

Mr. Arnold testified: I wish to state that on Friday when court adjourned Mr. Dorsey left the court room and as he left the court room I heard loud cheering at the front. On Saturday, when court adjourned, I asked Mr. Dorsey not to go out until the jury had gotten away from where they could hear the noise of the crowd, for fear they should cheer him again as he left the court room. Mr. Dorsey said all right, and remained in the court room for a while. Finally, I thought the crowd had left, and I presume Mr. Dorsey thought the crowd had left, and of course I do not claim that he is responsible for the cheering, but he finally left the court room and went out, and I went out with Mr. Rosser shortly afterwards, behind him. As Mr. Deavours says, it turned out that the jury had not at that time entered the German Cafe, although I didn't see them. I saw people up there but I didn't know who they were, but as Mr. Dorsey left the court room there were loud and excited cheers and cries of "Hurrah for Dorsey." My judgment is that you could have heard the cheers and cries of "Hurrah for Dorsey" without any trouble, all the way from the court house up Alabama street; that is my opinion. They kept cheering him and as my friend went across the street the cries continued until he got clear into the Kiser building. The first cheering was on Friday afternoon, but the second time was on Saturday when I asked Mr. Dorsey not to go out. I asked Mr. Dorsey not to go out until the crowd dispersed. He stayed in; I am not trying to blame Mr. Dorsey for it. I didn't know the crowd was waiting out there, and I presumed the jury had gotten out of hearing but found they had not. I didn't hear the case mentioned; I heard no allusion to this case but I heard cries of "Hurrah for Dorsey," but on the other occasions—while I love for my friend to meet all the approbation that he may get from the public, I did think that it was an outrage, the crying and shouting; that is what I thought. If the jury were where Mr. Deavours said they were, they could hear; no trouble about hearing it, if they had good ordinary hearing. On Friday I was in the court room when I heard most of the crying; I do not know where the jury was then.

Charles F. Huber testified: I was in charge of the jury when they left the court room Friday afternoon. I do not know how far the jury had gotten before the crowd began cheering in front of the court house. I didn't know myself that they had cheered until the next morning. They didn't know it at all. I had charge of the rear end of the jury. I have good hearing and I heard no cheering.

After the introduction of this testimony, Mr. Arnold for the defense stated that he desired time to examine Mr. Pennington and Mr. Liddell, the other two bailiffs in charge of the jury, who were then absent and asked the court to give him time to make the proof.

After the hearing of this request and the above evidence, the Court ruled: "Well, I am going to charge this jury on this case, and I will give you an opportunity, don't you understand, afterwards, to complete your showing about that, but I will overrule the motion."

During the hearing of this motion for a mistrial and when the witness Charles F. Huber was on the stand and swore that he heard no cheering on the Friday afternoon referred to, and that the jury did not hear it, there was applause among the spectators, on account of the statement that the jury did not hear the cheering. Mr. Arnold called attention to the applause, stating to the Court that the crowd could not be held in even while they were making this investigation.