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THE TRIAL
OF THE
WASHINGTON ELECTION RIOTERS.

CRIMINAL COURT FOR THE COUNTY OF *WASHINGTON.*

JUDGE CRAWFORD,
Presiding.

PHILIP BARTON KEY, ESQ., U. S. D. A.

COUNSEL FOR THE DEFENCE.
JOSEPH H. BRADLEY, SR., ESQ.
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VESPASIAN ELLIS, ESQ.
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FOURTEENTH DAY.
WEDNESDAY, August 12, 1857.

SPEECH OF
VESPASIAN ELLIS, ESQ.
IN THE DEFENCE.

MR. VESPASIAN ELLIS. May it please the court, gentlemen of the jury—I am not in the habit of making apologies for the manner or the matter of what I propose to say, and shall not do it now, though I am placed in an embarrassing situation. The eloquent and able speech of my colleague, Mr. Scott, made on yesterday, has covered almost the entire ground which I proposed to occupy; and that too, so much more ably than I can do it, I feel embarrassed in following him.

There has been one sentiment especially, uttered in the progress of this case, in which I very sincerely concur. I allude to what fell from the lips of the honorable Representative of the United States on this occasion, when he called upon you to do justice to all parties—justice to your own party—justice to yourselves, and justice to the country, in the trial of this case. It was a proper, a just, and an appropriate warning. It was proper and even necessary on the occasion which is now before us, because, as *you* all know—as *we* all know—as the country knows, the most strenuous and concerted efforts have been made by the partisan press, and by the official reports of public bodies which have been printed and scattered throughout the Union, to make an impression unfavorable to our defence. I would call upon you in the language of the learned gentleman who appears in behalf of the prosecution; I would call upon you in the language of my distinguished colleague, Mr. Scott, to discard, if you can, every sentiment adverse to a just decision in this case, and to forget, if it be possible, that you have any political opinions. You owe it to yourselves—you owe it to the defendants—you owe it to the country and to the cause of constitutional liberty, to discard all political feelings; and yet we can hardly deem it possible, that your minds have not been permanently influenced by the various publications I have alluded to, in relation to the proceedings of the first day of June.

I may state as a somewhat remarkable fact, that the whole press of Washington volunteered from the beginning, to excuse the municipal authorities, and to condemn those on trial in this prosecution. It cannot have escaped your observation, (and some impression must have been made on your minds from reading it,) that it has been proclaimed here, through the public press, in *official reports*, and copied elsewhere, that one hundred and twenty odd witnesses have been heretofore legally examined, and that the result of such examination was to establish the *fact*, that there was an awful, a *fearful riot* in this city, on the first day of June, and that the military force of the United States was properly called out, and properly used, in quelling this pretended riot! AND YET NO SUCH RIOT EXISTED! Gentlemen, you would be more than human, if impressions had not been made on your minds by those authoritative publications. All men form their opinions, more or less, from what they read, and it is vain for any man to say, that his mind does not receive lasting impressions from the presses of the party to which he is attached.

It may be, I do not say it is otherwise, that those presses which have given one-sided reports of this matter, both official and editorial, were honestly influenced, and that they believed they were giving the truth to the public. But *one* among many of the remarkable circumstances which have occurred on the trial of this case shows, beyond all question and controversy, that the publications to which I have referred, were *not* fair expositions of the facts. Why, gentlemen, here are four men now on trial, whom the learned Representative of the United States *asks you to acquit*,—and yet these men were regularly indicted by the Grand Inquest of the county, after an examination, as they have said, of one hundred and twenty witnesses! Now, where is the evidence on which these four men were indicted? Could not the witnesses be named and summoned, who appeared before the grand jury of this county and gave the testimony on which these four men were indicted? If no such witnesses can be produced, it follows as a necessary consequence, and one from which the grand jury cannot escape, that their indictments were improperly and unjustly made. I will not *assert* that they were made for political effect, but, gentlemen, you can draw your own inferences. I say the indictments were made, and in passing along, I may be allowed the further remark, that they were made by a body of men, *not one of whom belonged to the political party of these defendants!* I repeat then, that it behooves you to be cautious, and, if possible, to remove from your minds, the impressions which must have been made upon you by the publications, editorial and official, to which I have alluded.

But WHY this prosecution! Why the prosecution of fifty or sixty "Americans" by designation (for the present is but one batch) when no inquiry has been made into the causes and circumstances of the deaths of fourteen individuals, who, standing lawfully and peaceably in their own doors, or on the side-walks, unwarned of danger, and unconscious of offence, were stricken down by the balls and buckshot of the military? My answer is this: This prosecution was necessary to effect a certain political purpose! What is that? It was necessary to screen, to shield, and to exempt from punishment the very men who ought now to be standing before you on their trial! The officers of this corporation—the civil authorities of Washington, have got the "jockey word" of the "Americans." I must here allude to a fact which is not in proof, though generally known, that although the proper affidavits were made and tendered, not a single justice of the peace could be found in this city, who would issue the necessary process, to arrest and prosecute the officials of this city, for the *murders* committed on the 1st day of June!! Whatever may be the form, therefore, of the proceedings here (and the form is in legal shape) *this is substantially a political prosecution, not* designed so to be by the attorney of the United States, *but* so designed by those who originated it! Who they are I know not, and therefore cannot say.

Gentlemen, allow me here to state, that if that class of persons who have been denominated "Plug Uglies" were here on their trial—if the men had been arrested who came here from Baltimore to interfere (as is said) with our election, I should not stand here to vindicate them: I should not stand here and say that *they* were guiltless of wrong. There is no man, no matter what his position or character may be, who more abhors the actors in a mob or a riot than I do. There is no man who would go further to arrest rioting, or to suppress a mob—none who would go further to prevent, or to punish those who are guilty of such disturbances than I would.

In my professional capacity, if called upon to defend the worst man in the community for any offence, I should feel bound to stand forward in his *legal* defence, but as a politician, and as a citizen, I condemn and abhor rioting, and would go as far as he who goes furthest to put it down, and to punish those who are concerned in it. But let it not be said, on this occasion, that I stand here to defend men guilty of rioting. I am here for the purpose of defending men who are *charged* with rioting, but who, in my judgment, are guilty of no offence whatever against the laws of the land!

I stand here, indeed, as an advocate, *but* at the same time I have no hesitation in saying that if my services had not been demanded by any portion of these men, I would cheerfully have tendered them to defend them against a charge of which, I believe, they are not only *not* guilty, but a charge which, in my opinion, *originated in partizan malice.*

Gentlemen, the weather is entirely too oppressive, and I have suffered too much already during this long trial, to go into a lengthened detail of all the facts and circumstances of this case. I shall therefore pass as rapidly over it as may be consistent with my duty. I find even now, though addressing you under no excitement, I am scarcely in a condition to stand up before you.

The first question which presents itself is, whether the case which you are considering was an affray or a riot? And the next question is, if there was a *riot*, who committed it? I shall here assert, what will not be denied on the other side, that, no matter what other offenses may have been committed on that day—the defendants may have stolen money, committed murder, done anything else known to the laws as crime, yet, if they did not commit the specific offence charged upon them, to wit, *a riot*—you cannot on your oaths convict them.

What, then, is a riot? You have been told on both sides, and by the court, what constitutes a riot.

"It is a tumultuous disturbance of the peace by three or more persons, assembled together, acting in concert, and mutually aiding each other to commit a wrong."

What is an affray?

"It is the fighting of two or more persons in some public place to the terror of the people."

There may have been a thousand people engaged in an affray or in various affrays on the first day of June, yet you cannot convict them under this indictment. Any number of persons, from three to a million, may commit a *riot*, but an affray cannot be changed to a *riot* by reason of the number of persons engaged in it, or by reason of the number of fights which may have occurred during the affray.

If a thousand persons were engaged in fighting on the first day of June, unless there was a combination to effect a specific purpose, by three or more persons, which they unitedly had in view, and unitedly sought to accomplish, it was not a riot. I desire your particular attention to this point. No matter what scenes of bloodshed were witnessed on that day—no matter how many other crimes were committed—no matter how many *individuals* were seen running after others with pistols, nor how many pistols were discharged, nor how many stones and clubs were thrown—unless those acts were done in *concert*, by three or more persons, and with a "common purpose," there was no riot.

The essence of a riot is the *mutual* purpose, concert, and support, of three or more persons who meet to perform the illegal act. The essence of an affray is "a fight in a public place to the terror of the people." Now, Mr. KEY, in addressing you on this subject, and asking a conviction, said, in recapitulating the evidence, that *one* witness saw *one* act and another witness saw another act, and so on, but he forgot to tell you that if a hundred different witnesses saw a hundred different illegal acts committed, unless they were committed by *concert* and to effect a *common* purpose, mutually agreed upon, by three or more persons, it was no riot.

Now gentleman, to pass over this case as rapidly as I can, I will briefly repeat to you our defence. We take the position that there were two affrays at the first precinct of the Fourth Ward, one in the morning, and another in the afternoon. They occurred at the hour of half-past nine o'clock in the morning, and at one o'clock in the afternoon, of that day. We take the position, and shall maintain, that even the first affray was created by others than those now on their defence—it was created, in other words, by those called *anti*-Americans: I will not say by Irish and Dutch; I use the term *anti*-Americans, in contradistinction to those on trial, who are "Americans." I say, then, that the *first* affray was commenced by the anti-Americans, and the *second*, by the Marines. Upon the first point—who began the affray? It is in evidence, and cannot be controverted, that the *chief of the police*, Mr. Baggott, (who, I think, the prosecution has wisely kept from this court, and not summoned as a witness,) fired the *two* first pistols! There can be no doubt of that. He fired the first pistol over the heads of the crowd, and the second, he fired from the corner of "F" and Seventh streets. What was better calculated to excite an affray, than for a police officer (and *he*, the chief!) to fire a pistol over the heads of a crowd to intimidate them on the occasion of a gathering for political purposes?

The "Americans" at the polls had heard the rumor, that the polls were to be occupied in the morning by the foreign voters, and that "if the Americans voted at all, it would be in the afternoon through a file of Marines!" What was more certain to excite their indignation, than for a police officer to step out and fire a pistol over their heads, and then retiring to fire another? Was not this conduct well calculated to give strength to this rumor, which they had heard? On this point of the first firing, I refer to the testimony of Mr. Hallack, Mr. Lowrie, and others, who concur in stating, that the first pistol was fired by Baggott, the retiring policeman! I care nothing about his purpose. I care not what he intended. I care not whether he designed to excite the "Americans" to commence a disturbance, nor do I care why or wherefore he retreated. No matter what his purpose, he did the wrong, and that wrong tended to arouse the passions of the Americans. I consider the point, as to the first firing settled.

Another point settled by the proof is, that instead of its being a preconcerted disturbance or a riot, originating with the "Americans," this first affray was a *mutual fight*, and not "all on one side," as our worthy friend, Justice Donn, has told you It was not a fight in which there was no resistance, but a mutual fight, a sudden affray between contending parties. One witness, Mr. Lowrie, tells you that "both sides were fighting and firing." Mr. Randolph says "it was a free fight." Mr. Southeron says it was a "general fight." Others confirm their statements. Thus, then, it was a "mutual fight," and I will show you presently what was the precise origin of it—the time and immediate cause.

I have already told you of the excitement which prevailed among the "Americans," growing out of the threat that "if they voted at all it would be in the afternoon, and then through a file of Marines"—and how that excitement was naturally increased by Baggott's firing pistols over their heads. I will soon bring you to the point where the affray commenced, but, before doing this, let me add, that it is clear, from the proof, that both Goddard and Donn (anti-American Justices) pursued a course of conduct well calculated, still further, to excite the temper of the "Americans." I care not what was their purpose—I speak of their acts.

Justice Donn admitted, on his cross-examination, that he "invited and urged men to come and vote early!" His *present* party associations inform us what classes he thus invited. Did he invite the "Americans" to come early? He might have done this two or three years ago, when his associations were of a different character; but I doubt whether, with all the gentleman's apparent frankness and liberality, he extended as many invitations to "Americans" as he did to the anties! I will not say that he gave the charge usually given to the Irish, "*come early and vote often.*" But he admits that he invited voters to "come early." His invitation was accepted by the naturalized citizens—there is no doubt on this point, and great numbers of *that* class came early upon the ground, and had control of the avenue to the polls.

From the evidence of Mr. Alexander, and several others, it appears that Captain Goddard's conduct created no little excitement. This testimony must be fresh in your minds—and from it, you learned that Goddard, by "shoving, pulling, and hauling;" and Donn, by admitting men to the polls, through favoritism, at the *outlet* of the enclosure or barricade, did much to produce an excitement among the "Americans."

A word or two more, before pointing out the precise origin of the affray. Captain Davis proves that the affray was "no unusual fight;" that he "had seen many such affrays at the polls." He was formerly captain of the police, and last year an affray of a worse character was put down by the police. In this connection, Mr. Lord said, that "those who were noisy were half grown men and boys." Mr. Randolph says, "some boys were hurrahing." Mr. Larner says the same thing, and Captain Davis says "there was not as much disturbance as is usual on such occasions."

I mention these things here to show you, that it was "no unusual fight;" that it was merely a sudden affray, not a *riot;* but such a disturbance only as Goddard and Donn could have quelled, by the use of prudent means.

The learned United States Attorney has ommitted to mention, that the "Empires" from the Eighth Ward, of Baltimore, were present on that occasion, and how are you to know from the proof, what portion of the crowd were "Empires"—how many were "plugs," and how many were Washingtonians? It is impossible to say. No man has undertaken to say how many of each class were there, nor who were the parties to the affray. Witnesses say they "understood"—they "believed" the "plugs" were in the melee, but there is no evidence to show that this was *not* a fight between the "Empires" and the "Plugs!"

If the "Plugs" were here from Baltimore, they were here to meet the "Empires." Halleck tells you, that "there was halooing for the bloody Eighth Ward, of Baltimore, by a party called Empires!"

The JUDGE. There is no evidence that they came to meet the "Empires."

Mr. ELLIS. Gentlemen of the Jury, I told you I would come to the point, and show you *how* and *when* that morning affray commenced. There is but one witness who shows precisely *how* and *when* it commenced, viz: Mr. Halleck.

You have understood from various quarters that the feelings of the "Americans" were aroused and excited by the rumor of which I have spoken You have heard that there was shooting and hallooing and that pistols were fired, &c. &c., *but* from a single witness have you learned the exact time and cause of the first affray, and when I cite the evidence, you will not fail to understand both the time and the cause of this melee.

Mr. Halleck stated some facts considered by the United States attorney as favorable to the prosecution, and therefore, independent of his being a man of great respectability, the utmost reliance must be placed on his evidence against the prosecution. He says, that some one asked a naturalized voter, if he had "his papers?" It was a proper inquiry.

The inquirer was supposed to be a challenger. "*Have you your papers?*" was the question.

Now, I do not stand here denying the right of a naturalized citizen to his vote. I will go as far as any man to protect his "vested rights." I would not vote for any such citizen against an American-born candidate for office, of equal qualifications, but I would defend him in his "vested rights" at all times. The question, however, was a proper one: "Have you your papers?" and what was his answer? Did he say, "*I have them?*" He made no such response. The inquiry was proper, for it was said and believed that foreigners were attempting to vote upon dead men's papers! His answer was, "No; BUT I HAVE A BRICK IN MY POCKET!!"

Now, gentlemen, on ordinary occasions and under ordinary circumstances, if such an answer were made to a challenger at the polls, he might reply, *I don't care for your brick;* but this was on a day when threats had been made towards the "Americans," which were calculated to arouse indignation and resentment, and when such an answer might well be considered a direct invitation to a combat. In answering, "*I have a brick,*" it was equivalent to a challenge—it was distinctly inviting an affray.

What does Halleck say followed?

He says: "THE MELEE IMMEDIATELY COMMENCED." That circumstance—that imprudence of the Irishman created the affray in the morning.

Well, gentlemen, this proof negatives—disproves the idea altogether, that it was a riot, got up to oppress the naturalized citizens of the United States! This testimony proves directly the contrary—*that the disturbance originated with the anti-Americans.* Not only so, the testimony is overwhelming that the naturalized citizens voted as freely on that day as did the native born.

Gentlemen, there was no riot. There was no concert to prevent naturalized citizens from voting; *but* when the question was put to an Irishman, "Have you your papers?" and it was met by the defiant answer, "No; but I have a brick in my pocket," a general affray followed! You all know what that man meant. He *meant* to bid defiance—he *did* bid defiance—he "threw down the glove;" and at that very instant the affray commenced, as Halleck stated.

Thus is the whole pretence of a preconcerted arrangement by the "Americans" to keep foreigners from the polls, scattered to the winds! I venture to say, that if that Irishman had exhibited his papers to the judges, as he ought to have done, no affray would, at that time, have occurred, and perhaps none during the day. It is true this is only a matter of opinion; but it is certainly established that the Irishman's answer was the immediate cause of the disturbance. It is proved beyond controversy that this affray did *not* originate with the "Americans." I care not how many "Plugs," or "Americans," or "half-grown boys" were going about the streets hurraing. Captain Davis and others have proved that no disturbance had been created by them, down to the time of this "general melee," described by Halleck. Nor have I any doubt, gentlemen, that, even this affray could have been suppressed as easily as you could control a child, had there been a dozen policemen on the ground, men of bravery, nerve, and determination of purpose, who were really desirous to preserve the peace.

I omitted to notice, in connexion with the origin of this affray, (what is not of much importance, except to show that they expected, and were prepared for a general disturbance,) that Mr. Southeron saw four Irishmen that morning, coming up Massachusetts avenue towards those polls, with their pockets stuffed, with what he took, from the appearance, to be pistols. It shows that this class of persons were prepared for a fight, if an opportunity should be given.

Now, gentlemen, I have given you this brief general view of the morning disturbance, and you must be satisfied, from the references I have made to the proof, *first*, that it was an affray and not a riot, and *secondly*, that it was got up by the *anti*-Americans.

And now, in regard to the evening disturbance, I may ask what was it? and who began it? I will state as succinctly as I can the substance of the proof on these questions.

The first important fact as to the evening disturbance is, that the Marines were called out by order of the President, in response to the request of the Mayor, when all was quiet at the Fourth Ward, and that they left the Navy Yard.

The next fact is, that some young men (who had heard of the threat I have mentioned, and who discovered that the Marines were marching up the city) followed the Marines with a small swivel, avowing their sole purpose to be to defend themselves, and the "Americans" from the Marines. Their purpose was manifest, and they repeatedly said, "take away the Marines, and we will take back the swivel."

Another fact in proof is, that the swivel was not loaded, till after it reached the market house in the Third Ward—a fact which negatives the idea of any concert with those at the polls. It was taken from the Anacostia engine house, unloaded, and in great haste.

The taking up of the swivel was a sudden movement, proceeding from the impulse of a moment—it was unloaded, and (as it ultimately proved) it had been spiked some days before!

The next fact is, that the swivel passed the Marines on the march—and was planted and loaded at the market house in the Third Ward, some distance above the Fourth Ward polls. The next fact is, that the Marines were marched up and formed into line, near the swivel. Then followed the *act* of taking the swivel by a platoon of Marines with charged bayonets, before a single shot had been fired by even a pistol, or a single missile had been thrown by the crowd around the swivel; and simultaneously with this taking of the swivel, a discharge of muskets by the Marines at the crowd near the market house, and the killing and wounding of several citizens.

Gentlemen, though, *under the instructions of the court*, the Marines were lawfully brought up to the Fourth Ward polls by the directions of the Mayor, it does not follow that, when they had reached that locality, they had a right to do what they pleased—to take the property of others, or to shoot down innocent men! *They had no right to touch that swivel*, no matter what were the purposes of those around it. We are bound to believe, however, that the sole purpose of those around the swivel was to defend their own rights and the rights of their fellow citizens. They so declared, and their declarations have been thus proved by the Government! There is no proof that they had any other purpose. Major Tyler says that *he* was informed, by what he supposed was a committee, that unless he took away the Marines, those in possession of the swivel would fire upon them, but it is also proved that they declared at the same time they did not intend to use the swivel "except in self-defence." I here say, then, that the attack on that swivel was the *first breach of the peace*, and that the commencement of the evening affray is chargeable to the Anti-Americans—the *Marines!* In this connexion there is a circumstance to which I must here advert. I refer to the fact that, in an instant after the first platoon of the Marines took the swivel and fired at the crowd above and at the Market House—in the *very instant* following, the lower portion, or southern line of the Marines—the left, or from the centre to the left—commenced firing towards Allston's corner, nearly a square below the position of the swivel! Gentlemen, is there the least evidence in this case on which you can rely, showing that the Marines in the centre or on the left had *the slightest cause or semblance of provocation to fire a gun?* You cannot fail to remember what havoc and destruction that firing caused; how that Allston, Deems, and half a dozen other peaceable citizens, were instantaneously killed at that spot, and others wounded and crippled! I ask you to refer to the proof and respond for yourselves, whether there can be the slightest excuse or palliation offered for the discharge of those forty or fifty muskets? I shall advert to this point again in the sequel, and therefore I pass it over now without further comment.

I have thus, in this hasty manner, endeavored to show you that the affrays were commenced, both morning and evening, by the *anti*-Americans, and it is a singular circumstance, that of the fourteen persons killed by the Marines on that day, only two of them belonged to the political party to which the defendants were attached! Is it not remarkable that those Marines, brought there to kill *rioters*, (for that was the ostensible purpose—to put down *rioting* by slaughtering "Americans,") is it not remarkable that they should have killed a dozen Dutchmen, Democrats, and free negroes, and but *two* "Americans," and those *two*, innocent and unoffending bystanders? This fact will not read well in the written history of this transaction! It is a circumstance which will not only make an impression upon your minds unfavorable to the idea that an awful riot was quelled by those gallant Marines, who gained only a "spiked swivel" for their "trophy," but it will stand out before the American people as a *fact*, which clearly negatives the allegation that a riot existed!

Gentlemen, this general view which I have thus cursorily and unconnectedly taken, establishes the fact, that there was *no riot*, but that there was two affrays, one in the morning and the other in the evening, and that both were commenced by the Anti-Americans.

And now let me advert to some of the positions taken by my learned friend, the United States Attorney.

By way of inducing you to discharge your duty firmly, (as I sincerely trust you will,) Mr. KEY informs you that it is a part of the history of this country—that such riots are of every day occurrence, and especially in the large cities, such as Baltimore, Louisville, New York, &c.

Gentlemen, it is a melancholy fact that it is a part of the history of the present day, that riots, affrays, lawlessness, violence and crime stalk abroad at noonday throughout the land!! This statement, gentlemen, thus made by the United States Attorney, opens a wide field of enquiry, if I were allowed to go into it,—a very wide field of enquiry,—much wider than the gentleman who introduced this question to your minds would be willing that I should explore. Affrays, riots, discord, disorder, confusion and crime, are the "order of the day," all over the country! It is too solemn a truth to be passed overin silence. It is a most serious and alarming fact! Gentlemen, if I were permitted to go into the enquiry in all its length and breadth, and to show you the remote causes—the true origin—the actual beginnings of these scenes—the *whys* and *wherefores* of their existence in this country, I should go far beyond the limits of the testimony in this case. A few suggestions must suffice.

Gentlemen, the first political disturbance I ever witnessed, was in 1840. Down to that year, I had never seen and appreciated the necessity for the formation of an "American party." Such a scene as then passed before me I had never expected to witness. I was mixed up in it—was the object and unexpected cause of it, and hence the impressions made, are indelibly fixed in my memory. Many thousand people, men, women and children of divers nations and languages, were gathered together on a political occasion. It was a democratic mass meeting of the people of three counties in Missouri. I was politely invited by sundry democratic orators to meet them and debate the questions involved in the contest between Harrison and Van Buren.

I "took up the glove," (as I had never allowed myself to be thus challenged without accepting it;) but I had not been half an hour upon the stand (thus occupied by invitation) responding to my antagonists, before the leaders produced a general clamor amongst the Dutch and Irish,—a band of music was made to surround the stand,—and I was compelled by violence to leave my position! That was the "moving cause" of my advocacy of an "American" organization!

Gentlemen, it is but a few days ago that several German military companies were mustered under arms, by their officers in New York, to resist the civil authorities of that city—because a German had lost his life in a collision with the police! Yet such a display of a *foreign* legion is treated as an ordinary incident of the day! German military companies under arms, day after day, threatening a conflict with the civil authorities of our commercial metropolis! It is too true, gentlemen, as the United States Attorney has said, that riots, confusion and scenes of disorder and bloodshed are becoming the order of the day! I believe, gentlemen, that Captain Marryatt, of the British navy gave us a clue to the origin of these evils when he exclaimed: "*What cargoes of crime, folly and recklessness Europe annually ships off to America!*" The United States Attorney can contemplate these *causes* at his leisure, and ascertain why and wherefore such scenes occur. He may, perhaps, attribute them to a different cause. But permit me to say to you here, gentlemen, that if you would prevent those scenes of bloodshed and recklessness, and these foreign military demonstrations which now disgrace the country, from increasing in number and in violence, you must seek out and apply the proper remedy,—*not* by incarcerating American citizens for maintaining their birth rights on "freedom's holiday,"—*but*, if *it can be done at all, it can only be effected by the prompt legislation of Congress!* You must shut the door which is now wide open to immigration, or the marines under the Maguders of each locality will, ere long, proclaim to the native born, a doctrine which has received *judicial sanction, that the natives are not entitled to quite as much respect as foreign born citizens who came hither from choice, whilst the natives are here by accident!!*

Gentlemen, we are told by Mr. KEY, that the "Americans" of this city, exhibited "a ridiculous sentimentality" on the first day of June. "A ridiculous sentimentality," was it? to resent the threat, that they should "vote only through a file of Marines!" Would *you* have them submit to such indignity? Would you have them tolerate the doctrine that they should *only vote thus?* For myself, sooner than submit to such vile tyranny I would rather see the United States blotted out of existence—aye, sunk, ten thousand fathoms deep beneath the mingled waters of the Atlantic and Pacific Oceans, where we all, native and naturalized, should find a common grave!

I happen to think that native born citizens are quite as good, to say no more, as those who are foreign born! The Constitution of the United States does *not* give a perference to naturalized citizens—but it does give a preference to "native-born citizens" for various important trusts under the government; and on this basis, I rest the question of precedence.

"A ridiculous sentimentality?" I do not know whether my worthy friend, Mr. KEY, intends to lay down *now* and *here* the forthcoming doctrines of Magruderism. I hope he does not mean to warn us now, that this "ridiculous sentimentality" is to be put down, "crushed out" by the military, in the very infancy of our Republic!

I confess that I see but too plainly, that the power of the military, is that which is destined to control this country in the not distant future. I am, at least, afraid so—and when the time shall have come, and I fear its dawn approaches; that this power of the sword shall be influenced by the minions of the "*scarlet whore of Rome*," this "*sentimentality*," which Mr. KEY rebukes, will be in truth "*ridiculous!*" That time has *not* yet come—nevertheless, in the very metropolis of the country—in the very centre of the Union—aye, in the city which bears the sainted name of Washington—dark shadows of this fearful gloom draw near. Americanism is reproached as a "ridiculous sentimentality!"

Gentlemen, I am obliged to be discursive in my remarks. I must pass on to other positions assumed by the United States Attorney.

He has told us that the polls were closed by the commissioners in the morning, to prevent foreigners from voting. In opposition to this assumption, I give you the testimony of the commissioners, and that of numerous bystanders. They tell you that there was no difference made between native and naturalized citizens on that occasion.

Mr. KEY tells you, that the four commissioners knew for what purpose the Mayor had ordered out the Marines. They knew no such thing. They have so sworn, nor would the inference have been a natural one, if they had been informed that the Mayor called them out to keep the peace!!

DISTRICT ATTORNEY. They did not take the trouble to enquire.

Mr. ELLIS. If they had, I do not know that they would have believed the answer. *I should not.*

But the United States Attorney indulges in severe invectives on the Commissioners; he charges them with neglect of duty; and he says they "deserve to be consigned to eternal shame." Well, the Court has laid down the law, and I shall not controvert it here—we may do it if necessary, elsewhere. The court says that if the commissioners closed the polls on the Marines appearing, and solely on the ground of their appearance, it was an unlawful closing of the polls, but the court has not told you that they are to be given over to eternal shame for it; that is the doctrine of the District Attorney. The Commissioners said that the presence of the Marines led them to doubt the safety of the ballot box; they did not consider themselves safe nor the ballot box safe.

Mr. KEY. I do not recollect such testimony.

Mr. BRADLEY. They said they did not consider the ballot box or themselves safe.

Mr. ELLIS. I do not mean to misstate the evidence. I may possibly say some things that are not strictly in evidence, but the learned gentleman who appears for the United States, and the Court also, can correct me if I err. The proof was as I stated it.

The JUDGE. The jury are the proper judges.

Mr. ELLIS. Now, gentlemen, I repeat, that the Commissioners declared distinctly that they did not consider themselves nor the ballot box (or the polls—for perhaps they used that word) safe. Whether they were influenced by the general rumor that the "Americans" should pass through the Marines to vote, or whether they were influenced by their general knowledge of the man who had the Marines placed under his authority, is a matter I shall not stop to debate. It is certain that they have sworn they did not think themselves nor the ballot box safe, and I should myself consider a member of the Magruder party a *little* safer than "Americans" would be in his keeping! With this opinion of their danger, the Commissioners were right in closing the polls, on the Marines approaching.

But you are asked by Mr. Key if you do not believe that foreigners were prevented from voting? It is true, my quondam friend, Esquire Donn, said something of the sort, and if he had said this a few years ago, when we were "hail fellows, well met!" I might have been inclined to be influenced by his statement. I do not intend to question his veracity: I have not forgotten "auld lang syne;" and even if the "loaves and fishes" have attracted him, I do not so much blame as pity him!

But Mr. Key says the voting was all on one side. Gentlemen, I may refer you to the testimony of William Douglass, Captain Davis, and others on this point, who all declared that "any man could have voted, native or naturalized, who felt so inclined," and I trust you will not permit the statements of our excellent and learned United States attorney to influence your minds against the proofs. He is certainly making great exertions to convict the defendants. I do not know whether he is influenced by the hope of reward; he is closely watched, and perhaps if he fails in this prosecution, he may "get his walking papers!"

Now, gentlemen, having, as you must all have perceived, been addressing you in rather a disconnected manner, to meet the points taken by the United States attorney, let me present to you some views on more general matters. Let me examine the general character of the whole testimony by the United States, and the general character of the evidence on the part of the defence.

It is an obvious fact, that all the United States witnesses are *interested*, though not directly so, in the result of this trial. The District Attorney looks inquiringly, as if to ask "*How?*" I do not mean that they are directly involved in your verdict; but they dread the effect of your verdict on the public mind, if it should be one of acquittal. The judge has suggested that *we* have placed the United States witnesses in the position of accused parties. This is, in sober truth, a trial between the police of this city (and their assistants, the marines,) on one side, and on the other those unfortunate men, whom the police officers have got into their clutches!

It is a general principle of common law that a man shall not be a witness in his own case. This principle does not apply to the United States witnesses here, as it regards the competency of their testimony, for they are not a party to the record; but there is another principle which does apply to them and affects their credibility. They are interested in procuring a conviction of the defendants, to get rid of the responsibility which would rest upon them, if it shall be decided that there was *no riot*, to justify the extraordinary measures resorted to by the city authorities.

It is undeniable that the United States witnesses are officers of the corporation, or of the Marines, who are interested in making it appear that an awful riot was committed by the defendants. What is the issue with the *public?* The issue in *this court* is, did the defendants commit a riot? but with the public, the question is, did these police witnesses do their duty? And did the Marines do *no more* than their duty? The United States witnesses, composing the city *police*, have sworn that there was a riot which *they* could not quell, and which could not be arrested except by military power—and if, on these issues, you acquit the defendants, it will involve the condemnation of those officers for a dereliction of duty, or for something *worse.*

I do not mean to say, that all, or any of the United States witnesses have sworn falsely, but I do say they are so deeply interested in the issues thus presented, as to affect their credibility. Mayor Magruder, Captain Goddard, Justice Donn, Captain Tyler, Messrs. Birkhead, Owens, Frere, Ridgway, Kearney, (the smoky witness) Pyles, and even Mr. Carlisle, *all* are connected officially with the corporation, or with the Marines! It cannot have escaped your consideration, that the verdict you render, will indirectly affect all those witnesses (more or less,) and that, therefore, their interest, or their anxiety, touching your decision, is a proper question for you to consider in weighing the evidence.

You have to decide, whether any, or all these witnesses have told the truth; whether their testimony was biased; whether they testified frankly, and without prejudice; whether Mayor Magruder is entitled to belief, throughout this whole trial, and, if so, whether all on this side, who contradict him, are to be disbelieved? I say, the witnesses for the prosecution are *interested*, because your verdict of "*not guilty*," as to these defendants, would imply, to some extent, a censure of the police authorities of the city. It is true, the city police, MAY have done their duty, and the defendants yet be innocent, but, in the public mind, as now impressed, the conduct and character of these officers, are deeply involved in the result of this trial. This affects the question of their credibility.

Now, gentlemen, having presented this general view of the interest of *all* the United States witnesses on the result of this trial as affecting their credibility, I shall examine them, one by one, to show their errors and contradictions; and, as I always "take the bull by the horns," I will examine W. B. Magruder, the Mayor, first. I intend to show you that his testimony is not to be believed. I do not mean to say he has committed wilful and corrupt perjury—but I say he has testified under a bias—he has testified very unguardedly,—thoughtlessly, if you please,—or, if *you* will have it so, corruptly. If I do not show you that he has sworn to some statements that are not true, I will leave this court house and never enter it again as an advocate.

The first thing to which I shall advert in his testimony is, that he said "the polls were closed and there was no voting when he reached there in the morning." He did not get out of his carriage on that visit;—he may have been informed that the voting was not going on. I do not know nor care how that is: he did not, however, assume to make his statement on *information*, or to give his opinion, but to state a fact as a witness. He says "the polls were closed when he went there." I say it is clearly proved they were *not* closed! Mr. Larner says they were not.—Mr. Wm. Lord says they were not,—Mr. Lowery says they were not,—Mr. Bowen says they were *not* closed when Mayor Magruder went there; and Mr. Alexander testifies to the same fact, and gives you a reason for his statement, which confirms all this testimony beyond the possibility of contradiction.

Mr. Alexander was the sixth man who voted after the polls were reopened in the forenoon, and he tells you that he came out directly after he had voted, and that Mayor Magruder was there! He thought at first he was the third or fourth man who voted after the reopening of the polls, but he was the *sixth* man, and this fact is indisputably established by the poll-book, and thus it is demonstrated that, when Mayor Magruder was at the polls they were *open* and the people were voting! It is *not true* then as the Mayor testified, and as he stated in his letter to the President, that the polls were *then closed.* A half dozen witnesses, all privy to the fact, swear, that they were *open.* There is no mistake on this point. Now, whether or not Dr. Magruder knowingly tells an untruth on this point, is a question for the jury.

He says they were *shut;* the other witnesses say they were *open;* and there is some little difference between the polls being *open* or being *shut!* Here let me read to you Mayor Magruder's letter to the President of the United States.

"Mayor's Office, Washington, June 1, 1857.

"To the President of the United States:

"SIR: Upon the report of credible witnesses, that a band of lawless persons, most of them not residents of this city, have attacked one of the polls at which the annual election is now in progress, and have wounded some twenty good and peaceable citizens, have driven away the remainder from the polls, have dispersed the Commissioners of Election, and threaten further violence on any attempt to carry on the election, I respectfully request you to order out a company of the United States Marines now in this city, to maintain the peace thereof—the civil authorities finding themselves unable to do so with the means at their disposition, and there being no other United States soldiers at command in this city. I have instituted a personal enquiry into these matters, and find that the weapons used were various kinds of fire-arms, clubs, knives, and stones, and that the facts as stated in the enclosed certificate are just and true.

"With great respect, your obedient servant,
"WM. B. MAGRUDER."

Now, gentlemen, the Mayor asked for this military aid because (he says) the civil authorities are found to be unable to preserve the peace! He speaks in the present tense. He wrote this declaration or statement half an hour or an hour after he had visited the polls. He says twenty good and peaceable citizens were wounded; that the remainder were driven from the polls; that the Commissioners were dispersed; and that the rioters had threatened further violence on any attempt being made to carry on the election! Gentlemen, it must have been as late as half-past ten, or perhaps eleven o'clock, when he made those statements to the President. *Were they at that time true?* If he had intended to tell the truth, he should have said that certain persons *had* driven the Commissioners and the people from the polls, *but they had come back again*, and all was quiet; but, instead of this, he stated what was not *then* true.

He says twenty persons had been wounded! Captain Goddard had been struck by a stick on the shoulder, and with a brick on the breast, but not hurt, and two or three other men had received slight blows, but no one had then been seriously injured. One man, it is said, was dragged out of the barricade and beaten, but this was long *after* Dr. Magruder had left the polls and gone to see the President! Who, then, had been wounded, to make up the "twenty peaceable citizens?"

Did you ever before know such reckless statements made as this letter contains? It reminds me, gentlemen, of the statements of the boy sent by his mother for her cows, into a distant pasture. Instead of going and bringing up the cows in due time, the boy loitered on the way until it was late, and when he came back he told his mother he had "seen a hundred bears." "Oh, no," said the old lady, "you could not have seen a hundred bears, for they never go in droves." "Well," said the boy, "I am sure, mother, I saw fifty." "No, my son," said the mother, "it is impossible." "Well, then," said the boy, "I know I saw twenty." "No, nor twenty," said the mother. "Then I saw five, at least," said the boy. "You are mistaken, my son," said the old lady. "Well, mother," said the son, "I declare, I saw *one* of the biggest bears in the world." "