

murder; but you are still left in the dark. The prosecution is moved to the law only by the point of the bayonet, and it will not budge an inch further than the practical puncture of the instrument forces it. "Implied malice," says Mr. Gale, "only makes murder in the second degree; the State must prove something more than that the killing was unlawful, to make the crime murder in the first degree."

"Something more" must be proved! What is it? What is that "something more," Mr. Gale? In all his speech he refused to tell you! Up to this period you have not heard from the prosecution what that "something more" is; and yet you must find it before you can find murder in the first degree. Why are you left to guess at that "something more"? Your consciences are involved that your guess shall be right; why are you permitted by the prosecution to guess at all? What is it that fetters the gentlemen at the other side? Why are they so costive as to the necessary elements of capital murder in this state? Do they hunger for the blood of Worrell? Are they fearful that a candid admission of the requisites of the law will show you that it cannot lawfully be shed? If the prosecution will not tell you of these requisites, I have told you; and while they shrink from a manly admission of the truth, they are not bold enough to traverse my exposition. They do not deny, they do not admit, and compromise with silence by saying "something more" must be proved than the unlawfulness of the killing, to make murder in the first degree.

Can you conceive of a greater calamity than ignorance (in those who have to administer criminal justice), of the boundary line between murders, on one side of which line stands the gallows, on the other the penitentiary? Yet what has the prosecution done to show you that line? They have sealed their lips, or spoken only ambiguous words calculated rather to mislead than to enlighten you, and have thrown upon me the task of running the line. Gentlemen, I shall ask the Court to sanction my survey. That "something more" than the unlawfulness of the killing is malice express, malice proved as a fact by evidence coming from the lips of witnesses,