

it away. It is its most awful power; and because the power is awful, its exercise demands the utmost caution. Yes! Government may take life, but it should be fatal to the peace of any tribunal of government to take it by going on the wrong side of the line which marks the distribution of power. If the boundary be doubtful—if we are not certain of the legal territory on which we stand—humanity, the spirit of the law, justice itself, demands that the path of safety is to err humanely. Nor should we lend an ear to the voice of excitement, if that voice should counsel otherwise. It is the nature of excitement to confound the judgment, by substituting feeling for reason. The best of men are subject to this disturbing influence; but the spirit of our law will not submit that any man shall minister in this temple of justice who is under its power. To this end it provides a shelter from excitement—a city of refuge—not such as Moses created to protect the unhappy Jew from the avenger of blood, but a jury of twelve men, uplifted beyond the reach of the highest wave of popular commotion.

The means of refuge is change of venue; but the law takes care that excitement shall not pursue. How carefully did his Honor, who sits above you, probe each of you to find in the head an opinion, or in the heart a feeling against the prisoner. But no sooner are you sworn and impanelled, and charged with the fate of the accused, than the first assistant prosecutor, my friend, Mr. Coalter, rises to let in the disturbing elements of passion, which the law was so careful to keep out. He starts in passion, and touches as he goes every cord of feeling in the human heart. The deceased is “the noble son of a widowed mother”—“a whole people, roused by his lofty qualities, in the depth of winter are seen dragging the earth, shrouded by a deep snow to find the body.” On the bare suspicion of his “taking off,” they left their “comfortable firesides, amid the bitter inclemency of the season,” and “turned out to a man”—they were “deeply roused” that one “so noble” should meet “disaster so foul”—they felt that a man “so good” should not perish without retribution on his murderers. Their acuteness took inspiration from in-