attorneys at
law, Charlotte, N. C.; FRANK BALLANCE, Esq., Attorney
at law, Warrenton, N. C.; JOHN HARMON, Esq., At-
torney at law, New Bern, N. C., representing the
defendants Chavis, Patrick, Tyndall, Jacobs, Vereen,
McKoy, Epps, Moore and Wright.

MATHIAS P. HUNEVOL, Attorney at law, representing the
defendant Shephard.

Josephine L. Seila,
Court Reporter
P O Box 718
Selma, North Carolina 27576.

come to your juryroom and there await the opening of court and do not linger in the courthouse or the courthouse grounds going to or coming from the courtroom. You go now, members of the jury, come back Monday morning at 9:30.

(The jury was dismissed.)

(The Court recessed at 6:30 P M.)

October 16, 1972

9:30 A M.

(Sol. Stroud summed to the jury on behalf of the State of North Carolina.

May it please the Court, good morning ladies and gentlemen. You will have to pardon me this morning. I have got a cold and a slight fever. So if I have to take a break occasionally, please understand.

First of all, I don't feel like I need to introduce myself to you. You heard my name mentioned several times on Thursday and Friday of last week. I was referred to and characterized as the meticulous Mr. Stroud, the note taker. As to the meticulous part, I am sure that my wife would have a great deal of difficulty accepting that characterization. As to the note taker, I do take notes.

You have also heard me characterized as the

producer, director, script writer, coach, artist of this thing, of this trial. Well I am none of those things, and this trial has not been a play acted out for your benefit as the defense would have you believe. But, in fact, this trial is the real thing in living color, and you have seen and heard it all.

There will be no more evidence presented. All the evidence has been presented. At this point I will have occasion to sum up my view of the State's case as the defense has summed up their view of the State's case and some of their evidence.

Now the real Jay Stroud, not the note taker, not the producer, not the director, but the real Jay Stroud as Assistant Solicitor for the 5th Judicial District, which at the very beginning of the trial I stated to you is composed of New Hanover and Pender Counties. It is my responsibility to represent the State of North Carolina in all criminal actions that arise in New Hanover and Pender Counties.

Now appearing with me and assisting me during the course of this trial has been Mr. Dale Johnson from the Attorney General's office. Mr. Johnson is a former Assistant Solicitor for the County of Onslow, Duplin, Jones and Sampson. He has been with the Attorney General's office now for approximately 7 months. As part of his

responsibility with the Attorney General's Office he is there to aid the local Solicitors when they have heavy court dockets and need assistance in the representation of the State of North Carolina in criminal cases and that is the situation we have here.

During the time, during these 5 weeks, the beginning of the 6th week now that we have been here together for this trial court was also being held in New Hanover County for 6 week period of time, both Superior Court and District Court, and we are shorthanded with regard to our Solicitorial Staff. So it was at my request that Mr. Johnson is appearing in this case. I have appreciated his help and assistance very much. Mr. Johnson will have opportunity once I have concluded my summation to sum up some of his views concerning the State's case.

Now with regard to my summation essentially this is what I am going to try to be doing with you. First, I want to review the charges and the defendants add the applicable law. Secondly, and I know you are tired of seeing diagrams, but I want to review this diagram with you briefly along with the aerial photographs so that you have clear in your minds the neighborhood in which these crimes occurred. And then I want to go on and comment and provide rebuttal to the summations by the defense attorneys which you heard on Thursday and Friday.

So they were very correct when they stated that I would be addressing myself to their remarks because I feel that is necessary.

After that I will briefly or as briefly as possible review the evidence that has been presented by the State during this trial and try to tie it all in together for you. Then I will go on and review the law with regard to these cases and how the law in my opinion should be applied in these cases; and lastly, I will be addressing myself to some general remarks about the trial itself and what has occurred.

First of all, let me review the charges for you. But before doing that let me make sure, and I am sure that you probably at this point are aware of who each of these young men are here and this young lady. But so that there can be no question in your minds as to which one is Jerry Jacobs or whatever, let me go through that with you briefly.

Seated on the back row is Marvin Patrick. He is the young man there right behind the defendant Chavis. Right next to Marvin Patrick is the defendant Wayne Moore. Right next to Wayne Moore in the back row is the defendant Jerry Jacobs. And next to Jerry Jacobs is the defendant James McKoy.

Now you have heard during the trial Marvin Patrick

referred to as Chili and James McKoy, the one on the back in the far end as Bun.

Coming right behind the defense counsel here you have, beginning at this end, the defendant Ben Chavis. Next to him is the defendant Joe Wright and coming over to this table here beginning to your left is Reginald Epps. Here to your left in the middle Willie Earl Vereen and to your right Connie Tyndall and, of course, then you have the defendant Shephard who is seated down at the end of this table beside Mr. Ferguson.

Now the nine young men, as I indicated to you at the very beginning of the trial during the jury selection stage, the nine young men are charged with two felonies. They are first of all charged with conspiring or agreeing together to assault emergency personnel, police officers and firemen. This conspiracy is alleged to have occurred over a two day period, Friday 5 and Saturday 6 of February 1971.

Secondly, they are charged in a bill of indictment with the felony of damaging and burning Mike's Grocery Store building and the contents thereof by means of an explosive or an incendiary device, to wit, a firebomb or firebombs. So with regard to each of the nine men we are talking about two felony charges and you will, of course, have to render a verdict as to each charge as to each defendant.

Now let me read briefly the bills of indictment against the nine young men. This happens to be the bill of indictment against the defendant Joe Wright for burning Mike's Grocery Store. This is a bill of indictment returned by the Grand Jury of New Hanover County.

"The Jurors for the State, upon their oath, present that Joe Wright, late of the County of New Hanover, on the 6th day of February, 1971, with force and arms, at and in the County aforesaid, did unlawfully, willfully and feloniously and maliciously damage and burn the personal and real property owned and occupied by Mr. Mike Poulos, to wit, Mike's Grocery Store building and contents thereof, located at 302 S. 6th Street in Wilmington, North Carolina, by the use of firebombs, they being explosive or incendiary devices, said building was a two-story wooden frame building which was used to carry on the trade of marketing groceries and which contained goods, wares and merchandise commonly sold in a retail grocery business, against the form of the Statute in such case made and provided and against the peace and dignity of the State."

So all nine young men are charged in a bill of indictment just like this one with the burning of Mike's Grocery Store.

Next with regard to the conspiracy to assault emergency personnel, this happens to be the bill of indictment

against the defendant Reginald Epps.

"The Grand Jurors for the State, upon their oath, present that Reginald Epps and others, late of the County of New Hanover on the 5 and 6 day of February, 1971, with force and arms at and in the County aforesaid, did unlawfully, willfully and feloniously agree, plan, combine, conspire and confederate with Benjamin Franklin Chavis, Jerry Jacobs, James McKoy, Connie Tyndall, Marvin Patrick, Willie Earl Vereen, George Kirby And Shephard, Wayne Moore and Joe Wright to unlawfully, willfully and feloniously assault law enforcement officers of the City of Wilmington Police Department and firemen of the City of Wilmington Fire Department serving as emergency personnel with and through the use of dangerous weapons." So it is "a conspiracy to assault emergency personnel with deadly weapons, to wit, firearms, in the area of 302 S. 6th Street in Wilmington, North Carolina, which was within the immediate vicinity of an imminent riot against the form of the Statute in such case made and provided and against the peace and dignity of the State."

So all nine of the young men are charged with conspiracy to assault emergency personnel with deadly weapons in a bill of indictment just like this one.

Lastly, we have the defendant Shephard. She is charged with one bill of indictment. She is charged

as being an accessory before the fact of the burning of Mike's Grocery Store in that she encouraged the burning of Mike's Grocery Store and her bill reads as follows:

"The jurors for the State, upon their oath, present that Ann Shephard, late of the County of New Hanover, on the 6th day of February, 1971, with force and arms, at and in the County aforesaid, did unlawfully, willfully become an accessory before the fact of the unlawful, willfull, malicious, felonious damaging and burning of Mike's Grocery Store building, located at 6th and Ann Street in Wilmington and owned and occupied by Mr. Mike Poulos, by the use of incendiary devices, I.E., firebombs, by Benjamin Chavis, Marvin Patrick, Connie Tyndall, Jerry Jacobs, James McKoy, Willie Earl Vereen, Allen Hall, Reginald Epps, Joe Wright and Wayne Moore, by counselling, inciting, inducing and encouraging the said parties on the 6th day of February, 1971, did unlawfully willfully, maliciously and feloniously burn said store building with incendiary devices, against the form of the Statute in such case made and provided and against the peace and dignity of the State."

So those, ladies and gentlemene, are the gills of indictment, the charges against the defendants.

As I go through the rest of my summation I would appreciate it if you would try to keep these charges

in mind, the various elements that are in the bill of indictment that the State must prove to you existed beyond a reasonable doubt. And then toward the end of my summation I will go back through the law as it applies to these charges.

Now at this point let me briefly review the neighborhood in the aerial photographs. First of all, looking at the diagram here as was pointed out to you at the beginning of the trial, essentially what we are talking about is two blocks in the City of Wilmington. These blocks are bounded on one side by Nun Street, on the other side by Ann Street, on the East by 7th Street and on the west by 5th Street.

Now those of you who are familiar with Wilmington, let me try to place these two blocks in perspective with everything else in Wilmington. Coming down here about 5 blocks west you have the Cape Fear River. To the south you have got Castle Street which is two blocks down. Then going another 2 or 3 blocks and you have got Wooster Street and Dew Street which comes onto and off of the new bridge in Wilmington. Come back north some 4 blocks and you have got Market Street, 4 or 5 blocks and you have got Market Street in Wilmington, which is right there in the vicinity of the New Hanover County courthouse where I am sure most of you are familiar with where that is located.

So this is the basic neighborhood.

Now Lt. Turner, of course, testified at the very beginning that he took these aerial photographs. In this aerial photograph, of course, you see Gregory Congregational Church. You see the parsonage or the home of Rev. Templeton at the time. You see the Annex or Sunday School building here. Here is the playground at the church. This is right at the intersection of 7th and Nun here. Here you have the playground area. Here you have the concrete blocks or concrete pipes that you have heard testimony about concerning the setting up of barricades at 6th and Nun and at 7th and Nun. Those were pipes that had been there in the playground.

Now, of course, coming back up here you have got 5th and Nun. Pardon me. 6th and Nun right at this intersection. So here we have 6th and here we have 7th. Now you can see in here - and let me come a little closer with this. You can see in here the path leading from behind the church right in this area going between the third and fourth house right in this area which is on the east side of 6th Street across from where Mike's Grocery Store was located.

You have got 1,2,3 houses going toward the corner of Ann Street. So the pathway, leads right in here through three in between the third and fourth house. Over here you

have got a vacant lot which is somewhat hidden by the trees here. Of course, you can go off of that pathway through the vacant lot.

Here you have the intersection of 6th and Ann where previously Mike's Grocery Store building was located here. Next to it was a one-story house. It was occupied by Mrs. McKeathan. Then next to that was a two-story wooden frame house which also burned to the ground which was occupied by Mrs. Jackson.

Of course, you would go up Nun Street here past the intersection of 6th and Nun going on up to 5th. This is the church here that you heard so much testimony about during the fire at Mike's where Officers were located and where the firemen had to spray their hoses on the church to keep it from getting too hot.

Now in the other aerial photograph here you can again see 7th and Nun and 6th and Nun almost 5th and Nun here. This is the house located at 5th and Nun which there was testimony about concerning firebombing attempts. You have the church here, the parsonage next to it. Of course, the playground here. Here you have three houses on the east side of 6th Street. You have this driveway between the third and fourth house where the path comes out to. Here you have where Mike's was. You can still see the foundation there. Then one-story house, two-story house, then a vacant lot and this house is the one that

caught on fire where the fire was finally extinguished by the firemen. Here you have St. Marys Catholic Church. This is 5th Street, 6th, 7th. Here you have St. Marys. 5th Street is the 4 lane street testified to which has a grass plaza with trees in it and a curb, of course, on each side going down the middle.

Now with regard to the diagram here let's try to get it in perspective. O K. Here we have got 5th, 6th and 7th just like in the aerial photograph and Ann and Nun here. You have Gregory Congregation Church, the playground, the Annex or Sunday School building, the parsonage, the driveway between the parsonage and the church, the path leading from behind the church that goes between the third and fourth house into the driveway there and comes out right at this point, Mike's Grocery Store building, Mrs. McKeithan's house, the one-story house, Mrs. Jackson's house, a two-story house, behind Mike's Grocery Store a garage, between the first and second house here on Ann Street behind Mike's, this is the area back here where the tin garage was located that you heard testimony about. Then coming up to 5th you have got St. Marys Church here, the plaza here, the 4 lanes, two lanes going north, two lanes going south. Then coming down Nun Street here you have got the two-story wooden frame house at the corner of 5th and Nun where you heard testimony that police

officers were assaulted.

Now at this point I would like to address myself to some of the contentions in summation that were presented to you by defense counsel on Thursday and Friday. First of all, let me say that the defense counsel cautioned you to take your recollection of the evidence and not their recollection of the evidence because I feel like the recollection of the evidence which they had is somewhat misleading, and I hope to be able to correct that.

Of course, the same rule applies to Mr. Johnson and myself. You are to take your recollection of the evidence as opposed to ours if there is a difference. You are the finders of the fact; not myself. But I hope that my recollection will be somewhat more in line with your recollection of the evidence.

Now I dislike to some extent having to give the impression of dignifying some of the contentions of the defense attorneys by responding to those contentions, but I feel that I must in the interest of justice lest you be misled by some of those contentions.

The first matter I'd like to straighten out is the matter about the written statements. We have heard a great deal of talk, a great deal of questioning, a great deal of summations concerning the written statements of Allen Hall and Jerome Mitchell. You will recall

that the defense rather strenuously cross examined both Allen Hall and Jerome Mitchell concerning their statements of February 18, 1972, their written statements and that the defense brought out certain omissions from those statements and certain inconsistencies or alleged inconsistencies. Both the defendant Hall and Mitchell - Pardon - the witnesses Hall and Mitchell, both said that they had brought to my attention or to the attention of Agent Bill Walden certain omissions and errors in those statements.

Now the defendants would have you believe that the meticulous Mr. Stroud who never misses a trick - which is incorrect - prepared these statements from his notes, and, therefore, Hall and Mitchell did not bring out during the February 18 talk session that we had at Cherry Hospital the points that they have testified to here in court in the points which they have testified to here in court that are not in their statement, but which they said they brought out at that talk session and they were omitted or incorrectly stated in the statement.

The defense would have you believe that the few inconsistencies in the details between the statements and the testimony means that these two witnesses lied on the witness stand.

Now I would like to put an end to that type of thinking right now. Now you will recall that on cross

I said I didn't have it, and it was at that point that you left the court. When you came back in the defense had the original of Jerome Mitchell's statement and they presented it to him here on the stand to compare it with their copy; that in the meantime Agent Walden who happened to be in the audience on that particular day provided the original which he had prepared for the Federal investigation.

Now with regard to Jerome Mitchell, let me emphasize this. You heard Jerome Mitchell testify on cross examination that he never made any statements in his written statement concerning the events of Saturday night, February 6, and he did not. He made statements about Friday and other days to follow that, but did not make a statement at that time and did not tell me or Mr. Walden or anybody else who interviewed him at that time his activities on Saturday night and what he knew. But then he went on to tell you on cross examination that it wasn't until after he was tried and sentenced to 35 years that he then upon another question in interview prepared by me that he then admitted he had been present at the church on Saturday night and knew what had happened. He told me at that time and told you here in court that the reason he hadn't said it before was because he was afraid that he was going to get himself involved and

perhaps admit his guilt to other criminal charges, but that once he got his 35 years he didn't feel like it could really hurt him. And I tend to agree with him. And that after the time he was sentenced I talked with him, and he told me what he testified to here on the stand with regard to Saturday night.

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Sir?

MR. HUNEVOL: Objection.

MR. STROUD: I am reviewing what Jerome Mitchell testified to, your Honor.

MR. HUNEVOL: Like to have the Court Reporter read it back.

THE COURT: Objection sustained as to what he told you.

MR. HUNEVOL: Like instructions.

THE COURT: Members of the jury, you will not consider the statement of the Solicitor as to what Jerome Mitchell told him. *(Exception No.*

SOL. STROUD Continues: You will recall that Jerome Mitchell testified on cross examination that what he testified to here in court with regard to the events of Saturday night he had previously told me in July after he had been sentenced.

Now you also recall that the witness Hall had been interviewed several times prior to February 18, 1971, and that the witness Mitchell had been interviewed one time prior to that time and that they both stated under oath that what they had testified to they had previously told before they were brought together at Cherry Hospital in their individual statements.

You will recall also that it was before February 18 that Allen Hall - it was in January - that he pled guilty to and received a sentence of 12 years for his activity on that Saturday night with regard to the burning of Mike's Store and conspiracy to assault emergency personnel.

Now the defense has contended that if Hall and Mitchell had previously stated what they have testified to here in court and if they did correct or make corrections to the written statements then why didn't the State put on Agent Walden or Det. Brown or others to show this?

First, of all, it would be useless repetition. This trial has been long enough. There is no sense in going back through everything that Allen Hall and Jerome Mitchell ever told me, W. C. Brown or anybody else here on the witness stand.

Secondly, the defense had an opportunity to

cross examine Det. Fredlaw who has been involved closely in the investigation of these cases and yet they did not take the opportunity at that time to cross examine about any previous statements made by Hall and Mitchell.

You will recall that the defendant Shephard presented a defense through her attorney, Mr. Hunevol. And you will recall that in his summation Friday Mr. Hunevol referred to the testimony of Bill Walden which testimony was out of your presence and during which time he was cross examined. And that you also know that Mr. Hunevol on behalf of the defendant Shephard could have and would have called Bill Walden back to the stand in your presence and W. C. Brown, too, if he thought it would help her case in any way to do so.

MR. HUNEVOL: Objection.

MR. STROUD: By attempting to tear down -

MR. COURT: Overruled. *(Exception No.*

SOL. STROUD Continues: By attempting to tear down the credibility of Hall and Mitchell by these written statements. You know that if it had been to his advantage that he would have called them up here. So apparently it wasn't to his advantage.

Now don't let all the contentions of the defense concerning these written statements lull you into stressing these statements and disregarding the in-court testimony

because it is the in-court testimony that you must determine your verdict of guilt or innocence from and from nothing else, as you have been told and suggested to you many times before.

Now you will recall that during the time that the defense was cross examining both Allen Hall and Jerome Mitchell -

THE COURT: I believe I will sustain your objection as to what Mrs. Shephard could have done as to bringing some witness up. Members of the jury, you will not consider that statement *(Exception No.*

SOL. STROUD Continues: You will recall that during the time the defendant was cross examining Allen Hall and Jerome Mitchell concerning these written statements that they didn't bring out what was in the statement that they testified to here in court. They only brought out what was not in the statements that they had testified to here in court or errors between what they said in the statement and what they testified to here in court. The State did not go back on redirect examination and try to bring out what is or was in the statement that they did testify to here in court because, again, it would be useless repetition and a waste of time because what is of isn't in those statements is not relevant to the State's case during this trial and who took notes and why some

thing was left out or why something was put in is not relevant to the State's case during this trial.

What is relevant, and what is material is that the in-court testimony of Allen Hall and Jerome Mitchell, that is, was relevant and that is what is material; what they testified to here in court under oath and which has been corroborated almost point by point by other independent witnesses who have testified here.

You will also recall and what is material here is that the defense was not able to shake in any material way on cross examination the testimony of Allen Hall or Jerome Mitchell other than by implications concerning these statements, which I hope I have cleared up for you.

That brings us to another point. The defense in their summations, one right after the other, contended that all of the testimony of the witnesses that were presented here in court other than Allen Hall, Jerome Mitchell and Eric Junious, that the testimony of all 34 other witnesses was known to the State within 48 hours after the burning of Mike's Grocery Store on Saturday, February 6, and that since the State was aware of all of these things at that time we then went out looking in training schools, in prison units for Allen Hall and Jerome Mitchell and Eric Junious and suggested to them what they could come in here to court and testify to

regardless of any concern for the truth or falsity of the matter.

In support of their position the defendants and the defense attorneys point out that Father Jones's written statement which again had been prepared by Bill Walden, that Father Jones written statement was signed only the day before the February 18th interview of Hall and Mitchell and that Father Jones had told the police about this incident at 5th and Nun Street, his confrontation with some people over here; that he had told the police that back in February of 1971.

Admittedly the statement was signed by Father Jones the day before Hall and Mitchell were interviewed. That happened to be a coincidence. Agent Walden is an Agent in Raleigh, was in Wilmington for a period of 3 days during this time to get statements from these witnesses.

MR. HUNEVOL: Objection.

THE COURT: Objection sustained as to what Agent Walden did. *(Exception No.)*

SOL. STROUD: Continues: As Allen Hall testified to here in court he had in June of 1971 told me and others the details of his testimony, not only concerning the incident with Father Jones, but the other incidents that he has testified to here. Some police officer may have

known about the incident. Some police officer may have talked with Father Jones. But it was not until Father Jones was pointed out by the witness Hall that the State's investigative people became aware of the incident.

Again, this has been somewhat of a routine investigation in this respect. A routine investigation is where you get statements from primary witnesses as we did in this case and then you go out as a result of these statements, go out and interview other witnesses who they have referred to in an effort to get those witnesses to corroborate what the two primary witnesses say.

If Det. Brown, Det. Fredlaw and Det. Monroe and I knew everything that these other 34 witnesses were going to testify to back in February of 1971, then I am afraid that we have waisted a lot of nights and weekends investigating this case since that time. If that is true, if we did know everything that these other 34 witnesses were going to testify to back in February of 1971, then why did they wait until March and April of this year to bring charges against these defendants? Because the investigation had not been complete until that time. Our investigation was not completed up until time of trial, but continued up to and through the time of trial. Many of these witnesses, as you heard them testify to here on cross examination, were not interviewed by me except just

a day or two before the trial or maybe 2 or 3 weeks before the trial.

Now, if the State's case, if the State's case was programmed the way they would have you believe it was and that we went out to obtain Allen Hall and Jerome Mitchell and Eric Junious to testify to what we had already uncovered, then why not have Allen Hall when he is testifying about 5th and Nun on Saturday night, why not have him say that one of these defendants or somebody else was up here on the north side of where that gunshot came from that wounded Det. Genes? Why not have Mitchell inside the church when the defendant Chavis made the speech about burning Mike's Grocery Store so that he could come into court and testify that he heard Ben Chavis say so and so and Chavis say so and so? Why not have Jerome Mitchell testify that when the group left the church to go to Mike's that he came out the back and came to 6th Street and observed not just 4 people walking across here, but observed Allen Hall and Ben Chavis and Willie Earl Vereen and Steve Corbett walking across there just like Allen Hall testified to? That would have been a simple thing for him to do.

If the State's case is programmed, why didn't we program that? Why not program Eric Junious to testify that he saw Reginald Epps at the church on Saturday night

when, in fact, he said he didn't? Why not just have him throw in one more defendant, say, "I saw him, too."? Why not have him testify that although he saw the defendant McKoy when he first went to the church that Saturday night, why not have him testify that he saw the defendant McKoy go out with a group of weapons to go to Mike's Grocery store?

Next, we have the defense contention that the witnesses said the same thing in the same language, in the same manner and that the State's case just came together like a jigsaw puzzle. What is the explanation for that?

First of all, W. C. Grown, Fredlaw and others did a good job of investigating this case. Second of all, it is sort of funny, but the truth always tends to sound alike. It tends to sound the same and regardless of the source that you are hearing it from and the truth always tends to fit together like a jigsaw puzzle because that is exactly what you have here. You have got the truth and it came together. And as I review the State's evidence with you I want to show you how some of these pieces have come together, fit together to show you the truth of the matter.

Now you know from the testimony that has been presented here in court that I have been involved in the

investigation of this case from the very beginning, along with Det. Brown, Det. Fredlaw and Det. Monroe. And you know that I knew essentially what each witness was going to testify to when that witness took the stand. We myself and the three detectives took an oath when we became officers that we would seek the administration of justice. We see our jobs not as winning or losing, but seeking truth in the administration of justice in our court system.

Now if you feel in your own mind for one minute that we would hide the truth from you and that we would allow perjured testimony to come from that witness stand, as the defendants would have you believe, then I see that you have no alternative but to find the defendants not guilty.

But you know that is not the case. You know that we would not allow perjured testimony. That if it was going to be perjured testimony we would have to know it and then allow it knowingly. You know that we are not going to do that. We are not interested in winning or losing. We are interested in seeking the truth. That is what we all should be interested in. And I submit to you that you have seen the truth of the matter.

Now let me go and address myself to some of the other contentions and comments of the defense counsel during their summation periods with you.

First of all, let's take a brief look at the defense of Ann Shephard and I will refer to it later as I go through this. You will recall that on cross examination she tells us that she couldn't go home Thursday night to her children. She couldn't get home because she couldn't get any transportation; that she had to call someone to make arrangements for her children; that she wanted to go home but she couldn't; that there were people there at the church with cars; that she had money, she had friends at the church she could have gotten money for a taxicab. You will recall that also on cross examination she said that she couldn't get home on Sunday night and therefore had to spend the night with Allen Hall at his aunt's and uncle's house at 14th and Castle Street; that she couldn't get home that night because the man who drove them to Hall's house could not drive her an additional 5 minutes to get her home to her children.

You recall that she said that she was not there Saturday night at the church and she did not fix or attempt to give medication or medical care to the finger of a young boy who had smashed his finger in the door.

You recall that she said that she was there Thursday, Friday and Sunday. Does it make sense that she would be there Thursday, Friday and Sunday and not

Saturday? And did she give any explanation for why she wasn't there Saturday and why she was there the other three days?

I submit that you are convinced beyond a reasonable doubt , as the State is, that she was there Saturday night, and I will point this out as we go through.

Then we have got the argument of Mr. Becton. Mr. Becton first told you that everybody misunderstands Allen Hall. Well the defense misunderstood him when he was testifying, and they misunderstood a lot more. Mr. Becton brought out some minor point, but I want to answer them just how minute the argument of defense counsel were and how incorrect in time.

First of all, Mr. Becton tells you Allen Hall stepped in front of Marvin Patrick on Saturday to keep him from shooting a woman and a child. Allen Hall didn't say that. He said he just happened to come in front of Patrick at the time he was aiming the gun not paying attention and that Patrick had to hold the gun down and shoot it in the ground.

You will recall that Mr. Becton told you about Allen Hall assaulting the lady school teacher; but somehow whenever Hall was testifying about it he kept referring to that lady as "he".

You will recall the constant reference to Allen

Hall rushing off the witness stand. Mr. Johnson will cover that with you in his argument.

You will recall the constant reference to the fact that Allen Hall went to Cherry Hospital to try to beat the rap and then he goes on to tell you what he means by beating the rap is he'd never ^{been} / in trouble before, and he was hoping he could get on probation. I think any of us would, had we been in his position, have tried to do that. He goes on - the defense time after time brings out the testimony that Allen Hall wrote to Ann Shephard. Mr. Hunevol stated to you in his argument that Allen Hall said nothing in that letter about what Ann Shephard had done.

I submit to you that he didn't have to say anything in the letter. He didn't have to tell her what she had done. She already knew what she had done. Why should he have to remind her of what her actions had been? I submit to you that the letter to Ann Shephard is one of the best pieces of evidence the State has to show the believability and credibility of Allen Hall. Why, if he is not telling the truth, why would he tell her to tell everything that she knew if she didn't know anything? And why would he refer to Ben Chavis in that letter if Ben Chavis hadn't done anything?

So that is the argument. Admittedly the method