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COURT OF GENERAL SESSIONS OF THE PEACE
CITY AND COUNTY OF NEW YORK, PART V.

----- x
THE PEOPLE
against
ABRAHAM ROTH.
----- x

Before
HON. THOMAS C. O'SULLIVAN, J.
and a Jury.

Tried, New York, December 5, etc. 1910.

Indicted for murder in the first degree.

Indictment filed August 29, 1910.

A P P E A R A N C E S.

APPE. DIST. APPE. FRANK MOSS, for the People.

M. A. SAMPSON, ESQ., for the Defense.

Frank C. Beard,
Official Stenographer.

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Trial Resumed.

New York, December 6, 1910.

MR. MOSS: Shall I address the jury, your Honor?

MR. SACHS: Before Mr. Moss opens may I ask your Honor to exclude all the witnesses on both sides?

THE COURT: Yes, they will retire and remain out of the court room until called.

OPENING ADDRESS FOR THE PEOPLE

-of-

ASSISTANT DISTRICT ATTORNEY FRANK MOSS.

Your Honor,

Mr. Foreman and members of the jury,

I shall say very little in opening the case. I do not want to inject any feeling into it, at all, at this time. I want to lay before you just sufficient of the facts that you may understand the testimony when it is produced before you, in other words, I am not summing up now; I will leave that to the end of the case.

The charge against the defendant is a very serious one of murder in the first degree, and he is charged with having killed his wife. His name is Abraham Roth; her name was Bertha Roth.

These two people lived at 24 Rivington street in this city and county, and they had five little children.

Late in the night of July 28th last, a police officer

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going along the sidewalk heard the noise of a sudden jar or fall above him, and, on looking up, saw that a woman had fallen upon the first fire escape of the building, the first floor fire escape; and, investigation being made at once by those who were called to this sudden calamity, revealed that the woman was Mrs. Roth, that her residence was on the fourth floor, that she had fallen from the fourth floor through the fire escape, down onto the lower fire escape, and that her throat was cut, and that she was bleeding to death.

Those who entered the rooms where they lived, the apartment where they lived, found a terrible sight there.

The fire little children were all in confusion. Blood was all about. And, on looking for the father, he was found lying on a bed in the rear of the apartment, with a cut in his throat.

The apartment was a very simple little place. There was a front room which, I think, they called the kitchen, opening right upon the fire escape, and back of that was a little room they called the bedroom. I think that was the whole of their apartment; and, this being warm weather, the couches or beds for the father and mother were in the front room, and the mother's couch was quite close to the window, and she had been reposing there, with the baby in her arms; and the bed in the back room was appropriated to some of the children, and it was on that bed that the

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father was found.

Both the father and mother were taken to the hospital. The mother died in a very short time. The father recovered.

Now, we shall have to produce to you, gentlemen, the evidence that is available to us. I have always felt it to be the duty of the District Attorney to give to the jury all the evidence that is at his command. You will understand that people do not general invite audiences when they commit crimes, and we will have to produce before you those who entered the rooms, those who know something about the way those two persons lived before, and also some of the children, those who are the oldest and have the most intelligence.

From the stories of these different witnesses, I shall ask you to see the case. You will have to consider them all, and I am sure you will consider them all very carefully; that is our desire, that you should do just that; and we believe that the evidence which we will lay before you will prove this charge against this defendant, that is that, with deliberation, with a perfect knowledge of what he was doing, he took the life of this woman.

Evidence will show that they had trouble before, that he had once been sentenced to a term of imprisonment for having beaten his wife, and that he had made some threats against her.

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MR. SACHE: Hadn't that better be left until the evidence is produced?

MR. MOSS: I am simply stating what our case may be.

MR. SACHE: And an objection to that testimony may be raised, and sustained.

MR. MOSS: If you think I should withhold that now I will do so Mr. Sachse. I do not want to do anything that does not seem to be perfectly right and proper.

MR. SACHE: I am sure of that, Mr. Moss.

MR. MOSS: Then I think, gentlemen, without any further statement at this time concerning this very serious case, I will go to the evidence.

I merely want to urge you as you hear this evidence to realize the importance of the task which has been imposed upon you, to realize that, in just as full a sense as affects his Honor upon the bench, you are judges, and sworn judges. From this time forth, we shall have very little opportunity for pleasantries, or discursive remarks, or for thoughts running at random. We have got important business, gentlemen, each one of us has a duty to perform, and we shall perform that duty, every one of us, in the fear of God, and with the responsibility which we owe to this community of ours resting heavily upon us.

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THE PEOPLE'S TESTIMONY.

J O S E P H W A R T A L S K Y, of 94 Rivington street,
a witness called on behalf of the People, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Tartalsky, do you hold any official position?

A Yes, sir.

Q What is it? A Special Deputy Sheriff.

Q What is your regular occupation? A My regular
occupation is as a private watchman.

Q Where? A On the east side.

Q Whereabouts? A Rivington street.

Q What do you watch there? A All those stores,
at night, after they close up.

Q Now, on July 28, 1910, what occupation did you have?

A I had the same occupation.

Q Who is your employer? A The Harlem Patrol Company.

Q Now, referring to the night of July 28, 1910, at about
half past one o'clock in the morning, was there anything in the
neighborhood of Rivington street where you were that attracted
your attention? Yes, sir.

Q Where were you when it occurred? A I was on Allen
street, turning into Rivington street, when I have heard a
bellowing of "Police".

Q Yes. A And I turned around the corner, and I started

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to locate the place where the hollering comes from; and, when I turned Rivington street I heard the cry of "Police" from the location that comes from the Bowery, and, when I got over as far as 24 Rivington street, I see a crowd of people gathered around 24, and they hollered, "There is some murder upstairs".

THE COURT: I object to that, and move to strike it out if your Honor please.

MR. MOSS: I consent.

THE COURT: Yes, strike it out, and the jury will disregard it.

MR. MOSS:

Q And did you go upstairs in that house? A Yes, sir, I went upstairs on the third floor, and I opened up the door, and I seen three little ones all mixed up there, and they were all ducked in blood. When I seen they were all full of blood I went over towards the window in the front, and I seen the window was open, and I seen it was laying a table knife on the window, a kitchen knife.

Q Yes. Now about the three little children. What were those three little children doing? A They were standing at the window.

Q Was one of them a baby? A Yes, sir, a little bit of a baby.

Q Who had the baby? A The girl had it.

Q One of the girls? A Yes, sir; also a little girl.

Q Yes. And did you observe the condition of the baby?

A Yes, sir.

Q State it, please? A Well, she was all full of blood.

Q The baby was? A Yes, sir.

Q How old a baby was it? A Oh, I should judge about nine months ; a little bit of a creature.

Q Now you say you found a knife. Where did you say you found the knife? A It was laying on the window. The blade from the knife was broken in half, and I was trying to find the other half of the knife, but I couldn't find it.

Q Look at that knife (indicating)? A That's the knife, that's the one.

MR. MOSS: I offer that in evidence.

THE WITNESS: That was the knife that was laying on the window, and I picked that knife up, and I looked around for the other half, but I couldn't find it.

BY MR. MOSS:

Q Yes. A And I handled that over to the policeman.

Q And did you discover the state of that knife when you found it there? A Yes, sir.

Q What did you observe? A Well, I picked up that knife, and I was looking for the other half.

Q Well, was there anything on the knife? A Yes, sir, it was full of blood.

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MR. MOSS: I offer the knife in evidence.

MR. SACHS: I object to the reception of the knife in evidence on the ground that it is immaterial, irrelevant and incompetent, and on the ground that it has in no wise been connected with the defendant at the bar, nor has it been shown that it was at any time in his possession.

THE COURT: Motion denied.

MR. SACHS: Exception sir.

(It is admitted in evidence and marked People's

Exhibit 1.

MR. MOSS:

Q Well, now, having found the knife, tell us what else you did? A And then I started to look around for the other half of the knife, and I couldn't find it. And I went in the bedroom, and I seen a man laying in bed, and he was full of blood; and then I picked up his head, like that (illustrating) and he turned around and did that, "Ugh, Ugh", and I seen he had a cut on his neck, from here to there (indicating).

Q Indicating from the jaw bone to the jaw bone? A Yes, sir. And he had a plain table knife, a silver plated table knife, in his hand, and that's the way he was laying, with his mouth that way, in the bed (illustrating). And so I hollered it out to the policeman, "He's alive yet," and he said "The ambulance is coming." And I had stood there so long until I say that, and then I had turned around, and I had seen a little boy

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sleeping in the same bedroom in a little bed.

Q In the same bedroom? A Yes, sir.

Q In a little bed? A Yes, sir, in a little bed. And I went over, and I stood in front of the body that was laying on the bed, to cover it, so that the boy shouldn't get frightened the little child, and then I waked the boy up, and covered the bed (illustrating) so that the boy shouldn't get frightened, and I took him out of that room, and I brought him towards the back, in another tenant's room, and I asked him if he knows anything about it, and the child couldn't answer, one way or the other.

Q Now is that the knife which you say you found in the man's hand? A Yes, sir. He had a knife just like that, and he was laying on that knife.

Q That is, lying upon his face? A Yes, sir.

Q Now the knife? A Yes, sir.

THE PROSECUTOR: I offer it in evidence, as People's Exhibit 2.

THE DEFENSE: I object to it, as before, if Your Honor please.

THE COURT: Overruled.

THE DEFENSE: Exception.

It is admitted in evidence and marked People's Exhibit 2.

Q Did you know anything of that knife when you found it?

A Yes, sir, it was full of blood.

Q Do you recognize the man whom you have described lying on the bed? Do you recognize him here now?

A Yes, sir.

Q Who is it? A The gentleman right over there (indicating the defendant).

Q Pointing to the defendant? A Yes, sir.

Q Will you tell us what, if any, clothing the defendant had upon him as you saw him lying on the bed? A He had a pair of trousers, but I couldn't exactly tell the color, and he had no coat on. He had his overshirt on. He had no collar on. And that's the way he was laying in bed. He had his stockings on. I remember that.

Q Yes. Do you remember whether he had shoes on? A No, sir, he had no shoes on, because I stood there so long until I helped the man, the policeman, to bring him down to the ambulance. And my uniform was all soaked through with blood. I remember, when I came home, my wife thought I was killed myself.

MR. SACHE: Now that will do. Don't tell us that.

MR. SACHE: I consent that it be stricken out.

MR. SACHE: Yes, strick that out, and the jury will disregard it.

CROSS EXAMINATION BY MR. SACHE:

Q Officer, when you entered the apartment at No. 24

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Rivington street, into what room did you first go?

A I went into the room where the accident happened.

Q Do you know how many rooms -- well, you saw no accident; did you?

A No, sir.

MR. SACHS: Then I ask that his answer be stricken from the record.

MR. ROSS: I consent.

THE COURT: Yes, strike it out.

BY MR. SACHS:

Q How many rooms were there in the apartment?

A Two; a bedroom and a front room.

MR. ROSS: At this time, with the consent of the defendant, we will offer in evidence, first, a photograph of the front of the building 24 Rivington street, as People's Exhibit 3; and, secondly, an elevation by scale of the front of the building, as People's Exhibit 4; and next, a section by scale through the fourth floor, as People's Exhibit 5; and next, a section by scale showing the fire escape on the front of the building, as People's Exhibit 6.

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These exhibits, from 4 to 6, are all contained on one sheet, which is marked "Diagram showing front elevation, fourth floor, in part, and photograph, 24 Rivington Street, City and County and State of New York. Measured August 8th, 1910, by Walter H. Volckening, of 116 Decatur Street, Brooklyn, N.Y.C."

Also, diagram showing the fourth floor of 24 Rivington Street. City, County and State of New York, measured August 8th, 1910. Walter H. Volckening, 116 Decatur Street, Brooklyn, N.Y.C. And that is offered as People's Exhibit 7. Would your Honor like to see these now?

THE COURT: Yes, I will look at them.

(They are admitted in evidence and marked, respectively, People's Exhibits 4 to 7, inclusive).

MR. SACHS: If the last question is unanswered, it is withdrawn.

BY MR. SACHS:

Q How long have you been a special watchman or patrolman, officer? A Ten years.

Q And how long have you been employed by the Harlem Patrol Company? A Five years.

Q And do they send watchmen to various parts of the city? A Yes, sir.

Q During the five years that you have been employed by the Harlem Patrol Company, in what part of the city have you mostly done duty as a watchman? A Always on Rivington Street.

Q Have you been down there as a watchman on Rivington Street in the past ten years, or most of the five years? A Most of the past ten years.

Q Where is the office of the Harlem Patrol Company? A 94 Rivington Street.

Q Is that a branch office? A Yes, sir.

Q And what were your hours of patrol? A From half past nine until half past six in the morning.

Q From half past nine at night, I presume you mean? A Yes, sir.

Q Until 6:30 in the morning? A Yes, sir.

Q And in the early morning of July 28th last, you were on Rivington Street, you say? A I was on Allen Street, turning towards Rivington Street.

Q On Allen? A Yes, sir.

Q Turning towards Rivington? A Yes, sir.

Q At about what time were you on Allen Street, turning towards Rivington? A I should say it was around about half past one or a quarter to two, something like that. I couldn't

exactly tell to the minute, but it was about that time.

Q How many blocks is it, or how far is it, from the corner of Allen and Rivington Street to 24 Rivington street?

A It is about two and a half blocks.

Q And how long after you started to go to 24 Rivington Street, or in the direction of 24 Rivington street, did it take you to go from the corner of Allen and Rivington street?

A About two or three minutes.

Q When you started to go to 24 Rivington street, were you in Rivington street, or just turning the corner, or in Allen street? A Just turning the corner.

Q Just turning the corner. A Yes, sir.

Q And as the result of something, no matter what it was, you went towards Rivington street? A Yes, sir.

Q And you saw the crowd there? A Yes, sir.

Q And you went upstairs? A Yes, sir.

Q Now when you went upstairs, and into a room in that building, tell us how many persons were in that room? A In that room it was nobody there, except those children, but the door was open.

Q You don't know of your own knowledge then whether any persons had been there or not before you reached there?

A No, sir.

Q And how many children were in that room? A Well, two or

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three little girls, holding a little baby on their arm, and the little baby was full of blood.

Q Now I am not asking about that at present. I am asking you just how many persons were present in the room when you first entered? A In the room I first entered, there was two little girls and the little baby, standing at the window.

Q Now I show you the diagram offered in evidence, and admitted, and ask you to point out the room in which you first went? A Well, on this side here (indicating). This window was open, and the children, they were standing at the window, with the baby, and crying.

Q Now just show to the jury the window which you indicate? A Right here (indicating).

Q The smaller of the two rooms? A No, sir, the larger of the two rooms.

THE COURT: I beg pardon for interrupting you, Mr. Sachs. That has been admitted in evidence, but the jury have not seen it, and I suggest the propriety of their looking over it, before you proceed further.

MR. SACHS: Yes, sir. I thank your Honor for the suggestion.

THE COURT: You had better take them in order, gentlemen, and first take the outside view of the building and then look at the other.

BY MR. SACHS:

Q Now, the room you first entered, officer, was the large room indicated by the large colored space here (indicating)?

A Yes, sir.

Q And, as you said before, you don't know whether any persons had been in that room before you got there or not?

A No, sir.

Q And you saw two children, and one was carrying a baby in its arms? A Yes, sir.

Q By the way, do you know any one by the name of Harry Haddon? A No.

Q Or Harry Harlow? A No, sir.

Q Did you at any time know the brother of the dead woman?

A No, sir.

Q Are you sure of that? A Positively sure.

Q Where were you borne? A I was born in Russia.

Q In Russia? A Yes, sir.

Q How long a time did you spend in the large room?

Well, I was there until he was brought down to the ambulance.

Q No, no. Before you went into the small room, how long did you remain in the large room? A I wasn't there long, just walking around, looking for the other half of the blade of that knife, and I couldn't find it, and I went into the other room.

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Q And you found half of the knife on the window?

A Yes, sir.

Q Covered with blood? A Yes, sir.

Q Did you at any time find the other half of the knife?

A No, sir.

Q Did you make any search of the street for the other half of that knife? A No, sir, I did not.

Q When you went into the small room, was there any one in that room besides yourself and the defendant, at the time?

A No, sir, there was only just that little boy, sleeping in bed.

Q You were not present when the little girl took up the baby? A I don't know whether --

Q I am asking you whether you were present? A No, sir.

Q You don't know from which bed she took her? A No, sir.

Q Now you say you found the man lying ⁱⁿ bed ? A Yes, sir.

Q Towards what part of the bed was his head? A Towards what part?

Q Yes. A He was laying just straight in bed (illustrating).

Q In a normal position of a person sleeping? A Yes; but he was turned with his face down (illustrating).

Q Just a moment, please. Was his head towards the head of the bed, and his feet towards the foot of the bed? A Yes, sir.

Q Was he lying on his back? A No, sir.

Q How was he lying? A He was laying just like that, his hands underneath him (illustrating).

Q On the front part of his body? A Yes, sir.

Q With his hands underneath him? A Yes, sir.

Q Did you turn him over? A I did, sir.

Q And, when you turned him over, did you notice the condition of his throat? A Yes, sir.

Q Was there a lot of blood in the cut? A Oh, God, yes.

Q Was he bleeding at the time? A He was all full of blood at his neck, and his neck was all wide open, like a mouth, right that part here (illustrating).

Q Very wide open? A Yes, sir.

Q Extremely wide open? A Yes.

Q Now about how wide was his throat or neck open?

A As much as a large cut.

Q And it extended from what point to what point?

A Oh, you could see the whole chin was cut through, like that (illustrating).

Q Now, on your own neck, point out about where?

A I should say from here all the way up to there (indicating).

Q From here all the way up to there (indicating)?

A Yes, sir.

Q And a very deep cut? A Yes, sir.

Q Did you try to find out whether his heart was beating or not? A No, sir.

Q Did you put your hand upon his person at all?

A Yes, sir. I took with my hand his head like that (illustrating), and turned him over, and, when I turned him over, he started to snore, "Ugh! Ugh!" and so I hollered out that he was alive yet.

Q Well, was that a snore or a groan? A Well, you can take it any way you want it, counselor.

Q Well, no, I want you to tell what it was.

A Well, that was a breathing.

Q Do you think that he was asleep at the time that you turned him over? A Well, how would I know if he was asleep?

Q Well, you just said that it was a snore; didn't you?

A Yes.

Q Yes, then it was a snore? A Yes; and I answered you, you could take it as you like, and so I answered you.

Q Now at the time you turned him over, were there any other persons in the small room? A There was a little boy, sleeping in a bed by himself.

Q That is, when you first went in there? A Yes, sir.

Q And you turned the defendant over, before you awakened the little boy? A Yes, sir.

Q Now, after you turned over the defendant, did you awaken

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the boy? A No, sir.

Q Were there any persons in the room other than yourself and the defendant and the little boy, at the time you awakened the little boy? A The policeman was in there.

Q At that time the policeman had arrived? A Yes, sir.

Q Had the policeman arrived before or after you turned the defendant over? A The policeman was with me in the room, the time when I found the knife, and I gave him--

Q I am asking you this question, officer. At the time you turned the defendant over, was the officer in the room?

A Yes, sir.

Q He was? A Yes, sir.

Q And, as you turned the defendant over, you found the knife? A Yes, sir.

Q And the knife was covered with blood? A Yes, sir.

Q The bed upon which the defendant was lying had blood upon it, did it not? A Yes, sir.

Q Well, was there a lot of blood? A Yes, sir.

Q A great deal of blood? A Yes, sir.

Q And was there blood on the pillow? A Yes, sir.

Q Was there blood on the other part of the bed?

A Yes, right underneath him, where he was laying.

Q And how far down did the blood go? A Well, I didn't

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look to see where the blood went.

Q Well, will you say that some drops of the blood reached to the foot of the bed? A No; it was most of the blood right about the stomach.

Q But there was some of it below his stomach?

A The whole bed was full of blood, so far as that goes.

Q The whole bed? A Yes, sir.

Q Did the officer help you turn the defendant over?

A He come in, and, the moment the ambulance come, we took him down; we put him on a chair, and took him down.

Q You put him on a chair and took him down?

A Yes, sir.

Q Had the defendant been turned over by the time the officer got there? A No, sir. I turned him over, then I found the knife, and then I hollered out, "He's alive yet, and I handed over the knife."

Q Well, was the officer in the small room when you turned him over? A No, sir; he was in the large room.

Q As you turned him over, and then you called out that he was alive? A Yes, sir.

Q And at that time the defendant snored? A Yes, sir.

Q And then the officer came in? A Yes, sir.

Q At the time the officer came in, where was the silver plated knife? A In his hand.

Q In whose hand? A In this gentleman's hand over there (indicating the defendant).

Q The defendant's hand? A Yes, sir.

Q And did the officer see it in his hand? A I don't know whether he did or not.

Q Well, did the officer see the knife, do you know?

A I gave it to him myself.

Q You gave it to him, A Yes, sir.

Q Well, had the knife been taken out of the defendant's hand before or after the officer came in? A I took it out, and gave it to the officer, and I said, "I found the knife in his hand."

MR. SACHS: I object to that, and move to strike it out.

THE COURT: Motion granted.

BY MR. SACHS:

Q At the time that you took the knife from the defendant's hand, was the officer in that room or not? A He was in the other room.

Q Then you took the knife out of the defendant's hand, before he came in from the other room. A Yes, sir.

Q And then the officer didn't see any knife in the defendant's hand? A I don't think so; no.

Q But you are sure that you found a knife in the defendant's hand, covered with blood? A Yes, sir.

Q And you are sure that the defendant wore trousers that night? A Yes, sir.

Q Do you know where those trousers are? A I don't know.

Q And didn't you see whether there was blood on his trousers?
A It was blood all over him.

Q Will you answer my question, please? Did you or did you not see blood on the trousers of the defendant? A Well, if he was laying on the blood, positively he must have been full with blood.

Q I asked you if you saw any blood on the trousers of the defendant? A Why, certainly there was blood on his trousers.

Q And then do you know where those trousers are now?

A I don't know.

Q Did you see any blood on his shirt? A Yes.

Q Do you know where the shirt is? A I don't know.

Q Are you sure that it was an overshirt or an undershirt?

A Well, I wouldn't say whether it was an overshirt or an undershirt. I know it was a shirt.

Q But you did say, in answer to the District Attorney's question, that the man wore an overshirt, and no collar, and a pair of trousers? A Yes, he had no collar on.

Q Now, I want you to tell us whether you are sure it was an overshirt or an undershirt? Do you know the difference between an overshirt and an undershirt? A Yes, sir.

Q Now I want you to tell us whether it was an undershirt or an overshirt that he wore? A Well, I should say it was more of an overshirt than an undershirt.

Q You are not positive about it, are you? A No, sir.

Q And you won't swear that it wasn't an undershirt?

A No, sir.

Q He wore no shoes? A No, sir.

Q Did you see any blood on the floor? A Yes, sir.

Q In the small room? A Yes, sir.

Q Did you see any blood on the floor of the large room?

A I couldn't tell you whether I did or not.

Q Well, did you notice? A You know, counsellor, when a man runs in a room, in a rush, like that, he don't go to examine that room in particular to see what the room looks like.

Q But you are a police officer, or a deputy sheriff, or a special deputy sheriff; aren't you? A Yes, sir.

Q And you are there to watch out? A Yes, sir.

Q And you have had some training? A I have had, yes.

Q And you have been ten years in the business? A Yes, sir.

Q And you can't tell us now whether you noticed any blood on the floor of the large room or not? A No, sir; I couldn't tell you if there was blood or not.

Q Now, where was the blood in the small room? A Right by the bed.

Q About how far from the door was the bed? A Well, I should say about two or three feet away. It is a small bedroom.

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Q Will you point out on this diagram,--with Mr Moss' permission, I will ask you to make a small dot with a lead pencil--about where the bed was in the small room? A Well, the bed was over at the wall, right here (indicating).

Q Make a small dot? A Right there (indicating).

Q I ask you if my finger is at or near the point that you mean on this diagram (indicating)? A Yes, sir.

Q Now will you follow my finger, and tell me whether it goes toward the door of that small room? A Well, I don't know on that picture where the door is.

Q Well, you see this mark, don't you (indicating)?

A Yes, sir.

Q Is there a window between the front and the back room?

A There was a little window on the side, alongside of the door that leads into the hall.

MR. SACHS: Will you consent, Mr Moss, that my finger is now pointing to the door leading from the large room to the small room?

MR. MOSS: It appears to be, Mr Sachs.

MR. SACHS: Yes, from the diagram.

BY MR. SACHS:

Q And you saw blood near the bed? A Yes, sir.

Q But you didn't see any blood from the point near the bed to the door? A I didn't notice it.

Q You didn't notice it? A No, sir.

Q After the officer came, did you go back to the large room? A We took the man downstairs in the ambulance.

Q Did you go into the large room at all after the officer came? A Yes, sir.

Q Did you continue your search for the other part of the knife? A Yes, sir.

Q Did you see any bed in the large room? A Any what?

Q In the large room was there a bed? A Yes, sir.

Q Was there any blood on that bed? A Yes, sir.

Q And how far from the front window was the bed in the large room? A From the front window?

Q Yes. A The bed in the large room?

Q Yes. A I don't understand you, counsellor.

Q There was a bed in the large room? A In the large room, I didn't see no bed. It was a couch there.

Q Well, a couch then? A It was alongside of the wall, right by the window.

Q It was alongside the wall, right by the window? A Yes, sir.

Q Now where did you see the most blood? In the bed where the defendant was lying-- A Yes, sir.

Q Or on the couch? A No, on the couch I haven't seen anything.

Q You didn't see any blood on the couch at all? A No, sir. I moved the couch away when I was looking for the other

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half of the blade of this knife, and I didn't see no blood on the couch.

Q And then the only bed or sleeping appurtenances that you saw blood on was the bed on which the defendant was lying?

A And there was no blood on the couch? A I didn't see any. I couldn't say if there was or not. I didn't see any.

Q And the little girl, the baby, her clothes were covered with blood? A Yes, all full of blood; just like paint, it was.

Q Do you know of your own knowledge whether she had been lying in the bed where you found the defendant? A I don't know.

Q You don't know? Of course not? A No, sir.

Q The boy was sleeping in the small room? A Yes, sir.

Q Was it in a separate bed? A Yes, sir.

Q Was there a folding bed in the front room? A I didn't see it; I didn't see no folding bed in the front room.

Q Did you see any bed in which the children slept?

A Well, the only two beds that I have seen in that room was the large bed in the room where the defendant was laying, and the small bed where the little boy was sleeping. I haven't made no investigation there, because there was plenty of police to do that.

Q But you are sure that you didn't notice any blood on the couch in the front room? A No, sir, I haven't noticed

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it at all.

Q And the only place where you saw blood was on the bed where the defendant was lying? A Yes, sir.

Q And on the floor near the bed? A Yes, sir.

Q And was he lying near the edge of the bed? A Yes, sir.

Q And was it near the edge of the bed that you saw the blood? A Yes, sir.

Q And that's the only blood that you saw on the floor in those rooms? A Yes, sir.

Q Or on any bed? A Yes, sir.

REDIRECT-EXAMINATION BY MR. MOSS:

Q Was the light lit when you went in there? A Yes, sir, in the large room.

Q And did I understand you to say that the door was locked? A No, sir, the door was closed, but I opened it.

Q You found the door closed, but you opened it? A Yes, sir.

BY MR. SACHS:

Q May I ask what door that is? A The door from the large room.

Q Opening into the hall of the house? A Yes, sir.

BY THE FOURTH JUROR:

Q Will you explain to us your meaning, when you say the defendant was snoring? A Well, when I got into the bed-

room, he was laying quiet, and, when I picked up his head and turned him around, then he started to breathe, and then I hol-
lered out to the policeman that was alive yet.

BY MR. MOSS:

Q You mean that he made a noise when he started to breathe?

A Yes, sir.

BY MR. SACHS:

Q Well, will you illustrate that as best you can?

A That's the way he made, "Ugh, Ugh".

Q Did the man appear to be asleep or awake? A No, he
seemed to be unconscious, that's the way he looked, and I hol-
lered out to the police that he was alive yet.

RE-CROSS-EXAMINATION BY MR. SACHS:

Q Well, can you tell us positively whether he was
asleep, or his unconsciousness was the result of his wound?

A He wasn't asleep. Why, certainly he was laying unconscious
from his wound.

Q Well, that is only your opinion; isn't it? A Yes,
sir.

BY THE SECOND JUROR:

Q I would like to know whether the noise that you heard
was an attempt to speak or not? A I couldn't say whether
it was any temptation to speak or not.

BY MR. SACHS:

Q Of course, you are not a physician? A No, sir.

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Q And you have never studied medicine? A No, sir.

Q And you couldn't say whether that wound was large enough to drive him into unconsciousness or not? A No, sir.

Q And you can't say then whether he was unconscious or asleep? A If you will pardon me, I will say that that is just my belief, that he was unconscious, that way, because he was cut that way, that's all.

EMIL KEPKO, of Traffic Squad B, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MOSS:

Q You are a police officer? A Yes, sir.

Q On the night of July 28th, 1910, were you on duty on Rivington street, near No. 24? A Yes, sir.

Q Did anything occur to attract your attention? A Yes, sir.

Q State what it was? A Why, there was a crowd collected in front of No. 24.

Q Yes, No. 24 Rivington street? A Yes, sir.

Q Was that in the city and county of New York?

A Yes, sir.

Q Now tell us what you did and what you saw, at the point where you observed the crowd? A There were some people there, and they told me they heard some fighting going on.

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MR. SACHS: I object to that, and move to strike it out, if your Honor please.

THE COURT: Objection sustained. Strike that out, and the jury will disregard it.

MR. SACHS: I don't object to his telling his story in his own way, if he will keep out what somebody else said.

MR. MOSS: Well, he is not a lawyer, and he does not know the rules of evidence entirely, and perhaps I had better ask him questions.

BY MR. MOSS:

Q In consequence of what somebody said to you, did you go into the house? A Yes, sir.

Q Where did you go in the house? A I waited, first, because I saw nothing happening, and I stood there a while, with ~~the~~ my back toward the building, and something fell off the fire-escape from the fourth floor down to the second, and I went upstairs, and saw it was a woman.

Q Did you see it fall? A No, sir, I didn't see it, I had my back turned to the building, but I heard it fall, and looked up, and saw the body on the fire-escape, two flights up, on the second floor, and I went upstairs, and I saw a woman lying there.

Q Well, the noise that you heard, and the words that the people spoke there, were before the woman fell down, were

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they? A Before I looked up.

Q Before you heard the woman fall? A Yes, sir.

Q People were speaking on the sidewalk? A Yes, sir.

And so I went up, and I saw the woman was lying on the fire-escape, and her throat was cut, and so I didn't waste any time, and I ran out, and rang for the ambulance, and, by the time I got back there, there were several officers there, and we took her off the fire-escape, and put her inside of the room, and then I went up to the Roth apartments, and there was Mr Roth lying on the bed.

Q And what was the first thing in the Roth apartments?

A I saw the children gathered around in the room there.

Q Which room did you go into first? A The large room.

Q And what children did you see there? A I saw five children there, or four children, in that room.

Q Well, did you observe their condition? A Yes, sir.

Q State it, please? A They were excited, and they were covered with blood.

Q Yes. Did you see a little baby there? A Yes, sir.

Q Was the baby covered with blood? A Yes, sir.

Q And who had the baby? A Well, I can't recollect now. It was one of the little girls had hold of her.

Q One of the children? A Yes, sir.

Q And you saw these children? A Yes, sir.

Q And what did you do? A Well, I asked them what

the trouble was.

Q You can't tell us what they said, Officer, you know.

A I know it. So, after I had found out what had happened, I went into the bedroom, and there I found Mr Roth. He was lying sort of on his left side, more so with his face towards the bed.

Q Now what did you observe about Mr Roth? A Why, he was also covered with blood, and he was sort of groaning.

Q Did you see any knife there? A Well, not at that time; no, sir.

Q Did any one give you a knife? A No, sir.

Q You say not at that time. What knife did you see? When and where? A Well, after I turned Mr Roth's body over, or after we turned his body over--

Q Well, what did you see then? A I found a knife underneath him.

Q Is this the knife (indicating)? A Yes, sir.

Q People's Exhibit No. 2? A Yes, sir.

Q And was that knife bloody? A Yes, it was just as it is now, that is, the blood was wet at the time.

Q Now this other knife, People's Exhibit 1, did you see that? A Yes, sir.

Q Where did you see this knife? A That was lying on the window sill where the fire-escape is.

Q And was that covered with blood also? A I am not

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sure, but I think it was.

Q Well, what was done with these two persons, if you know? A Why, the ambulance came--

Q That is, the man and the woman, Mr and Mrs Roth?

A Why, the ambulance came, and the woman was taken to the hospital, and Mr Roth was placed under arrest.

Q And did you afterwards see Mrs Roth anywhere, or see her body? A Yes, sir.

Q Where? A At the Morgue of Gouverneur Hospital.

Q And did you see Dr O'Hanlon there? A Yes, sir.

Q The Coroner's Physician? A Yes, sir.

Q And you identified the body of Mrs Roth to him; didn't you? A Yes, sir.

Q Were you present at the autopsy which he made?

A Well, she was lying there with her skull cut through. I guess they call that the autopsy.

Q Well, you saw that work done, didn't you? A Yes, sir.

Q You saw Dr O'Hanlon performing the autopsy, didn't you? A Yes, sir.

Q And that is the same woman you found on the fire-escape? A Yes, sir.

Q You saw her dead there? A Yes, sir.

CROSS-EXAMINATION BY MR. SACHS:

Q Officer, which knife did you say you saw lying on the

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bed? A The table knife, the white one.

Q And when you saw it lying on the bed, did you pick it up? A Well, I don't know whether I picked it up, or whether Officer Wartalsky, the special officer, picked it up. I can't recollect now.

Q And when you came into the smaller room, the defendant was lying on his left side? A Well, sort of on his left side, but more on his face.

Q Well, was his face towards the bed and the rear of the apartment, or towards the bed and the front of the apartment? A Towards the front.

Q Towards the front? A Yes, sir.

Q And the knife was lying on the bed? A Yes, sir.

Q You don't know whether you picked it up or Officer Wartalsky?

A No, sir; I can't recollect now, counsellor.

Q When you entered the apartment, how many persons were in it? When I say how many persons were in it, I don't include the defendant or any one sleeping. I want to know how many persons were awake, and on their feet? A Well, now, I saw the four children there when I entered the room.

Q When you entered the large room? A Yes, sir.

Q Is that the room you entered first? A Yes, sir. Three little girls and a baby there.

Q Did you find any one asleep in the rooms? A Not in that room; no, sir.

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Q Did you find anyone asleep in the smaller room?

A Yes, sir.

Q Who did you find asleep there? A Why, there was a boy there.

Q Do you know the boy's name? A I can't remember his name now.

Q Well, was he a very small boy? A He was about that high, I suppose (illustrating).

Q He was asleep? A Yes, sir.

Q Did you take charge of that knife, the silver plated knife? A I did.

Q And you saw you saw it lying on the bed? A Yes, sir.

Q Well, was it near the defendant? A Yes, sir, right underneath him.

Q Where were the defendant's hands? A One of his hands was underneath him, that is, under his left side, and I can't place where the other hand was.

Q And did you see Officer Wartalsky pick up the knife?

A Now, I ain't sure who picked up the knife; it's so long ago since.

Q You are not sure who picked up the knife? A No, sir.

Q But you saw the knife while it was in the bed?

A Yes, sir, I saw the knife there in the bed, but I ain't sure whether I picked it up or Officer Wartalsky did.

Q Did you say it was lying under the body of the defendant?

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A It was lying on the bed underneath his body, that is, over under his left side.

Q And you say his left arm was also under his body?

A Under his body as he was laying there, I think.

Q Now how great a space was it from the knife to his body?

A Oh, I should judge about three or four inches.

Q The nearest point of his body to that knife was about three or four inches away from it? A Yes, sir.

Q And there was no part of his body nearer than three or four inches to the knife? A Well, I can't remember to the left side now, but I know the right side was a little above it. The knife was more towards the left. His right side was about that much from the bed (illustrating).

Q And his left side was right close to the bed? A Yes, sir; you couldn't see the knife underneath him, the way he was laying.

Q What is that? A You couldn't see the knife underneath him the way he was laying.

Q Well, when did you first see the knife? A When we turned him over.

Q When you turned him over? A Yes, sir.

Q At the time you turned him over you saw the knife?

A Yes, sir.

Q That was also lying in the bed? A Yes, sir, that was in the bed.

Q And no part of his body was less than three or four

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inches away from it? A Yes, sir, about that.

Q At the time that you saw the knife? A Yes, sir.

Q Did you notice how the defendant was dressed? A Why, I think he had his -- was only in his night shirt and drawers.

MR. MOSS: You say you think. I move to strike out the answer.

THE COURT: Yes, strike it out.

THE WITNESS: I can't remember now Mr. District Attorney.

BY MR. SAGHS:

Q Well, was he in his undershirt? A He had no night shirt on, no, sir. He had on an undershirt.

Q Well, I mean the undershirt, the ordinary undershirt?

A Yes, sir, he had his undershirt on. That's what I meant.

Q And a pair of ordinary underdrawers? A Yes, sir.

Q And the drawers and the shirt were covered with blood?

A Yes, sir.

Q And he didn't wear shoes; did he? A I can't recollect now whether he had shoes on or not.

Q Well, did he wear hose or socks? A I couldn't tell you that either.

Q Were his feet covered with blood? A I couldn't say.

Q Did Officer Wartalsky hand you that silver plated knife?

A Yes, he did.

Q Did he pick it out of the bed in your presence?

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A I couldn't say. I can't recollect now who picked it out.

Q Well, you say you saw it in the bed when you went in there? A Yes; and I was busy turning the man over, and I don't know who picked it up from the bed.

Q You didn't see Officer Wartalsky take it out of his hand, did you? A No, sir.

Q Were you in the room, when you started turning the body of the defendant over? A Yes, sir.

Q In fact you helped to turn it over? A Yes, sir.

Q Then you came to the bed, and before you saw the body turned over, and before you helped to turn the body over, did you see that silver plated knife? A No, sir.

Q The silver plated knife was then lying underneath the body of the defendant? A Yes, sir.

Q And when you turned him over, you saw the knife? A Yes, sir.

Q His hand wasn't upon it, was it? A I couldn't say.

Q Well, you were right there, officer? A I know, but I didn't notice whether his hand was on it or not. I was busy turning him over, too busy to see whether it was in his hand or not.

Q Now, Officer, have you had any conversation with Officer Wartalsky about this case? A No, sir.

Q You are sure about that? A Yes, sir.

Q You didn't see Officer Wartalsky take a knife out of

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his hand? A No, sir; I was too busy turning the body around to see where he was injured, so that I could ring for another ambulance.

Q And you don't know whether you picked the knife out of the bed, or whether Officer Wartalsky gave it to you? A I know he gave it to me but I don't know who picked it up out of the bed.

Q Well, if you had picked it up there would have been no necessity for Officer Wartalsky giving it to you; would there? I suppose not.

Q Was one side of the bed close to the wall? A Yes, sir.

Q And, therefore, you and Office Wartalsky were on the same side of the bed, as you turned him over? A Yes, sir.

Q And, being on the same side of the bed, and almost next to Officer Wartalsky, you don't know whether you picked the knife out of the bed, or Officer Wartalsky gave it to you? A I know he gave it to me. I didn't notice him picking it up. I was busy with the body there.

Q Now, after being in the apartment of the defendant, did you go downstairs? I don't think I did, counselor.

Q Did you help take the body of the woman to the ambulance? A No, sir.

Q Had the body of the woman been removed by the time you got downstairs? A Yes, sir.

Q Was the defendant taken to a hospital? A Yes, sir.

Q In what? A The ambulance, the same ambulance.

Q In the same ambulance as his wife? A Yes, sir.

Q Did you ride in the ambulance? A No, sir.

Q Did you at any time go near the body of the woman?

A What? After it was in the ambulance?

Q No, before you went upstairs even? A No, sir,
not before I went upstairs.

Q Well, did you go up to the first floor? A Yes, sir,
that's the only time I went up, after I rang up the ambulance,
and then I went up directly to where Mr. Roth was.

Q And Mrs. Roth was lying on the fire escape abutting
the first floor, you say? Yes, sir.

Q Did you go to the fire escape? A Yes, sir.

Q Did you hear her groan? A No, sir, I didn't hear her
say a word and then I rang for an ambulance, and went upstairs.

RE-EXAMINATION BY MR. ROSS:

Q Officer, are you sure that the defendant didn't have his
trousers on as he lay in the bed? A I am not sure.

THE PROSECUTION EXAMINATION:

Q Just a moment. Who first observed the body of the
defendant, you or the officer who already testified? A The
other officer.

Q You came into the room after he called your attention
to it? A No, sir, I knew. The people in the hall told me --

THE PROSECUTION EXAMINATION:

A (Answer continued) Well, I knew there was a fight up-

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stairs.

BY THE FOURTH JUROR:

Q Well, what remarks did Officer Wartalsky make to you?

THE COURT: No, that question cannot be answered,

Mr. Juror.

BY MR. SACHS:

Q Prior to the time you went into the small room?

A I don't recollect him saying anything to me.

Q What attracted you to the small room? A Why, I asked the children.

Q You came in there after Wartalsky was already in the room? He was already in the room when you arrived there?

A Yes, sir.

RE-CROSS EXAMINATION BY MR. SACHS:

Q How long were you at or near the bed on which the defendant lay, on that night? A Oh, I should judge about ten minutes.

Q And did you help carry him downstairs? A Yes, sir.

Q And being near him all that time, and helping to carry him downstairs you can't say whether he was in his underclothes, or had his trousers on? A No, sir, I can't because it's so long ago.

Q But you think it was underclothing that he had on?

A Yes, sir.

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W I L L I A M S. Z I M M E R M A N, of Gouverneur Hospital,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Zimmerman, on July 28th last you were attached to
the Gouverneur Hospital in this county? A Yes, sir.

Q And on that night did you go with the ambulance to
No. 24 Rivington street? A I did.

Q Now will you please to describe the first thing that
you saw there in the way of an injured person that attracted
your attention? Just describe what you first saw? A Why,
I found this woman on the second floor.

Q Was. Would you know her under the name of Mrs. Roth?
A Would if

Q Would you call her Mrs. Roth? Did you learn her name?
A I had learned her name, yes.

Q You mean Mrs. Roth then? A Yes, sir.

Q Now you found her there? A Lying out on the floor.

Q Of the -- of which story? A On the second.

Q Now please describe to the jury the condition of Mrs.
Roth as you saw her? A Why, she was in a semiconscious condi-
tion, with profound shock, bleeding from a stab-wound on the
left side of the neck. She was also bleeding from the mouth,
and from a laceration of the scalp.

Q Now you will please describe that wound which you have

already called a stab wound on the neck? Tell where it was, and describe it, so that the jury may see it as nearly as possible? A Why, it was on the left side of the neck, about here (indicating) just below the jaw.

Q Yes. How many inches below the lobe of the ear do you say that was? A I guess about two inches.

Q Yes. Now you speak of it as a stab-wound. Why do you say that? A Why, it was a clear cut wound, which went in.

Q Went in? A Yes, sir.

Q How far did it go in? Did you find out? A No, I did not at that time.

Q Well, did you find out? A Afterwards, yes.

Q How deep was it? A Down into the oesophagus.

Q Will you tell the jury what that is? A That is just a passage or tube connecting the mouth with the stomach.

Q That is the tube down which the food goes? A Yes, sir.

Q And you say the point of the knife went into the oesophagus? A Yes, sir.

Q And how wide was that cut? A I think it was a quarter to half an inch.

Q You measured it, I judge from your answer? A No, sir.

Q You are giving the best of your recollection? A Yes, sir, the best of my knowledge.

MR. SAGES: May I suggest that the witness may mean from one side of the wound to the other, not the width

of it, but from one point to the other.

THE WITNESS: I am not speaking of the depth. Just across the wound, just the superficial length of it through the skin.

DR. MOSE:

Q Now will you tell the jury what you did for the woman and what you did with her -- what you did immediately, I mean?

A Well, I stopped the hemorrhage as well as I could, and I ordered her to be taken down, and to be put in the ambulance right away.

Q You had some helpers with you, didn't you? A I did.

Q What else did you do? A That's all I did for her.

Q Did you then go upstairs? A I went immediately upstairs.

Q And did you find this defendant upstairs? A I did.

Q Where did you find him? A He was on the third floor back, in a bed. He was found in an unconscious state, with an incised wound of the throat.

Q Now will you kindly describe very carefully to the jury the wound which you found on the man's throat? A Why, it was a wound about a half to three-quarters of an inch deep.

Q Are you speaking now of the depth beneath the skin?

A Yes, sir and about two and a half to three inches long.

Q Will you kindly raise your head and indicate to the jury by your finger? A Across, about two and a half to three

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inches across. (Illustrating).

Q Just state what you did for him, please?

A Why, I stopped that hemorrhage as well as I could, packed it with gauze, and bandaged it up, and ordered him down to the ambulance.

Q Can you tell the jury what, if any blood vessels or arteries were severed by the cut on the man's throat?

A No, I couldn't. They were small vessels.

Q Well, did it invade the wind pipe or the oesophagus?

A No, it didn't.

Q Now will you describe the man's wound, as to whether it was a clean cut wound, or a jagged one?

A Why, it looked like a clean cut wound.

Q Now will you tell the jury what you did with the woman, after you saw the man?

A Why, she was carried down to the ambulance as soon as possible, and I hurried them to the hospital; I hurried her right to the hospital.

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Q Yes. And what was done at the hospital with her?

A Why, then I notified the admitting doctor, "Doctor Russell" and he came down immediately and we began working on her, stimulation, etc.

Q You stimulated her, A Yes, sir.

Q How long did she live? A She lived about half an hour, I guess, after I got her to the hospital.

Q Have you an opinion as to the cause of her death?

A Yes, sir.

Q What is it? A I think she died of shock from the loss of blood.

Q From the wound in the throat? A Yes, sir, from the wound in the neck.

CROSS EXAMINATION BY MR. SACHS:

Q She died as the result of shock, doctor, do you say, or the loss of blood? A I think that the shock was due to the loss of blood.

Q And, therefore, the loss of blood was the primary cause or influence of death, A Yes, sir, the loss of blood.

Q Now you said, doctor, that the wound on her throat was about a quarter of an inch wide?

MR. MOSS: He said a quarter to an inch.

MR. SACHS: Yes.

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BY MR. SACHS:

Q Now will you please indicate on your own neck just where that wound was? A Why, it was on the left side, and I guess about two inches below the angle of the jaw, may be an inch or an inch and a half below.

Q And it was about a quarter to half an inch that way, was it (illustrating)? A Yes, about the median line of the neck.

Q How long have you been a physician? A Two years.

Q Have you had any experience in the matter of cuts and wounds? A Yes, some.

Q Now, I ask you, doctor, as the result of your two years' practice, and as the result of your experience, whether a person suffering from a wound of that kind, if attended to by a physician within a reasonable time after its occurrence, or its inception, could, within reason, be saved? A Why, this case, I don't think it could be saved.

BY THE COURT:

Q Speak a little louder, doctor? A I don't think this case could have been saved under any treatment.

BY MR. SACHS:

Q You mean because the wound was so deep? A No, not specially because the wound was so deep, but one of the import-

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ant structures was stabbed, which is the jugular vein, and the hemorrhage could not have been controlled in time.

Q Well, even if a physician had attended her, within a moment after the infliction of the wound, you don't believe her life could have been saved? A I don't think so.

Q Were you present when the woman was being carried from the first or second floor to the ambulance? A Why, as well as I remember, I think I was just behind.

Q Did you hear her say anything? A Why, nothing that I could make out. She was mumbling in a semi-conscious way.

Q Yes, and she was mumbling? A Yes, mumbling in a kind of more or less groan.

Q And did you have a conversation with the defendant at the bar while he was on his way to the hospital, or while he was in the room? A I did not.

Q Now try to think it over. Didn't the defendant at the bar tell you that his wife had cut his throat? A If he did, I didn't hear it. I don't remember anything that he said.

Q Well, you remember that he said something, doctor? A Nothing more than a kind of a semi-conscious groan. I couldn't make out what he was saying.

Q Are you sure that he didn't tell you that his wife had cut his throat? A I am sure.

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Q just a moment, doctor. You worked over the defendant at the hospital? A Yes, sir.

Q Was it at that time that he told you that his wife cut his throat? A Why, I don't remember his ever saying anything about it at all.

PHILIP F. O'HANLON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Doctor O'Hanlon, you made an autopsy on the body of Bertha Roth, shortly after the 28th day of July last past; did you not? A I did.

Q Do you remember the date? A I think it was on the 29th of July -- 28th of July.

Q And you remember the body being identified to you by Officer Kepko, who has been on the stand? A Yes, sir.

Q And will you please describe to the jury the condition of the body of Bertha Roth, as you first saw it, and then tell the jury what you found in your autopsy, stating also any opinion that you had as to the cause of her death? A On the 28th of July last, gentlemen, I went to Gouverneur Hospital, and performed an autopsy upon the body of Bertha Roth, to determine the cause of death. I found her to be a woman weigh-

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ing about 140 pounds, and about 5 feet 4 inches in height, and the body was well nourished.

BY MR. SACHS:

Q Well nourished? A Yes, sir. I made an autopsy upon this body, in order to determine the cause of death. I found that she died from a stab wound of the neck, which severed the left internal jugular vein. She also had a scalp wound.

BY MR. MOSS:

Q And your opinion was, if I understand you correctly, that the cause of her death was the stab wound in the neck, which severed the jugular vein in the neck? A Yes, hemorrhage following the stab wound severing the left internal jugular vein.

CROSS EXAMINATION BY MR. SACHS:

Q When you say, doctor, that you found the body well nourished, what do you mean by that? A I mean the adipose tissue, and the general musculature of the body, was in about the normal condition for a woman of her height and build.

Q In the language of laymen that showed, I suppose, that she had had enough to eat and drink, A Yes, sir.

Q How far from the skin of the left side of the neck or throat is the left internal jugular vein? A The left internal jugular vein lies beneath the sterno-clidoid-mastoid muscle,

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and in front of the carotid artery, and I should judge, in depth, not over half an inch.

Q Such a wound might be inflicted by a person upon himself? A Yes, sir.

Q In other words, am I right in saying that the wound you saw upon the body of Mrs. Bertha Roth was such a wound as might have been inflicted upon that body by herself?

A I would say that it wasn't.

Q Eh? A I would say that it was not.

Q That ^{it} was not. A Yes, sir.

Q That the wound which was inflicted upon her body was not a wound inflicted upon herself? A That would be my opinion.

Q Now, how deep was that wound? A About three inches.

Q And how wide was it? A About half to three quarters of an inch.

Q Could she, by the insertion of a sharp pointed instrument, reach that depth. A Do you mean could she physically do it?

Q Yes. A Certainly she could.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Why do you say that, in your opinion, she could not have inflicted that wound? A Because it is out of the area

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wounds that are self inflicted, and within the area of wounds that result from homicidal acts.

Q In other words, if I understand you correctly, the position that one would have to take to inflict that wound upon himself, would be an unnatural position? A Most extraordinarily unnatural.

RE-CROSS EXAMINATION BY MR. SACHS:

Q Now tell me, doctor, point to your own throat, and tell me, whereabouts the instrument entered? A If you take a line straight down from the angle of the jaw to the collar bone here (indicating), it would be about two inches from the angle of the jaw, but she would have to take the knife this way, and jab herself in that way (illustrating).

Q Well, do you know whether or not she could do it with her left hand? A I don't think so.

Q Do you think that I, with my left hand, could have started at the point indicated by you, and driven a sharp pointed instrument into my throat two or three inches?

A I think you might, yes.

Q And do you say it was impossible for her to have done it, absolutely impossible? A Why, of course, I wouldn't say that.

BY THE 4TH JUROR;

Q What was the direction of the wound after entering

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the neck. Was it upwards? A No, sir, it was a downward wound, in this direction (illustrating). This is the thyroid cartilage, or Adam's apple, and the direction of the wound was down, so as to cut the rings just in front of the oesophagus, and the wound was slanting.

BY MR. SACHS:

Q And the only reason that you said that she hadn't done it herself was because suicides, as a rule, don't pick out that part of the body? A I say, in my opinion, that wasn't a self inflicted wound.

Q Why? A Because I never saw, in my experience, a wound of that kind inflicted by a suicide.

Q But you won't say that it was impossible for Mrs. Roth to have done that. A I will say that it is my opinion that she didn't do it.

Q (Question repeated). A Certainly not.

BY MR. MOSS:

Q Doctor, how long have you been performing autopsies upon the bodies of persons who have died by violence in this city? A Since the 3rd day of January, 1895, sixteen years.

Q Sixteen years. A Yes, sir.

Q And about how many bodies of persons killed by violence have you examined in that way? A Killed by violence, and from all causes of death, ten thousand.

Q And, of course, many of those cases were cases of homicide and suicide? A Yes, sir.

Q So that you have had a great deal of experience in this matter? A In that line, yes.

BY MR. SACHS:

Q But you won't say, doctor, that next year, you may not find something very new in your experience? A No, sir.

Q And you won't say that last year you didn't find something very new in your experience? A I don't know whether that question is to be answered or not, but, in the normal conduct of affairs, one hopes to find something new all the time.

Q One hopes to find something new all the time?

A Yes, sir, I hope so, if they have intelligence.

J O S E P I N A G I A P P I N O, of 24 Rivington Street,
a witness called on behalf of the people, being duly sworn and
examined through the official interpreter, Mr. De Ville,
testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mrs. Giappino, do you remember the night of July 28th when there was some trouble there at the house? A Yes, sir, I remember the 28th of July.

Q Well, what was it that you first heard? A At half past one, that night, I heard some one knock at the door.

Q At what door? A The ~~xx~~ inside door of Mr. Roth's apartment.

Q Do you live next to Mr. Roth? A Yes, sir; my door is adjoining the door that goes into the apartment of Mr. Roth.

Q You were saying something when I interrupted you; were you not? A I heard the door open and close.

Q Yes, that is, Mr. Roth's door? A Yes, sir.

MR. SACHS:

One moment, I object to that, as a conclusion of the witness.

THE COURT: Overruled.

MR. SACHS: Exception.

BY MR. MOSS:

Q What did you hear? A I heard the door open and close, and then, about ten minutes later, I heard the wife and children shout.

Q Yes. What did you do then? A I got up off the bed, and I put some clothing on, and during that time I heard some one shout "Police", and I opened my window, and I saw her at the window, covered with blood, and I asked her, "What's the matter, Missus" and she said, "My husband cut me".

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MR. SACHS: I object to that, if your Honor please, and move to strike it out, the conversations between them.

MR. MOSS: Yes, I consent that it be stricken from the record.

THE COURT: Yes, strike it out. And the jury are instructed not to consider it at all in their consideration of the other testimony in this case.

MR. MOSS: That is, the statement of Mrs. Roth as to how it happened?

THE COURT: Yes.

BY MR. MOSS:

Q And what happened then? A I left the window, and tried to get into the Roth apartment, but I found the door closed, locked. The police opened the door.

Q When you saw Mrs. Roth at the window, how far away from her were you? A There was one window between myself and the position occupied by Mrs. Roth. She was on the fire-escape at that time, and she was sitting down.

Q Was she sitting upon the fireescape or upon the window sill? A She was on the fireescape.

Q I show you a diagram, people's Exhibit 3, and ask you if you will show where Mrs. Roth was when you saw her? A That's where she was, right there (indicating).

Q Well, put a cross there, please. A (The witness

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complies with the request).

MR. MOSS: The witness indicates this window as the window where she was looking out (indicating). This cross is above the place where she says she saw Mrs. Roth.

THE COURT: That is the window where the witness was (indicating)?

MR. MOSS: Yes. You may cross-examine.

CROSS EXAMINATION BY MR. SACHS:

Q Mrs. Ciappino, do you live at No. 24 Rivington street at the present time? A Yes, sir.

Q You live there with your husband? A Yes, sir.

Q Does your husband work? A Yes, sir.

Q What does he work at? A He works at a shoe warehouse

Q What time does he go to work in the morning?

A 8 o'clock.

Q And what time is he through with his work?

A He leaves at half past five or six, just according to the work.

Q What time about does he go to bed? A Ten o'clock.

Q About what time do you retire? A The same time.

Q You say that you heard a knock on a door, that night; did you? A Yes, sir; at half past one.

Q Do you ever hear knocks on doors in that building?

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A At times, when some one comes in late, in the adjoining apartment, I would hear noise, probably.

Q You heard a knock, you say, at half past one?

A Yes, sir.

Q Was your door closed at the time the knock was made?

A Yes, sir, sure it was closed.

Q Was there anything so particular about that knock as would enable you to identify it as having been made upon the door of Mr. Roth's apartment? A I only know that I heard knocks at the door, and I heard the door open and shut, and that's what woke me up.

Q Did you see any one knocking at the door? A No, I was in bed. I didn't see any one.

Q And you were asleep at the time the knock was first made? A yes, sir, I woke up with that.

Q You woke up, A Yes, sir.

Q Do you know, or how do you know, it was a knock on Mr. Roth's door, and not a knock on any other door?

A Because I heard Mr. Roth call, "Mellise, Mellise," to the little girl to open the door.

Q Well, why didn't you tell that to the District Attorney when you testified in answer to his questions? A Because I wasn't asked.

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Q When did you hear him cry out, "Mellise, Mellise"?

A Outside, before he got into the apartment.

Q You were asleep just before you heard the knock?

A Yes; I woke up when I heard the knocking at the door.

Q And after you awakened, you heard the call of "Mellise, Mellise"? A Yes, sir; I heard the father calling the daughter, "Mellise", and then I heard the door open and shut.

Q How long have you known Mr. Roth, the defendant?

A Sixteen or seventeen months.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Just a word. Did you ever see any trouble between Mr. and Mrs. Roth before this time? Yes or no.

MR. SACHS: I object to it on the ground that it is--
that the question states no definite time.

THE COURT: Overruled.

MR. SACHS: Exception.

A I only know of one quarrel between them, but I don't know the reason why.

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BY MR. MOSS:

Q Well, when was that? A Ten months previous to the occurrence related here.

Q Did you see anything of that trouble? A When I arrived there, I found the police, who were taking away the whole family.

Q You didn't see the trouble itself then, if I understand you aright? A No, sir.

Q Well, did you at that time see the body of Mrs. Roth, ten months before the night in question? A I did.

Q Was that at the time the police were taking the whole family away? Yes, sir, I saw the whole bunch of them.

Q No, but the body of Mrs. Roth, did you see that?

A I saw it.

Q Will you describe what you saw?

MR. SACCHS: Just one moment. May I ask Mr. Moss to make it more definite as to time?

MR. MOSS: Yes.

MR. SACCHS: She said ten months before.

MR. SACCHS: Will you ask her if she saw the body of the deceased at the time of the disturbance, ten months ago?

MR. MOSS: That is what I asked her, and now I ask her to describe it.

MR. SACCHS: I object to that as immaterial, irrelevant and incompetent and too remote.

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THE COURT: Objection sustained.

RE-CROSS EXAMINATION BY MR. SACHS:

Q Now Mrs. Ciappino, where did you spend your evenings for ten months previous to the 28th of July 1910? A Always at home.

Q And for those ten months you say you heard no quarrels between Mr. and Mrs. Roth; is that right? A No, no.

Q And you live in the apartment just directly next to theirs? A Yes, on the same floor. The doors touch.

Q Were you at home on the afternoon of the 27th day of July? A No. I work. I came home in the evening.

Q About what time? A Six o'clock.

Q Did you know any woman in that apartment house by the name of Mrs. Hirsch? A No, I don't know the names.

Q Do you know whether Mrs. Roth had been served with a dispossession notice to move? A No, she didn't tell me anything about that.

Q And you don't know anything of your own knowledge? A No, sir.

RACHEL P. CIAPPINO, of 20 Livingston Street, a witness called on behalf of the People, being duly sworn and examined, through the official interpreter, Mr. Rosenthal, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Did you know Mrs. Roth? A I knew her.

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Q Did you live near to her? A Yes, in the next house.
Hers was 24, and mine was 26.

Q And if you looked out of your window, could you see her window? A Yes, it was one next to the other.

Q Now I want to ask you about the night of July 28th, last July 28th, and I want to ask you if you saw anything that affected Mrs. Roth? If you did, tell us what it was?
A Yes, sir.

Q Go on, please and tell us? A It was a quarter of two, in the night. We were sleeping, and we heard a big noise, and we ran to the window, and we saw a big crowd of people in the street. I noticed people looking up, and I glanced over to her window, which is next to mine.

THE COURT: Now, be careful, Mr. Interpreter, in translating her answers to those questions, as to whether you use words which ought not to be used in the presence of this jury.

MR. MOFF: May I say, with definiteness --

THE COURT: The witness had better be instructed that she cannot testify to any conversation at all, had outside of the presence and hearing of the defendant.

MR. MOFF: Yes, sir. May I put this question to her?

THE COURT: Yes.

MR. MOFF:

Q When you tell us what you saw, don't tell us what

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Mrs. Roth said. Just tell us what you saw, not what she said.

MR. MOSS: Now please tell us what she said up to the point when we interrupted her, Mr. Interpreter?

MR. INTERPRETER: She says "I glanced towards Mrs. Roth's window, and I saw her sitting there."

BY MR. MOSS:

Q Now please tell us what her condition was when you observed it? What was the matter with her? What did you see?

A I only saw her sitting on the window.

Q Did you see anything the matter with her throat?

A It was dark. I couldn't see.

Q Well how long did you see her sitting there?

A About five minutes.

Q And then what happened to her? A Then I left the window because I got frightened.

Q Yes. A Then there was a noise again, and she fell down. But, if you don't let me talk, I can't talk, I can't tell what happened.

MR. MOSS: Now, you try her and see what you can get out of her. That's all I wish to ask her.

MR. SACCH: No, indeed, not a question.

MR. MOSS: Now, you try her and see what you can get out of her.

Q His Honor asked the witness --

MR. SACCH: Now, I should advise the jurors to be careful about asking questions, and eliciting answers from witnesses

that may intrude upon territory which should not be invaded.

You might ask a question which would invalidate the whole trial.

THE JUROR: I understand that. But now you told her that she shouldn't say anything that the deceased said, but the interpreter left out the last part she said to him, about that.

THE COURT: Well, it was well left out. I can say that to the juror, that it was well left out. We cannot exercise too great care in the questions which are put to the witnesses in such a case as this, and, while it is very proper for a juror to ask questions, the questions that are sometimes put to even witnesses who are best informed as to the law bring out matters which are improper, and I would advise the jury to suppress their desire to ask questions, unless they are absolutely necessary.

And, gentlemen of the jury, the Court desires to say such of you as understood the answers made by the last witness, which were not permitted to be interpreted by the interpreter, on account of the character of the answer -- for instance, a conversation may not be detailed to you, unless it was in the presence of the defendant, and he heard it and understood it, or unless it is so closely connected with this transaction as to become a

part of it -- now, such of you gentlemen as understood the answer which the witness made, but which the court would not allow to be repeated by the interpreter, are to disregard that answer as completely as you possibly can, to erase it from your memory, and not to allow it to influence your judgment in the slightest manner in the investigation of the testimony in this case. It is your duty to disregard it, gentlemen, entirely.

MR. SACHS: And will your Honor charge the jury that they are not to take into consideration any statement made by any person in this court room, not called to the witness stand, and sworn, and examined and cross examined, as being, perhaps, the conclusion of that person only.

THE COURT: Yes, I so instruct the jury.

MR. SACHS: I will ask your Honor if you will take your recess at this time. My evidence is just a little bit disorganized, at this moment, by the recent occurrence here, and some of my witnesses are not in attendance now, because it was expected that the testimony of the last witness would take up the time until the usual recess hour.

(The court admonished the jury in accordance with section 111 of the Code of Criminal Procedure, and took a recess until 1:00 o'clock.)

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After Recess.

I S R A E L R O T H, a witness called on behalf of the
People:

BY THE COURT:

Q Do you talk English, my boy? A Yes, sir.

Q How old are you? A Eleven years.

Q Eleven? A Yes, sir.

Q Do you know the difference between the truth and a lie?

A Yes, sir.

Q You go the synagogue? A Yes, sir.

Q You pray? A Yes, sir.

Q To whom do you pray? A To God.

Q Why is it wrong to tell a lie? Do you know?

A Yes, sir.

Q Why? A You get punished from God and get punished
from the People in court.

Q Now tell us what you think to be the difference between
the telling of truth and the telling of a lie? What is the
difference? What is a lie? A When you tell a lie you get
punished, and, when you tell the truth, you are never afraid to
get punished.

Q What I want to know is, not what is going to happen if
you tell a lie, but what will be the result, or what will happen
if you tell the truth. I want to know what you mean by the word
lie? A When you speak something that isn't true.

Q It means to tell something that isn't true? A Yes, sir.

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Q And the truth means to tell something -- A That means to tell something that was done, and that is the truth; and, when you speak the exact truth.

Q To tell something that was done, and something that was really so? That you believe to be the truth? A Yes, sir.

Q Now who commanded us to tell the truth? A God.

Q God? A Yes, sir.

Q And you say that you believe God will punish one who tells an untruth? A Yes, sir.

Q And what do you mean by saying that the people in court would punish you for telling an untruth? What do you mean by that? A Because we tell it to the people, and they can punish us in prison, also.

Q Then, if you say, you might be put in prison for telling an untruth, in addition to the fact that God has commanded you to tell the truth, and will punish you for telling a lie? Now, is that what is the matter with, what you may be put in prison for telling a lie? A Yes, sir.

THE COURT: That may be sworn. I wish to have the witness repeat to the jury the boy's answers to the leading questions, so that they will understand it perfectly.

THE COURT: (Then read the examination of the witness to the jury.)

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MR. SACHS: May I ask your Honor at this time to direct that any child, or any other witness, who may be in the court room now, and who may be called as a witness hereafter, be taken out of the court room?

THE COURT: Yes.

MR. MOSS: Yes, I will see that the lady who has charge of the children take the other children out, your Honor, at once.

(Israel Roth, of 24 Rivington street, was then duly sworn.)

THE COURT: Now just talk loud enough, boy, so that all the gentlemen over there may hear what your answers are to the questions.

DIRECT EXAMINATION BY MR. MOSS:

Q Israel, how old are you? A Eleven years old.

Q Do you know your birthday? A Yes, sir.

Q What is it? A December 25th.

Q I want you to look at this picture, People's Exhibit 3 and see if you recognize it? A Yes, sir.

Q What is it? A It is a picture of the house where we used to live in.

Q A picture of the house where you used to live?

A Yes, sir.

Q And can you point out the window of the place where you lived? A Yes, sir, right there (indicating).

Q And who did you live with in that place? Just name them

all? A My father, my mother, my sisters and my brother.

Q Can you give the names of your sisters? A Yes, sir.

Q Name them, please? A Mollie Roth, Becky Roth,
Charlotte Roth.

Q And the brother? A Georgie Roth.

Q How old is Charlotte, if you know? A She is about a
year and a half -- about a year and five months, now.

Q She is about a year and five months now? A Yes, sir.

Q And Becky, about how old is she? A About eight.

Q Eight now? A Yes, sir.

Q And Mollie? A About nine.

Q About nine? A Yes, sir.

Q And Georgia? A He will be soon five.

Q Do you remember the night, last summer, when there was
some trouble in your home? A Yes, sir.

Q Do you remember the date? A I don't remember it, but
I saw it to-day, on the slip there.

Q You saw it on a slip? A Yes; July 28th.

Q Was it in warm weather? A Yes, sir.

Q And I want to ask you, Isreal, if you and your mother
and father and brother and sisters had supper, at home that night
that night? A Yes, sir.

Q Do you remember what time it was? A No, sir.

Q Was it in the evening? A Yes, sir.

Q And were you all present there? A Yes, sir.

Q Was that the same night that your mother lost her life?

A Yes, sir.

Q Now I want to ask you if there was any talk at the supper table between your mother and your father, that evening?

MR. SACHS: Just a minute. I object to that, if your Honor please, on the ground that it is too remote, and on the ground that it is not part of the res gestae, and on the further ground that it is immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

MR. SACHS: Exception.

BY MR. MOSS:

Q Go ahead and tell us, Israel, everything that was said between your mother and father, that evening, at the supper table? A My father said that he was going to kill my mother.

Q Did you hear him say that? A Yes, sir.

Q Did your mother say anything in reply? A She smiled, and, of course, she did hear him say that before, so that she thought he wasn't going to do that.

Q She thought he wasn't going to do it, A Yes, sir.

Q And she smiled, A Yes, sir.

Q And what happened that made your father say to your mother that he was going to kill her? A I don't know about that.

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Q Was there any talk before that? A I don't think so.

Q Had you ever heard your father and mother quarrel before that? A Yes, sir.

MR. SACHS: One moment. I object to that question and ask that the answer be stricken from the record, as immaterial, irrelevant and incompetent, and not definite.

THE COURT: Overruled.

MR. SACHS: Exception.

BY MR. MOSS:

Q When?

MR. MOSS: I will make it definite at once, Mr.

Sachs.

A Well, they quarreled most of the time.

Q Most of the time? A Yes, sir.

Q Did you ever see your father strike your mother?

A Yes, sir.

MR. SACHS: I object to that, if your Honor please, upon the same grounds.

THE COURT: The same ruling.

MR. SACHS: The same exception, sir.

BY MR. MOSS:

Q When? How long before your mother died? A I don't know exactly what time.

Q Well, can you tell whether it was days or weeks, or how

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long before? A I don't know about how long.

Q How many times did you see him do that?

MR. SACHS: I object to that, if your Honor please, as being indefinite.

THE COURT: The same ruling.

MR. SACHS: Exception.

BY MR. MOSS:

Q How many times? A I seen him once, when I came home from my aunt's, and when I came home my mother had a blue eye, and was hurt all over the side.

Q Yes. At any other time besides that? A Yes.

Q How many times altogether; do you remember? A No, sir. He once struck me at the supper table.

Q He struck you? A Yes, sir.

MR. SACHS: I object to that, if your Honor please, as immaterial, irrelevant and incompetent, and I move to strike that out.

THE COURT: Objection sustained. Strike that out. I may say, Mr. Moss, that you may lead, to determine how long before the night in question the altercations or assaults or strikings by the father took place.

MR. MOSS: Yes, sir.

BY MR. MOSS:

Q Now, let me ask you about the time that you say her

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eye was blue, and her side was hurt. You know what I am speaking of, what you said a minute ago? A Yes, sir.

Q Did anything occur to your father at or about that time? A Yes, sir; he was arrested then.

MR. MOSS: Now, then, simply to fix the time, Mr. Sachs.

MR. SACHS: I understand. I have no objection to it.

BY MR. MOSS:

Q That was the time he was arrested, wasn't it? A Yes, sir.

MR. MOSS: I can fix that time at once, if you care to have me do it, by reference to documents, Mr. Sachs?

MR. SACHS: For the purposes of the motion with reference to the testimony given by this witness that I propose to make, I will accept your statement, Mr. Moss, as to the time.

MR. MOSS: Very well, then. September 7th, 1909.

MR. SACHS: The statement of Mr. Moss, the Assistant District Attorney, being accepted as correct by counsel for the defendant, I now ask your Honor to strike from the record of this case all the evidence given by the present witness as to that occurrence, on the ground that it was too remote from the alleged occurrence mentioned in the

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indictment; and, on the further ground, that it is irrelevant, immaterial and incompetent.

MR. MOSS: I ask that ruling be withheld on that point, to see if I do not connect it by other events.

THE COURT: yes, motion denied, for the present, with leave to renew.

MR. SACHS: Your Honor, however, will grant me an exception at this time?

BY MR. MOSS:

Q Didn't you say that your father struck your mother after that again? A I don't understand.

Q Did your father strike your mother again after that time that he made her eye blue and her side sore?

MR. SACHS: Just a moment. May I recall to the Court the testimony of the witness that the only time was when the eye was blue?

MR. MOSS: No, he did not say that. But, to make assurance doubly sure, Mr. Sachs, I will ask him again, if you like.

MR. SACHS: I wish you would.

BY MR. MOSS:

Q Did your father strike your mother any time again, any time other than the time that he made her eye blue and wounded her side? A No, sir, not until the time of her

death.

THE COURT: How many months or weeks was this alleged to be prior to the time mentioned in the indictment as to the offence charged here?

MR. MOSS: About ten months, sir.

MR. SACHS: I object to that, and move to strike it out, as immaterial, irrelevant and incompetent, and too remote.

THE COURT: I will allow it.

MR. SACHS: Exception.

BY MR. MOSS:

Q Do you know what the trouble between your father and mother, at the supper table, was about? A My mother owed some money to the grocery store, and she had a skirt which she couldn't wear any longer, and she wanted some goods to make another one, and there was a lady below us, and she -- as soon as my mother bought the goods for the skirt, she asked me mother for a piece of the goods, and my mother gave it to her, and she went over to the grocery store and showed it to the lady there, who owned the grocery store, and the lady said to the grocer, "She buys goods and everything, and doesn't pay you back your money." And then the quarrel began.

Q And how did your father know that? A The lady told my father. He heard it when he came home from work.

Q Yes. He heard about that when he came home from work? A Yes, sir.

Q And is that what your father and mother were talking about? A Yes, sir.

Q Is that what they were talking about when he said he would kill her? A I don't know about that.

Q Well, how long before he said he would kill her did that talk happen? A That was the same night.

Q Well, was it some minutes before? A When he first came home from work, before supper time.

Q When he first came home from work, before supper time? A Yes, sir.

Q Now then I want you to tell us, Israel, all that happened from the time you had your supper, that night, until you went to bed. Now I am asking you to tell us what happened after you had your supper until you went to bed? A After supper, was over I wanted to go downstairs, and my mother said I should wait upstairs, because she was fearing that he might hurt her.

MR. SAGHS: I object to that, and move to strike that out.

MR. MOSS: Yes, I consent.

THE COURT: Yes, strike that out. And you should warn the witness not to detail any conversations, unless they

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were in the presence of the defendant, or in his hearing.

MR. MOSS: Yes, sir. Israel, you are not to tell us what your mother said to you. I only want you to tell us what occurred.

BY MR. MOSS:

Q Did your father go out?

A Yes, sir; when I was in bed, he went downstairs.

Q What time was that; do you know?

A One o'clock.

Q Near one o'clock? A Yes, sir, I think so.

Q In the night time?

A Yes, sir.

Q Well, hadn't you been asleep until then?

A No, sir, I couldn't sleep.

Q You couldn't sleep?

A No, sir.

Q Why not? A Because they were both quarreling all the time.

Q So that you stayed awake until about 1 o'clock, when you said your father went downstairs?

A Yes, sir.

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Q Did you go to sleep then? A After he went down, I went to sleep.

Q Well, now tell us what was the very next thing you knew or saw, Israel?

THE COURT: I beg pardon, Mr Moss. I do not care to intrude, but I think it would be better for you to question the boy instead of allowing him to tell his story. There might be some improper ~~matter~~ testimony elicited in that way.

MR. MOSS: No, sir, I think not. I have talked with this boy before, and what the witness has said to me is not objectionable, under the rules of evidence, I think.

BY MR. MOSS:

Q Go on, Israel? A When everything was going on, I was asleep, but, when I woke up, there was an officer there, Mr Wartalsky, and he woke me up when everything was done.

Q Well, then, the next thing you knew was when Officer Wartalsky woke you up? A Yes, sir.

Q And when Officer Wartalsky woke you up, was your mother in the room? A No, sir.

Q She was gone out; was she? A Yes, sir.

Q Did you see your father at all? A Later on, I wanted to know what was the matter, I was dizzy, and he was in the same room where I was, and I went to look for my shoes and I saw him on the bed.

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Q Now, what bed were you on, Israel? A I was on the small bed there.

Q On that small bed in the back room? A In the bedroom.

Q In the bedroom? A Yes, sir.

Q Now, I want you, Israel, to tell the jury how the beds were arranged in your home. Were there any beds in the kitchen, in the front room, the kitchen? A Yes, sir.

Q How many beds? A Two.

Q Now, tell us about one of those beds, where it was and what it was like? A One was a folding bed, in the kitchen, right near the bedroom.

Q Now, wait a minute. A folding bed in the kitchen right near the bedroom? Is that right? A Yes, sir.

Q Now, who generally slept in that bed, the folding bed? A My father sometimes used to sleep there.

Q Sometimes? A Yes, sir.

Q Now, what other bed was there in the diningroom or kitchen? A There was a lounge.

Q Where was the lounge? A By the window.

Q Who generally slept on the lounge by the window?

A My mother sometimes slept there.

Q Your mother sometimes slept there? A Yes, sir.

Q Now, take the bedroom. How many beds were in that?

A Two.

Q And the one that you were on, was that a large bed or a small bed? A No, a small bed.

Q Was it near the front of the room or the back of the room? A Near the kitchen.

Q Towards the kitchen? A Yes. There was a window right--my bed was right next to the folding bed, and the window separated them.

Q And what about the other room? A There was a large bed that came right across the room.

Q And was that the bed that you saw your father on? A Yes, sir.

Q Who generally slept on that bed? A My mother sometimes slept there, with the children, my two sisters and the little baby.

Q Yes. Well, who slept in that bed that night? A I don't know who slept there, because I was asleep already.

Q Well, when you went to bed, Israel, were there any others of your family in bed? A I guess my two sisters were in bed.

Q Well, do you know whether they were or not? A I don't know, sir.

Q Do you know what bed they used, that night, your two sisters? A No, sir.

Q You didn't observe whether anybody else went to bed, that night, when you did? Is that the idea? A Yes, sir.

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GROSS-EXAMINATION BY MR. SACHS:

Q Israel, you said something, just a little while ago, about seeing your mother's eyes blackened? A Yes, sir.

Q That was in September; wasn't it? A Yes, sir.

Q Of 1909? A Yes, sir.

Q And about what time, that day, Israel, did you get home, or about what time was it when you saw your mother's eyes blackened? A That was about half past seven.

Q And where did you come from? A From my aunt's store.

Q From your aunt's store? A Yes, sir.

Q What is your aunt's name? A Mrs Goldman.

Q Is it Mrs or Miss Goldman? A Mrs Goldman.

Q And is she a sister of your mother's? A Yes, sir.

Q And then from Mrs Goldman's store--where was that?

A 233 Greene street.

Q 233 Greene street? A Yes, sir.

Q And you went home from there? A Yes, sir.

Q And was it when you got home that you saw your mother's eyes blackened? A Yes, sir.

Q Did you--now, I don't want to know what you found out, Israel, or anything about that--but did you see any one blacken your mother's eyes? A No, sir.

Q You did not? A No, sir.

Q On the 27th day of July, Israel, you didn't go to

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school, did you? A I don't remember.

Q You don't remember? A No, sir.

Q Well, don't you know that school had a vacation about that time? A Oh, yes.

Q Did you play on the streets, that day? A During the vacation, I went to my aunt's store, every day.

Q You went to your aunt's store? A Yes, sir.

Q About what time of day did you go to your aunt's store?

A About eight o'clock.

Q About eight o'clock in the morning? A Yes, sir.

Q And about what time did you get away from your aunt's store? A Sometimes half past seven and sometimes eight.

Q At what time, if you know, did you get home on the 27th of July? A Around half past seven, something around there.

Q Do you know what day of the week it was? A No, sir.

Q Monday, or Tuesday, or Wednesday? A No, sir.

Q When you got home, was your father home? A Yes, sir.

Q What time did your father leave the house in the morning, as a rule? A About five o'clock--five o'clock he got up.

Q He got up at five o'clock? A Yes, sir.

Q And about what time would he leave the house?

A Around half past five or six. I don't know exactly the

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time.

Q Do You know where he would go every day? A He would go to work.

Q Where did he work? A Bleecker street.

Q Do you know the name of the firm? A Mr Schwartz, I think.

Q And he left about half past five or six, every morning? A Yes, sir.

Q And about what time did he get home, Israel? Do you know? A Around six o'clock.

Q Now, do you know a lady by the name of Mrs Hirsch, Israel? A Yes, sir.

Q Does Mrs Hirsch live at No. 24 Rivington street? A Yes, sir.

Q And what floor does she live on? A Second floor.

Q What floor did you live on? A Third.

Q You lived on the third floor? A Yes, sir.

Q Did you live in the rear of the house? A In the front.

Q In the front? A Yes, sir.

Q Do you know whether Mrs Hirsch lived in the front or the rear? A The front.

Q Did you hear Mrs Hirsch and your mother quarreling that day? A Yes, sir.

Q You did? A Yes, sir.

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Q Where was Mrs Hirsch at the time your mother was quarreling with her? A She was on the second floor.

Q And where was your mother? A On the third floor.

Q And your mother was scolding Mrs Hirsch; wasn't she?

A Yes, they were both quarreling.

Q They were both quarreling? A Yes, sir.

Q Talking very loud? A Yes, sir, but not very long, though.

Q Not very long? A No.

Q Of course, you don't know, Israel, how long they had quarreled before you came home; do you? A No, sir.

Q But you do know that, after you got home, they were not quarreling very long? A Yes, sir.

Q Your mother was talking to Mrs Hirsch, and Mrs Hirsch was talking to your mother? A Yes, sir; when they were quarreling, they did.

Q Yes, during the time they were quarreling, Mrs Hirsch spoke to your mother, and your mother spoke to Mrs Hirsch?

A Yes, sir.

Q And during that time where were you, Israel? A I went out in the hall, when I heard them quarreling.

Q You went out in the hall when you heard them quarreling? A Yes, sir.

Q And where did your sisters go? A Out in the hall also.

Q They were all out in the hall? A Yes, sir.

Q Was your father out in the hall? A He wasn't home then.

Q He wasn't home? A No, sir.

1 Q And this was about half past seven, was it? A No, sir; that was when he wasn't home yet, they were quarreling.

Q Well, you say you came home about half past seven?

A Yes, sir.

Q Now wasn't it a little earlier that you came home?

A No, sir. I know about the quarrel when I wasn't there.

That's how it happened.

Q Do you mean the quarrel between Mrs. Hirsch and your mother? A Yes, sir, but they didn't quarrel after I

got home. It was all over when I got home.

Q But they had been quarreling, that day? A Yes, sir.

Q And was it Mrs. Hirsch that told the grocer that your mother could buy dresses, but couldn't pay for groceries?

A Yes, sir.

Q Do you know whether your mother threw an iron to the floor, that day? A No, sir.

Q You don't know? A No, sir.

Q And then your father came home, didn't he? A Yes, sir.

Q And your father and your mother, did they have a quarrel?

A I don't remember that.

Q You don't remember that? A No, sir.

Q This was the 27th of July? A Yes, sir.

Q And you don't remember whether they had a quarrel or not? A No, sir.

Q Now, when your mother and father spoke together, in what language, as a rule, did they speak? A Jewish.

Q Jewish? A Yes, sir.

Q You very seldom heard them speak English? A Yes, sir.

Q Yes. Most of their conversations were in Jewish?

A Yes, sir.

Q Are you sure, Isreal, that there was no quarrel between your father and mother, that day? A I ain't sure.

Q Well, was there a quarrel between your father and mother that evening? A I don't know about that.

Q You don't know about that? A No, sir.

Q Didn't you tell the District Attorney, Isreal, didn't you tell Mr. Boss, the gentleman right here (indicating, that you heard your father say something to your mother, that night?

A That was the night that he did strike my mother. That was the next day, that was on July 22th.

Q That was on July 22th? A Yes, sir.

Q Well, now, your mother died in the early morning of July 22th, around two o'clock? A When she was speaking -- when Mrs. Hirsch told the trooper, that wasn't the time my father struck my mother. That was the day before.

Q Well, were you present the day before when your mother and Mrs. Hirsch quarreled? A No, sir.

Q Well, you don't know whether it was the same day or the day before, of your own knowledge, do you? A No, sir.

Q You were not present, were you? A No, sir.

Q Now, tell me, did you hear anything, that same day, that your father and mother quarreled about a quarrel between Mrs. Hirsch and your mother? A No, sir.

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Q Do you know whether they quarreled on that day? A What is that?

Q Do you know whether they had a fight, on that day?

A No.

Q You don't know? A No, sir.

Q Now, when you got home, that day, I mean the day before the morning on which your mother died, was your father home when you came from your aunt's store, on Greene street?

A When he made her the blue eye?

Q Was that the night he gave her a blue eye? A He made the blue eye before I came home.

Q But I am not talking about September. I am talking about July.

MR. MOSE: Well, you use the term "that day" so frequently that it mixes up the dates.

MR. SAUNDERS:

Q Well, you say your mother gave a blue eye in September, about two months before? A Yes, sir.

Q But I am not talking about July, when you came home from your Aunt's on Greene street. During vacation you went to your Aunt's store, didn't you? A Yes.

Q During vacation? A Yes, sir.

Q But you didn't go to your aunt's store during the month of September, did you? You were going to school then?

A No, I didn't go to the store, that time.

Q No. It was in July that you went to the store?

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A Yes, sir.

Q And it was in September that you saw your mother have the blue eye? A I didn't go to school, because there was no school, that day.

Q But that was about ten months before the night on which she died; isn't that so? A Yes, sir.

Q But now, Israel, I am talking about the night before the day when your mother died. When you got home from Greene street, was your father home? A No, sir.

Q About how long after you came home, did your father come home? A I don't know about how long.

Q Well, he did come home, though; didn't he? A Yes, sir.

Q And when you all had supper? A Yes, sir.

Q Did you see your father, on that day, take your mother and Mrs. Hirsch, Mrs. Hirsch's daughter, or where Mrs. Hirsch lived?

A No, sir; they weren't quarreling then.

Q Now, didn't your mother and your father weren't quarreling?

A No, sir.

Q But your mother and your father had a quarrel at the same time, didn't they? A Yes, sir.

Q And you were in the middle of it? A Yes, sir.

Q Now, with your permission, I am going to ask you to tell me what your father said to your mother.

Q Now, with your permission, now speak

in Yiddish, and tell the interpreter just what your father said to your mother.

(The witness speaks in Yiddish to Mr. Rosenthal, the official interpreter.)

THE INTERPRETER: He said that he was going to kill her.

MR. SACHS: Now, Mr. Interpreter, will you repeat the language used by the father, as testified to by the boy, in Yiddish?

(The interpreter speaks in Yiddish.)

MR. SACHS: May the stenographer, as well as he has, place upon the record the statement made by the interpreter?

THE JURY: Yes.

THE INTERPRETER: It is "Ich, will dir derhargenen."

MR. SACHS: Now, you may translate that literally as the witness said it to the jury, Mr. Interpreter.

THE INTERPRETER: The literal translation of derhargenen is "kill", though it is sometimes used simply as "kill" or "killings".

MR. SACHS: The witness said the whole sentence.

THE INTERPRETER: "I will kill you."

MR. SACHS:

THE JURY: The witness said that "Ich will dir derhargene"

and "Ich will dir derhargene" which have heard it said many times

and "Ich will dir derhargene" means

to kill.

Q Yes, I know. That is exactly what the word means. But what I am trying to find out from you, if you know -- of course Israel I don't want to make this too hard for you -- but I want to know just in what way that word is used. You have heard lots and lots of people say it; haven't you? A No. To hit means "Schloegen."

Q Now "schloegen" means to hit; doesn't it? A Yes.

Q But haven't you heard people over on the east side use the word "derhargenen," when they meant "I will beat you," or "I will hit you"? A No, sir, I never have.

Q Now, Israel, you had a conversation with the Judge, just now? A Yes, sir.

Q And you know that you want to tell the truth? A Yes, sir.

Q Just as much as you possibly can? A Yes, sir.

Q Tell the jury how often your mother said to you, "Ich will dir derhargenen"? A She never said that. She said to me, sometimes, "Schloegen".

Q Did you ever hear her use that expression to your father?

A No, sir.

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Q Now, on the night in question, you were all at the supper table? A Yes, sir.

Q Did you see your father strike your mother, that night?

A No, sir.

Q About what time did you have supper, that evening?

A I don't know what time.

Q Well, did you have it at seven o'clock? A About that time.

Q And while you were at the supper table, your father and mother quarreled? A Yes, sir.

Q Did they quarrel after the supper was over? A Yes, sir.

Q Until about what time did they quarrel? A Until I went to bed, and my father went downstairs.

Q Until you went to bed? A Yes, sir; until my father went downstairs.

Q When did you go to bed? A Before my father went downstairs.

Q About what time was that? A I don't know exactly what time.

Q Well, was it nine or ten or eleven o'clock? A I don't know what time it was.

Q Well, when you went to bed, did you fall asleep?

A No, sir.

Q Eh? A No, sir.

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Q You were awake? A Yes, sir.

Q From the time, at the supper table, up to the time when your father went downstairs, did you see your father strike your mother once? A No, sir.

Q They quarreled? A Yes, sir.

Q They were talking? A Yes, sir.

Q Your mother was quarreling? A Yes, sir.

Q And your father was quarreling? A Yes, sir.

Q But not once did you see your father strike your mother? A No, sir ; at that time, he didn't.

Q And then your father went downstairs? A Yes, sir.

Q When he came up, you were asleep? A Yes, sir.

Q An officer awakened you? A Yes, sir.

Q You didn't hear any noise in the apartment; did you?

A No, sir.

Q Did you hear any fighting going on? A No, sir.

Q Now, at the time you went to bed, Israel, had Molly gone to bed? A I don't know about that.

Q Oh, Israel, you have answered almost every question so intelligently. Don't you know whether Molly and Becky had gone to bed, that night, before you did? A Yes, sir.

Q And do you know whether or not they were asleep when you went to bed? A No, sir.

Q Well, how long before you went to bed, Israel, did they

go to bed? A They went to bed the same time.

Q Well you don't mean to say that Molly and Becky and the other little children stayed up until one o'clock?

A Well, I don't know whether they stayed up until one o'clock, but they went to bed the same time that I did.

Q Well, about what time did you go to bed, as a rule?

A About ten o'clock, sometimes, and, in summer, my mother would stay down with the baby, and stay down until about eleven o'clock.

Q Yes. Did you go up to the roof, that night?

A No, sir.

Q You know a little boy by the name of Lemmel? A Yes, sir

Q His father keeps a baker shop in that building, doesn't he? A Yes, sir.

Q Did you go up to the roof that night, with little Lemmel. A I don't remember.

Q Didn't you go into Mr. Lemmel's place and ask him to let his little boy sleep upon the roof with you? A No, sir.

Q Are you sure of that? A Yes, sir.

Q And are you sure that you didn't sleep on the roof?

A I don't know. I ain't sure about that.

Q Did you ever sleep on the roof when it was warm?

A Yes, sir.

Q Are you sure that you didn't sleep, on that night, on the roof, or aren't you sure? A I am not sure whether I slept

on the roof, that night, no.

Q Now, about the couch. It was in the larger of the two rooms; wasn't it? A Yes, sir.

Q And that was right near the window? A Yes, sir.

Q And that was the place where your mother usually slept?
A In summer, she used to sleep there.

Q Yes. Was there a folding bed in that room?
A yes, sir.

Q In the large room, A Yes, sir.

Q And hadn't you slept in the folding bed, that night?
A No, sir.

Q In what room did you sleep, that night? A In the bedroom.

Q That is, in the bedroom in which was the bedⁱⁿ which your father usually slept? A Yes, sir.

Q Did you have a separate bed for yourself? A Yes; I slept there sometimes with my little brother.

Q That is, you didn't sleep with your father? A No, sir

Q And in that bedroom, where was the bed in which you slept sometimes, with your little brother? There was another bed; was there not? A Yes, sir.

Q And that was usually occupied by your father?
A Yes, sir; in summer.

Q That is, when your mother slept in the front room,

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right by the window, your father slept in the back room, in the bed? A yes, sir.

Q Do you know whether or not your brothers and sisters slept in the folding bed in the front room, that night?

A No, sir.

Q You don't know? A No, sir.

Q Well, weren't you up when they went to bed?

A I couldn't see from my bed; I couldn't see into the kitchen.

Q Well, you could see into the bed in which your father slept? A Yes, sir.

Q They didn't sleep with him; did they? A No, sir.

Q They didn't sleep with you; did they? A No, sir.

Q So that the only place they could have slept was on the folding bed, or on the couch, with your mother?

A Yes, but before they did really go to bed, they slept in the big bed in the bedroom.

Q But I mean after you went to bed, in your room, do you know where they were put to sleep? A No, sir.

Q Now you say that you saw something on a slip, to-day?

A yes, sir.

Q Did you have a talk with somebody from the District Attorney's office? A No, sir; I seen it in the papers.

Q In what paper? A It was torn out from a paper.

Q Oh, from a newspaper? A Yes, sir.

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Q That was to-day, before you came into court?

A Yes, sir; I seen it in the room there, while I was waiting there, I seen it in the room in which I was waiting.

Q Yes. While you were waiting you saw the newspaper?

A Yes, sir.

Q Did you ever at any time within a few days before the 27th of July, see your mother get a dispossess paper?

A Yes, sir.

Q About what time did she get the dispossess paper?

A I don't know.

Q You know why she got it?

MR. MOSS: Well -- all right. Go ahead.

BY MR. SACHS:

Q (Question repeated) A No, sir.

Q Wasn't it because she quarreled with the tenants all the time? A No, I think so; I don't know exactly why it was she got a dispossess.

Q Now, Israel, in answer to my question, didn't you say, "I think so"? A Well, I didn't understand your question, then.

Q Now, wasn't it because she quarreled with the tenants all the time? A I don't know about that.

Q Isn't it a fact, Israel, that your mother did quarrel with the tenants very often? A Not very often. Only with

Mrs. Hirsch, at that time.

Q Not very often? Only with Mrs. Hirsch? A That time.

Q At that time? A Yes, sir.

Q But she did quarrel with the tenants, sometimes?

A Only with Mrs. Hirsch. That's all that I can remember .

Q Israel, do you remember whether it was you or Molly, or Becky, who was sent out by your mother to have the knives sharpened? A No, sir.

Q Now think. A She ~~had~~ didn't have the knives sharpened that day.

Q Well, the day before? A Not about that time; she didn't have the knives sharpened that time.

Q Are you sure of that? A Yes, sir.

Q Well, how long before? Do you remember? How long before was it that she had the knives sharpened? A I don't know.

MOLLIE ROTH, a witness called on behalf of the

People:

BY THE COURT:

Q How old are you, my little girl? A Nine years old.

Q What is your name? A Mollie Roth.

Q And you say you are how old? A Nine years old.

Q Do you know the difference between the truth and a lie?

A Yes, sir.

Q Now, what is it? A When you tell the truth -- when you tell a lie, you get punished, and, when you tell the truth, you are liked by everybody.

Q Yes, that is what will happen, but I want to know if you know what a lie is, and what the truth is. You say, if you tell a lie, that you will be punished for it, and you say that, if you tell the truth, you won't be punished for it?

A Yes, sir.

Q Well now who would punish you, if you told a lie?

A God.

Q Who has said that we must not tell lies? A God.

Q Do you go to the synagogue? A Yes, sir.

Q Do you say your prayers? A Yes, sir.

Q To whom do you pray? A To God.

Q To God? A Yes, sir.

Q But you haven't told me yet what you mean by telling a lie. A When you tell a lie, you are punished for it.

Q I know that. Look out there. What is it doing now, the weather. A It's snowing.

Q Suppose that you said it was raining, what would that be? Would it be the truth or a lie? A A lie.

Q So that what do you mean by saying "lie"? Do you mean to tell something that is what? A Tell something that isn't true. If you tell a lie, you get punished for it.

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Q I know. All the time, we understand that you mean to tell a lie is to do something for which you will be punished, and you say God will punish you. Where would he punish you, where would you be punished for that, where would God punish you? A (No answer).

Q How would you be punished for telling a lie?

A You would be sent to prison for telling a lie, for one thing.

Q And what would happen to you, for another thing, or what do you believe would happen to you? Who would punish you, if you told a lie? A God.

Q How do you know? A You have to suffer.

Q I know, but I want to know how. Here, or in the next world? A Here.

THE COURT: No, I will not put this child under oath.

MR. MOSS: Will you take her statement, under Section 392 of the Code?

THE COURT: Yes, of course, with the understanding that the provision of the Code being that, in the discretion of the Court, a child may testify, if the Court believes that she has sufficient capacity, but not under oath, if she has not that capacity, and that, while her evidence may be taken, there could be no conviction upon such evidence, unless it was supported by other evidence.

The jury will understand that. I will say that the child manifests some degree of intelligence concerning the distinction between truth and falsehood, but not to the extent that the Court would be justified in putting her under oath.

DIRECT EXAMINATION BY MR. MOSS:

Q Mollie, how old are you? A Nine years old.

Q Where did you live before? A 24 Rivington street.

Q And who did you live with in that place? Who lived with you there? A With my father and mother and sisters and brothers.

Q Yes. Do you remember the night, last summer, when your mother got hurt? A Yes, sir.

Q Was that late in the night? A Yes, sir.

Q Had you been to bed, before she got hurt? A Yes, sir.

Q What room did you go to bed in? A The bedroom.

Q Which bed? A The big bed.

Q The big bed or the little bed? A The big bed.

Q And who was in the big bed with you? A My sister.

Q Which sister? What is her name? A Becky Roth.

Q Becky? A Yes, sir.

Q Do you remember whether your brother Israel was in bed too? A No, sir.

Q You don't remember? A No, sir.

Q Where were your father and mother, that night? A My father went away.

Q Your father went away? A Yes, sir.

Q Were you awake when your father went away? A Yes, sir.

Q Well, where was your mother sleeping, that time?

A She was sleeping near the window.

Q Was there a couch there, a lounge or couch? A There was a lounge next to the bed.

Q And did your mother have any one of the children with her? A Yes.

Q Which one? A The baby.

Q Yes. And did you see your mother and the baby lying down? A No, sir.

Q Did you see them in the kitchen? A My mother put us to bed.

Q I see. Then, after your mother put you to bed, did you wake up in the night again? A No, sir.

Q Did you hear some noise? A Yes, sir.

Q What did you hear? A I heard when my father killed my mother.

Q Well, what did you hear, just tell us?

MR. SACHS: One moment. I object to that, and move to strike it out.

MR. MOSS: Yes, I consent to strike that out. It is

a conclusion.

THE COURT: Yes, strike it out.

BY MR. MOSS:

Q Did you hear a voice speaking? A Yes, sir.

Q Whose voice did you hear? A My mother's voice.

Q Could you understand what she said, A No, sir.

Q Now, when you heard your mother's voice, what did you do? A I got up.

Q Where did you go? A I went out of the bedroom.

Q Did you go into the kitchen? A Yes, sir.

Q Did you see your mother there? A Yes, sir.

Q Where was your mother? A I saw her on the firescape.

Q Did you see her go to the firescape? A Yes, sir.

Q Where was your mother before she went to the firescape?

A On the lounge.

Q Did your mother have the baby in her arms? A No, sir.

Q Did you see whether anything was the matter with your mother when she was on the lounge? A Yes, sir.

Q What did you see? A I saw all around her blood.

Q And did you see your father then? A Yes, sir.

Q Where did you see your father? A In bed.

Q In the bed in the bedroom? A Yes, sir.

Q Did you see your father go into the bedroom?

A I can't remember.

Q Did you see your father in the kitchen? A At first I saw him in the kitchen.

Q Yes. Did you see him in the kitchen while your mother had blood on her? A Yes, sir.

Q And where was he standing when you saw him? A I think I saw him walking through the bedroom.

Q Did you speak to your mother when she was sitting on

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the lounge? A No, sir.

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Q Did you go to her? A Yes, sir.

Q What did you do? A My sister and I took hold of her skirt.

Q Yes. And then what did she do, your mother? A She was going to the fire escape.

Q Did you see her go to the window? A Yes, sir.

Q And what did she do when you saw her go to the window? Don't tell what she said. Did she call out, did she holler?

A Yes, sir.

Q And did you still have hold of her dress? A No, sir.

Q Did you follow her to the window? A No, sir.

Q Did you just stand still and watch her? A No, sir,

I was in the lounge.

Q Where was the baby then? A I saw the baby on the

lounge.

Q Did you see whether there was any blood on the baby?

A Yes, sir.

Q Did you see anything on the window? A Yes, sir.

Q What did you see? A A broken knife, a knife.

Q Did you see that knife on the window (indicating People's Exhibit 1)? A I don't know if it was this one. It was all covered with blood.

Q Well, what happened to your mother when she was by the window? A My mother was calling Mr. Polansky.

Q What did she do? Did she stay there, or go out,

or what happened to her? A She stayed there when she called.

Q And then what happened? A Then the lady next door asked my mother --

Q No. Don't tell what she said.

MR. SACHS: Objected to.

THE COURT: Objection sustained. No statement will be made as to that.

BY MR. VOSS:

Q Well, did you see your mother fall? A No, sir.

Q And do you know what became of her? A I saw her holding on to the things on the fire escape.

Q Yes. And what then? What happened then? A And then I was sitting there, and my mother fell down.

Q Fell down where? A I don't know where she fell down.

Q Now when she fell down out of the window?

A Yes, sir.

Q And when your mother fell down out of the window, were you standing or sitting on the lounge, or what were you doing?

A I was near the lounge.

Q For the lady who you said this time? A Yes, sir.

Q Then, when your mother fell out of the window, what did

you do? A I went over to my bed, and told him,

"The lady has fallen."

Q Now, was your father sitting on the bed then? A Yes, sir.

Q What was your father doing? A He is the man downstairs.

He had a store.

Q And what kind of a store has he? A A bologna store.

Q And was that downstairs on the same side of the street as your house? A Yes, sir.

CROSS EXAMINATION BY MR. SACHS:

Q Mollie, the day before, did your mother send you out with some knives, to have them sharpened? A No, sir.

Q Within a few days before that, did you have any knives sharpened? A Yes, sir.

Q Your mother send you out to have them sharpened? A Yes, sir.

Q Now wasn't it the day before that all this happened, that your mother had the knives sharpened? A I don't remember.

Q You don't remember? A No, sir.

Q You go to school, Mollie, don't you? A Yes, sir.

Q You didn't go to school at this time, because there was a reception? A Yes, sir.

Q Now, about that time did you go to bed, every day?

A I don't remember.

Q Well, do you recall that time you went to bed, this night?

A No, sir.

Q Do you know what bed you went to sleep in? A Yes, sir.

Q What bed, Mollie? A The big bed, where my mother used to sleep.

Q Well, in the summertime, where did your mother use to sleep? A Near the window, with the baby.

Q Well, is that the bed that you mean? A Yes, sir.

Q And you went to sleep in that bed? A No, that wasn't the bed.

Q Well, what bed was it, Mollie? A The bed in which my father use to sleep.

Q That is, you went to sleep in the big bed, which stood in the bedroom? A Yes, sir.

Q And that's the bed your father use to sleep in? A No, sir.

Q Well, what bed did your father sleep in? A He slept in the kitchen.

Q Well, is the kitchen the room where the couch was that your father slept in? A Yes.

Q And you went to sleep in the little room, in the big bed? A Yes, sir.

Q And then you fell asleep? A Yes, sir.

Q Now, you woke up, you were in the bed in the kitchen? A No, sir.

Q Well, what happened when you woke up, Mollie? A I woke up in the bed. I was talking out of that bed where I was sleeping.

Q Now, did you get out of the bed? A Yes, sir.

Q That is the bed in the room next to the kitchen?

A Yes, sir.

Q Now did you notice if anybody was in the bed, when you got out? A No, sir.

Q And when you got out of the bed and walked, where did you walk to? A Into the kitchen.

Q And when you walked into the kitchen, who was in the kitchen? A My mother.

Q Where was your mother when you walked into the kitchen? A On the lounge, sitting.

Q Sitting on the lounge? A Yes, sir.

Q Did you notice whether or not your father was lying in the big bed, when you got out? A No, sir.

Q But when you walked into the kitchen, your mother was sitting on the lounge? A Yes, sir.

Q And, after your mother was sitting on the lounge, you saw her go to the window? A Yes.

Q And after she went to the fire escape, you went to your father? A Yes, sir.

Q You walked right over to the big bed, where your father was lying? A Yes, sir.

Q And you shook him; didn't you? A No, sir.

Q Didn't you say something to him? A Yes, sir.

Q Well, did you put your hand on him before you said that? A No, sir.

Q You simply said it to him? A Yes, sir.

Q And you said what? A I said, "My mother fell down. We have no more a mother."

Q And how long, Mollie, after you saw your mother fall down did you go to your father? Did you go right away?

A Just as my mother fell down.

Q Just as your mother fell down you went over to your father, and said, "Papa, we have no more mamma"? A Yes, sir.

Q And you went to the big bed in the bedroom and said that to him? A Yes, sir.

Q Now, were you near the window when your mother fell? A No, sir.

Q Where were you, Mollie, when your mother fell down the fire-escape? A I was near the lounge.

Q You were near the lounge? A Yes, sir.

Q And, just as she fell, you turned around, and went over to the bed where your father was? A Yes, sir.

Q And told him what you have told us? A Yes, sir.

Q You didn't see him in the kitchen when you got of bed and walked in to your mother, did you? A Yes, sir.

Q Well, was he sleeping in the kitchen? A I saw him

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standing there.

Q How long before you went to the kitchen, did you see your father? A I didn't see him go into the bedroom.

Q Well, how did you know he was in the bedroom? A When I went to tell him.

Q Well, when you went to tell him, you went as soon as your mother fell; didn't you? A I don't remember.

Q You just said so, Mollie? A What.

Q You just said so, didn't you, that you went right to your father, and told him? A Oh, after my mother fell down?

Q Yes. You went right over to your father in the big bed? A Yes, sir.

Q Now, didn't you tell this gentleman (indicating Mr Moss) that you were not sure you saw him walking into the bedroom; that you were not sure you saw him walking into the bedroom; didn't you? A Yes, sir.

Q And you are not sure; are you? A No, sir.

Q You were rather sleepy; weren't you? A Yes.

Q And you don't know whether ~~yes~~ or not your father walked into the bedroom at that time; do you? A No, sir.

Q For all that you know, he might have been in that bedroom for a long time, in that bed? A When my sister and I was in the bed I didn't see him.

Q Yes, Mollie, that is true. You were asleep when you

were in the bed? A Yes, sir.

Q And when you awoke, you got up and went into the kitchen? A Yes, sir.

Q And you were sleepy at the time? A Yes, sir.

Q And you are not sure that your father walked into the bedroom then; are you? A When I was sleeping in the bed, when I got up, I didn't see nobody in the bed.

Q No, that may be true. But did you look around, to see if anybody was in bed? A I didn't look around, but nobody was there.

Q You didn't look around? A No, sir.

Q Now, you told this gentleman, indicating Mr Moss, that you were not sure that your father walked to the bedroom? A Yes, sir.

Q And you are not sure, are you? A No, sir.

Q Now your father was lying in the big bed when you went to him, after your mother fell? A Yes, sir.

Q You remember how he was dressed? A Yes, sir.

Q He had a pair of pants on? A No, sir.

Q Did he have a shirt on? A He had his undershirt on.

Q Now, didn't he have a pair of underdrawers on?

A Yes, sir.

Q But his pants? A I didn't recognize that.

Q You didn't recognize that? A No, sir.

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Q In other words, you don't know, do you? A What?

Q Whether he had trousers or underdrawers on? A No; I can't remember for sure.

Q Did you see a lot of blood in the bed where your father was lying? A I didn't see any blood. I saw blood on him.

Q On your father? A Yes, sir.

Q But you didn't see any blood on the bed? A No, sir.

Q And it was on the window sill, Mollie, that you saw the broken knife? A Yes, sir.

REDIRECT-EXAMINATION BY MR. MOSS:

Q Just a question, Mollie. Was it in the bed where you and Bessie had been sleeping that you saw your father, when you told him there was no more mother? A Yes, sir.

Q In your bed? A Yes, sir.

RECROSS-EXAMINATION BY MR. SACHS:

Q Mollie, that was the bed that you didn't look in, when you got up? A Sir?

Q (Question repeated.) You didn't look around that bed when you got up, Mollie, did you? A No, sir; but when I went to sleep nobody was there.

Q Yes. And when you got up, you didn't look to see if your papa was there or not; did you? A No, sir.

MR. MOSS: I offer in evidence, from the official files, the conviction of Abraham Roth, set forth--

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MR. SACHS: May I suggest that you say, at the present time, that you offer a certain paper, and then, if his Honor excludes it, the jury will not know what it is?

MR. MOSS: Just as you like. I will even hand the papers to his Honor, and he may see them. What is the ground of your objection, Mr Sachs?

THE COURT: Do you object?

MR. SACHS: I do.

THE COURT: Objection sustained.

MR. MOSS: The People rest.

MR. SACHS: It is now twenty minutes of four o'clock, if your Honor please. I may frankly say that I understood that the People's case would take the entire day. Of course, your Honor appreciates the solemnity and importance of this case, both to the defendant and myself. I will, at this time, with your Honor's permission, make a very short and formal motion, which perhaps may save me the work on a more lengthy one. But, if your Honor should overrule my formal motion now, I will ask your Honor to give me at least until to-morrow morning, to make a more careful and a longer motion, a more formal and lengthy motion, if I care to make it.

THE COURT: Yes.

MR. SACHS: Then, at this time, if your Honor please, the defendant respectfully moves this Court, and respect-

fully requests this Court, that your Honor take from the consideration of this jury the count charging the defendant with murder in its first degree, and from the consideration of this jury all crimes under the title "Homicide", on the ground that the People have not made out a case.

THE COURT: Motion denied.

MR. SACHS: We except. And I may, to-morrow morning, if your Honor please, make a somewhat more lengthy motion, if I have your Honor's permission to do so?

THE COURT: You may. And the proposition to adjourn at present until to-morrow morning is agreeable to the District Attorney, and the Court will now admonish the jury.

Gentlemen of the jury, you are not to discuss any matter in connection with this trial, and you are not to form or express any opinion upon it, until it has been finally submitted to you.

The Court will now stand adjourned until to-morrow morning, at half past 10 o'clock.

(The further trial of the case was then adjourned until Wednesday, December 7, 1910, at 10:30 o'clock.)

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Trial Resumed.

New York, December 7, 1910.

MR. SACHS: With your Honor's permission, I will hand to your Honor my list of motions, and ask your Honor to read them, and I will give a copy of them to Mr. Moss.

THE COURT: Motions denied. You may take your exception.

MR. SACHS: Very well, sir. Will your Honor permit the stenographer to place upon the record of this court the grounds of my motion, and permit me an exception to your Honor's denial to instruct as requested?

THE COURT: Yes, they may be spread upon the record at this point in the trial.

The defendant herein respectfully asks your Honor to take from the Jury the count charging the defendant with murder in the first degree on the following grounds:

FIRST.

On the ground that the testimony given by the witnesses for the People does not form so strong a chain of evidence as to include beyond all reasonable doubt every hypothesis save that of the defendant's guilt.

SECOND:

On the ground that the testimony of the witnesses Mollie Roth and Israel Roth has not been corroborated or

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sufficiently corroborated as required by the Code of Criminal Procedure.

THIRD:

On the ground that proof of death does not of itself show death as the result of criminal agency and on the further ground that the criminal agency of the defendant has not been shown or shown beyond all reasonable doubt.

FOURTH:

On the ground that there is no proof that the death of Bertha Roth was the result of the act, procurement or omission of the defendant.

FIFTH.

On the ground that the People have not proved beyond all reasonable doubt premeditation and deliberation on the part of the defendant.

SIXTH.

On the ground that the circumstances testified to, do not, taken together, point strictly, surely and unerringly in the direction of the guilt of the defendant."

OPENING FOR THE DEFENSE

-of-

M. A. SACHS, ESQ.

May it please the Court:

Mr. Foreman and gentlemen of this jury;

You remember, gentlemen, during the examination of jurors that Mr. Moss or myself oftentimes repeated the statement that you gentlemen are the judges of the facts in this case, and that his Honor is to decide the questions of law only? So I hardly feel it to be necessary, at this time, to tell you that his Honor's denial of my motions to instruct you gentlemen to acquit is not to be taken by you as any expression of his Honor's opinion as to the guilt or innocence of the defendant. He is simply fulfilling a part of his duty in this case, he is deciding a question of law, and does not want you to understand that he is deciding a question of fact that will trespass upon your province.

It becomes my duty, at this time, to tell you what the defense in this case will be, and I am almost at a loss, for the defendant at the bar knows so little as to the act which resulted in Mrs. Roth's death, that he, nor his witnesses can tell you much about it.

But he will tell you, and so will some of his witnesses, of his life.

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He will tell you how old he is, and when he came to this country. He will tell you what he did while he was here. He will tell you when he was married to his wife. He will tell you of the life that he lived with her, and the length of that life, and then he will come down to the evening of this very regrettable affair, and tell you just how much he knows about it.

He will tell you that he came home to supper, and what occurred after supper, and then of his retiring, and knowing nothing more until he found himself in the ambulance being carried to the hospital, or in the hospital.

He will deny, gentlemen, he will deny upon his oath, that he ever struck Mrs. Roth any blow that caused her death; and, in asking you to believe that denial, we shall ask you to take into consideration his life, as I said before; and if, upon the very weak case that the prosecution has presented, and upon his statement and upon the statements of his witnesses, you feel, gentlemen, not that he has proven his innocence, or not that there is a reasonable doubt of his guilt, but, taking all the facts into consideration, you feel that the People of this State have not proved the case beyond all reasonable doubt, or that the defendant has proved his innocence, although you may have a reasonable doubt as to whether he has shown it, we shall ask at your hands, as I have said

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before, a verdict of not guilty.

THE DEFENSE.

B E C K Y B R O D S K Y, a witness called on behalf
of the defense, being duly sworn, testified as follows:

THE COURT: If you care to examine this witness, Mr.
Moss, to determine what knowledge this witness has of the
English language, and as to the necessity of an interpreter,
you may do so.

MR. MOSS: No, sir. I am willing to take her as she
is.

THE COURT: Very well then, proceed, Mr. Sachs.

(The witness testified through the official
interpreter, Mr. Rosenthal.)

DIRECT EXAMINATION BY MR. SACHS:

Q Where do you live? A 683 Southern avenue,
Brooklyn.

Q Are you married, Mrs. Brodsky? A Yes, sir.

Q And you live with your husband? A Yes, sir.

Q Have you children? A Yes, sir.

Q How long have you lived in the United States of
America? A Thirteen years.

Q And you live at present in Brooklyn? A Yes, for the
last four years I have been living in Brooklyn.

Q Did you know Mrs. Roth? A Yes, sir.

Q And do you know Mr. Roth? A Yes, sir.

Q Did you ever live in the same house with them? A Yes, sir.

THE INTERPRETER: Your Honor, the witness answers the question before I can put it to her in Yiddish.

THE COURT: Yes, I notice that.

MR. SACHS: If your Honor please, she understands some English, but can't express herself, your Honor, in English.

THE COURT: Very well.

THE INTERPRETER: She says "I understand everything but I can't talk."

MR. MOSS: I am willing to let her have the assistance of an interpreter, your Honor.

BY MR. SACHS:

Q Where was it that you lived with the defendant and his wife in the same house? A 91 Cook street.

Q And how long did you live in the same house together with Mrs. Roth? A One year.

Q That is, you didn't live in the same apartment as Mr. and Mrs. Roth, did you? A No.

Q What floor did you live on? A On the ground floor.

Q And what floor did they live on? A On the fourth floor.

Q When? When was this? A About four years and a half ago.

Q Well, is it four and a half years ago since they moved,

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or you moved, or since they started to live there? A No, since we moved.

Q Now during the time that Mr. and Mrs. Roth lived on Cook street, in the same building that you did, did you often see Mrs. Roth? A Every day.

Q You had conversations with her? A Yes, sir.

Q Now Mrs. Brodsky, are you in some way related to the defendant? A He is a friend of my husband's.

Q You had conversation with Mrs. Roth; did you not?

A Yes, sir.

Q Did you ever have conversation with her in relation to her husband? A Yes..

Q Now tell us what you said to her and what she said to you?

MR. MOSS: One moment. If this matter is as remote as four years ago, I object to it.

MR. SACHS: I submit, your Honor, that we have the right to show, and can show --

THE COURT: You are not even showing when. You have shown that she lived with these people, in the same house, at least, about four years and a half before the date of the charge in the indictment, but you are not even showing by this testimony when, previous to that time mentioned in the indictment the conversation was had, if any, and the Court sustains the objection.

MR. SACHS: Exception.

BY MR. SACHS:

Q How often did you have conversations with Mrs. Roth, during the time that you lived with her at 91 Cook street?

A Often while they were living there; they used to call on me every week .

Q Well, did they live in New York before or after they lived in Cook street? A Before.

Q Did they live in New York afterwards as well ?

A Before this I lived in New York, and they lived in New York.

Q After the Roths moved from Brooklyn, or East New York, where did they move to? A They didn't move. He went to the shop, and she sold the furniture.

Q Well, after they left Cook street, do you know where they lived together? A She lived with her mother, and he lived with his mother.

Q Now did you ever see Mrs. Roth after she left Cook street? A I saw her the last time before this fight occurred.

Q And how long before did you see her, for the last time? A A couple of days.

Q And during the time you saw her, where was it? A In Rivington street.

Q Was it in a house or on the street? A No, in the street.

Q Do you know about where on Rivington street it was?

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A On the corner, near the elevator.

Q Near the elevated, you mean? A Yes, sir.

MR. MOSS: She said "the fight," and I do not understand which fight she means. There was one in September, 1909, you know, according to the testimony.

MR. SACHS: I will find out what she means.

BY MR. SACHS:

Q Now what fight do you refer to? You said you saw her on Rivington street, a few days before the fight. What fight do you refer to? A It was the time when she cut her throat.

Q Well now long before that was it, if you know? A It was in the month of July, the date I don't remember.

Q And you met Mrs. Roth on Rivington street? A Yes, sir.

Q Did you have a conversation with her? A Yes, sir.

Q Did she mention her husband in that conversation?

A Yes, sir.

Q Now tell the Court and jury what she said? A She stopped me when I was walking in the street, and I asked her, "Bertha, how are you living now with your husband?" And she said "I don't live well. I don't like him. Now, there will be an end of our life."

And I asked her, "Bertha, why should you do that?"

And she said, "I don't like him."

That is all she said. When I heard her talking about murder, then I couldn't stay there any longer, and went away.

MR. MOSS: Now, I move to strike that last remark out.

THE COURT: Yes, strike it out.

MR. SACHS: Mr. Interpreter, the witness said something else. She said something about the word "Leben". What did she say about the word "Leben"?

THE INTERPRETER: She said she didn't like the husband. She must take his life and her own life."

BY MR. SACHS:

Q Did you know, Mrs. Brodsky, that Mrs. Roth quarreled with her husband?

THE COURT: I do not think that you had better go too much into other matters than the evidence that you have already elicited. The Court does not intend to allow you to go into details in these matters. She may answer the last question.

A Yes, sir.

MR. SACHS: I shall cease there, if your Honor please. Your witness, Mr. Moss.

CROSS EXAMINATION BY MR. MOSS:

Q You knew that she quarreled with her husband; did you?

A Yes, sir.

Q Did you know that the police had to come in, when they were quarreling? A No.

Q And didn't you know that the police arrested Mr. Roth?

A Yes, I heard about it.

Q And don't you know that he was convicted for having beaten her?

MR. SACHS: I object to that, if your Honor please.

THE COURT: Yes, objection sustained.

BY MR. MOSS:

Q Well, you say that she quarreled with him. Don't you know that he quarreled with her? A Whenever he came home, he never found his supper. She was never at home.

Q Well, did he quarrel with her about that? A When he came home, and asked her why did she not prepare supper, she used to throw a plate, or a knife, or fork at him.

Q Didn't he throw a fork at her? A No.

Q Didn't he throw a fork at her and didn't it strike the little boy, Israel, in the breast, and cut him? A No, never. He loves his children.

Q How long had your husband been acquainted with the defendant? A Since he came to America. My husband has been here in America for fourteen years.

Q And your husband has been acquainted with the defendant all that time? A Yes, sir.

Q Did they work together? A No; my husband worked at cloaks, and he works at men's clothing.

Q Well, how did they become acquainted? A Since they came to America.

Q How did they meet? - What brought them together?

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A They got acquainted at a wedding.

Q And your husband and he had been friends ever since?

A Yes, sir.

Q Have you ever talked over the testimony that you were going to give with anybody? A I don't see anybody. I live now in East New York.

Q Well, with whom have you talked about this case?

A With nobody. I came myself, and I wanted to be a witness.

Q Well, who have you talked with about the case?

A With nobody.

Q Nobody at all? A No, sir.

Q Didn't you talk with the lawyer about the case?

A With the lawyer, yes.

Q That's what I was asking you. He is somebody?

A Oh, yes; with him I talked.

Q You say that your first word when you met this lady, was "Bertha how are you living with your husband?" A Yes, sir.

Q Well, why did you ask her that? A Because I knew she was always fighting with him, and when I saw her I asked her about it.

Q You say she was always fighting with him, and he never was fighting with her; is that what you say? A Never. He is a very fine man.

Q Well, when they left Cook street, she went to live with her mother; didn't she? A Yes.

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Q Why? A This I don't know. I didn't see them afterwards.

Q Wasn't it because they had trouble, and she wanted to live with her mother? A The husband came home and he found an empty house. She had sold the furniture.

Q Well, I asked you if it was because they had trouble that she left, and went to her mother. Can you answer that yes or no? A Perhaps so. But what else? She didn't care to live with him. She sold the furniture, and went to live with her mother.

Q and how long were they living apart? A Not long. She soon came and asked him to forgive her, and then they moved together again.

Q Did you hear her ask him to forgive her? A No.

Q How do you know it, then? A I heard it of tenants, that they got together again.

Q Well, how do you know that she asked the husband to forgive her? A His mother told me that.

Q That is, the defendant's mother told you that; is that so? A Yes, sir; the mother of Abraham Roth.

Q Don't you know that, after the defendant went to the Island, that Mrs. Roth pleaded with the Judge to let him out, so that they might live together again?

MR. SACHS: I submit, sir, that there is no proof that Mr. Roth went to the Island.

THE COURT: Yes. You may strike it out.

BY MR. MOSS:

Q Do you know that Mr. Roth was on the Island?

MR. SACHS: Just a moment. I object to that, if your Honor please.

THE COURT: Objection sustained.

BY MR. MOSS:

Q Do you know that, at any time Mrs. Roth, when her husband was away from her, tried to get him to live with her again? A I didn't see them any more. When I used to come to New York, I used to see his mother, and inquire about how they lived.

Q Well, your Knowledge of how they lived together, comes from the statements of his mother to you; isn't that so?

MR. SACHS: I object to that.

THE COURT: Objection overruled.

MR. SACHS: Exception.

A Yes; nothing more.

BY MR. MOSS:

Q Did she tell you why she didn't like him?

MR. SACHS: Will you show who "she" is, Mr. Moss?

BY MR. MOSS:

Q Did Mrs. Roth tell you why she didn't like Mr. Roth?

A For the last four years and a half, I haven't seen them, until the last month of July.

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Q Well then what you say is that you met Mrs. Roth, just before her throat was cut, for the first time in four and a half years?

MR. SACHS: I object to the question, on the ground that it presumes a state of facts not proven, "her throat was cut."

THE COURT: Well, the District Attorney is not saying by whom. I do not suppose --

MR. SACHS: May I submit, sir, that there is no proof that the throat was cut.

MR. MOSS: Why, the doctor's testimony is ^{to} that effect.

MR. SACHS: No, there is proof that there was a wound, but not a cut.

MR. MOSS: Oh, yes, it was a cut, according to the testimony of the doctor, and a very serious cut, too.

THE COURT: Objection overruled.

MR. SACHS: Exception.

A Yes, sir.

BY MR. MOSS:

Q Did you go over there to see her? A No, sir.

Q What were you doing over there? A I wasn't there.

Q Hadn't you ever called upon them since they lived in Rivington Street at all? A Never.

Q Didn't she come to your house to call on you in that four and a half years? A No, sir.

Q And didn't you ever call on her during that time?

A No, sir. I have small children, and I never go out of my house.

Q Well then what did you go out for, that day? A I had to look for my husband. He was in a meeting room. It was at the time of the strike.

Q Yes. Well, did you know that the Roths lived at 24 Rivington street, when you walked through the street, that day? A I knew that they lived in Rivington street, but I didn't know the number.

Q Then you were much surprised to meet her; were you?

A No, I didn't care to speak to her at all, because she was a woman that I didn't care to talk to at all, but she stopped me when I passed her.

Q Well, if you didn't care to talk to her at all, why did you say to her, "Bertha, how are you living now with your husband?" A After she had stopped me, and held onto me, and while I was standing there, I asked her this question.

Q Well, when she stopped you, and held on to you, wasn't she making complaints about her husband? A No, she didn't say anything. I only asked her, "Bertha, how are you living with your husband?", thinking of the time before how they had lived.

Q Well, wasn't she talking at all of her husband when you asked her that question? A I asked her, "Bertha, how do you live with your husband?" And she said "I don't live well."

Q I know that. But what was the first thing she said to you? A She said she didn't like him, and she will take his life and her own life.

Q Was that the very first thing she said to you? A The first thing she spoke, and I saw that she spoke as if she was drunk, and, soon after, I left her.

Q Well, if the very first thing she said to you was that she was going to take her life and her husband's life, why did you then ask her "Bertha, how are you living now with your husband?" A I asked her the question before.

Q Well, now I am asking you what she said to you, the very first thing? A These were the first words that she told me.

Q Well, she spoke to you first you said? A No, she came over and spoke and stopped me, and then I asked her the question how she lived with her husband.

Q Yes. But I am asking you what did she say when she stopped you? A She asked me where I was coming from.

Q Yes. Now tell us the whole conversation? A I told her I was looking for my husband; that's all.

Q Well what then? A That's all. After she had said that she will take her life and his life, I didn't care to listen any longer, and I left her immediately.

Q Where was your husband? A In Chrystie street, corner of Rivington street. There was the meeting.

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Q Now, when she said she didn't get along well with her husband, did she tell you what was the matter? A No.

Q Did you ask her? A No.

Q Did she say she would kill her husband? A She only said she would take her life and his life, that's all, nothing more.

Q Well, who was the first person you told that to?

A At the lawyer's.

Q And when? A I think it is about two weeks when I was called to the lawyer.

Q Two weeks from now? A Yes, sir.

Q Is Mr. Sachs the very first person you ever told that to?

A Yes, sir, I didn't see anybody except Mr. Sachs.

Q Didn't you tell Mr. Roth? A No.

Q Why didn't you? A Because I hadn't seen him.

Q He was your husband's friend? A Yes, sir.

Q And you were over on Rivington street? A But not in his house.

Q And you heard his wife say that she was going to kill him? A She said take the life; that's all she said.

Q Well why didn't you go and tell him, right away?

A I knew that every time one would speak to her, she would always talk about that.

Q Well, you hadn't seen her for four and a half years.

How did you know that? A No, I hadn't seen her.

Q Now, not having seen her for four and a half years, she tells you that she is going to kill her husband. Now I ask you again didn't you notify Mr. Roth at once? A I live in East New York and Mr. Roth lives in New York, and I very, very seldom come to New York. This is the only time I came to New York.

Q And he was your husband's friend for fourteen years?

A Well, while we were living in New York together, we used to see each other often. While we were living in Brooklyn together, we saw each other very often. But, since we lived in different places, we didn't see each other very often.

E V A F I N C K, of 24 Rivington street, a witness called on behalf of the defense, being duly sworn and examined through the same official interpreter, testified as follows:

MR. SACHS: Mr. Interpreter, will you tell Mrs. Finck to speak up, so loudly, that the last juror can hear her, even though she speaks in Yiddish?

THE WITNESS: Yes, I will.

DIRECT EXAMINATION BY MR. SACHS:

Q How long have you lived at 24 Rivington street?

A About five years; it will be soon five years.

Q And do you live there with your husband? A Yes, sir, my husband.

Q How long have you been married, Mrs. Finck? A Twelve

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years.

Q Have you children? A No.

Q On what floor do you live at 24 Rivington street?

A Second floor, back.

Q And have you any connection with that building? A I do everything there that is necessary, cleaning and so on.

Q Well, what are you, so far as the -- A I am the janitor.

Q You are the janitress, you mean? A Yes, sir.

Q And how long have you been the janitress of the building?

A About five years I have been there as janitress.

Q Did you know there Mrs. Roth? A Yes, sir.

Q Do you know Mr. Roth? A Yes, I know him.

Q And how long have you known Mr. and Mrs. Roth?

A As long as I have lived in the house, a year and a half.

Q Do you remember the 27th day of July 1910?

A I remember it was in July; the day exactly I don't remember.

Q Well, do you remember Mrs. Roth's death? A Yes, sir.

Q Yes. Was that during the night, or early morning, or during the daytime? A It was after one o'clock; about two o'clock in the nighttime.

Q Do you remember the day before that? A Yes, sir.

Q Did you see Mrs. Roth, that day? A Yes, sir.

Q Where did you see her? A I saw her downstairs in the house.

Q And on what floor did you see Mrs. Roth? A On the

second floor.

Q Did you see what Mrs. Roth was doing there? A She was in my house, and, when she left my house, she went into the hall.

Q Did you see what she did while in the hall?

MR. MOSS: Yes or no to that.

A No, in the hall I didn't see anything that she did.

BY MR. SACHS:

Q At the time that you saw Mrs. Roth in the hall, did you see any other persons there? A I only know that, when she left me, she went towards the front, and had a fight with a woman there.

MR. MOSS: Now, I move to strike that out.

THE COURT: Strike it out.

BY MR. SACHS:

Q After she left your apartment, did you close your door?

A Yes, sir.

Q Did you hear Mrs. Roth speak at any time during the year and a half that you lived at 24 Rivington street? A She had a very bad habit in talking. She used to go around everywhere --

MR. MOSS: Wait. One moment. I move to strike that out.

THE COURT: Strike it out.

BY MR. SACHS:

Q Did you or did you now know Mrs. Roth's voice? A Yes,

sir.

Q After you closed your door, when she had been in your apartment, did you hear Mrs. Roth's voice? A Yes, sir.

Q And did you hear the voice of any other person?

A Yes, sir.

Q Who was the other person's voice you heard? A Mrs. Hirsch.

Q And did you hear what was said by Mrs. Hirsch to Mrs. Roth, or by Mrs. Roth to Mrs. Hirsch?

MR. MOSS: That I object to, unless it refers to the defendant.

THE COURT: Objection sustained.

Q Was Mr. Roth there at the time? A Yes, sir.

Q What occurred there then? Tell us that, what was said there?

MR. MOSS: I object to that, unless it refers to the defendant.

MR. SACHS: If your Honor desires me to express the reason for asking the question, I will. Would your Honor like to hear me?

THE COURT: The witness has already indicated that he is about to say something that is incompetent.

MR. SACHS: But we want to show, if your Honor please, the temperament and condition of Mrs. Roth at the time, and we submit, sir, that we have a right to show what

occurred then.

THE COURT: Objection sustained. You may have your exception.

MR. SACHS: Exception.

BY MR. SACHS:

Q You say that Mr. Roth was present at the time?

A Yes, sir.

Q Was Mr. Roth with Mrs. Roth when she came to your apartment? A Yes, sir.

Q Did they come in together, both of them? A Yes, together.

Q Now did you know any other persons who knew Mrs. Roth, or do you know? A Yes, I know them.

Q Do you know Mrs. Roth's reputation for bad temper and quarrelsomeness?

MR. MOSS: That I object to, unless the defense is self defense.

THE COURT: Yes.

MR. SACHS: I respectfully submit, if your Honor please that, as intimated by my defense, that we may prove that the crime was committed by Mrs. Roth, that we have the right to show her reputation and her threats; we have a right to show that, if your Honor please, I claim.

THE COURT: If the defense is self defense, yes; otherwise, no.

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MR. SACHS: We except.

BY MR. SACHS:

Q Mrs. Finck, did you ever serve, or cause to be served, on Mrs. Roth, a dispossess notice?

MR. MOSS: I object to that.

THE COURT: Objection sustained.

MR. SACHS: Exception. And now, for the purposes of the record, if your Honor please, I will ask another question.

THE COURT: Yes, you may.

BY MR. SACHS:

Q For what reason was the dispossess notice served on Mrs. Roth?

MR. MOSS: Objected to.

THE COURT: Sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Now, just one more question -- which may be a little leading, Mr. Moss -- did you ever hear Mrs. Roth threaten to kill her husband? A I heard her say often that she would take her life, and take the lives of her children.

Q Did you ever hear her say that she would take her husband's life? A This I didn't hear.

MR. MOSS: May I ask, for the purposes of the record, to what Yiddish word, Mr. Interpreter, did you use the witness

in translating the question of counsel, regarding the words
"to kill?"

THE INTERPRETER: I used several words, and "to take
the life," et cetera, et cetera.

MR. ROES: For the word "kill", did you use the word
"hardenen"?

THE INTERPRETER: Yes. And also I used the words
"to take the life."

MR. ROES: Now, was that their literal language to
use?

THE INTERPRETER: Yes, sir.

MR. ROES: Now, I want to ask you a question.

Q Did Mrs. Rush ever tell you why she would take her
husband's life? A She said that she would take her life because she
didn't love her husband, and she didn't know how to get rid of
him.

Q Now, did she tell you that her husband treated her bad-
ly? A She said she talked so much that many things I
didn't understand all that she said.

Q Did she ever tell you that her husband treated her bad-
ly? A Yes, she said so. But I saw by my
eyes that she said that she could not be so.

Q Well, did she say so? A She said the husband is bad,
and he didn't like the children. But I saw different.

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MR. MOSS: I move to strike that out, as irresponsible.

THE COURT: Motion granted.

MR. SACHS: Exception.

THE COURT: And the same motion or request might have been made as to several of the last answers.

BY MR. MOSS:

Q Did she ever tell you that her husband struck her?

A No, she didn't say that to me.

Q Didn't she ever tell you that her husband struck her, and made her eyes black, and hurt her side? A At that time I didn't talk to her any more, for quite some time.

Q You were not speaking with her then; were you? A No, not speaking.

Q Well, why do you say "at that time"? What time do you mean? A I don't remember the time. There was a fight, quite some time ago. I don't remember the time, and at that time I didn't speak to her.

Q Well, what was that fight? What are you speaking of?

MR. SACHS: I object, unless it is definitely said as to when the fight was.

MR. MOSS: Well, I am trying to find out.

MR. SACHS: Well, I object to what the fight was about, unless the relevancy to this case is shown.

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THE COURT: Objection overruled.

MR. SACHS: Exception.

A There were fights all the time. I didn't go up there any more on account of the fights.

BY MR. MOSS:

Q Well, I am asking you whether she didn't speak to you about a black eye and an injured side? A I didn't speak to her. Another woman in the house told me I shouldn't speak to her, because --

MR. MOSS: Now, never mind that. I move to strike that out.

THE COURT: Yes, strike out about the other woman in the house.

BY MR. MOSS:

Q Well, you told me that, at that time, you were not speaking to her. Was that at the time of a fight? Is that what you mean? A No, not just then, but quite some time before that, I didn't speak to her.

Q How long were you not speaking with Mrs. Roth? A I think about eight months.

Q Well, then, how did she come to tell you that she was going to take her husband's life, and take the lives of her children? A That was before, when she came to me to take the rooms. She came without her husband, she came alone.

Q But how long ago was that? A You mean when she came

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to mefor the rooms?

Q No, when she first told you that she would take her husband's life? A This I heard several times after she had lived in the house four or five months.

Q I asked you the first time. When did you first hear it? A That was the time that the husband came, and wanted to live with her, and she didn't want to accept him, and I had persuaded her to take him back, because he was a good man. She said, "I will rather take my own life, and the lives of my children, before I will go to live with that man again."

Q Yes. Now how long ago was that? A The rooms in the house she took about this time of the year, or, rather, one month later than at this time of the year, and all the time she used to come to my house.

MR. SACHS: But she said something else, Mr. Interpreter.

THE INTERPRETER: She said, "Up until the Hebrew Passover., she used to come to my house, and talk to me."

BY MR. SACHS:

Q Now, then, you have told us the first time she said that she would rather take her life and the lives of her children than live with that man again. ^{when} Now/was the next time she mentioned the subject? A She said that several times. Whenever I tried to persuade her to live with her husband, and make no trouble, she always answered me this about taking her life,

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rather than live with him.

Q Well, was that while her husband was not living with her? A It was at the time when her husband was not with her.

Q Well then, the husband did come to live with her; didn't he? A Yes, sir.

Q Did you ever hear her say that, after the husband came to live with her? A I can't remember exactly the time when I became bad friends with her, and didn't talk to her any more.

Q Well, now, think of the question. I put it to you again. After the husband came to live with her, did she ever say that to you again? A I don't remember that.

Q And then it was that you didn't talk with her any more; is that so? A Yes; quite some time I didn't speak to her at all.

Q Well, had you talked with the lawyer about this case? A Yes, sir.

Q And did you tell him about these things that Mrs. Roth said? A Not everything.

Q Well, did you tell him what you have told us about what Mrs. Roth said? A Not as much as I have told here.

Q Not as much as you have told here? A No, sir.

Q Who else did you ever tell that to? That Mrs. Roth said she would take her own life, and the lives of her children?

A I didn't tell that to anybody. But everybody around there

knows that, and others told me about that.

MR. MOSS: I move to strike that out.

THE COURT: Yes, strike out all after the words

"I didn't tell that to anybody." Strike out the rest of the answer.

BY MR. MOSS:

Q Why didn't you tell that to Mr. Roth? A I didn't care to speak to him, because I noticed that he was very careful not to talk to any women when she could happen to see it.

RE-DIRECT EXAMINATION BY MR. SACHS:

Q Mrs. Finck, did Mrs. Roth ever tell you why she didn't want to live with her husband? A She spoke very much, and it isn't very nice to tell those things.

Q Well, you have got to tell them. You must tell us why she said. Tell us what she said? A I can't speak out such things.

Q Can't you tell us why she didn't wish to live with her husband? as stated to you by her? A No.

Q You know why, Mrs. Finck?

MR. MOSS: I object to that.

THE COURT: She may answer, yes or no.

A She told me that.

BY MR. SACHS:

Q Now, tell the Court and jury why it was that she didn't

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wish to live with him, as stated to you by her?

THE COURT: No, not why, but the why that she stated to this witness, if any.

A She said she didn't need a man; she was a cold woman.

Q Mrs. Finck, who brought you to my office? A Mr. Roth's sister-in-law.

Q Do you know other people -- do you know Mr. Roth?

A Yes, sir.

Q Do you know other people who know him? A Yes, sir, I know him.

Q What is his reputation for peace and quietness? A I didn't hear a bad word about him.

RE-CROSS EXAMINATION BY MR. MOSS:

Q How many children had Mrs. Roth? A Five.

Q Did Mrs. Roth ever tell you that one of the reasons why she didn't want to live with Mr. Roth was because he beat her?

A She spoke much. She gave other reasons, too.

Q Did she give those reasons? Now why don't you answer the question? A Yes, she told me that, too.

BY MR. SAGES:

Q Well, what are the other reasons given by Mrs. Roth not wishing to live with her husband?

THE COURT: I think we have gone far enough into that.

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MR. SACHS: Very well. The question is withdrawn, your Honor. That's all, Mrs. Binck.

A R I E L E M E L, of 24 Rivington street, a witness called on behalf of the defense, being duly sworn and examined, through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Mr. Lemel, are you married? A Yes, sir.

Q And where do you live? A 24 Rivington street.

Q How long have you lived there? A It is the fourth year.

Q And are you in business? A Yes, sir.

Q What business are you in? A Bakery.

Q And where do you keep your place, where is your place of business? A In the same place, 24 Rivington street.

Q You have your business there and live there? A Yes, sir.

Q Do you know the defendant, Abraham Roth? A Yes, sir.

Q Did you know his wife? A Yes, sir.

Q How long did you know Mrs. Roth? A About a year and a half, I think.

Q And how long did you know Mr. Roth? A Also the same time. Her I knew before him, because she moved in alone, and he came afterwards.

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Q During the year and a half or so that you knew Mr. Roth, did you notice his conduct, and his mode of life?

MR. MOSS: One moment. The question called for yes or no. I object to anything more than that coming from the witness.

THE COURT: Yes.

A In the beginning, he wasn't there. She was there alone.

BY MR. SACHS:

Q I am talking of the time that he lived at 24 Rivington street, Mr. Lemel? A You mean when they lived together already?

Q Why, yes, of course? A Sure, yes.

Q And what was his manner of life? Was it quiet and orderly?

MR. MOSS: That I object to.

THE COURT: Objection sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Do you know other persons who know Mr. Roth? A Yes, sir; people in that house.

Q Do you know his reputation for quietness and peaceableness and orderliness? Yes or no? A Yes.

Q Is it good or bad?

THE COURT: Tell him to answer that question without any further talk, yes or no?

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A I knew his name is good.

THE COURT: That is not an answer to the question at all.

(The question is repeated by the stenographer).

A Yes, his reputation is good.

BY MR. SACHS:

Q You knew Mrs. Roth; did you? A Yes, sir.

Q Do you remember the night of her death? A Yes, sir.

Q Did you see her the day before her death? A Yes, sir; the day before I did.

Q Well you don't mean the day before the night that Mrs. Roth died, but the day before that? A Yes, sir, a day before that day, while she was sitting outside.

Q Did you have a conversation with her? A Not with her, but with him, I spoke.

Q And was she present? A She was sitting about four chairs away from me, outside.

Q When was the last time that you spoke to Mrs. Roth? A The thing happened on Wednesday night, and I spoke to her on Monday night.

Q What was the subject of your conversation? A I was sitting there with Mr. Roth. Mr. Roth said --

THE COURT: No, that is not the question. What was the subject of the conversation? That was the question.

BY MR. SACHS:

Q No, what was the subject of the conversation between

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you and Mrs. Roth? A I want to come to that.

Q No, never mind about the other parts. Tell me what she said to you, and what you said to her? A I asked her, "What's the matter? Why don't you like your husband?"

Q What did she say? A She said, "Before one lives with such a man, it is better to ~~am~~ die.

Q Did she say why? A She said she didn't like him.

Q Do you know people, other people who knew Mrs. Roth?

A The housekeeper, Mrs. Hirsch and Mr. Polansky, the man that has the bologna store there.

Q Now -- don't answer this question until the Court rules upon it -- now do you know Mrs. Roth's reputation as a quarrelsome woman?

MR. MOSS: Objected to.

THE COURT: Sustained.

MR. SAGNER: Exception.

BY MR. SVETIS:

Q Just one more question. Who brought you to my office? A I went there myself.

Q Well, did you come with any one? A No.

CROSS EXAMINATION BY MR. MOSS:

Q Did Mrs. Roth say why she didn't like her husband?

A She told me the whole story, from the beginning of her life up to that time.

Q Did she say why she didn't like him? A Yes.

Q What did she say? A She said she didn't want to marry him at all.

Q Did she say that he beat her? A No, she never said it.

Q Didn't she ever say so? A No, no.

Q Didn't you ever know that he ^{did} beat her? A I asked her, "Is it because he beats you that you don't like him?" And she said, "What? He would beat me? It would have been very bad with me, if I would have to be afraid of him beating me."

Q Why, didn't you know that she had complained to the Court about his beating her? A Yes.

Q And didn't you see her black eye? A Yes, it was covered with blood; what it was I don't know.

Q Yes. And didn't you know that he went to the Island for it? A Yes.

RE-DIRECT EXAMINATION BY MR. SACHS:

Q Now tell us what else Mrs. Roth said about her married life, from its beginning?

MR. MOSS: Pardon me. The only matter that is admissible, I think, now, is that one conversation. I perhaps opened the door for that.

THE COURT: Yes; I will not allow either side to go into details here.

BY MR. SACHS:

Q Tell us what Mrs. Roth said to you, and what you said to Mrs. Roth, during the time, during the conversation that you had with her, when she told you about her whole married life?

MR. MOSS: No, I object to that. I don't object to the whole conversation that was had on the Monday before the killing.

MR. SACHS: I am referring to what was said by Mrs. Roth --

THE COURT: Yes, you had better confine your questions to that period, Mr. Sachs.

MR. SACHS: I am trying to get the witness to tell us what Mrs. Roth said in the conversation that Mr. Moss questioned him about.

MR. MOSS: And I have no objection to that entire conversation being brought out, every word of it, the conversation on the Monday before she died.

MR. SACHS: Yes, that's what I want.

BY MR. SACHS:

Q Now tell us everything that she said in that conversa-

tion? A You don't let me tell you. She used to bake her bread in my oven.

MR. MOSS: I object to that, and move to strike it out.

THE COURT: Motion granted.

BY MR. SACHS:

Q I want the conversation that you had with her, not that she used to bake bread with you.

THE COURT: The Court is satisfied that you should lead, in order to avoid incompetent and immaterial testimony, and to save the time of the Court; you may lead, if you care to.

BY MR. SACHS:

Q Well, what did Mrs. Roth say to you about her life with her husband? Never mind the bread.

MR. MOSS: In that conversation?

MR. SACHS: In that conversation, yes.

A She said she didn't like him; she would rather die than live with such a man.

BY MR. SACHS:

Q Did she say why she didn't like him, in that conversation? A Absolutely she didn't like him, she said.

Q Well, did she say that she didn't like him because he didn't treat her right? A She couldn't say --

THE COURT: No, no answer of that character. You

may answer that question.

MR. SACHS: Yes, I want an answer to that question.

Q (Question repeated by the stenographer) A She only said that she didn't like him, and she would rather die than live with him.

BY MR. SACHS:

Q Did she say why? I am asking you a simple question. Did she say why she didn't like him? A No, she didn't.

MR. SACHS: That is all.

MR. MOSS: That is all.

NETTIE HIRSCH, of 23 Rivington street, a witness called on behalf of the defense, being duly sworn and examined through the same interpreter, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Are you married, Mrs. Hirsch? A Yes, sir.

Q And do you live with your husband? A Yes, sir.

Q Where do you live at the present time? A Now, I live at 23 Rivington street, but I lived before in 24.

Q When did you live at No. 24 Rivington street? A I don't remember.

Q Well, was it more than a year ago? A No.

Q Well, about how long? Six months ago? A After that case -- that happened on Wednesday -- and, on the following

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Friday, I moved out.

Q Did you know Mrs. Roth? A Yes, sir.

Q Did you know Mr. Roth? A Yes, sir.

Q Did you see Mrs. Roth the day before the night she died? A Yes, sir.

Q Did you have any conversation with her? A Yes, sir.

Q What was that conversation?

MR. MOSS: One moment. I object to the conversation, unless it relates to the defendant.

THE COURT: Yes.

MR. SACHS: I again submit that we have the right to show Mrs. Roth's actions, that day, and her disposition and her conduct, in order to show the state of mind that she was in.

THE COURT: Objection sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Did you have a conversation with Mrs. Roth, the day before that? A No; that day.

Q Did Mrs. Roth at any time, and, if so, state when, say anything to you about her husband? A She used to talk about him all the time, and, when I was on good terms with her she spoke to me about it.

Q Now what did she say about her husband? A She always used to say that she was tired of her life.

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Q Did she say why? A She said because she was tired of life, and she would kill herself and the children with gas.

Q Well, did she say that that was because her husband treated her unkindly? A Yes.

Q Did you ever hear her quarrel with her husband?

A Every night it was. Not every night, but often in the night time I used to hear the noise there, beating around with something, the knocking.

Q Did you live underneath Mrs. Roth? A Yes, sir.

Q Did you ever see Mrs. Roth strike her husband?

A Yes, sir.

Q Whereabouts was that when you saw it? A It was in the house of a tenant; not in her own house.

Q Did you ever hear her cursing him or threatening his life? A Yes, I did hear.

Q Did you ever hear her cursing him? A Yes, sir. When she was beating him, she was cursing him.

CROSS EXAMINATION BY MR. MOSS:

Q When did you see her beat her husband? A This was late at night. It was either between 10 and 11, or between 11 and 12.

Q Yes, I know, but what night? A This I don't remember, but I know it happened in the night time.

Q Well, but how long before she died? A This was about

seven or eight months before she died.

Q Did he strike her back? A No.

Q How long were you out of speaking terms with Mrs. Roth? A About seven or eight months. I don't know exactly the time; about that.

Q Seven or eight months before she died? A Yes, sir/

RE-DIRECT EXAMINATION BY MR. SACHS:

Q Did you at any time during the last seven months before Mrs. Roth's death, did you hear her curse him? A No, I never went into their house.

Q Well, but did you ever hear her curse him on the street or in the hall? A In the hall, yes.

Q Well, in the hall? A I heard it, that night when there was a scandal there, and they were having a fight there.

THE COURT: I would advise the attorney not to proceed very far in that direction. It is not so much a question as to what might have happened to this defendant, as it is as to what did happen to the deceased.

MR. SACHS: Very well, sir. That's all.

MR. MOSS: That is all.

J A C O B R U B I N, of 279 Belmont avenue, Newark, New Jersey, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q What is your full name, sir? A Jacob Rubin.

Q And you know the defendant at the bar? A Yes, sir.

Q Are you a relative of his? A Yes, sir.

Q Did you know his wife? A Yes, sir.

Q Do you know what day she died, the date? A I can't place the exact date.

Q Speak up loudly, so that the last gentleman can hear you. A I can't place the date.

Q What is your business? A Cutter.

Q During the months of June and July, 1910, were you employed? A Yes, sir.

Q Where? A Leventhal & Spiegel, 17th street.

Q When did you start working for them? A Four years ago.

Q And did you work steadily all the time? A Until the strike.

Q Well, if you worked until the strike, you didn't work steadily; did you? A I worked steadily until the strike.

Q Well, about when did the strike occur? A The 10th of July; something like that; I don't remember the exact date. In the beginning of July.

Q Well, what strike do you mean? A The cloak and suit strike.

Q And are you a member of the Union? A Yes, sir.

Q And the Union struck? A Yes, sir.

Q And, as the result of that, you stopped working?

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A Yes, sir.

Q And that was when? A I don't remember the exact date. After the 4th, a couple of days after the 4th of July.

Q Did you, during the month of July, and after you had stopped working, call at the home of Mr. and Mrs. Roth?

A Yes, sir.

Q And what time did you get there? A Noon time; about one o'clock.

Q Where did you come from to Mr. Roth's house? A I was down at the Union, 45 Chrystie street.

Q And did you go from the Union headquarters to the house of the defendant? A Yes, sir.

Q And you knew Mrs. Roth? A Yes, sir.

Q And you are a relative of her husband's? A Yes.

Q Did you go up, on that day, to her rooms? A Yes, sir.

Q Did you see Mr. Roth there? A No, sir.

Q Did you see Mrs. Roth? A Yes, sir.

Q Did you have a conversation with Mrs. Roth in relation to her husband?

MR. MOSS: Can't you locate that better, as to the date?

MR. SACHS: I will try to.

BY MR. SACHS:

Q Can you tell us about when that was, or on what day it was, when you went to Mr. Roth's place? A I could, if I knew the exact date of the strike.

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Q Well, how many days after the strike? A I should judge about a week or ten days.

Q And you say the strike occurred on the 10th of July?

A No, sir, I am not positive. But it was after the 4th, because I know I had to get paid for the 4th of July.

Q Then you went there when? A After the 11th, I think; I am not sure of that.

Q Now did you have a conversation with Mrs. Roth in relation to her husband? A Well, I didn't go up there to have a conversation.

Q I didn't ask that. (Question repeated) A Yes.

Q Well why did you go up there? A Well, my duty was to go down to the Union. I lived in New Jersey, and I was supposed to come over, once a week.

MR. MOSS: I object to the why.

THE COURT: Sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Well you went there, once a week, to the Union?

A Yes, sir.

Q Never mind why you went there. And did you go from there to Mrs. Roth's place? A Yes, sir.

Q And you saw her and spoke to her? A Yes, sir.

Q And was her husband mentioned in the conversation?

A Yes, sir.

Q Now tell me what Mrs. Roth said to you, and what you you said to Mrs. Roth, respecting her husband, about her husband? A Well, I went up there and had lunch. I had lunch along with me.

THE COURT: Now tell the jury just what your answer is to that question. We want no history of the matter at all.

BY MR. SACHS:

Q It isn't necessary to tell us why you went there. We just want the conversation? A Well, I said, "Bertha, I am coming up here to have lunch --" I had my lunch in my pocket --and she said "All right. Sit down."

She was drinking a pint of beer, and she said, "You can have a drink of it, if you want," and I said, "No, I don't want any. There are always arguments with Abe about drinking beer. Why don't you stop drinking beer?" And ~~she~~ she said, "He can't boss me. I am boss in this house. If he starts with me to boss me, I will kill him and end my life..."

Q And is that all the conversation? A That's all the conversation.

Q And did you leave shortly after that? A I was only there ten or fifteen minutes.

CROSS EXAMINATION BY MR. MOSS:

Q When did you tell that to Mr. Sachs? A When I told what to Mr. Sachs?

Q When you told what you have just told us, When did you tell that to Mr. Sachs? A When I was called for a witness.

Q Just now? A No, sir.

Q When? A Four weeks.

Q Four weeks ago? A Yes; maybe more; when he first called the witnesses.

Q And was he the first one you told that to? A The first one I told it to?

Q Don't repeat my questions. Answer them. A I told it to my father, and I told it to some others, but after the thing happened.

Q No, no. I am not speaking of after the thing happened. You had this conversation with Mrs. Roth, shortly after the 10th or 11th of July? A Yes, sir; and it might have been the 11th.

Q Who did you first speak to about it? A My father.

Q And when did you tell him? A After the thing happened.

Q After the killing? A Yes, sir.

Q And what is your relation to the defendant? A Well now, his father and my grandmother are sisters and brothers. He is a second cousin of mine.

Q Yes. You are very well acquainted with him? A Very well, sir.

Q Enough to go up to his house, and take lunch? A Yes, sir.

Q You didn't tell him then? A I didn't see him.

Q You didn't see him? A No, sir.

Q You didn't think it was important? A I didn't see him.

Q You didn't think it was important to find him? A I wasn't in New York; I was in Newark.

Q I know, but you didn't write to him about it, did you?
A No, sir.

Q And you didn't tell him about it? A No, sir.

Q Either by word of mouth or writing? A No, sir.

Q You didn't think it important enough to tell him?

A No, sir, because I thought she was in the habit of talking when she was drunk.

Q She said she would kill him? A Yes, sir.

Q What words did she use, in Yiddish? A Well, she spoke English and Jewish.

Q Well what word did she use for the word "kill"?

A She says (The witness speaks in Yiddish.)

Q Well, what does that mean literally? A "I will take your life and my life."

MR. SACHS: No, it doesn't mean that.

MR. MOSS: Oh, one moment. I will find that out.

THE WITNESS: Well, I am born here in America, and I don't speak Jewish well enough to tell you what it means.

MR. SACHS I suggest that the interpreter tell us

what that means,

MR. VOSS: All right. He may repeat that answer to the interpreter, what he said in that answer.

THE INTERPRETER: She said, "I am the boss of the house. You can't boss me here. If you will start to boss me, then I will take his life, and then I'll take my life. My life isn't worth anything to me. I don't care anything for it."

BY MR. VOSS:

Q That is, she said if he would start to boss her, she would take his life and her own? A No, I didn't say if he would start to boss her. She said, "He has nothing to do here. I am the boss."

Q Didn't you say, "And, if he starts to boss, I will take his life?" A No, I didn't say that; not if he starts to boss.

Q Well now will you please repeat it again? Now you said that some of it was in English and some of it was in Jewish?

A No; I said she spoke English and Jewish.

Q Well, was this all in Jewish? A I can't remember the exact words.

Q You can't? A No sir; I can tell you the exact words that she said.

Q What were they? A She said, "I will take his life and my life. My life is worth nothing to me."

Q Well, now what did she say that preceded that? A She

said, "I boss in this house. He can't boss me." I was talking about the beer --

Q No. Wait a minute. He said, "I am boss in this house; he can't boss me?" A Yes, sir.

Q Now what next did she say, immediately after that?

A She said, "I am boss here, and, if he bosses me, I'll take his life, I will kill him, and take my life."

Q Well, did she say? "I will kill him", or "I will take his life?" A I can't say which.

Q Well, did that make any impression on your mind, that his life was in danger? A Well, I thought --

Q Did it? Yes or no? A No, sir; because, if it made a real impression on me, I would have made it my business to go and tell him.

MORRIS SINGER, of 319 East 8th street, a witness called on behalf of the defense, being duly sworn, and examined through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Mr. Singer, do you know this defendant, Mr. Roth?

A Yes, sir.

Q Did you know Mrs. Roth? A Yes, sir.

Q How long do you know Mr. Roth? A I have known him for about three years.

Q And how long did you know Mrs. Roth? A About two years.

Q Do you remember or do you know upon what day it was that Mrs. Roth died? A I read it in the papers.

Q Well, but do you know about when it was? A No.

Q Do you know what month it was in? A I know according to the papers it was in July.

Q Did you see Mrs. Roth at any time before her death? A Yes, sir.

Q And when was the last time that you saw her? A I can't know that.

Q Well, was it more than a month before her death, or two months before her death? A I can't remember that.

Q Well was it a year before her death? A Yes, a year.

Q Well, was it a year or more than a year, or less than a year? A Whether more or less, I can't tell, because I spoke to her alone.

Q When was it that you saw Mrs. Roth? A In the street.

Q And where in the street? A In Essex street.

Q Did you, in your conversation with Mrs. Roth, say anything about her husband? A She spoke to me.

Q What did she say about her husband?

MR. BOSS: Wait a moment. Isn't this rather remote and indefinite, a year or more?

THE COURT: Yes. If you wish to direct the witness's attention to the charge against this man, that would be the

death of this man's wife. Of course, while the wound inflicted upon him may have been, and probably was, part of the same transaction, nevertheless, the charge here results from the death of this man's wife, and you may direct the witness's attention to that, and ask him any questions you care to and the court will consider it competent and relevant.

MR. SACHS: It is our desire, and we will show to your Honor --

THE COURT: No, you will show as the court has directed you, or not at all.

MR. SACHS: Will your Honor give me that direction again?

THE COURT: You will proceed with regard to whatever design the wife had, or may have had upon her own life. That may be a competent question here, because that is an issue here. The issue here is the charge that the defendant killed his wife. Now, that is the first thing towards which this man's attention should be directed. Your defense appears to be now that you took her own life. Then your first question and the important and relevant question, should be directed towards any design that you claim she had upon your own life, not upon his.

MR. SACHS: I thank your Honor.

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BY MR. SACHS:

Q Did Mrs. Roth at the time you had your conversation with her say anything to you about taking her life?

THE COURT: I should imagine that that question is faulty, because of its leading character. You may ask for the conversation.

MR. SACHS: Your Honor sees the witnesses I have to deal with, the character of the witnesses; that they are not very intellectual.

THE COURT: Under the circumstances, if your Honor please, I shall not object to the question on that ground.

THE COURT: You may direct his attention to the conversation which was had, and, if the only conversation was about the husband, the Court will strike that out.

BY MR. SACHS:

Q Did Mrs. Roth, in her conversation with you, say anything about her own life? A Yes, sir.

Q What was it she said? A She said she couldn't live with him, and I told her if she didn't care to live with him, according to the Jewish religion, she could get a divorce. She said she didn't care for a divorce, but rather death. She didn't care to part with him, alive, but rather dead.

Q Is that the only conversation that you ever had with Mrs. Roth when she spoke about her own life? A I spoke to her

several times, but at that time she told me what I said here.

CROSS-EXAMINATION: None.

MR. SACHS: Might I ask your Honor to take the recess now until a quarter of two o'clock? It is the hour, any way, it is one hour.

THE COURT: I know, but what is the important reason for adjourning at this hour?

MR. SACHS: The condition of my health, just now.

THE COURT: You have other witnesses?

MR. SACHS: Yes, sir, I have other witnesses.

THE COURT: Then you had better call them, Mr. Sachs.

MR. SACHS: Very well, sir.

ERNEST P. ROSE, of 319 8th street, a witness called on behalf of the defense, being duly sworn and examined through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Mrs. Roth, what is your husband's name? A Harry Roth.

Q And do you know the defendant? A Yes, sir.

Q Are you related to him in any way? A He is my brother-in-law.

Q Now, where do you live, Mrs. Roth? A 319 8th street.

Q And you knew Mrs. Roth? A Sure.

Q How long did you know her? A Since I have been here, about ten years.

Q Do you remember the last time you saw her? A Yes; but I don't remember when.

Q Do you remember the night that she died? A I remember it was on a Thursday night, but I don't know when it was.

Q Do you remember when it was that you saw Mrs. Roth for the last time, before her death? A It was after the Hebrew Easter. I saw her in the street, with the baby.

Q Do you know when the Hebrew Easter was, what month? A I don't know that.

Q Well, how long a time elapsed between the Passover holidays and the month of July; do you know that? A I don't know that; but I know when I saw her it was three or four weeks after Passover.

Q During the past two or three years, Mrs. Roth, how often had you seen your brother-in-law's wife? A Perhaps twice a year; I don't remember exactly.

Q Why was it that you saw her so seldom?

MR. BOSS: I object to that.

THE COURT: Sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Did Mrs. Roth at any time that you saw her, within

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the past year or so, say anything to you about taking her own life?

MR. MOSS: I object to that, unless the time is made more definite.

THE COURT: Sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Now, try to fix for us as nearly as you can, or as best you can, just when it was you saw Mrs. Roth for the last two or three times? A The last time I saw her it was three or four weeks after the Hebrew Passover.

Q Now wasn't the Hebrew Passover, this year, during the month of April?

MR. MOSS: Let the interpreter tell us.

THE INTERPRETER: The Hebrew Passover, this year, was from April 24th to April 30th.

MR. MOSS: I accept that statement.

BY MR. SACHS:

Q Now you say that you saw her two or three, or three or four weeks after Passover? A Yes, sir.

Q Well, that was during the month of May? A I think it was in May. I don't know for sure.

Q At that time did Mrs. Roth say anything to you about taking her life?

THE COURT: No. You asked her if she said anything

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to the witness about herself, and then that question will not be leading.

BY MR. SACHS:

Q Did Mrs. Roth at that time say anything to you about herself? A Yes. I want to tell you.

Q Well, tell us then? A When I met her, we said said hello, and I asked her, "Bertha, how are you living now with your husband?" "Are you all right now?" And she said, "He had a suit of clothes made for me, but I don't care, I don't care to live with him, and I wouldn't live very long with him." I told her, "Why should you do that? It's about time that you should start in to lead a good life with one another," and she said "No, no, you can't persuade me to do that. I can't live with him."

BY MR. SACHS:

Q Go on. State what else the witness said. She said something in addition to that.

THE INTERPRETER: I did not catch that. I will ask her to repeat it.

MR. SACHS: Very well.

THE INTERPRETER: "She said she disliked him, she didn't want him, she wouldn't live with him."

BY MR. SACHS:

Q Now, do you remember if, in the conversation you had with her before this last one, she said anything to you about

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herself? Yes or no? A She used to speak about it every time when I saw her.

Q Now, tell us what the conversation was at that time?

MR. MOSS: Well, when was this, Mr. Sachs?

BY MR. SACHS:

Q When was it? Fix the time as nearly as you can?

A It was before the Hebrew Passover.

Q Do you know how long before? A It was sometime before Purim.

Q Well when was that?

THE INTERPRETER: Four weeks before Passover, March 25th.

MR. MOSS: And now ask her how long before that it was.

BY MR. SACHS:

Q How long was that before Purim? A I can't remember.

Q Was it a month, or two months, or less than a month?

A I don't remember.

Q Well, what did she say? A She used to tell me all the time the same thing, and I told her, "Bertha, stop drinking, and you wouldn't be so nervous, and then you will live a good life with him, but this is why you are always having trouble with one another." She said that she couldn't stop it; she had to drink.

Q Did she, at any time during those conversations, make

any threat to you regarding her husband's life?

MR. MOSS: I object to that.

THE COURT: Objection sustained.

MR. SACHS: Exception. I asked the question, believing that I was following your Honor's ruling.

THE COURT: It ought to be possible to get whatever there was in that conversation, without asking her directly a leading question.

BY MR. SACHS:

Q Tell us what she said, if anything, regarding her husband?

MR. MOSS: When was this, Mr. Sachs? Fix the time, please.

MR. SACHS: Yes, I will fix the time, Mr. Moss.

BY MR. SACHS:

Q (Question continued) Regarding her husband, during the last conversation she had with you, or the conversation before the last? A The first time, she said the same as the second time, and all the time she used to say the same thing.

BY THE COURT:

Q What same thing? A She couldn't live with him and she didn't like him, and I requested her --

Q No, it is not what you said to her, but it is what she said to you? A The first time, I asked her to stop drinking, and she said, "I can't stop drinking. I'm a woman, and I

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am nervous, and I have to drink." The second time, she told me the same thing, that she couldn't live with him. She said, "I don't like him, and I don't want to live with him, and nobody can force me to do so."

THE COURT: You may ask her if she told her anything about her intentions regarding herself.

BY MR. GAGHS:

Q Did Mrs. Roth say anything to you in regard to her intentions as to herself?

MR. GAGHS: I submit, sir, that is rather indefinite.

THE COURT: No, I cannot allow you to ask a question that is any more leading than that.

A She used to say a great many things; that she would take her own life, and that she would put poison in his soup. She used to say lots of things of that kind.

CROSS-EXAMINATION: None.

(The Court then admonished the jury in accordance with Section 416 of the Code of Criminal Procedure and took a recess until two o'clock).

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AFTER RECESS.

SARAH HIRSCHKOWITZ, a witness called in behalf of the defense, being duly sworn and examined through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Where do you live, Mrs. Hirschowitz? A 116 Eldridge Street.

Q Do you know the defendant at the bar? A Yes, sir.

Q Did you know his wife? A Yes, sir.

Q When was it that you first met Mrs. Roth? A I lived together with them for a year and a half.

Q Did you live together with them for a year and a half, or is it a year and a half since you lived with them together? A Yes, it is a year and a half since I lived with them together.

Q And where is it that you lived with them? A 205 Eldridge Street.

Q And did you live in the same apartment with them, or did you live in the same house? A In the same house. I lived on the second floor, and they lived on the third.

Q How long did the Roths live in that house? A When I moved in, I found them there living already.

Q How long after you moved in did they live there?

A Ten months, I lived together with them.

Q Do you know other people who knew Mrs. Roth? A Yes,

serv who lived in the house.

MR. SACHS: Now don't forbid her to answer this question until it is ruled upon.

BY MR. SACHS:

Q Do you know Mrs. Roth's character for quarrelsomeness, and as being a person who generally fought?

MR. MOSS: I object to it.

THE COURT: Sustained.

MR. SACHS: We respectfully except. That is all.

MR. MOSS: No questions.

MR. SACHS: May I ask you, Mr. Moss, to state the grounds upon which you objected to the question put to the last witness, Mrs. Hirschkowits?

MR. MOSS: On the ground that it is immaterial, irrelevant and incompetent.

MR. SACHS: And we except to your Honor's ruling upon Mr. Moss's objection.

THE COURT: Yes.

ANNA RUBIN, of 104 East 117th street, a witness called in behalf of the defense, being duly sworn, testified as follows; being examined through the same official interpreter:

DIRECT EXAMINATION BY MR. SACHS:

Q Do you know the defendant at the bar? A Yes, sir.

Q How long have you known him? A I knew him when he was a child.

Q Are you related to him? A Yes.

Q In what way? A He is my brother's son.

Q Did you know his wife? A Yes, sir, I knew her before she was married.

Q Well, about how long is that? How long ago did you first meet her? A About seventeen or eighteen years.

Q Do you remember the time when you heard or found out or knew of Mrs. Roth's death? A People came and told me that Mrs. Roth had died.

Q About how long before Mrs. Roth's death was it that you saw her for the last time? A Two weeks before her death, she called on me, on a Saturday morning. I was still in bed.

Q Did you have a conversation with her, that morning? A Yes, sir.

Q Did Mrs. Roth, during that conversation with you, that Saturday morning, say anything in reference to taking her own life?

MR. BOSS: I object to the question, as leading.

THE COURT: Objection sustained.

MR. SACHE: Question withdrawn.

MR. SACHE:

Q Tell us what Mrs. Roth said to you, and what you said to her, that Saturday morning? A I asked her, "Bertha, what is the matter you are here so early? Is there some trouble?" And she said to me, "You must know, and I inform you of that, that, if you wouldn't take him away from me alive, you will take him dead. I will take my life, and I will take his life also." As true as this is, I hope God will let me live.

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1 MR. MOSS: I move to strike that out.

THE COURT: Motion granted.

MR. SACHS: Exception.

BY MR. SACHS:

Q Did you have any further conversation, that morning?

A The day before, he came to me and told me --

MR. MOSS: I object.

THE COURT: Sustained.

BY MR. SACHS:

Q Well, what time before this Saturday morning, did you see Mrs. Roth? A I used to see her in the street, and she used to tell me how she was fighting with him.

THE COURT: That is not an answer to the question.

MR. MOSS: I move to strike it out.

THE COURT: Strike it out.

BY MR. SACHS:

Q Now I don't want that answer at all. Now tell me when it was, the last time, that you saw Mrs. Roth before this Saturday morning that you have told us about? A Eight days before, I saw her in the street:

Q What did she say to you, and what did you say to her then? A I asked her whether her head was more quiet.

Q Her head? A Yes, sir, her head. And she said, "There will be no quiet and no rest, until I will take my life, and leave all the children to him. I don't want to live with

him.

Q Now, Mr. Rubin, did you know other people who knew Mrs. Roth? A Yes, sir.

MR. SACHS: Now, don't permit her to answer this question until it is ruled upon.

BY MR. SACHS:

Q Do you know her reputation for quarrelsomeness and bad disposition?

MR. MOSS: I object to that?

THE COURT: Sustained.

MR. SACHS: Exception.

CROSS EXAMINATION BY MR. MOSS:

Q Have you talked with the lawyer about your testimony?

A Yes, sir.

Q Did you tell the lawyer what Bertha said to you, two weeks before she died? A Yes, sir.

Q Did you talk with anybody else about your testimony?

A I told Roth himself about it, and --

Q Well, that is an answer. You told Roth himself about it, you say? When did you tell Roth? A The same week when she came to me and told me that she would take her own life.

Q Has Mr. Roth called at your house very much? A He used to come twice and three times a week. Twice or three times a week it happened that he didn't find his supper at home.

MR. MOSS: Now, I move to strike that out. There is

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too much testifying, without questions, here.

MR. SACHS: I submit that it was brought out by Mr. Moss's question.

MR. MOSS: No, it was not.

THE COURT: Strike it out.

BY MR. MOSS:

Q I asked you if he often called at your house? A Every Sunday, he used to come.

RE-DIRECT EXAMINATION BY MR. SACHS:

Q Mrs. Rubin, did Mrs. Roth ever say anything to you concerning the life of the defendant? A All the time she used to talk.

Q What would she say?

MR. MOSS: Now, wait a minute. I object to the re-opening of this matter, after the cross examination is finished, unless the incident is pointed as to time and place.

THE COURT: Yes. Objection sustained.

BY MR. SACHS:

Q When was it that Mrs. Roth spoke to you concerning her husband's life? A Two weeks before that thing had occurred, on Saturday morning, at eight o'clock; she came in to me.

Q Yes. What did she say at that time concerning her husband's life?

MR. MOSS: Well, wait a minute. I object to that now,

upon the ground the question now being pointed to that particular incident, the conversation was exhausted by the questions of the counsel, and now, having asked a leading question, he is putting the thought into the witness's mind, and drawing out that which he himself suggests to her. I object to the question.

MR. SACHS: On what ground.

MR. MOSS: On the ground that it is immaterial, irrelevant and incompetent, and on the ground that I mentioned.

THE COURT: Yes, the direct examination was pretty complete, as I recall it, and the cross examination has been made, and there is no necessity for re-opening the matter on the re-direct.

MR. SACHS: Your Honor will grant me an exception.

THE COURT: Yes. I sustain the objection.

WILLIAM SCHWARTZ, of 104 and 106 Second avenue,
a witness called on behalf of the defense, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Mr. Schwartz, how long have you been in this country?

A About twenty-six years.

Q What is your business? A Contractor of coats, men's coats.

Q Well, what do you mean? Do you mean that you get work

from firms, and sew them up? A Yes, sir.

Q And where is your place of business? A 65 - 69
Bleecker street.

Q And how long have you been in business there? A
I keep in that building two lofts seven years.

Q You are a married man? A Yes, sir.

Q And live with your wife at the address you have given?
A Yes, sir.

Q Do you know the defendant at the bar? A Yes, sir.

Q How long have you known him? A About seven years.

Q Has he been employed by you? A Yes.

Q How long? A About that, between six and seven years.

Q And when did he leave your employ, if he did? A I can't
state the date. Ofcourse I can from my books.

Q Yes. Well, did you discharge him? A No, sir.

Q And was his arrest the cause of his leaving your
employ? A Oh, he left my employ --. For instance, he works
to-day, and, the next morning, I saw in the paper what
happened.

Q Well, never mind what you saw in the paper. That
is to say he worked for you up to the day of his arrest?

A Yes, sir.

Q And did he work for you for the seven years last past?

A Yes, sir.

Q Do you know other people who know Mr. Roth? A I do.

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Q Do you know his reputation for peace and quietness?

A Yes, sir.

Q And good behavior? A Yes, sir.

Q Is that reputation good or bad? A Good.

Q Did you know Mrs. Roth? A I did.

Q How often did you see Mrs. Roth? A Four times.

Q Can you tell the Court and Jury when you saw Mrs. Roth
for the first time? A Yes, sir.

Q About when? A 1909, about the month of June.

Q Did you have a conversation with her? A Yes, sir.

Q In relation to herself? A Yes, sir.

Q What was that conversation?

MR. MOSS: I object to it as too remote, June 1909.

THE COURT: I will allow it.

BY MR. MOSS:

Q Tell the Court and jury what the conversation was?

A The first time, Mrs. Roth came up to my factory, and on the
12th floor -- I keep the 12th and 13th floor -- and she was
waiting by the door, until I came out, on the 12th floor, and she
said, "Are you Mr. Schwartz?" And I said "Yes, ma'am, what do
you wish?" And she said "I am Mrs. Roth, Mrs. Roth's wife."

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And I said, "Well, what can I do for you?" And she said, "Mr. Schwartz, I would like to have that you should give me Mr. Roth's wages," and I said, "What do you mean by that?" "Why, Mr. Roth works steady, and he gets his wages, and it is the first time I see you."

And she said, "Well, I want the money, because I can't live with my husband, and I must give my child -- my children -- to eat."

And I said, "Well, I suppose your husband gives you the money," and she says, "Yes, but I want all the money," and I said, "Now you are telling me that you want all the money, and you can't live with your husband. From what will he live then?"

MR. NOSS: I object to all this, as immaterial, irrelevant and incompetent, and move to strike it out.

THE COURT: Yes, strike it out.

MR. GAGHS: Exception.

BY MR. GAGHS:

Q. Did Mrs. Roth, at that time, say anything to you about her life? A. No; that time, I said to Mrs. Roth --

THE COURT: Answer the question yes or no.

THE WITNESS: No.

BY MR. GAGHS:

Q. When was it that you saw Mrs. Roth the second time?

A. The second time, the next day, at dinner hour, between 12

and I, up in my house.

Q And did she say anything to you at that time about her life? A She did.

Q What was it she said?

MR. MOSS: I object to any statement about her life, as immaterial.

THE COURT: Yes, sustained.

BY MR. SACHS:

Q Did she, at that time, say anything about taking her life? A Yes, sir.

Q What was it she said? A I begged her that she should live together decent with her husband. "I don't see any fault on you, and I don't see any fault on your husband. He is a steady worker, a quiet man. I don't see what for you ask anything like that."

MR. MOSS: I object to this, and move to strike it out.

THE COURT: Strike it out.

MR. SACHS: This is a conversation, if your Honor please, held between both.

THE COURT: Yes, but it is immaterial, irrelevant and incompetent, and has no bearing whatever upon this case.

MR. SACHS: Exception.

BY MR. SACHS:

Q Well, what did she say about taking her life, Mr.

Schwartz? A She said, "I can't live with my husband. I don't like him, I hate him, and I can't live with him."

Q Did she say anything about taking her life?

A She said to me, "I rather take my life before I live with him."

Q Did she say anything about taking her husband's life?

A No, sir.

Q That was the second time you saw her? A Yes, sir.

Q When was it that you saw her the third time?

A The third time, I saw her the following day, at evening, between six and seven in my house.

Q Did you have a conversation with her then? A I did.

Q Did she, during that conversation, say anything to you about taking her life? A Yes, sir.

Q What did she say? A Well, it was the same thing over again. I had ~~xx~~ them both up in my house, but one didn't know about the other. I had Mr. Roth up and I had Mrs. Roth up.

Q Well, what do you mean by saying that one didn't know about the other?

THE COURT: No, let us not get away from the issue into that sort of testimony.

BY MR. SACHS:

Q Well, you had a conversation with her? A Yes, sir.

Q And she said something to you about taking her own

life? A Yes, sir, she said, "It's no use. I can't live with my husband. I would rather take my life than live with him."

Q Did she, at that time, say anything about taking the life of Mr. Roth? A Of Mr. Roth?

Q Yes. A No, sir.

Q And when did you see her for the fourth time?

A That was around the month of August; that was about three months later.

Q Where did you see her then? A On the street in front of my house.

Q Was she alone? A She was with Mr. Roth, and the little baby in her arms.

Q Did you have a conversation with her, that night?

A Yes, sir.

Q What did she say? A She told me that, "Mr. Schwartz, I admit that everything was my fault, about my husband's being away from your place for about two weeks, and please take him back, and from now on everything will be all right."

CROSS EXAMINATION BY MR. MOSS:

Q Then Mr. Roth had been away from your factory for two weeks; had he? A Yes, sir.

Q And upon her request you took him back? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. SACHS:

Q You know why Mr. Roth was away from your factory?

MR. MOSS: Now you have finished. I object.

MR. SACHS: You brought it out.

THE COURT: Objection sustained.

MR. SACHS: Exception.

PHILIP GOLDMAN, of 668 DeKalb avenue, Brooklyn,
a witness called on behalf of the defense, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q What is your name? A Philip Goldman.

Q And you live in DeKalb avenue, Brooklyn? A Yes, sir,
Brooklyn.

Q What is your business, Mr. Goldman? A Tailor.

Q Are you at present employed? A I am employed at
present by Mr. Schwartz; I am employed as the foreman there.
I transact the business.

Q Have you ever been in business for yourself? A Yes,
sir, for the last 25 years.

Q For yourself? A Yes, sir.

Q Well, you are working now for Mr. Schwartz?

A Yes, sir, I am working there for ten years, but I give up
my business, and I am in business in New York City for the last
25 years.

Q When you were in business for yourself, were you in business in the City of New York? A Yes, sir.

Q How long have you known the defendant at the bar?

A Well, I know him between 20 and 21 years; something like that.

Q Did you ever employ him? A Yes, sir.

Q How long ago did you start employing the defendant at the bar? A Well, I will say that was about 18 years ago.

Q How long was he in your employ? A He was something like eight or nine years, something between that; but for eight years I will say that he was in my place.

Q And how long do you say you are working for Mr. Schwartz, Mr. Goldman? A About ten years.

Q Do you know whether or not the defendant is employed by Mr. Schwartz? A Yes, I do.

Q Do you know how long he has been steadily employed there? A Steady, he was employed about six years, or something like that; I couldn't say exactly the date, but I will say about six years.

Q Do you know other people who know Mr. Roth?

A Oh, I know plenty.

Q Do you know his reputation as a quiet, peaceable man?

A Yes, sir.

Q Is it good or bad? A Good, as good as anything.

It is good, to-day.

CROSS EXAMINATION: None.

LOUIS SILVERSTEIN, of 595 Prospect avenue,
Bronx, a witness called on behalf of the defense, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q. What is your business, Mr. Silverstein? A Trimmer.

Q. And where are you in business? A With Mr. William
Schwartz, 65 to 69 Bleecker street.

Q. Do you know Abraham Roth? A I do, sir.

Q. Who was he employed by, if you know? A By Mr. William
Schwartz.

Q. Your employer? A My employer.

Q. How long had you been employed by Mr. Schwartz?

A I am with Mr. Schwartz for eight years.

Q. Do you know how long the defendant has been with Mr.
Schwartz? A Around between six and seven years.

Q. Do you know other people who know Mr. Roth? A Yes,
sir.

Q. Do you know his reputation as a quiet, peaceable
and orderly citizen and man; do you? Yes or no? A Yes.

Q. Is his reputation good or bad? A It was always
good.

CROSS EXAMINATION: None.

SAMUEL FOX, of 1657 Lexington avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Mr. Fox, what is your business? A Machinist, sewing machinist.

Q And are you at the present time employed? A I am, yes.

Q By whom? A William Schwartz, 65 to 69 Bleecker street.

Q Do you know the defendant, Abraham Roth? A I do.

Q How long have you known him? A Between six and seven years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know his reputation as a quiet, peaceable, orderly man? A The best.

Q Yes or no. Do you know it? A Yes, I do.

Q Is it good or bad? A The best.

Q The best? A Yes, sir.

CROSS EXAMINATION: None.

SARAH BRANDSTEIN, of 246 East 2nd street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Miss Brandstein, what is your business please?

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A I am employed by the Jewish Morning Journal.

Q And what is that paper? A A daily morning paper.

Q Published in what language? A In Jewish, in the jargon.

Q And how long have you been employed on that paper?

A Almost a year.

Q And you are a Jewess by birth? A Yes, I am.

Q And you are a native of what country? A Hungary.

Q And are you acquainted and familiar with the jargon as employed by Jewish people? A Yes, sir.

Q Miss Brandstein, what is the commonly accepted definition of the term "dirhargenen"? A To beat, to lick; something like that.

CROSS EXAMINATION BY MR. MOSS:

Q Now have you given the whole meaning of "dirhargenen"?

A No.

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Q Well, why didn't you do it? Why did you stop with "beat" abd "lick"? A Well, I will just explain, Mr. Moss. Just a moment. I have the dictionary here --

Q Now, I don't want any explanation. Why did you stop with "beat" and "lick", when Mr. Sachs asked you for the definition of the word? A Well, because it is most used in that way. I will just explain, Mr. Moss. For instance, when a child is at his mother's apron, she will say, "Her away, or I'll kill you." Fathers and mothers use it frequently, too, even in English.

Q But you told Mr. Sachs, as an answer to his question as to the meaning of the word, that "Dirgargenen" meant "to beat, " "to lick"? A One moment, Mr. Moss, I will explain.

Q No, I don't want any explanation. Answer my question:

MR. SACHS: I object to that. I object to the question, if your Honor please, on the ground that Mr. Moss hasn't stated my question correctly, evidently not hearing it.

THE COURT: objection overruled.

MR. SACHS: Exception.

BY MR. MOSS:

Q Now, why didn't you state the other meanings of the word "Dirhargenen"? A Well, "Dirhargenen" would really mean "kill." But it is used in a Jewish house, very often,

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almost always, as not "to kill." Now, if you will permit me, Mr. Moss, I will just explain -- I will illustrate --

Q No, pardon me. I don't want any illustrations. Will you kindly take the dictionary which you say you have --

A Yes.

Q And read from that dictionary the meaning of the word "Dirhargenen", the definitions of that word, and just read them in the order in which the definitions are given there?

A Yes, sir, I will.

Q Then please do so? A "Dirhargenen" -- to kill, to murder; to lick; to beat."

Q Now, why did you only say, "To beat, to lick", in answer to Mr. Sachs' question? A Because this is the way it is usually used by Jews.

Q Now, if a Jew really said to another man, "I will kill you," what would he say? A Well, usually he says, "Ich will dir ermorden."

Q Do you mean to say that a Jew, saying to another, "I will kill you," would not say "Ich will dir derhargenen"?

A Oh, probably he will, but I don't hear it used that way.

Q Now, Miss Brandstein, you were not in the Roth's house; were you? A No, sir.

Q And you did not hear the tone of voice in which this thing was said; did you? A No, sir.

Q And the tone of voice, and the look of the eye, the gen-

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eral expression of the face, would have a good deal to do with the meaning of the word; would it not? A Why, of course it would.

Q And so it would be with an English speaking person, who might say, "I will kill you," and smile about it, and it might mean nothing at all? A Yes, sir.

Q And then he might say, "I'll kill you," with a frown on his face, and a meaning in his voice, and that might mean a great deal? A Yes, sir.

Q And so it is, Miss Brandstein, is it not, that any word may be used in a different sense from its ordinary meaning, by a tone of voice or an expression of the countenance? A Yes, sir.

Q Even as a joke? A Yes. Now, understand me, Mr. Cross, I would like to explain --

Q No, pardon me, there is no question now. And wouldn't a meaning attached to the words used by some one who understood such language, have a great deal to do with your understanding of the words? That is, suppose words were repeated to you, and some Jewish person who was present and heard them used, and saw the face, and heard the voice, wouldn't the meaning that that Jewish person took from those words influence your judgment as to the meaning in which they were used? A No.

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Q It would not? A No. I'll tell you. When they come to our office --

Q No, you say no. That is your answer? A Unless I see the face myself, and then I could judge.

Q Unless you see the face yourself and then you could judge? A Yes, sir.

Q So that you wouldn't undertake to say what anybody meant by using those words, unless you saw the situation yourself? A Why, of course.

RE-DIRECT EXAMINATION BY MR. SACHS:

Q Mr. Brandstein I asked you for the commonly accepted meaning of the term "Dirhargenen"; didn't it? A Well, the commonly accepted meaning of it is, when a man comes to our office, and says, "Two Jews are --"

Q (Question repeated) A Yes; "to lick, to beat." That's the commonly accepted meaning.

RE-CROSS EXAMINATION BY MR. MOSS:

Q Well don't you know that in the dictionary that you have there that the commonly accepted and generally used definition is the first one given? A Yes.

Q And what is that dictionary which you have there?

A It is the dictionary used in my office, in our office.

Q And used by you in the writing of your articles for that paper? A Yes, sir.

Q And also used by the reporters and editorial writers

of that paper? A Yes, sir.

Q So that it is not a learned dictionary, but a dictionary of the plain people; is it not? A Yes, sir.

BY THE COURT:

Q Just a moment. Assuming that a man really meant to kill another, how would he express it in that language?

A Well, he would say, "Ich will dir mermesen." That means to murder.

Q Well, that is a legal conclusion? A No, that's really how he would say it.

Q Just a moment. When a word in a dictionary is placed first after the word to be defined, how do you regard that? As more the accepted use of it than the last word? A Well, we usually --

Q Answer my question. A Well, we usually consider the circumstances.

Q Answer my question? A Well, it is up to the circumstances.

Q What is that? A It is according to what story we are writing, how we are to use the word.

Q No, I am not asking you about writing a story. If you find a word in the dictionary, and the very first word defining it follows it, and there are several others following that, which do you take as the accepted definition of the word; the first or the last word, as the accepted definition?

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MR. SACHS: I object to that question, as it is something that doesn't call for expert testimony.

MR. MOSS: Why, she has been called by you as an expert.

THE COURT: She appears here as a witness to translate the meaning of certain words.

MR. SACHS: Mr. Moss said that I placed this lady on the stand as an expert. That is true. But, even as an expert, I claim that your Honor should not ask the question, even though she is an expert, because it isn't something calling for expert testimony.

THE COURT: Yes, you may have an exception.

MR. SACHS: Exception.

(The Court's question is repeated by the stenographer.)

A I couldn't answer that, because I take the one that fits the situation that I am in, the story that I am writing.

Q Well, do you know what is commonly accepted as the accepted definition, the first or last word following the word defined? A I don't know.

Q You don't know. A No.

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A B R A H A M R O T H, of 24 Rivington street, the defendant,
being duly sworn, in his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q What number in Rivington street did you tell the Crier you
lived at? A 24 Rivington street.

MR. SACHS: May I say to your Honor that I don't know
whether the witness will be able to answer all my questions
in English, and I would like to have the interpreter stand
next to him.

THE COURT: Yes.

MR. SACHS: And will you kindly answer, Mr. Roth,
every question you can in English, and speak as loud as you
can, so that every juror can hear you?

BY MR. SACHS:

Q How old are you? A 39 years.

Q Where were you born? A Roumania.

MR. SACHS: Now, you see, the gentlemen can't hear you,
and it is quite important that they should.

BY MR. SACHS:

Q How old did you say you were? A 39 Years.

Q And where were you born? A Roumania.

Q How old were you when you came to this country?

A Seventeen years .

Q And how long after you arrived in this country did you
start working? A Right away.

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Q Do you know the name of the man for whom you started to work? A Mr. Goldman.

Q Is that the Mr. Goldman who was on the stand here?

A Yes, sir.

Q When you came here, did you come with your parents?

A No, sir.

Q Did you have any relatives in this country when you came here? A A brother.

Q What was his name? A Joe Roth.

Q Where did you live when you came to this country first?

A Where did I go to live?

Q Yes, where did you live? A I lived on Chrystie street.

Q How long did you work for Mr. Goldman, after your arrival here? A About eight or nine years.

Q And how long did you work in the last place where you were employed, I mean Mr. Schwartz's place? A From six to seven years.

Q And you worked eight or nine years for Mr. Goldman, and six or seven years for Mr. Schwartz? A Yes, sir.

Q And do you know where you worked during the other time?

A Yes, sir.

Q For whom, please? A I worked for S. N. Wood & Co.

Q Yes. A I worked for a party by the name of Mr. Freedman, who kept on Marion street, where the building is torn down now. I don't know where he keeps now. I don't know where else I worked.

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Q Have you been out of work for any great length of time during the time that you have been in this country? A No, sir; I always find work.

Q What was your wife's maiden name? A Bertha Herdan.

Q How long ago was it that you first met her; how long did you know your wife? A I knowed her from the old country where we were children.

Q You knew her when she was a child? A Yes, sir.

Q Do you know where she was born? A Yes, sir.

Q Where? A Roumania.

Q Do you know the name of the city or the village?

A Yessy.

Q And is that the place in which you were born? A Yes, sir.

Q How many years did you know her in Roumania? A I knowed her when we were children.

Q When you were children together? A Yes, sir.

Q Did you see her often during that time? A In Roumania?

Q Yes. A When we were children, I remember her.

Q How long after you came to this country did you first see your wife? A In this country?

Q Yes. How many years were you here, Mr. Roth, when you first saw your wife? A When they first landed to this country, they came to visit us.

Q They came to visit who? A My parents.

Q Well, what do you mean by parents -- by visiting your

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parents? Did they stop at your house? A No, sir, they used to come often to us.

Q At that time were you living with your parents?

A Yes, sir.

Q How long ago did you marry Bertha Herdan? A Thirteen years.

Q Was it in this country that you married her? A Yes, sir.

Q How long, how many years did you know her in this country before you married her? A As long as they were here.

Q Well, do you know how long that was? A I can't exactly say; about fifteen or sixteen years they are here.

Q They are here altogether about fifteen or sixteen years? A Yes, sir.

Q And you say that you are married to her for thirteen years? A Yes, sir.

Q And then you knew her for about three years in this country before you married her? A Yes, sir.

Q Now Mr. Roth, how long did you go with your wife before you married? A About a year and a half.

Q And during that time did you see her often? A When I went around with her?

Q Yes? A Yes, sir.

Q And then you married her? A Yes, sir.

Q Were you married in this city? A Yes, sir.

Q According to the Jewish religion? A Yes, sir.

Q Where was it that you were married; do you remember?

A That was in 201 Eldridge street; they lived.

Q Oh, at her home? A Yes, sir.

Q And, after your marriage, where did you go to live?

A On 75 Sixth street.

Q Did you take the rooms there? A Yes, sir.

Q How many rooms did you occupy? A Three rooms.

Q And what rent did you pay? A I think thirteen dollars.

Q And where were you working at the time? A For S. N. Wood & Co.

Q And how much were you earning a week? A I worked piece work.

Q Well, about how much would you earn a week? A Well, I earned about sixteen dollars or eighteen dollars.

Q Sixteen or eighteen dollars? A Yes, sir.

Q Did your wife know where you were working at the time you married her? A Yes, sir.

Q Did you ever tell her how much you earned when you married her?

MR. VOSS: I object to these questions, as entirely too remote.

MR. SACHS: Very well. Question withdrawn.

BY MR. SACHS:

Q And then you say you went to live in Eldridge street? Or, Sixth street, rather? A Yes, Sixth street.

Q And about how long did you live in Sixth street?

A I lived there for about a year and a half, or something like it, and then I got robbed over there.

Q Your home was robbed? A Yes, sir.

Q And then you moved away? A Yes, sir.

Q Do you know where you moved? A I moved, that time, to 25 Essex street.

Q How many children have you? A Five.

Q What is the name of the oldest child? A Solly Roth.

Q About how old is he? A Eleven years.

Q And the next child? A Mollie Roth.

Q And how old is she? A About ten years.

Q And the next? A Becky.

Q And how old is she? A About seven, I think.

Q And the next? A Georgie.

Q How old is he? A About five.

Q And who is after that? A Charlotte, the baby.

Q And how old is she? A A year and a half.

Q Were you present, Mr. Roth, at the birth of each of your children? A Yes, sir.

Q You were at the house? A Except one.

Q Who is that? A The little one.

Q And where were you then? A Eh?

Q Where were you when the little one was born? A I wasn't living with her.

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Q When was the little child --

THE COURT: You have not answered the question.

He has not answered your question.

BY MR. SACHS:

Q Were you present when the little child was born?

THE COURT: No, you asked him where he was at the time the child was born, and he has not answered it.

BY MR. SACHS:

Q Where were you at that time? A She didn't want to live with me.

Q Were you in the city of New York at that time?

A Yes, sir, with my parents.

Q Now, Mr. Roth, during the time you resided with your wife, you had, of course, many conversations with her?

A Yes, sir.

Q What was your wife's conduct towards you?

MR. MOSS: I object to that.

THE COURT: Objection sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Where was the last place that you resided with your wife? A What do you mean by reside?

Q Lived? A 24 Eldridge street.

Q Where? A 24 Rivington street.

Q How long did you live there with your wife? A When she moved in, I didn't live with her, for about a couple of

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months she lived there, and then I lived with her until the last day.

Q How many times were you separated from your wife since the time you married her? A About three times.

Q When was the last time that you separated from her, when was the last time you separated? A The last time?

Q Yes. A That was about three or four years ago.

Q When was it that she moved into No. 24 Rivington street?

A I can't remember when.

Q How long did you live with her at 24 Rivington street?

A Well, she lived there about --

Q How long did you live there with her? A About a year.

Q Immediately preceding that year that you lived with her at 24 Rivington street, where did you live before that?

A Before that?

Q Yes. A On Rivington street, also, a couple of houses below.

Q Together with her? A Yes.

Q When she moved into the Rivington street house, No. 24, did you move there with her? A Yes.

Q Right away? A Yes.

Q And you lived in the Rivington street house how long?

A I can't remember.

Q When was it that you and your wife separated, the last time?

THE WITNESS: I will ask the Judge a question.

MR. SACHS: Now, please, Roth, just try to answer my questions, without asking the Judge anything.

THE WITNESS: Just explain my case, all about how it happened, and then it will be just so.

MR. SACHS: No, you are not permitted to do that. You are not permitted to ask the Judge any questions. You are here to answer questions. Answer my questions as well as you can.

BY MR. SACHS:

Q Do you remember when you and your wife separated, the last time? A That was when she left me?

Q Yes? A I came home, one evening --

MR. MOSS: I object. The question is "when". I object to anything else.

BY MR. SACHS:

Q Well, she left you? A Yes, sir.

Q Now can you tell us when it was? Was it a year ago, or ten years ago, or when was it? Were you living on Rivington street at the time? A Two years ago.

Q Two years ago? A Yes, sir.

Q Now where were you living at the time? Where did you live when you separated? A With my parents.

Q But before that, at the time when you separated, or when she left you, where did you live? A Where I lived myself?

Q With her, with her. Where did you live? A On Rivington street.

Q Do you know the number on Rivington street? A 24 Rivington street.

Q Well, that was the last time, the last place you lived?

A Yes, sir.

Q Is that where you were separated from her? A I think that must have been about 48 Rivington street. That was below, if I ain't mistaken.

Q Now do you remember when you moved into 48 Rivington street? When was it, if you remember? A As I say, something like two years ago.

Q And how long did you live there with your wife?

A About six months.

Q Six months? A Yes, sir.

Q Then it was about a year and a half ago that you left 48 Rivington street? A Yes, sir.

Q Now tell the Court and jury why you left 48 Rivington street?

MR. MOSS: That I object to.

MR. SACHS: I have fixed the time, sir.

THE COURT: Objection sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Did you leave 48 Rivington street, or did your wife

leave 48 Rivington street? A She moved away from me.

Q Didn't you know that she was going to move? A No, sir. I came home from work, and I didn't find no home, no furniture, and no children, or nothing, and I went downstairs to the landlord, and I asked --

MR. MOSS: I object to that, as not responsive.

THE COURT: Yes, strike it out.

BY MR. SACHS:

Q When you got home, and found her gone, and all the furniture gone, and the children gone? A Yes; empty rooms I find.

Q And now can you tell us when it was that she separated from you, or you from her, before that occurrence at 48 Rivington street? A That was the time when I lived in Brooklyn.

Q Where did you live in Brooklyn? A 91 Cook street.

Q How long did you live at 91 Cook street? A I don't remember. Something over a year.

Q You lived there over a year? A Yes, sir.

Q And do you remember how long ago it was that you moved in 91 Cook street? A How long is it?

Q How long ago it was that you moved into 91 Cook street?

A I don't remember.

Q Do you know how long ago it was that you moved out of 91 Cook street? A It must be something like four years ago.

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Q Four years ago? A Yes, sir.

Q You and your wife agreed to separate at Cook street?

MR. MOSS: I object to it as too remote in time.

THE COURT: Objection sustained.

MR. SACHS: Exception.

BY MR. SACHS:

Q Now, during the time that you lived at 24 Rivington street, were you employed by anyone? A Mr. Schwartz.

Q Yes, Mr. Schwartz? A Mr. Schwartz.

Q Yes, Mr. Schwartz. Now, do you remember the 27th day of July? A Yes, sir.

Q What time did you get up on that day? A The 27th?

Q Yes. What time did you get up? A Well, at half past five in the morning.

Q Well, how do you know it was half past five? A I seen the clock.

Q What time did you usually get up in the morning?

A Five to half past five.

Q I don't hear you? A Five to half past five.

Q What time did you get to your place of work, as a rule?

A Seven o'clock.

Q Now, on the 27th of July, when you arose at half past five, did you dress yourself? A Just the same as always.

Q Yes? A Yes.

Q And did you have breakfast? A Not home, no. I took

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coffee and cake in --

Q Speak up loudly, please? A Well, I had breakfast.

Q Where? A Downstairs. Four cents I used to pay for my breakfast, coffee and cake.

Q Well, was your wife up when you left? A No, always sleeping.

Q As a rule was she up and dressed, ready to get your breakfast, when you left your house? A No, sir; always sleeping.

Q And where did you get your breakfast usually? A In the Bowery, in one of those combination lunch rooms.

Q And do you know what time it was you arrived at your place of business, that morning?

A Seven o'clock.

Q Now did you start working?

A Yes, sir.

Q As you usually did?

A Yes, sir.

Q Did you have any time for dinner, any dinner hour?

A Yes, sir.

Q How long did you have for a dinner hour?

A From twelve to a quarter to one.

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Q Now, Roth, you say that, as a rule, you go to work -- you would get to work at seven o'clock? A Yes, sir.

Q And you had a lunch hour from twelve to a quarter to one? A Yes, sir.

Q Was that your hours all the time that you worked for Mr. Schwartz? A Yes, sir.

Q Now, coming back to 48 Rivington street, do you remember that month of the year it was that you found your wife had moved out of 48 Rivington street? A I don't remember that; no.

Q When you came home, that night, what did you do? A I went upstairs, and I seen the rooms empty, and then I went down, and I asked downstairs where my wife is.

Q Never mind what you asked downstairs. What did you do then? A I went to look for her. I went to Headquarters, and inquired, and went around all night, looking for her, and I couldn't find her; and, the next day, I watched the children going to school, and I asked the children, "Where is mamma?"

Q You asked your children? A Yes, sir. And the children told me --

MR. MOSS: Never mind. I object.

BY MR. SACHS:

Q Well, the children said something to you? A Yes, sir. Where they moved to.

Q They said something to you? A Yes, sir.

Q What did you do then, after you had a talk with the

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children? A I asked whether --

Q No. Don't tell what you said to the children, or what they said to you. But, after you had a talk with the children, what did you do? A I went to live with my parents.

Q How long after you had a talk with your children did you see your wife? A The next day.

Q Where did you see your wife? A On Rivington street.

Q On ~~six~~ the street? A Yes, sir; where she lived.

Q Where did she live? A In 24 Rivington street.

Q You went there to see her? A Yes, sir.

Q You had a conversation with your wife? A Yes, sir.

Q What was that conversation about? A She said that she wants support; she doesn't want to live with me.

Q Did she say why she doesn't want to live with you?

A She doesn't like me. She said I don't earn enough.

MR. MOSS: Pardon me. I ask that there be no more leading questions put, but that, if there is any conversation to be given, that the whole conversation be given.

THE COURT: Yes.

MR. SACHS: I will do that.

BY MR. SACHS:

Q Now state everything that she said to you, and that you said to her, at the time? A I asked her if she wants to live with me, and she said no, she wants support, and I said, why she can't make a living with sixteen dollars. And then,

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as long as she don't want to live with me, I went to live with my parents.

And then I didn't give her no money at all. When she seen the week came around, and I didn't give her the money, she sent her sister to my mother, why I don't give her the money, and I said, "I want to live with her," and she says she doesn't want to live with me.

I tried to talk to her, she should live with me, this and that, but she didn't want.

And then my mother said I should give her some money, and I gave her money, that is, for the children; and I gave her the five dollars -- I sent her five dollars a week.

Then she brought me over a summons in court, and she brought me to court, and the Judge seen her in court, with the children, and, as soon as the Judge seen the children and all, the Judge said that I should go in the private room, and a man should listen to us talking; and the man took us in the private room, and he listened to her.

She told him everything, all about it, and then he asked me what I got to say, and I told him all about it.

She started in collaring there, and this and that, and the man said, "If I should get rich, I wouldn't live with you, for my wife."

MR. MOSS: I move to strike that out, if your Honor please.

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THE COURT: Motion granted.

A (Answer continued): And then we came in the court-room, and the man explained to the Judge everything, and the Judge said to my wife --

MR. VOSS: I object, unless there is some record of this.

THE COURT: Yes. Objection sustained.

BY MR. SACHS:

Q Well, you left the court; did you? A The Judge said to my wife, "Go home --"

MR. VOSS: I object to that, and move to strike it out.

THE COURT: Yes, strike it out. Objection sustained.

BY MR. SACHS:

Q No, you are not allowed to say what the Judge said to you. But did you go out of the court, after the Judge said something? A Yes, the Judge said we should go home.

Q Well, you left the court-room? A Yes, sir.

Q Did you leave the court-room with your wife? A With my wife.

Q And the children? A Yes, sir.

Q Where did you go after you left the court-room?

A Back to my folks.

Q And where did she go, if you know? A Home, 24 Livingston Street.

Q Now when did you see her again after that? A I used

to see her often, often. I used to be around there two o'clock, three o'clock, looking up (illustrating). I couldn't be without my children and without her. I never slept at night, the time I didn't live there with her; I couldn't be away from them, but she didn't want to live with me. Neighbors used to see me around there.

MR. MOSS: I object to that, add move to strike it out.

THE COURT: Yes, strike out about the neighbors.

BY MR. SACHS:

Q Now, during the time you were separated from your wife, did you send her money? A Yes, sir.

Q How much? A I brought it to her.

Q How much? A I sent her five dollars a week, and then she went up to my boss, and she said, she ain't got enough, and my boss advised me I should give her eight dollars a week, and so I did.

Q Now, this was while she was living at 24 Rivington street, and you were separated from her? A Yes, sir.

Q Do you know how long she lived on Rivington street while you were separated from her? A She lived there all the time.

Q But you moved into 24 Rivington street, didn't you? Please say yes or no? Did you move into 24 Rivington street? A She moved in herself.

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Q Yes, go on. A She moved into 24 Rivington street herself.

Q And how long after did you move into 24 Rivington street? A I can't remember exactly how long I was away from her.

Q Well, was it a month or two months? A A couple of months. I can't exactly remember.

Q How long before you moved into 24 Rivington street was it that you saw your wife -- how much time before you moved back to Rivington street, No. 24? A I saw her often.

Q Well, when was the last time before you moved back? A It was a couple of months that I didn't live with her, and then I moved back to her.

Q You were living with your mother during this time; weren't you? A Yes, sir.

Q And you saw your wife often? A Yes, sir.

Q Do you remember what day of the week it was that you moved into 24 Rivington street? A I don't remember the day.

Q Well, how long before you moved in did you see your wife the last time, before you lived with her together? A (No answer).

Q Do you understand the question? A I understand the question. If I will be allowed, that wasn't the first time she arrested me. That was the second time she arrested me.

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She arrested me once before.

Q Yes. Now please try to answer my question, and not talk about something else. You moved back with her at 24 Rivington street? A Yes, sir.

Q During the time you were separated from your wife, and while she lived at No. 24 Rivington street, how often did you see her? A I saw her.

Q Well, where did you see her, where was it during that time that she was separated from you, where was it that you saw her? A Before I came together with her?

Q Yes? A That wasn't the first time she had me arrested.

Q Now please answer my question. You separated from her at 48 Rivington street, didn't you? A Yes. I thought you meant 24 Rivington street.

Q And where did she move to, when she moved from 48 Rivington street? A To 24.

Q Then how long was she living at 24, before you went back to live with her? A How long was she living there?

Q Yes? A We lived there for about a year and a half.

Q Did she live there alone for a year and a half?

A (No answer).

Q (Question repeated). A She lived with me.

Q With you? A Why, certainly.

Q Did you move from 48 Rivington street with her to 24

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Rivington street? A She took the rooms herself.

Q Did you take the rooms, did you move in with her, right at the same time? A Into 24?

Q Yes? A No, sir.

Q How long after she moved into 24 Rivington street did you move in there? How long was she living alone at 24 Rivington street, before you went back to live with her?

A I can't remember how long she lived there herself.

Q Well, was it a month? A A few months.

Q A few months? A Yes, sir.

Q During those few months, were you sending her the money, sending her support? A Yes, sir. Sometimes I brought it up myself.

Q When you brought it up yourself, did you see her?

A Yes, sir.

Q Now how did you come to go and live with her at 24 Rivington street? A She went up to my boss's place once.

Q Did she ask your boss -- did you hear her ask your boss that he should tell you to go back and live with her? A She called me out of the place, and she said she can't get along without me, and wanted I should live with her again.

Q And what did you say to that? A I told her, "Yes, I'm satisfied."

Q Now, at that time where were you living? A On 24 Rivington street.

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Q No, she was living there. But, on the day that she came up to your boss's place, and called you out, where were you living? A BY my parents.

Q And when did you go to Rivington street, to live with her? How long after she called you out of your boss's place?

A A couple of months.

Q A couple of months after she called you out of your Boss's place? A Then I went to live with her, right away.

Q Well, did you go that same night? A Yes, sir.

Q And you lived with her steadily up to the 27th day of July? A Yes, sir.

Q How much were you earning during the time you lived at 14 Rivington street? A Sixteen dollars a week.

Q On what day of the week were you paid? A Tuesday.

Q Did you get sixteen dollars every Tuesday? A Yes, sir.

Q Then you were not working piecework, were you? A No, sir, week work.

Q Week work? A Yes, sir.

Q Now what did you do with the sixteen dollars that you procured every week from your boss? A Gave it to my wife.

Q How much did you give her? A Sixteen.

Q Sixteen dollars? A Yes, sir.

Q Every week? A Yes, sir.

Q Where did you get the money to pay your expenses during

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the week? A She used to give me lunch money, every day.

Q Well, about how much used she give you? A She used to give me twenty cents a day.

Q And that twenty cents you used for your expenses?

A Yes, sir.

Q Now what time did you get home on the 27th day of July? A Half past six.

Q Did you walk home? A Yes, sir.

Q From Mr. Schwartz's place? A Yes, sir.

Q On Spring street? A On Bleecker street.

Q On Bleecker street? A Yes, sir.

Q You walked from Bleecker street, near where? A Through the Bowery to Rivington street.

Q Well, where is that place on Bleecker street where you worked? A Near Elm.

Q And you walked home from that place every day?

A Yes, sir.

Q And you had your supper on this day when you got home? A Yes, sir.

Q And what did you do after you had your supper? A My wife told me, after supper, that she will have a summons to move.

Q A summons to move? A Yes, sir.

Q Well, what else did she say? A And I told her what she thinks about it, and she said I should go down to the jan-

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itor, and find out. I went out to the janitor, and I said --

Q Now, one moment. Did you go down to the janitor alone, or with her? A With her.

Q And when you had a talk with the janitor she was present? A She was with me.

Q Now what did you say to the janitor? A I asked the janitor why he made me to move, because I paid a month's rent, and the janitor told me that the landlord wouldn't keep me in the house, and I says, "Why?" And he said, "Because she is fighting with the tenants."

Q "Because she is fighting with the tenants?" A Yes, sir.

Q Well, who was meant by "she"? A My wife.

Q Well, who did you speak to, the janitor or janitress, the man or woman? A Both of them.

Q Both of them? A Yes, sir.

Q Yes. Now, go on? A And, while I was speaking to the janitor, there is a neighbor next door, by the name of Mrs. Hirsch, and she started in --

Q Wait a moment. Who did you mean by "she"? A My wife started in talking to Mrs. Hirsch, and I was busy talking with the janitor, asking him why he makes us to move, because I wasn't ready to move, and, all of a sudden, I heard my wife start quarreling with Mrs. Hirsch, and they were quarreling and fighting until it come to me high, and the whole house came

together. They were cursing each other, and she called her a drunkard, she says she drinks a lot of beer.

Q Who do you mean by "she"? A Why, Mrs. Hirsch called my wife a drunkard, and that she drinks a lot of beer. And they started cursing, something fierce.

And so I took my wife's part, and I said, "Mrs. Hirsch, what do you insult my wife for?" And she said I must be glad that she is fighting with her, or she will fight with me, and I said, "Never mind that. Stop that. Don't insult her no more."

And they kept on fighting for over an hour, and I went over to my wife and I said, "Bertha, that's enough, that will do," and she throwed me away (illustrating). and I had the child in my arms --

Q What child? A The little one, the baby. And she throwed me away all the time (illustrating), and so I leave her downstairs, and I went upstairs with the rest of the children, and she were still fighting. I seen that she was so excited, it's no use. Whenever I went over to her, she throwed me away on the side (illustrating); and, when she got through fighting, she came upstairs.

And, then she came upstairs, and the first thing she throwed down dishes on the floor, to spite that Mrs. Hirsch what lives downstairs.

Q Did Mrs. Hirsch live on the floor below you? A Yes,

sir, the next floor below. And she throwed dishes and saucers and plates and everything she gets hold, and when she sees she hasn't got anything more to get a hold of, she took irons that she used to iron with, and strike them on the floor (illustrating), just for spite on that woman. The first one she breaks the handle, and then she takes another one, and she breaks the handle, too, and then she takes the other irons, and breaks the handles off.

And I say to her, "Bertha, you will frighten the children. What is the matter with you?" That's what I said, and she said I should get killed with the children together, and she said (The witness speaks in Yiddish).

MR. LOES: I would like to have the interpreter's translation of the words used by the witness in Yiddish.

THE INTERPRETER: "Be killed together with the children."

MR. LOES: And please take that down, Mr. Stenographer, that word "derbargen." We have it as used on the other side now.

THE INTERPRETER: The exact words that he used were: "Wer geharret mit die kinder zusammen."

BY MR. SACHS:

Q. Now go on from the point where you left off, Mr. Roth?

A. And then I said, "Bertha, what do you want? Didn't I take your part, downstairs? What do you want from me?" She was with

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like a tiger. I was trying to make her quiet, and I said, "Bertha, what do you want?"

The house was full of broken dishes, and I said, "What did I do to you?" Didn't I take your part? Didn't I tell Mrs. Hirsch she shall stop?"

And she kept on cursing me, and I said to her, "Bertha, what is the use you should curse, what is the use we should fight? It is the best thing that you look for another rooms." And I always lived before in three rooms, and I had a nice place before, with nice furniture and nice carpets, but she makes me live in two rooms.

MR. ROSS: I object to that, and I move to strike that out, as irresponsible.

THE COURT: Motion granted.

BY MR. SACHS:

Q Just tell what occurred then Mr. Roth. What happened then? A And I told her she should look for other rooms, and she cursed me again, and she said she wouldn't look for rooms, and I said, "Bertha, never mind, you go and look for rooms."

She said "No, she wouldn't look for rooms," and she leaves the things there, and she don't want to know from me anything, and I said, "Bertha, the best thing is, I've got my watch and chain. There is the watch and chain, and you go and get enough money, you pawn it, and then you should buy a

little more furniture than we have, and look for rooms."

And she got wild, and she didn't want to know me, or know nothing from me, and I see it's no use, because she is wild, she is violent, and the children are frightened.

And so I went downstairs, and I was thinking what shall I do now. And then I made up my mind I will go up to my brother -- he lives on 8th street -- and I should tell him the story, and so I did, I went down to my brother.

I didn't find him home, and I said to my sister-in-law she shall tell my brother he shall go, in the morning, to my wife, and to give her the watch and chain, and she should pawn it, and he should tell her she should look for rooms, because he has got more time than I have, because he is a salesman.

I waited there, and he didn't come. So I left there.

Then I went down to my house, I went home. It must have been about half past ten or eleven o'clock, and I was downstairs, speaking to the baker -- there is a baker downstairs-- for about an hour, and the neighbors seen me in the street, and then I went upstairs.

When I went upstairs, I knocked at the door, and she opened the door for me, my wife opened the door for me, and I went in.

BY MR. SAGHO:

Q Now, Roth, please stop there. What time was it that you knocked at the door, and she opened the door for you, your wife? A It must have been from twelve to half past twelve.

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Q Well, what happened then? A I went in the house, and she opened the door for me, and the children and my wife were asleep. After she opened the door for me, she went back to sleep in her place, and I went to sleep. I undressed myself, and went to sleep.

Q Now, just wait a minute. You undressed yourself and went to bed?

A Yes, sir.

Q Now how many beds were there in your rooms?

A Two in the front room, a couch and a folding bed, in the front room.

Q And how many beds were there in the bed room?

A A big bed and a small bed.

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Q When you went to bed, that night, into what bed did you go? A In the bedroom.

Q In which there was a large bed and a small bed?

A Yes, sir. In the large bed, I went.

Q At the time you went to sleep in the large bed, was anyone sleeping in that large bed? A No, sir.

Q Was it empty? A Yes, sir.

Q When you entered your rooms, after knocking on the door, and after it having been opened by your wife, did you go into the kitchen first, or the bedroom? A I had to go in the kitchen, because the door was in the kitchen. That was the door my wife opened.

Q And you had to go into the kitchen first? A Yes, sir.

Q When you went into the kitchen, after your wife opened the door, did you say anything to her or she to you?

A Nothing at all.

Q Nothing? A No.

Q And then you went into the bedroom? A Eh?

Q (Question repeated) I undressed myself, and went to sleep.

Q Did your wife go back to sleep while you were in the kitchen? A As soon as she opened the door, she went back to her place to sleep.

Q Where was her place? A On the couch.

Q Where was the couch? A In the kitchen, in the window.

Q In the kitchen by the window? A Yes, sir.

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Q You say that there was another bed in the kitchen?

A Yes, sir.

Q Did you see who was sleeping in that bed? A The children.

Q What children? A Two girls and a little boy.

Q By the two girls whom do you mean? A Mollie and Becky and Georgie.

Q Mollie and Becky and Georgie? A Yes, sir.

Q And then you walked into the kitchen, into the bedroom?

A Yes, sir, into the bedroom.

Q The large bed was empty? A Yes, sir.

Q Roth, how long was the couch by the window in the kitchen, do you know? Or how long had it been there?

A The couch?

Q Yes, the couch by the window, how long had it been standing there, do you know? A All the time.

Q In winter and summer? A All the time.

Q And how long was the folding bed standing in the kitchen?

A In the daytime, it was put together, you know.

Q But it stood in the kitchen all the time? A Yes, sir.

Q The bed in the bedroom, was that a folding bed or an ordinary bed? A An ordinary bed.

Q And did that stand in the bedroom all the time?

A Yes, sir.

Q And the other bed in that bedroom, what was it?

A A small bed for the boy, for Solly.

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Q And when you went into that bedroom, that night, was Solly in bed? A Yes, sir.

Q And there was no one in the large bed; was there?

A No, sir.

Q And you undressed? A Yes, sir; I undressed, and I went to sleep. When I went to sleep, I slept away, I don't know for how long, I can't say, and then I was sleeping like that (illustrating), and I felt a knife over my throat, cut my throat, and, of course, I been kind of fainty, I couldn't move. I was going to holler for help, but I couldn't, because there was blood in my mouth, there come out blood in my mouth (illustrating) and I couldn't holler.

Q Well, how long did you remain in that condition?

A I couldn't tell how long it was. My little girl walked in the bedroom, and she said "Papa, we have no mother no more."

Then I been laying in bed, I couldn't move, I couldn't holler (illustrating), but I could hear, I could hear.

I heard knocking at the door. I couldn't go down to open, but I been turning around (illustrating). I heard the children open the door, and the children opened the door, and I heard the officer come in, and a man from downstairs. I know him by the voice. That was Mr. Polansky.

When they come in the bedroom, I heard them say -- I heard the officer say, "Oh, my, he is bleeding ." He seen me laying in bed.

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I heard the officer looking for a knife, I heard him looking around for the knife. I don't where they find the knife.

And then I heard Mr. Polansky say "They both live." For me, I seen what he means, but I don't know what he means by saying, "They both live." And then I was taken down on the stretcher to the ambulance.

Q. Now did you try to push your wife away at the time your throat was cut? A. Well, of course, you know, I tried to push her away like that (illustrating) but I couldn't, because she was a very strong woman all right, and I couldn't push her away, and she cut me, and I didn't notice her any more.

Q. When your daughter came over to you, Roth, did you try to get out of bed? A. I tried to, but I couldn't. I been fainty, I couldn't. I thought -- Solly was sleeping next to me -- and I thought I would holler, but I couldn't. My mouth was full of blood.

Q. Now, Roth, being under oath as you are, tell us the truth. Did you, on that night, on the night of July 27, 1910, or the early morning of July 28, 1910, cut your wife's throat, or attempt to cut it? A. No, sir.

Q. Did you cut your own throat? A. No, sir.

MR. SACHS: That's all. You may cross examine.

THE COURT: Do you wish to cross examine, this afternoon, or would you prefer to wait until the morning,

Mr. Moss? It is near the hour of adjournment.

MR. MOSS: If your Honor is going to adjourn at four o'clock, as usual, it being now ten minutes of four o'clock, I would prefer to postpone the cross examination until the morning.

THE COURT: Very well, I think that is a reasonable request, and we will adjourn now.

(The court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Thursday morning, December 8th 1910, at 10:30 o'clock.)

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Trial resumed.

New York, December 8th, 1910.

A B R A H A M R O T H, the defendant on the stand:

CROSS EXAMINATION BY MR. MOSS:

Q You spoke yesterday of a little boy, whom you called Solly. Is that Israel? A Yes, sir.

Q Did you ever have any children but these five? Are all of your children alive? A Yes, sir.

Q How many times did you say you separated from your wife? A Twice.

Q When your wife moved to 24 Rivington street, and you were away from her two or three months, who paid the rent of the rooms in Rivington street, at No. 24? A I wasn't away for that long from her.

Q You said you were away two months or more? A No, I wasn't away that long.

Q Didn't you say that you were away two months? Didn't you say so, yesterday? A No, sir, I wasn't away that long.

Q How long were you away from her? A A short while.

Q Well, how long? A I can't remember exactly, but a short while.

Q Well, what do you mean by a short while? A About a month, or a month and a half.

Q I will read to you from your testimony of yesterday:

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"By Mr. Sachs: Q Well, was it a month or two months?

A A couple of months. I can't exactly remember." Now what did you mean by that? A I don't remember how long I stayed away from her, because it happened many times. You see, I went away many times, and she called me back again.

Q It happened many times that you went away, and she called you back; is that so? A (No answer).

Q Is that so? A Every time she closed the door on me, and she didn't leave me in, I went away, and then I came back again. I never went away from her myself as long as I lived with her, because I liked my wife, and I never cared to go away.

Q Well, what did you mean when you said it happened that you went away many times, and she called you back? A There were times when she closed the door on me, and I had to stand on the outside, until she opened the door for me.

Q You said she called you back many times; is that so? A Well, I wasn't away from her.

Q (Question repeated). Is that so? Is it? A Yes.

Q Now I ask you again, while she was with the children at 24 Rivington street, while you were away from her, who paid the rent at 24 Rivington street? A In the beginning, I paid her five dollars. I didn't give her but five dollars, because I know, if she don't have enough, if she can't make out, she'll want me back again.

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Q You are not answering the question. (Question repeated). A I gave her money.

Q What money did you give her? Now, that doesn't answer my question. Who paid the rent, you or she? A I paid her money, and she paid the rent.

Q She paid the rent? A Yes, sir.

Q Now out of what money did she pay the rent, how much money? A \$5.

Q \$5 a week? A That was the first week when she left me, that she took the furniture away; the first week and the second week too.

Q The first and second week, you gave her \$5? A Yes, sir; and then I gave her \$8.

Q Well, how many weeks did you give her \$5? A Two weeks.

Q Did she take the children with her when she went to Rivington street? A Yes, sir.

Q And you found out, the day afterwards, that she and the children were at No. 24; didn't you? A Yes, sir.

Q And you went to live with your parents? A Yes, sir.

Q And for two weeks you sent her each week \$5? A Yes, sir.

Q And out of that she took care of the children; did she? A Yes, sir.

Q Who paid the deposit on the rooms; do you know?

A Well, she moved in. I don't know who paid it, whether she paid it.

Q Now, after you had been giving her \$5 a week for two weeks, she went to Mr. Schwartz; didn't she? A Yes, sir.

Q And she told Mr. Schwartz that she was not getting enough money to take care of the children; didn't she?

A Yes, sir.

Q And that was so; wasn't it? A Yes, sir.

Q And Mr. Schwartz advised you to give her \$8?

A Yes, sir.

Q And you gave her \$8? A Yes, sir.

Q Now how many weeks did you give her \$8? A A couple of weeks.

Q Did she pay the rent out of that money? A Yes, sir.

Q And took care of the children? A Yes, sir.

Q And then you said that finally she asked you to come back and live with her; did she? A Yes, sir.

Q And then you went back and lived with her; is that right? A Yes, sir.

Q How many times did she have you in court?

MR. SACHS: Just a moment. I object to that, if your Honor please, as being irrelevant, immaterial and incompetent.

THE COURT: Overruled.

MR. SACHS: Exception.

MR. MOSS: Why, you asked him, yesterday, and he said twice.

MR. SACHS: I take an exception.

BY MR. MOSS:

Q How many times did she have you in court? A Twice.

Q Is that all? A Twice I was discharged from the Judge, and once he sent me away for six months.

Q Well, that makes three times. A Yes, but twice I was discharged.

Q Well, I know, but, when I asked you how many times she had you in court, and you said twice, then those were the times that you were discharged? A Yes, sir.

Q But you forgot about the one time when you were sent to the Island? A No, I didn't forget.

Q Well, the two times that you were before the Judge, and when you were discharged, what was the complaint? A The first time when she arrested me, she took me down with a detective from the shop.

Q No. But what was the complaint?

MR. SACHS: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. SACHS: Exception.

A I'll tell the complaint. She took me down --

Q I am not asking you whether she took you down or not.

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What was the charge against you? A When she came to court, the Judge asked her what charge she brought in against me, and she said I don't give her money, and the Judge asked her --

Q Now, stop, that is an answer.

MR. SACHS: I submit that the defendant has a right to explain.

THE WITNESS: I will explain what happened in the court.

THE COURT: The answer may be given, Mr. Sachs, and you may get the explanation, if any, on the re-direct.

MR. SACHS: Very well, sir.

BY MR. MOSS:

Q The charge was non-support; wasn't it? A Yes; I wasn't living with her then.

Q Well now what was the next charge? A I can't go from one charge to the other. I want to explain the first one.

Q (Question repeated) A Well, she brought me in court that she hasn't got enough, only five dollars, and the Judge sends us in another room, and --

Q Now wait a minute. Not about that he sent you into another room, but the charge was that she did not get enough money, that \$5 was not enough; was that the charge? A I want to explain that charge.

Q (Question repeated) A Yes.

Q And, after she made the second charge, how long was it

that you went back to live with her?

MR. SACHS: I object. There is no proof that he was not living with her at the time of the second charge.

THE WITNESS: I lived with her then.

BY MR. MOSS:

Q At the time of the second charge, were you living with her? A No, that's the time she brought me over the summons in the shop.

Q Yes, you were in the shop then? A Yes, sir.

Q And you were giving her \$5 a week? A Yes, sir.

Q And she brought you to court because \$5 wasn't enough?

A Yes, sir.

Q Is that right? A Yes, sir.

Q That was the second charge? A Yes, sir.

Q Now what was the third charge? A The third charge -- if you leave me explain, I'll explain.

What was the charge? A The charge was I brought her up -- that's the time I gave her \$8. I came up in the house, and --

Q No. What did she charge you with? A I'll explain everything.

Q I didn't ask you to explain. What did she charge you with? A I can't say. I want to explain.

Q Now you must answer my questions. A That was for a fault, that's what it was. I'll explain.

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Q No. That was the fight, you say? A Yes, sir.

Q Were you convicted? A I want to explain everything.

Q I don't ask you for an explanation. That can come afterwards, your explanation.

MR. SACHS: I object to this as immaterial, irrelevant and incompetent.

THE COURT: You may take your exception, but let there be no further intrusion, Mr. Sachs, upon the examination. He is under cross examination now.

BY MR. MOSS:

Q Were you convicted? A She was after me to be convicted.

Q Were you convicted? Yes or no? A Yes.

Q And were you committed for six months, under a bond of \$2,000? A Yes.

Q Did she have a black eye? A I'll explain everything.

Q Did she have a black eye? A I don't know.

Q You don't know? A No.

Q Did she have a bruised body? A (No answer).

Q You don't know? A No, sir.

Q How long did you stay in prison upon that conviction?

A Will you leave me explain everything?

Q (Question repeated) A Two weeks.

Q Then you were bailed out; weren't you? A She came to see me --

Q Wait a minute. Were you bailed out? A Before I was bailed out, she was to see me in prison.

Q Stop, sir. Now answer my questions; were you bailed out? A Before I was bailed out, she was to see me in prison.

Q Were you bailed out? Yes or no? Answer that question. A Yes.

Q Who was your bondsman? A Mrs. Porges.

Q Mrs. Porges? A Yes, sir.

Q Who obtained Mrs. Porges as a bondsman, who got her?

A I don't know. I was in prison.

Q Didn't your wife get her? Don't you know that she did? A I don't know. I was in prison then.

Q Didn't you find out? A I don't know. How could I find out, if I was there.

Q Did you know Mrs. Porges? A I know Mrs. Porges.

Q You do? A Yes, sir.

Q Now don't you know that your wife went and got Mrs. Porges to take you out? A My wife was to see me there, during the two weeks, and never told me about Mrs. Porges, never told me anything about Mrs. Porges; she didn't tell me anything. She walked out of the prison, and didn't tell me anything.

Q Didn't she tell you afterwards that she got Mrs. Porges to call you out? A When I came out, she told me.

Q Then why didn't you answer that before, that you knew about it in that way? A I want to explain everything.

Q Well now, when you were bailed out by Mrs. Porges, you were under a bond of \$2,000 for your good behavior for six months; weren't you? A I know she took me out.

Q Well, she gave a bond for you; didn't she? A (No answer).

Q Now didn't she? A I don't know what she done. She took me out.

Q Don't you know that she gave bail to you? A I don't know. She took me out. I don't know what she done.

Q Do you mean to say that you don't know that she gave \$2,000 bail for you? A Yes, she did.

Q Tell them, why don't you say so? And don't you know that, under that bond, you were bound over to keep the peace for six months? A Yes.

Q And not to give your wife any cause for complaint; weren't you? A Yes.

MR. SACHS: I object to that question, and move that the answer be stricken out, as the question contains the conclusion of the District Attorney. I object to the question.

THE COURT: Objection overruled. Motion denied.

MR. SACHS: Exception.

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BY MR. MOSS:

Q That's the only time you were ever convicted; isn't it?

A Yes, sir.

Q You were never before convicted of anything? A No, sir.

MR. MOSS: If your Honor please, I offer in evidence the original affidavit and conviction, First Division, City Magistrate's Court, produced by the Clerk of the Court.

MR. SACKS: Objected to, on the ground that it is irrelevant, immaterial and incompetent, as trying to prove one crime by showing the commission of another.

MR. MOSS: This is under cross examination.

THE COURT: It is not admitted for that purpose, Mr. Sacks, and so the jury will be charged. But it is admitted for the purpose of showing the relations between the parties.

MR. SACKS: Exception.

(It is admitted in evidence and marked People's Exhibit 8).

BY MR. MOSS:

Q Now ask you, Mr. Roth, did you not know that, during the time you were giving your wife \$5 a week, that Mrs. Kuba was supplying food to her and the children?

MR. SACKS: I object to that as immaterial, irrelevant and incompetent, and there being no proof that \$5 a

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week was not sufficient to support her and the children.

MR. MOSS: Sufficient to support six persons and pay rent?

MR. SACHS: And I ask that the remark of the District Attorney be stricken from the record in this case, and that the jury be instructed to disregard it.

MR. MOSS: I withdraw the remark.

THE COURT: Yes, I so instruct the jury. Objection overruled.

MR. SACHS: Exception.

(Question repeated by the stenographer)

A I gave my wife \$5 a week.

BY MR. MOSS:

Q No, that is not the question. (Question repeated)

A I will say, when I give my wife \$5 a week, I tell Mr. Polansky, if he will supply the children with everything they want, I will pay for it, every week when it comes around; everything that the children want, they shall have, I tell him. And I tell Mrs. Polansky any time when the children come around -- there is a lunch room there -- to give the children whatever they want, and I will pay for that.

Q What was during those first two weeks? A Yes, sir.

Q Now I ask you if you knew that Mrs. Kuba was supplying food to them? A No one supplied her with anything. I tried that she shouldn't have to go in to nobody, because I was able

enough to pay her.

Q Did you speak to Mr. Polansky about it, about supplying food to the children? A I said to Mrs. Polansky, I said, "Mrs. Polansky, give my children everything they want."

Q I didn't ask you that. Did you say so to Mr. Polansky? A To Mrs. Polansky I said it.

Q (Question repeated) Yes or no? A No, sir.

Q Why don't you answer my questions? A No, sir.

Q Did you strike your wife, in the presence of Mrs. Kuba?

MR. SACHS: I object to that, if your Honor please, as not definite as to time, and as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. SACHS: Exception.

A No, sir.

MR. SACHS:

Q Did Mrs. Kuba accompany you and your wife to the Police Court, at the time you were arrested for beating your wife?

A No, sir. I knew Mrs. Kuba.

Q How long did you know her? A Yes, sir.

Q And you and she didn't go to the Police Court? A Eh?

Q (Question repeated) A Mrs. Kuba --

Q And you and she didn't go? A Mrs. Kuba was --

Q Now don't answer things that I don't ask you. You listen to the questions and answer them, and it is better, much

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better for you to do that. A Mrs. Kuba interfered in my business, and I insulted her, and she went against me all the time.

Q Whom did you assault?

MR. SACHS: He didn't say assault. He said insult.

BY MR. HOSS:

Q Did you say assault or insult? A I'll tell you in Jewish. I can't tell it in English. I told her she shouldn't interfere in my business.

Q Well, didn't she interfere enough in your business to make the complaint against you, when you beat your wife?

A She didn't make no complaint against me.

Q Didn't she call the police? A What police?

Q The police who took you to the station house? A When?

Q When you beat your wife? A She wasn't the only one. There was more people there.

Q There were more people calling for the police; is that right? A No one called police; but, when we had an argument between us, it was summer, and the windows were open, and we see the policeman come up.

Q And they took the whole family to the station house, didn't they, the children and all? A No, sir; my wife and me went to court.

Q I said to the station house? A The station house.

Q Didn't the children go, too? A No, sir.

Q Didn't Mrs. Kuba go with you and the policeman and your wife? A All that went --

Q Did she? Yes or no? A All that went was me and my wife.

Q And that was all? A And the baby.

Q And the baby? A Yes, sir.

Q Then when she went to the station house, at the time of the arrest for the beating, she had the baby with her; did she?

A Yes.

Q Now I want to ask you a few questions about the night or evening before she died. You had supper there, that night, at home? A Yes, sir.

Q Were all the children at the supper table? A No, sir.

Q Who was away? A Solly was at my wife's sister's place.

Q Wasn't he at the supper table? A He wasn't at the supper table, the whole vacation, because my wife's sister hasn't got no children, and they --

Q Never mind the because. You say he wasn't there? A No, sir.

Q When did he come in? I'm not asking you for explanation. I am asking you for answers. When did he come in?

A He used to come home --

Q When did he come in, that night? A He used to come home --

Q No. When did he come in, that night? A He was playing around with the boys.

Q (Question repeated) A I didn't see him. My wife had to holler, for hours long, before she got him upstairs, every night.

MR. MOSS: I move to strike that out.

THE COURT: Strike it out.

BY MR. MOSS:

Q Now answer questions, and don't tell me things that I didn't ask you for. Now you say she broke an iron? A Two irons. She broke the handles off.

Q Two? A Yes, sir.

Q Were they -- A One I seen the handle off, and, when she seen the handle off, she took the other. They were laying on the stove.

Q Was that after supper? A Yes, sir.

Q How long after supper? A As soon as we were through supper, I went down to the janitor.

Q No. How long after supper did she pound the irons on the floor? A That was after the fight, downstairs.

Q Well how long was it after supper? A I can't tell how long she were fighting, downstairs.

Q No, no. Was it an hour, or two hours after supper, when she pounded the irons on the floor? A I didn't look at the clock, how long the fight is, downstairs.

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Q Well, how long did you think it was? A I don't know. I can't tell.

Q Well, now, you saw one iron, with the handle broken off? A Yes.

Q Is that right? A Yes. And then she got hold of the next one.

Q That is two? A And she threw^{him}ed / on the floor, after she didn't had no more dishes.

Q Yes. That is two irons she threw on the floor; is that right? A Yes, six.

Q Did she throw them on the floor, or what did she do with them? Just tell us exactly what she did with them? A She picked them up from the stove, and throwed them on the floor (illustrating), and then she picked them up again, and throwed them on the floor. That woman always complains she makes noise.

Q Well, how many times did she throw them on the floor? A A couple of times.

Q A couple of times? A Yes. And the children were standing, crying, looking at her.

Q Now let me read you what you said, yesterday: "She took irons that she used to iron with, and strike them on the floor, just for spite on that woman. The first one she breaks the handle, and then she takes another one, and breaks the handle too, and then she takes the other irons, and breaks

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the handles off." A What irons? What handles?

Q Well, is that what you said yesterday? A No. She would break the handles off. Of two irons she broke the handles, but no more. There was two irons, no more than that. She breaks the handles off, two handles she breaks off.

Q Well, but you said, just now, there was only one?

A There was two.

Q Well, now, were you very careful, when you testified yesterday? A Yes, I was.

Q Then why did you say, "She took irons that she used to iron with, and strike them on the floor, just for spite on that woman. The first one she breaks the handle, and then she takes another one, and breaks the handle, too, and then she takes the other irons, and breaks the handles off."? Why did you testify that she broke the handles off of a number of irons?

Why did you testify that way? A Well she takes only two irons that she breaks the handles off, when she gets through breaking the dishes and plates and everything, when she was tired of that.

Q Now, we will see about the plates first. You said, yesterday, that the house was full of broken dishes? A The dishes that was on the table, after supper.

Q You said yesterday that the house was full of broken dishes. How many were there? A The plates what we had supper.

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Q How many, how many? A I didn't count them. The plates that we had supper.

Q Well, how many? A I didn't count them.

Q One? A I didn't count them. She got a hold of the dishes from the table, and she dropped them on the floor (illustrating).

Q Every dish that was on the table? A That we had supper.

Q (Question repeated). A I didn't notice whether there was any left, or she broke them all. But she broke as many as she got hold of, as many as she could get hold of.

Q Were there any dishes left on the table that were not broken? A If there was such a --

Q Answer the question? A I didn't look on the table. I looked on the floor, where there was broken dishes.

Q Well, but you were in the house a long time, and you went out, and came back again, and I ask you if there were any dishes on the table that were not broken? A I don't know.

Q Are you able to say? Can you tell? A I don't know.

Q Well, after you looked on the floor, and saw the broken dishes, can you tell us how many dishes were broken? A I didn't count it.

Q What kind of dishes were broken? A The plates.

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Q Anything else? A And whatever was on the table.

Q Well, but we don't know what was on the table. Were there any cups broken? A Plates.

Q Were there any cups broken? A We didn't have coffee. We had meat.

Q (Question repeated). A I didn't look much. I see only how she dropped it on the floor, and break it, for spite on that count.

Q Was she sitting down or standing up when she dropped them on the floor? A Standing up.

Q How far table or far from it? A Here is the table, and here is the floor (illustrating).

Q Now, where was she standing? A Right there (indicating).

Q Between the table and stove? A Right there (indicating).

Q And did she stay there when she threw all the plates on the floor? A Yes.

Q Were all these broken plates on the floor when you came in, about half past twelve? A No, sir.

Q When were they? A I don't know.

Q Did it look broken? A I didn't see them. They were all broken.

Q Now, in your statement, on page 27 of the minutes you said: "The room was full of broken dishes." Now,

Q I read you again your statement of yesterday: "The house was full of broken dishes." What did you mean by that?

Now what did you mean by that? A The plates what we had supper. Each one had a plate.

Q Weren't you telling a large story, or is it pretty large?
A Just as it happened.

Q. What is on the plate on the table?

...to be pawned,
...new dishes?

Q. Now, did you tell him that you had to come in, about half

6.

past twelve, did she have the baby in her arms? A No, sir.

Q Where was the baby? A Sleeping.

Q Where? A With her.

Q Where? A On the lounge.

Q On the lounge? A Yes, sir.

Q Then there is no doubt about it that your wife's bed, that night, was on the lounge? A Always.

Q Always? A Yes.

Q And the baby slept with her? A Yes, sir.

Q And the baby was with her, that night? A Yes, sir.

Q Did you see the baby all covered with blood, that night?

A No, sir, I didn't see anything of the kind.

Q How long had you slept, do you think, before anything happened to you? A I don't know.

Q You don't know? A No.

Q And what position were you sitting in? A When I was sleeping, I can't tell what position I was in.

Q Well, you told the jury, yesterday, just how you were lying when you were sleeping, you assumed the exact position that you were sleeping in, when this thing happened to you?

A How could I know, that I was asleep?

A I don't know, I don't know, yesterday. But do you remember that you lay back in the chair, and held your head back (illustration), and you were lying just that way? A Well, I don't know, they told me that. I remember they

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didn't have to turn me. They say they had to turn me, and they were lying, too, the people was lying.

Q Well, do you mean by lying that they did not tell the truth? A Yes. And the watchman, too, was lying. There

was lots of lies was told by them people.

Q And you say they did not have to turn you over, but you were lying on your back? A Yes.

Q Do you mean to say, when you woke up, you found yourself on your back? Is that what you mean? A No.

I know, when I was out, and my wife was near me, I was laying that way, (illustrating), and she cut me.

Q Did you know you were lying on your back before she cut you? A No, sir.

Q Then how do you know that you were on your back when she cut you? A I find it out, when my throat was cut.

Q You just think, because your throat was cut, that you must have been on your back; is that right? A I know my throat was cut.

Q Is that what makes you think you were on your back?

A I guess it makes me think. I know.

Q Well, how do you know it? A I know the way I were laying.

Q Now let me read you your testimony of yesterday, at page 32: "I went to sleep. I slept away; I don't know for how long, I can't say. Then I was sleeping like that (illustrat-

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ing), and I felt a knife over my throat, cut my throat, and, of course, I been kind of fainting." Now, what you first felt, or knew, was that you felt a knife cut your throat; is that so? A Yes, sir.

Q That was the first thing you knew? A Yes.

Q And immediately you felt kind of fainting, as you say?

A My throat was cut.

Q And you felt kind of fainting, right away; didn't you?

A Yes.

Q You didn't see anybody; did you? A Yes, I did.

Q When did you see? A My wife. I had hold of her arms, but she was strong enough to do it (illustrating).

Q Well, now, do you notice that your first testimony was: "I went to sleep. I slept away; I don't know how long; I don't say. Then I was sleeping like that (illustrating), and I felt a knife over my throat, cut my throat, and, of course, I been kind of fainting." Now do you mean to say that you saw your wife? A When she cut me, certainly I did.

Q Do you realize that you didn't say at all, yesterday, that you saw your wife? Do you realize that? Do you know that you didn't say, yesterday, at all, that you saw your wife? Do you know that? A (No answer).

Q (Question repeated). A Well, you know, I see her

Q (Question repeated). A I see her when she cut my

throat.

MR. SACHS: Now, if your Honor please, I am going to express my objection to the deduction of the learned prosecutor as to his not saying anything of that kind yesterday, as not founded on the fact.

THE COURT: Overruled.

MR. SACHS: Exception.

MR. MOSS: If there is anything, Mr. Sachs, point it out to me. Here is the record. This is very serious business, and I want no mistake made about this.

MR. SACHS: All right. I have my objection and exception on the record.

BY MR. MOSS:

Q Now, didn't you testify this way, yesterday -- first, a leading question was put to you by your counsel -- "Q Now, did you try to push your wife away at the time your throat was cut?"

A Well, of course, you know, I tried to push her away, like that (illustrating), but I couldn't, because she was a very strong woman, all right, and I couldn't push her, and she cut me, and I didn't notice her any more." Now why didn't you say, yesterday, that you saw your wife? A I saw her.

Q Why didn't you say so, yesterday? A That's plain enough. When she cut my throat, I saw her.

Q Why didn't you say so, yesterday? A Was I asked that?

Q I think you were asked to tell all about it. Indeed, you went on and told all about it, without being asked. The question was by your counsel: "Q And you undressed?" And then you went on, and told the whole story. Why didn't you tell that, yesterday? A I saw my wife, that time.

Q Well, why didn't you say so, yesterday? A I don't know why I didn't say it.

Q You don't know? Well, that is a fair answer. Now, you will notice that, in your first testimony that I read to you that you said you were sleeping, and you felt a knife over your throat, and that the first thing you knew was the knife on your throat? A I find my throat were cut.

Q That was the first thing? A Yes, sir.

Q Now let me read your testimony, on page 88, yesterday, in regard to that: "Well, of course, you know, I tried to push her away like that (illustrating), but I couldn't because she was a very strong woman, all right, and I couldn't push her away, and she cut me, and I didn't notice her any more."

Q Now which of these statements is true, Mr. Witness? Did you first feel the knife, or did you first see your wife? A I felt when my throat was cut.

Q Then you want to say, to-day, that you saw your wife, after your throat was cut? A When the knife was on me, I got hold of her hands, and she cut me, and then she went away.

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Q Was there a light? A No, sir.

Q How did you see her, how did you see her, if there was no light? A I could feel the person (illustrating).

Q You felt her? A Yes, sir.

Q When you retired, when you went to bed, was there any person in that apartment, except your wife and your children and yourself? Were there any other persons there besides them?

THE COURT: Mr. Moss, I would like to see the attorney for the defendant, that is, the assistant to Mr. Sachs, I mean, if you will move a little to one side. I find that it is necessary that I should see him, while you are cross-examining this witness. Just move out that way a little. And I admonish you, sir, not to bow your head in assent or dissent again, during this trial, at any time. You may continue, Mr. Moss.

BY MR. MOSS:

Q (Question repeated). A No, sir.

Q Did you close the door before you went to bed?

A Yes, sir.

Q Was it locked? A It was no lock.

Q There was no lock? A No.

Q Wasn't there ever a lock on the door? A Eh?

Q (Question repeated).

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MR. SACHS: To what door do you refer, Mr. Moss?

MR. MOSS: The outside door, the door leading into the hall.

BY MR. MOSS:

Q Was there not any lock there? A There was a lock to it, but no key to it.

Q No key? A No, sir. It didn't work (illustrating). That's why we used to put the table or a chair inside.

Q Well, did you put the table or a chair in front of the door, when you went to bed, that night? A Yes, sir.

Q Do you recognize this knife, People's Exhibit 2 (indicating); do you recognize that? A Yes, sir.

Q What knife is that? A Meat knife.

Q Meat knife? A Yes.

Q You mean a knife that you put out with on the table, when you eat? A Yes, sir.

Q Did you see that knife, that night? A Yes.

Q Where did you see it? A On the table, where we had the meat.

Q It was on the table? A Yes, sir.

EXHIBIT 2

Q Did you see it when you went to bed? A No, sir.

Q Did you keep it lying on the table? Did you keep it on the table all the time? A What do I know about that knife? I don't know nothing.

Q Didn't this knife lie on the table all the time? A I don't know.

Q Where were the knives kept in your rooms? A I don't know about the dishes, I don't know. Maybe it is with the dishes it is kept.

Q Well, where were the dishes kept? A In the closet.

Q Well, do you know whether that knife was in the closet with the dishes that night? A I don't know. I don't watch the dishes.

Q Now look at People's Exhibit 1. Do you recognize that knife? A Yes, sir.

Q What kind of a knife is that? A Bread knife.

Q A bread knife? A Yes, sir.

Q I show you that bright, new break there (indicating), when was that broken, do you know?

MR. SACHS: I object to that question as being the conclusion of the District Attorney.

THE COURT: Sustained.

BY MR. MOSS:

Q Now I show you that break there (indicating), do you know when it was broken? A When I used the knife at supper,

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at the table, it wasn't broken.

Q It wasn't broken? A No, sir.

Q That very night, at the supper table, it wasn't broken?

A No, sir, it wasn't broken.

Q You said, yesterday, that you tried to holler, and you couldn't, because your mouth was full of blood. Did the blood come up from your throat? A I been vomiting.

Q You were vomiting blood? A Yes.

Q You mean to say that, do you, that you were vomiting blood? A I don't know if it is blood. I been vomiting. I couldn't see whether it was blood or not. It was dark.

Q You were vomiting? A Yes.

Q And the blood came up from your mouth, not from outside, but up from your mouth? A Out from my mouth. I was vomiting.

Q Well, were you vomiting blood? A I couldn't see. It was dark.

MR. MOSS: You may examine, in the redirect-examination.

MR. SACHS: At this time, if your Honor please, I desire to say to the Court that I did not wish to interrupt Mr. Mos in his cross-examination, but I can assure your Honor that there was nothing done intentionally by my associate to lead the witness, and I trust that your Honor will tell the jury that you did not intend so to

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imply.

REDIRECT-EXAMINATION BY MR. SACHS:

Q You say that you went to the Police Court three times altogether, Mr Roth? A Yes, sir.

Q And the first two times you were sent home? A Yes, sir.

Q You say that, at one time, the Judge sent you into a private room with somebody? A Yes, sir.

Q Was that the first time or the second time? A The second time.

Q Something occurred in the private room? You spoke to somebody there? A I spoke to somebody there.

Q And then you came out into the court? A Yes.

Q And were you sent to the Island that time? A No, we were sent home.

Q Sent home? A Yes, sir.

Q Did the Judge say anything to you at the time he sent you home, or to your wife? A My wife told the Judge that I only gave her five dollars, and he said, "Go home, and be a good mother to your children, go home."

Q Now, the first time that you went there, was anything said? A The first time, the Judge--I lived with her, that time--and Friday morning, I got up in the morning, and I asked my wife--

MR. MOSS: I object to that. That is not responsive.

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THE COURT: Yes. Objection sustained.

MR. SACHS: Your Honor sustains the objection?

THE COURT: Yes.

MR. SACHS: Exception, sir.

BY MR. SACHS:

Q Well, you were sent home both times; is that right?

A Yes, sir, both times.

Q Now, you say you gave her five dollars a week for two weeks? A Yes.

Q Why did you give her five dollars a week? A Because she left me.

Q Was there any other reason that you gave her the five dollars for? A In fact, because, when I come home, I didn't find the house any more, and that's why.

Q And you gave her five dollars a week? A Yes.

Q Now, did your wife ever, while you lived with her, have to go out to work to support the children or the family?

A No, sir. She was asked by the Judge, when I was in court, and she says no.

MR. MOSS: I object to that, and I move to strike it out.

THE COURT: Objection sustained, motion granted.

BY MR. SACHS:

Q Yes or no? A No, not since I knowed her.

Q Now, at the supper table, you say that Solly wasn't

there? A No, sir.

Q During the vacations, if you know, where did Solly take his supper? A Why, by my wife's sister's place. There is a lunch room there.

Q Where is your wife's sister's place? A In Greene street.

Q And she keeps a lunch room there? A Yes.

Q And, during the vacations he had his supper there?

A He was there all day.

Q And are you sure that he wasn't at the supper table, on the night of the 27th of July? A No, sir.

Q He wasn't there? A No, sir.

MR. SACHS: With your Honor's permission, I will now call Mr Leventhal, a witness for character. He was outside in the hall, yesterday, but I didn't know it; and, if I may be permitted, I will call him now.

THE COURT: Yes.

FRANK LEVENTHAL, of 19 West 115th street, a witness called on behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Mr Leventhal, what is your business? A Manufacturer of clocks and suits.

Q And what is the name of your firm, if you are a member

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of a firm? A Leventhal & Spiegel.

Q And you are the senior member of the firm of Leventhal & Spiegel? A Yes, sir.

Q How long have you been in business, Mr Leventhal?

A About eight years.

Q Do you know the defendant at the bar? A Yes.

Q How long have you known him? A I have known him for about twelve years.

Q Has he worked for you? A He has worked for me about a year.

Q And do you know other people who know him? A Yes, sir.

Q Do you know his reputation for peace and quietness and orderliness? A Yes, sir.

Q Is it good or bad? A Good.

CROSS-EXAMINATION: None.

MR. SACHS: The defendant rests, if your Honor please.

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R E B U T T A L.

A N N I E K U B A, of 46 Rivington street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MOSS:

Q Mrs Kuba, did you live on the third floor of 24 Rivington street? A Yes, sir.

Q You lived there until about five months before Mrs Roth died? A I don't remember; four or five months. I moved out because I went in business again.

Q And you knew Mr and Mrs Roth, did you? A Certainly I know them.

Q Do you remember any occasion when Mr Roth struck Mrs Roth?

MR. SACHS: Just a minute, please. I object on the ground that all the questions put to Mr Roth, on the stand, in relation to Mrs Kuba, or any acts done, or seen by her, were matters collateral, and that the District Attorney was bound by the answers of the defendant.

MR. MOSS: Well, as to that, perhaps that might have some force, there might be some force in that statement, and yet her testimony would be proper as part of the direct case. If the objection is that I have no right to offer a witness now in chief, I submit that to your Honor,

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and I will take your Honor's ruling upon that.

THE COURT: Yes, I think the objection is well taken as to that question, at least.

MR. MOSS: Yes, sir. Then I examine her as a witness in chief, if your Honor permits it, as though she had been examined in the former part of the trial.

MR. SACHS: To which I shall object, if your Honor please.

THE COURT: I will allow the examination as in chief.

MR. SACHS: To which I respectfully take an exception.

BY MR. MOSS:

Q (Question repeated:)

MR. SACHS: And I object to the question again, as now asked, as being immaterial, irrelevant and incompetent, and as being indefinite as to time and place.

MR. MOSS: I will say within a year before the killing. I will modify the question to that extent.

MR. SACHS: And I object to that question as modified, and being too indefinite, your Honor.

THE COURT: Then you may reframe or modify the question to make it read that way.

MR. SACHS: I except.

BY MR. MOSS:

Q Do you remember Mr Roth striking Mrs Roth at any time within a year before she was killed?

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MR. SACHS: I object to the question as modified, as before, on the same grounds.

THE COURT: Overruled.

MR. SACHS: Exception.

A Well, I tell you I was in business, and I went down at 4 o'clock in the store, 4 or 5 o'clock, in the store, and I go out, and I don't see--

Q Mrs Kuba, didn't you go into Mr Roth's apartment?

A Yes, sometimes, when I am going upstairs to see my baby from my business.

Q No. Do you remember the time when Mr Roth was arrested? A Yes.

Q Didn't you go into the house, into his house, at that time, before he was taken away by the police? A I arrest him myself.

Q You arrested him yourself? A Yes, sir.

MR. SACHS: I object to that, if your Honor please, as being the conclusion of the witness, and as being testimony as to an impossibility.

MR. MOSS: Why, a private citizen can make an arrest. There is no impossibility about it at all. I will just require what she means by that.

BY MR. MOSS:

Q What do you mean by that, madam? A Well, I was in the store, and I heard somebody holler upstairs, and I run up-

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stairs--I think it is a fire--and, when I come up, he walks around in the house, Mr Roth.

Q Yes? A And she holler, and then that time she asks me, "Mrs Kuba, look at my blue eyes." That's all.

MR. SACHS: I object to that, and move to strike it out, if your Honor please, what the deceased said to her.

BY THE COURT:

Q Was that said in the presence of the defendant? Was he there? A Who? Mr Roth?

Q Yes. A Yes, he was there, when she says to me, "He hit me."

Q Was he there when she shouted and said, "Look at my eyes"? A Yes, he was there in the house.

THE COURT: Objection overruled.

MR. SACHS: Exception.

BY MR. MOSS:

Q And what happened then? A At that time I go down, and I take a policeman, and I arrest him. That's all.

Q Yes, you got the policeman? A Yes, sir.

Q Now, did you ever see Mr Roth strike her at any other time? A Never I see it.

Q Do you remember having a conversation with me, yesterday? A Yes.

Q Now I want to ask you if you remember any other time when Mr Roth did anything to Mrs Roth after that? A I don't

see anything.

Q Did you hear anything? A Well, I heard in the papers he killed her.

Q No, not what you heard in the papers.

MR. SACHS: I object to that, and move to strike that from the record, and that the jury be instructed, if your Honor please, not to regard it at all.

MR. MOSS: I consent to its being stricken out.

THE COURT: Yes, strike that out. And the jury are instructed to disregard it entirely.

BY MR. MOSS:

Q Well, when you were in the back room in your apartment, didn't you hear Mr Roth talking to Mrs Roth? A Well, sometimes, like a husband and wife, he made a fight in his house, but I didn't count that, how many times, because I am in business, you know, and I had to watch my business.

Q Now do you remember what you said to me, yesterday?

A No, sir.

Q Has anybody talked to you since yesterday? A Well, what is it? Maybe I forgot.

Q Maybe you forgot? A Yes, sir.

CROSS-EXAMINATION BY MR. SACHS:

Q Now, the first thing you knew about the fight, at the time you went for the policeman, was when you heard somebody holler upstairs? A Yes, sir; and I take a policeman, and

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I go over, and right away I arrest him.

Q Well, did you take a policeman before or after you went upstairs? A After.

Q But you heard somebody holler? A Yes, sir.

Q And that's the first you knew about any fight?

A Yes, sir.

Q Well, you don't know whether Mr Roth or Mrs Roth started the fight, do you? A No, I can't say that. I saw only the blue eyes, and I don't know if she started it or not.

REDIRECT-EXAMINATION BY MR. MOSS:

Q You did not see any blue eyes on him; did you?

A No, sir, because I see the blue eyes.

ISRAEL ROSE, being recalled by the District Attorney, testified as follows:

DIRECT-EXAMINATION BY MR. MOSS:

Q Israel, I understood you to testify the other day, that you had supper with your father and mother, on that night, just before she died; is that so? A Yes, sir.

Q Now I want to ask you if your mother took the plates off the table, and smashed them on the floor? A No, sir.

MR. SACHS: Just a minute. That, if your Honor please, was brought out by the District Attorney from the defendant, and is collateral matter, and the District At-

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torney was bound by the answers.

MR. MOSS: Why, on the defendant's own testimony, in the direct-examination, he told that.

MR. SACHS: But, if your Honor please, the question of the dishes didn't arise between 1 and 2 o'clock in the morning. That, according to the testimony in this case, was at the supper table. The matter is collateral, I submit.

THE COURT: Question allowed. Objection overruled, and you may have your exception.

MR. SACHS: Exception.

BY MR. MOSS:

Q Did she take the smoothing irons off the stove, and throw them on the floor? A Not while I was there. When I was there everything--no dishes were fired, and nothing was thrown on the floor.

CROSS-EXAMINATION BY MR. SACHS:

Q What sort of a place does your aunt keep on Greene street? A A lunch room.

Q Lunch room? A Yes, sir.

Q Has any one spoken to you, Israel, this morning, or just a little while ago, in relation to what you were to say here? A No, sir. But I have received many letters telling me to tell the truth.

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Q No. I am asking you now whether any one spoke to you, to-day, Israel? A This morning?

Q Yes. A Yes, but not about that.

Q Not about that? A No, sir.

Q Somebody from the court here spoke to you? A No, sir.

Q And you say that, while you were there, you didn't see any dishes broken? A No, sir.

MR. MOSS: The People rest. Oh, wait a minute. I have another witness whom I had forgotten. I will call him.

THE COURT: Your requests to charge, are they written, Mr Sachs?

MR. SACHS: Yes, sir.

THE COURT: I would like them.

MR. SACHS: Yes, sir, I will hand them up to your Honor.

MAX DREFKOFF, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MOSS:

Q You are an attorney and counsellor at law? A Yes, sir.

Q And have you some knowledge of the Hebrew language and of the Yiddish? A Yes, sir.

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Q Will you please tell the jury what knowledge and experience you have had in that subject?

MR. SACHS: I am perfectly willing to admit that the gentleman is very well experienced.

MR. MOSS: I should like to have the jury hear him.

A I have been teaching Yiddish and Hebrew in private schools, and giving private lessons, for a period of ten years.

BY MR. MOSS:

Q Proceed, please? A I have also been giving instructions in the Hebrew language in the Hebrew Union College, in Schenectady--no, not the Hebrew Union College--in the Union University, I mean. And I have also been instructing in the Hebrew in the Hebrew Free School, in East Broadway.

Q Now I want you to tell the jury and the Court, please, the mean of "hargen". Just describe it, and tell the meaning of it?

MR. SACHS: I object to the question, on the ground that it is a question put to an expert witness, and not founded on any evidence given in the case. There was no such word used.

MR. MOSS: Then "derhargenen".

MR. SACHS: Yes, that word was used.

THE COURT: That is, your objection is not to the question, but the word that was put in the question?

MR. SACHS: Yes, sir, that is it exactly.

THE COURT: Then, that being corrected, he may answer the question.

BY MR. MOSS:

Q Now, please, tell us about that word? A What was the question, Mr Moss?

Q I want you to explain to the jury the meaning of the word "derhargenen"?

A This word is derived from a Hebrew word. The Hebrew words are made up mostly of stem words. The stem, as a rule, consists of three letters. The original word in Hebrew was "horag".

But, in Hebrew, it has only three letters.

Also, those words in Hebrew, when additional letters are added to the original word, when it is to be used for tense, for instance, "I killed," in English, that would be horagti", in Hebrew, the "ti" will be added to it. That will be for the first tense, and it would mean "I killed." And "Thou killed", in Hebrew, would be "Horagto."

Q Now please, without giving the other tenses in the original Hebrew word, will you explain how that root gets into the Yiddish? A In Yiddish, the word, the stem word "horag" is added to it, and you get "gehoraget," which means "killed", in the past tense.

Q Now give it in Yiddish as "I will kill you?" "Ich will dir derhargenen."

Q Now as to the common usage of the word "derhargenen" is that commonly used as implying to kill? A Yes, sir.

Q Will you please illustrate? A For example, where that was a massacre in Russia, and the newspapers had that --

MR. SACHS: I object to that, if your Honor please.

I object to the question as being a conclusion of the District Attorney, and as not being founded on any fact within the knowledge of the witness, when there was a massacre in Russia unless, of course, the witness was present at the massacre.

MR. MOSS: Oh, that is not the point. He is describ-

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ing the newspaper account of the massacre or the use of words in that account.

THE COURT: Objection overruled.

MR. SACHS: Exception.

A For instance, if twenty persons were killed, and thirty were injured, the newspapers said, "Zwanzig geharget," that is twenty persons were killed; and "Treisig verwounded," that is that twenty persons were wounded. So that for the wounded, for the injured, there would be the word, "verwounded," and for the killed, there would be the word "derhargenen".

Q Now for the word hit , or strike, or beat, what is the word that is usually employed to express that meaning?

A "Schlogen."

Q Now the word "mammes", meaning death. I want to ask you as to the usage of the word "mammes" meaning death, with regard to the ordinary expression or word for the word

killing in the Yiddish? A The word "mammes" is not used in Yiddish, it isn't used at all, or very seldom, if at all; and, if it is used, it is used only in certain parts of Europe, for instance , in Bessarabia, where they will sometimes say that they will injure another, but only to hurt them, injure them. (The witness speaks in Yiddish.) It does not mean to kill them.

BY THE EIGHTH JUROR:

Q "Mammes" is a hebrew word, isn't it? It isn't a jargon word, is it? A No, sir; it is a pure Hebrew word.

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BY MR. MOSS:

Q Now, as to the possible use of the word "dehargenen" as to a common, ordinary beating or hitting, what do you say as to that? A I don't quite understand the question.

Q Can you say whether the word "dehargenen" is commonly and ordinarily used to express an ordinary beating or striking, or is it used at all? A No, sir; the word "Schlogen" would be used to express that.

BY THE COURT:

Q What word? A "Schlogen."

Q That would be used to mean to strike or beat?

A Yes, sir.

CROSS EXAMINATION BY MR. SACHS:

Q Now, Mr. Werdansky, where were you born? A My name isn't Werdansky. My name is Drefkoff.

MR. MOSS: I unintentionally mislead you, I believe, Mr. Sachs in announcing the name of the witness that I was about to call. I believe I called him Werdansky.

BY MR. SACHS:

Q Well, Mr. Drefkoff, where were you born? A In Russia.

Q Whereabouts in Russia? A In Warsaw.

Q And how long have you been in this country? A About ten years.

Q And where have you resided in this country? A Most of the time in New York, and a part of the time in Albany.

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Q And where did you live in New York? A 113th street.

Q Then you didn't live down on the east side at any time, did you? A I did.

Q Did you ever live below Houston street, and east of the Bowery? A Yes, sir, I lived on East Broadway, No. 204.

Q How long did you live there? A I lived there for over a year.

Q And did you come in contact with the ordinary people in that neighborhood? A Why, of course I did.

Q Now did you have a talk with me in the hall, outside of this court room, yesterday? A Yes.

Q And did you tell me that, according to the ordinary accepted meaning of the word "dehargenen" it means to beat?

A No, sir, I didn't.

Q You did not? A No, sir. If you will let me explain, I will explain what I mean. The word "derhargenen" means to kill. But, in the Yiddish language, you know, words sometimes are used which exaggerate meanings, and a person may not mean that, he may not mean "I am going to kill you" at the time he says that, uses that expression.

Q But did you ever hear the word "derhergenen" used where it meant simply to beat or lick, around on the east side?

A Yes, I have.

Q So it will be used with that meaning, will it not, sometimes? A A person --

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Q Yes or no? A Literally, no.

Q Well, but sometimes it may be used by persons over on the east side to mean to beat or lick? A I can't say what other persons may do about it.

Q But you have heard it, you say, used in that sense?

A Yes.

Q And you know that the poorer and less intelligent class of our people, yours and mine, do use it in that sense; don't you? A Yes, they do.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q And I suppose you have heard English speaking people say, "I'll kill you," when they didn't mean to do anything of the kind? A Yes, sir, I have, often.

Q And when they meant only to beat or strike one?

A Yes, sir.

MR. MOSS: The People rest.

MR. SACHS: I will call Mr. Adler. And I desire to say, if your Honor please, that Mr. Adler's testimony will be to the same effect as the last witness's, that "dehargenen" is sometimes used to mean to beat or lick.

MR. MOSS: Well, will his testimony be any different from the testimony of the last witness?

MR. SACHS: No, sir, I think not.

MR. MOSS: Then I am disposed to concede it to save time.

THE COURT: You may put him on the stand, if you desire.

S U R- R E B U T T A L.

J A C O B P. A D L E R, of 68 Lenox avenue, a witness
called on behalf of the defense, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. SACHS:

Q Just a few questions, Mr. Adler. What is your
business? A Professional. On the stage.

Q You are an actor? A Yes, sir.

Q And in what theatres? A Different theatres in
New York.

Q In what language do you play? A In Jewish.

Q In Jewish? A Yes, sir.

Q Do you use the Yiddish jargon? A Yes, the Yiddish
jargon.

Q And how long have you been an actor, Mr. Adler, and
how long have you used the Jewish jargon? A Thirty-two
years.

Q Thirty-two years? A Yes, sir.

Q Mr. Adler, as a result of your thirty-two years experi-
ence, can you say whether or not the term "dehargenen", in our
Jewish jargon, or Yiddish, is ever used to mean to beat or
to strike? A It means mostly to beat and strike, that is
all, mostly. They usually say "dehargenen", "I'll beat you,"
and that's all.

Q And it is a common expression? A Yes, it is a

common expression. It is an old habit to use that word, and I remember my father often told me that, and my mother, too, and I am sorry to say I use that to my children too, now. I say to them that I will beat or strike them, "dehargenen".

CROSS EXAMINATION BY MR. MOSS:

Q And you do use that sort of language to your children, do you say? A Yes, I do, sometimes, in my excitement. I will say to them (the witness speaks in Yiddish). But I don't mean "I will kill you". I mean, "I will punish you, I will beat you." It is my habit from my childhood. I heard it very often from my father and my mother, and now I do the same thing, and we don't mean that we will kill you, when we say that.

Q But it does mean to kill, also; doesn't it? A Yes, sir.

Q And if you were going to say, "I will kill you", just as those words, what would you say, what words would you use? A Well, it wouldn't be anything but exaggerating, but it would be the same thing mostly.

Q Well, what words would you use to say, "Really and truly I am going to kill you?" A Well, it is exactly the same thing, the same words.

Q Well, say it please, A "Ich will dir dehergenen."

Q Ich will dir dehargenen? A Yes, sir.

MR. SACHS: The defense rests, if your Honor please.

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MR. MOSS: And the People's case is closed, your Honor.

MR. SACHS: Will your Honor permit me, on behalf of the defendant, at the close of the People's case, to renew my motion to advise the jury to acquit the defendant, upon the same grounds as advanced at the time the case for the People was closed; and, in addition, to ask your Honor, to advise the jury to acquit the defendant, upon the ground that the People have failed to establish facts sufficient to sustain the indictment?

And upon the further ground, that they have failed to prove the corpus delicti.

I ask that your Honor advise the jury -- take from the jury the consideration of the counts charging murder in the first degree, and to take from their consideration the count charging murder in the second degree, on the ground that there is no evidence in the case upon which either of these counts can be sustained.

The same motions are made with respect to the crime of manslaughter in any of its degrees.

And, as before said, these motions now are made in addition to those advanced to your Honor at the close of the People's case.

THE COURT: The motions are denied.

MR. SACHS: And we respectfully except to your Honor's decision.

THE COURT: Mr. Moss, Mr. Sachs has requested me, saying that he is not in the best of good health himself, and would like it if the Court would let him have until one o'clock, as extra time to prepare his summing up, and then to begin at two o'clock to sum up. If that is satisfactory, the Court will take that course.

MR. MOSS: It is very satisfactory to me, sir.

THE COURT: Then we will take the adjournment now.

(The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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After recess.

SUMMING UP FOR THE DEFENSE

of

M. A. SACHS, ESQ.

With your Honor's permission:

Mr. Foreman and Gentlemen of the Jury,

With proper appreciation of the fact that I stand here as an officer of this court, charged with the duty of protecting the interests, with the aid of the Court, of a human being whose life is at stake, and appreciating the fact that there are many matters that I ought to draw your attention to, I shall, nevertheless, in as quiet a way as possible, and in as short a time as possible, present for your consideration not alone those things which I think are lacking in the People's case, but I shall even go beyond that, although there is no duty imposed upon us to do so, to show what, in my client's case, points certainly and unerringly to his innocence, and I shall endeavor to do it, as I said before, in as short a time as possible.

You have noticed the conduct of the Court in this case. It ill befits an attorney to congratulate any one who has done his duty, and particularly so the Judge who presides, but, if I may so trespass, and go beyond my limits, I want to say to you that no man in the world,

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no man who wears the robe of judicial office, could have better protected the interests of this defendant than the Judge who presides here in this court.

And I say that to you as a prelude to calling your attention to the fact that his Honor does not want you to draw from his denial of my motions to advise you to acquit any deduction that might work against the defendant at the bar.

As you learned from your examination before you were accepted, and as I said to you in opening the defendant's case, you, gentlemen, are the judges of the fact, and his Honor decides the questions of law, and you are not to permit your judgment to be swayed by his Honor's decision upon any legal matter.

You, gentlemen, are charged with a most serious responsibility, for upon you depends the question, not as to the punishment this man is to suffer, if you find him guilty, but as to the question as to whether or not you shall say that he is guilty at all. If your verdict be that of guilty, though you may have nothing to do with it, he walks from this court room to the chair of death, and so you ought to weigh carefully, prudently and conscientiously every fact in this case, before you find him guilty; and not alone every fact, but you must discuss as sincerely as you possibly can the lack of what his Honor will

tell you is absolutely necessary to find before you can say that he is guilty; and you cannot guess at it, you cannot surmise it, but from the evidence given by the witnesses in this case you must find it proven, and not alone that, but you must find it proven beyond all reasonable doubt.

It may have seemed to you, gentlemen of the jury, that the District Attorney, the distinguished gentleman who protects the interests of the People in this case, and myself, were a little more than careful in our examination of you gentlemen, or in the examination of those who preceded you, or went after you, but the interests of a human life are very carefully guarded under the great and humane laws of this State of ours. That is an instance, the latitude allowed the attorney for the defendant in the selection of those jurors who are to determine the question of the guilt or innocence of his client.

I hope not to appeal to your passions or your prejudices. But, if I were to do so, if I were to ask your sympathy, I should ask it rather for two of the witnesses for the People, who know not what they do; but not for my client. We do not want a verdict based on sympathy; we want a verdict founded on the facts, in due consciousness of the fact that they point to acquittal, all of them, I claim, of the defendant.

I want you to look at this case, not as men of feel-

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ing, but rather would I have you look at it through my own eyes, who, after some slight experience in this court, feels that he looks at evidence from a legal standpoint, rather than from a layman's point of view, or the advocate's point of view.

So I ask you to look at this case carefully, and say whether you find every absolutely necessary element proven before you can convict the defendant.

The criminal law is not the growth of a single day, it is not the thought of yesterday. But it is something that may have started in ages so far gone that no human being can tell when they began. The criminal law has come to us with time itself; and when the Court, his Honor, shall tell you, that there are certain safeguards thrown about the defendant, do not believe that it is the work of the Legislature of to-day, but that it is the result of the thought, and care, and consideration of the centuries of Anglo-Saxon law, and even before that, even centuries before that.

Remember this, gentlemen, that the defendant at the bar must never establish his innocence, he is not bound to. And in that respect our laws differ from those of other countries, but I shall not discuss that, but in this State and in every country which has the benefit of the laws that England gave, the defendant is never pre-

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sumed other than innocent.

It is not his duty to show you one fact that would enable you to set him free, but the burden of the proof is upon the State, and they must not prove two out of three elements, nor must they prove nineteen out of twenty, or nine hundred and ninety-nine out of a thousand, but, if there be any number of elements in this case that you must find proved, before you can say the defendant is guilty, then you must also find in your discussion of the evidence, and in your verdict that the People of this State have proven them all to you, beyond each and every reasonable doubt. Beyond each and every reasonable doubt, must they prove them to you, before you can say by your verdict anything except innocent, and not guilty.

There may have been many things which more able counsel might have shown you, but, if I have made mistakes, and you feel that there is something lacking on the part of the defense, I trust that you will not visit my shortcomings on his head, but feel that I have tried to do my best. If more able counsel had appeared for him, perhaps there might have been more done for the defendant's welfare, but I have done my best.

Now, the defendant is charged with murder in the first degree, and his Honor will undoubtedly tell you, before you can find him guilty of that, you have got to

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find that he took the life of Bertha Roth, his wife, with premeditation, you have got to find that he took it with deliberation. Those are two elements, two very important elements, gentlemen of the jury. You ought not to surmise that those elements are here, you ought not to guess that those elements are here, but from the entire case as presented to you, you have got to find them present, and you have got to find that those elements are present beyond all reasonable doubt.

His Honor may charge you that a reasonable doubt is one based on reason. It may be, perhaps, that you need not give or assign any cause for your doubt, but if it is a doubt, if it is such a doubt as would make you hesitate in your own affairs of life, in social, or private, or family, or business affairs, then you can say on your oaths that there is a reasonable doubt here, and it then becomes your duty to acquit the defendant.

It is not necessary, it is not incumbent upon the District Attorney, gentlemen, to prove to you motive. Now, I shall discuss with you, in a few minutes, the question as to whether there was or was not motive in this particular case, as far as the relations of the defendant and his wife are concerned. But in some cases, and his Honor may charge it in this case, which is a case of circumstantial evidence, the People ought to show

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you that there was some reason, some cause, some desire on the part of Roth to kill his wife.

I shall point out to you as best I can, in a few minutes, that the fact that, no matter what might have occurred, these little quarrels between husband and wife, and particularly down on that terrible east side, particularly in the hot temperature of July, there may have been such quarrels, furnish no motive for the killing of Mrs. Roth.

But, gentlemen, before you go into the consideration of this case, you must know that Bertha Roth is dead, and your verdict of guilty cannot bring her back to life; but if her voice, coming from the Great Beyond, could be heard in this court room, it would be heard in behalf of this man who sits here, her husband, and it would ask you to acquit him, not because of sympathy for him or for her, but it would tell you that the defendant at the bar did not commit the crime with which he is charged.

Whatever may have been done in those small, oppressive, dank and dark rooms, on the night of July 27th, or the morning of the 28th, I ask you what my distinguished friend would have claimed, if Roth had died, and his wife had lived.

If Roth had inflicted the wound upon Bertha Roth, and had died with his cut throat, who would have been

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the defendant here, to-day, and against whom would the eloquent Moss, for he is eloquent, and I wish I could speak to you on behalf of my client as I have heard him speak for years on behalf of his, who would he be prosecuting here, to-day, if Mrs. Roth's wounds had not caused her death, and Roth had been found in bed, with his throat slashed, so deeply and horribly slashed that no human being, starting to do it, could so retain the power of his arm as to continue it?

I shall ask you to consider that, gentlemen. Against whom would Frank Moss's voice be raised here, to-day?

Of course, against Bertha Roth, on trial for the murder of her husband.

And if you think that she, alive, and Roth dead, would have occupied his seat, don't you think, gentlemen, that that is sufficient doubt to bring from the lips of your Foreman, when the Clerk asks you that momentous question, "What say you, gentlemen? Guilty or not guilty?" a verdict of not guilty?

If Bertha Roth had lived, she would have been charged with the murder of her husband. But her husband lives, and he is charged with her murder.

Think that over, gentlemen; think it over.

If those two persons had been in that room, as they were in these rooms, and Bertha Roth was stabbed by her

husband, and he had died, would there not have been a charge of murder made against her? Is it not reasonable to suppose so, no matter what the District Attorney may tell you, for he would have investigated the facts, and perhaps come to the conclusion that there was perhaps something serious in the death of the husband, particularly when he knew that there had been sometimes quarrels?

But remember this, gentlemen: It is not for us to prove to your satisfaction that the defendant did not kill Bertha Roth; it is for them to prove it beyond a reasonable doubt; and, after hearing our defense, gentlemen of the jury, if you feel even that there is a reasonable doubt as to whether we are telling the truth or not, mind you, on the one hand, you have got to find beyond reasonable doubt that the People's witnesses are telling the truth, or that the circumstances as related by them are really true, and on our side you have only to have a reasonable belief, not as to the truth, but as to whether it is a lie or the truth, and, if you have a reasonable doubt as to either, it is your duty to acquit.

The little boy, the day before yesterday, I believe it was, testified in answer to the Judge's questions.

Did you hear how splendidly he acquitted himself? It is boys of that kind who, even under his terrible circumstances, make those of his faith feel proud. He will

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have a hard struggle, perhaps, but he will eventually become a worthy and useful and distinguished citizen.

But what is his age? Had he passed the age when his mother took him to his father, and said, "My Lord, I have brought up your son, and he has now arrived at the age when you must take charge of him?"

No, but he was a mere baby, a tot, hanging still to his mother's apron string, and, even though he had been every day to his aunt's house, he still clung to his mother.

By the way, what aunt? Why, was it the father's sister? No, it was his mother's sister.

He was brought up by his mother, clinging to her, even as you and I, even in these older years, in hours of stress, cling to ours, and find comfort in their presence and affection. He was full of but one kind of love, mother love, knowing but one human being on earth, mother.

And then he comes home -- but I don't believe that he was at home at the time of this alleged occurrence -- he comes home, and soon thereafter his mother crosses the dark river of death. And then with his little brain taught by the mother's relatives in this case, though there is no proof of that in this case, conjures up this story.

During his cross examination, he told a very straight story, it is true, but how often, and you know it perhaps

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better than I do, for I had to think of the question and the answer almost at the same time, or the preceding answer and the following question at the same time, and you had nothing to do but observe him, and you know it better than I do, how often he said, "I don't remember."

Wherever he may have been since this terrible occurrence, visited by those who may have visited him, his story actually became stronger as he went along, until, unlike a boy of eleven years, with faltering lip, he told a story, the whole story, without a stop or a pause, and then, upon cross examination, he didn't remember this, and he didn't remember that, and he didn't remember the other thing, and I say to you, gentlemen, taken all together, his story is not a story that is reliable, and it couldn't well have been, because he was only a baby. And, if you feel that way about his story, why should you send this man to an untimely death because of that story?

Would it be fair to say to a fellow human being that he shall walk down a stone corridor, and into the room of the chair that awaits the murderer, and which shall send him to all eternity, on the story of a little boy like that? Surely not. You could not do that.

And if, in my argument, I dwell for a moment or two more on the boy's story, I trust that I shall not tax

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your patience, because it may be necessary.

Can there be a more excitable time for a human being than to find himself awakened at night, in the dark night, on a hot July night, in an east side tenement house, with his throat cut, not a mere scratch, but a great, deep cut, from ear to ear, right across?

It was not a pin scratch, or the scratch of a pin point, but it was a cut, a gash, one that might have cost him his life, if the ambulance surgeon had not been so quickly on the spot.

And so the defendant on the stand told you that he didn't think Wartalsky was there.

Well, even if he was there, did he say that he saw the defendant cut his wife's throat, did he say that he saw the defendant hold her down, and cut her throat?

No. He heard a noise, and he went upstairs, and in to the room of this defendant, and saw him there on a bed, covered with blood.

It may have been his unconscious scream that alarmed the neighborhood. How does he know whether he screamed or not?

I am sorry to draw it so close, but, if you had awakened, at night, with that terrible sensation, do you know whether you would scream, Mr. First Juror, or Mr. Second Juror, or you, sir, Mr. Sixth Juror?

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A scream was heard. No one said that they heard Mrs. Roth scream, not even the Italian lady, her next door neighbor, or the other woman who was so anxious to talk.

Is there not a camaraderie among the east side women? Must they band together to protect themselves against brutal husbands, who beat them?

But does Wartalsky say that he saw anything of this happening?

No, but he said that he found a knife in the bed, and he says that it was in the defendant's hand.

You remember the testimony of the officer, gentlemen? He found no knife in the defendant's hand. The knife was lying on the bed, where, in the horror that came upon Mrs. Roth, after she committed this terrible crime, she dropped it.

And this man lay there, vomiting blood from his mouth, and gradually the blood from his body spurted over that bed, where he expected to enjoy his night's rest.

And Wartalsky comes in, and finds him there. And the officer comes in, shortly after, and he finds Roth lying on his left side, and helps to put him over on his back. And the nearest that the knife was to the body of Roth was three quarters of an inch away -- no, three or four inches away, if I remember right.

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A knife was found on the window, and the testimony of the doctor is -- the doctor from the hospital -- that the wound was from a quarter to half an inch wide, and Dr. O'Hanlon said from a half to three quarters.

It is your duty as jurors in this case to take into consideration the question as to whether any of the knives produced before you in evidence you think made a wound three quarters of an inch wide. The knife is at least an inch and a half wide, the silver knife. And I trust to be able to remember to show you the defendant's honesty about that knife, under cross examination.

Now, if he had committed the crime with the large knife, he would have made a deeper wound; and, if he had committed the crime with the large knife, do you believe that it would have broken off in Mrs. Roth's throat; and, if it did, where is the other part of the blade? She was taken to the hospital right away.

And, if he had done it, and intended to take his own life, would he have dropped the large knife, or placed it on the window sill, and then gone back and rummaged around until he found the silver plated knife, and gone back and used it there?

Do you believe, gentlemen of the jury, that a man who had just murdered his wife, caused her a wound from which she died, is going to be so explicit about it?

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They can say that he used the large knife, or that he broke it, because it was found on the window sill where Mrs. Roth last was. There is not the slightest doubt of that.

But I will tell you what she did. In her horror, in her despair, after having cut her husband's throat, seeing the blood from his body pouring out, the same blood that flowed in the veins of her children, saw it gradually besprinkle the bed upon which he lay, in her horror and despair, she ran from that room, and picking up the first implement that she could get, she jabbed it into herself (illustrating).

That is the way Mrs. Roth came to her death. That is the reason that Roth was found bleeding and wounded on the bed.

Far be it from me, of all human beings, who stands here with the blood of God flowing in my veins, and with the breath that he gave me, to disparage the dead, but it is my duty to say that which will convince you of the innocence of my client.

I don't know that I blame Mrs. Roth very much. Here was a woman in a tenement house, with five babies to look after, with the heat of this city, particularly in that portion of it in the summer months, some times despairing, worrying because her sister, or her aunt, or some other

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woman that she knows is getting on in life better than she is, I don't doubt but what sometimes it drives women mad, and she had been quarreling with that woman all day, perhaps been over her ironing board all day. And what an opportunity I am giving to Mr. Moss to point out her wife-ly attention to her household duties. But sometimes the grip of despair will take hold of you, and that night, lying there, panting, perhaps, for a breath of air, who can tell what thought entered her mind, and who can tell why or what she thought of the husband who dragged her away from Mrs. Hirsch, this Mrs. Hirsch who was causing her all this trouble? How she must have hated her, that sultry night.

The District Attorney will tell you that I have not shown that it was hot and sultry. Well, gentlemen, you are not to draw upon what you hear alone in this testimony in this case, but also upon your own knowledge of the city in which you live, upon all the knowledge that lodges in your mind in your experience, all those things must be called upon in your determination of this case.

You cannot say that, because I did not prove it was hot and sultry, that it was not hot and sultry in this city, in July. It was, and you know it.

And over in that east side region, Mrs. Roth, angry

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because Mrs. Hirsch had started the story that she was buying clothes, instead of paying for her groceries, went downstairs and quarreled with her, and was dragged away by her husband, and the hatred that she had towards Mrs. Hirsch, on that hot night, as she lay there, must have been beyond all bounds.

Now, there is a discrepancy between the testimony of the special officer and the regular policeman, and it seems to me that, as between the two, you should take the word of the regular policeman, because he is a man more trained, and he can remember better; and when he tells you that the knife was not in the defendant's hand; you ought to know, you ought to feel and conclude, that he has no reason to tell an untruth, and he is a man of experience, and you ought to conclude that he is telling the truth, and that Wartalsky, the first officer on the scene, is not.

It does not matter much, I suppose, whether Roth was found on his stomach or on his face, or whether he was found on his back or on his left side. But, gentlemen of the jury, if Roth stabbed his wife, that night, do you think that he would have gone back to that small bed room, and taken off the coverlid or cover, and thrown it aside, and laid himself out gently, like a Socrates about to drink the hemlock, and use the knife on his throat?

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Or do you think that he would have cut his throat there by the couch, which was almost the bier of his wife?

Would he have gone back to his bed room to cut his throat, and if he did do that, do you believe he fell back gently, and raised his legs to the bed, and lay back in an easy position?

But the fact that he was found in a normal position in that bed is an indication that he was not out of it. The fact that he was lying, not across the bed, or not from the corner to another, but as you said I would lie, sleeping, is not that the best kind of proof to you, gentlemen, that he was not out of bed after he had laid himself down to sleep?

Is it unreasonable to suppose that he would not have been in that situation, if he had arisen from the bed, and gone to his wife, and committed that crime?

It is not possible that, with the horror of it, and the possibility, crazed or otherwise, he went back to that stilling and quiet - it was stifling, gentlemen. This is a fact, and it shows that it must have been. The window was open. The window given to his wife. He would have gone back to that hot and stifling room, and laid himself gently down, and cut his throat.

Thank you, gentlemen, and I repeat, and repeat again, and

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must not forget that Roth was found lying in a normal position; and, if he had committed the crime charged against him, he never would have been found in that position.

Think of it, think of it, think of what he tells you, without any acting on his part, and with no witnesses except the witnesses for the prosecution to support him, he tells you that which ought to prove his innocence, if it was necessary thus to prove his innocence to you, that he was lying in a normal position in that bed.

There was some question as to whether or not the defendant had on his trousers. The little girl was in doubt. The officer is in doubt. Wartalsky, the inexperienced, who had never before had anything to do with anything of this kind, said he had on his trousers.

Well, if his trousers were upon the person of the defendant, where are they? If they were on his person, they went with him to the hospital, and the hospital is under the jurisdiction of the police authorities. Where are these bloody trousers? And they must have been bloody, if you are going to take the testimony of the two officers.

And if there are no bloody trousers produced -- and the underwear may have been disposed of by the police -- is it not an indication that the defendant at the bar, when he came home that night, really undressed, and went

to bed for those few hours of sleep before that five-thirty in the morning, when he would get up, and go downstairs, and on to the Bowery, for his four cent cup of coffee and cake? Four cents. Just think of it, gentlemen.

And he heard him snore or groan, Wartalsky says.

But is there a single word that either of the officers or the ambulance surgeon tells you that the defendant said?

He was alive. Is it possible that he could have inflicted upon himself so deadly a wound that he couldn't speak? It is impossible. If he would start out to do it, he couldn't have inflicted upon himself that wound.

And there are no bloody trousers here, and doesn't that show that, like a hard laboring man as he was, he laid himself down to sleep?

Now Kephart saw the crowd at the door of the house, and went in, and saw the defendant lying there.

And the knife was not in Roth's hand. It was lying on the bed, where Mrs. Roth had dropped it.

And Mrs. Cippiano and Mrs. Poser and other women neighbors testified.

Mrs. Cippiano testified that she heard a knock. I don't think it is necessary to discuss whether it was the knock of the defendant or any one else. He may have got home at half past twelve, or it might have been later. There is no definite time stated when he left the

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house, that night. He may have gone downstairs for a little air, and he tells you that he went over to the sister-in-law, to leave his watch and chain to be pawned.

To be pawned for what? There this man's pride appears. "When she lived with me before," he said, "I wasn't accustomed to two rooms, but there we lived in two rooms," and, when the dispossession notice came he said, "Why, if we have to get out, we might as well live in the style that we always lived before." And so he wanted to give her more money by the pawning of his watch and chain, so that she could live again in the style that he wanted her to live.

And Mrs. Power, how excitable and talkative she was. Mrs. Roth was dead, and ever on the east side the fact that she was a witness in this court room will be handed down for generations, and she wanted to be an important witness. "Oh," she said, "you don't let me speak," or words to that effect. And, of course, his Honor did not let her speak, because she couldn't say a word that could honestly and legally come before you, and she was quite angry, and left the court room in quite a feminine huff.

And then Dr. Zimmerman was called, but he did not know anything of importance.

And Dr. O'Hanlon conceded that, each year, one might learn something new.

If I were to indulge in stories I might say a word, too, about Bismark, who, a day or two before his death, said, "I know now that I didn't know very much."

But Dr. O'Hanlon admits that the wound in the woman's throat might have been self inflicted. He says that he doesn't think that Mrs. Roth inflicted the wound herself, but his opinion is not a very strong one, because he admits that, in this case, the wound could have been self inflicted. Of course, I could have stopped there, and I could have said, "Doctor, could this wound have been self inflicted?" And I could have stopped there.

But I am so strongly imbued with the conviction of my client's innocence, that I went further, and I said, "Doctor, do you believe that Mrs. Roth inflicted it herself?" And he said no.

Now, I am not charging the Doctor with any attempt to pervert the testimony, or attempt at perjury. He did admit, after a great deal of effort on my part, that Mrs. Roth could have done it, but that in cases of suicide, the only cases that count in a case like this, he never found such a wound, self inflicted.

Now, there is another thing that Dr. O'Hanlon said, and my heart was filled with joy when he said it, be-

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cause it indicated not that the defendant at the bar beat his wife, not that he put the \$16 that he earned every week into his own pocket, and squandered it on drink, but that he took care, the best of care, of his family. "I found Mrs. Roth", says the Doctor, "140 pounds in weight, five foot four inches in height, and well nourished."

Well nourished, well nourished, taken care of, plenty of food, plenty of drink, plenty of rest, well nourished. Don't forget that, gentlemen. Mrs. Roth was a woman well nourished.

Where is Mrs. Kuba, the woman who gave her food while her husband was in jail?

Mrs. Kuba came into court to-day.

Did you hear Mrs. Kuba say that she had ever sent as much as a mouthful of food to the defendant's family?
No.

But Mrs. Roth was well nourished. Well, why should not Mrs. Roth be well nourished, when, from six o'clock in the morning until six o'clock at night, step by step on the treadle of his machine, stitch by stitch, in light and in dark, in the hot weather and in cold, in stormy weather and in fair, for twenty-one years, the twenty-one past years, Abraham Roth worked at his machine, so that he could provide food, and drink, and dress, and a home for his wife, and the children he tells you he loved?

Why shouldn't Mrs. Roth be well nourished? She had her babies to take care of -- cold woman that she was -- and I may say a word about it to you -- and why shouldn't she be well taken care of? She had her husband who loved her, and who gave her five dollars a week only that she would take him back.

Are you going to say that her being well nourished is an indication that the defendant at the bar sent her, before her time, into the grave?

Mrs. Roth was well nourished. There he was for twenty-one years, never without a position, always working, in those sweat shops in the east side or west side or any part of town, working with the sweat of his brow, and when he was working there was always a song of rejoicing on his lips, for he knew for whom he was working, he knew he was working for the little girls that he knew in the little Roumanian village, in childhood, and who afterwards became his wife and the mother of his children.

Is that an indication that he took her life?

If we only had the knowledge of the Father of all men, the Father of all religions and all faiths, we could see through all this and see where the innocence of this man stands forth, without any difficulty, and to hear from Dr. O'Hanlon the proof that he took care of her all the time, and then hear the charge that he took her life, is hard indeed, gentlemen.

But, gentlemen, she is gone, the woman he loved, and his children are left motherless, the children, some of whom have been pressed into the service of the State to send him to the electric chair.

Now, when I say Israel or Solly, I mean one and the

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same boy. And he was recalled here, to-day, and he didn't say anything that I can remember.

But he told you, the other day, that he saw his mother, when he came home one day, with a black eye. But there was no witness to tell you that the defendant inflicted it, not even Mrs. Kuba.

There may have been quarrels. It is true, perhaps that, in a palace, with twenty lackeys standing about, the Lord of the manor and his lady may not have hold of each other's hair, or that they may quarrel in polite language. But on the east side, where passions run hot and quick, and your next door neighbor pays no attention to what you do or say, passions may have run high, and there may have been quarrels.

And perhaps there was a quarrel between them, and perhaps the defendant did go with an officer to the police court, and perhaps he was sent away. And then Bertha Roth said, when he is out, he always supports me. Perhaps he was a little excited, and perhaps I gave him cause.

The minutes of the case are not here. He was convicted of disorderly conduct, it is true. But who can tell what the minutes show? There may have been provocation.

But are you going to say that the defendant at the

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bar, some ten months before the 27th of July, served two weeks in the Workhouse, and that because of that he is guilty of murder in its first degree?

And the boy does not say that he saw the quarrel.

And he doesn't remember whether his mother sent him out to sharpen knives, the day before. But he does know that, at the supper table that night, his father said that Jewish phrase which has caused so much discussion in this case.

Gentlemen of the jury if you only understood the language and could walk a street like Broome street, for instance, in this city, at any hour of the day, you would hear that expression used ten thousand times, and I say to you, as I have tried to show you in this case, that that expression is used by mothers to their little children, by wives to their husbands, by brothers to sisters, a hundred times an hour in the great East Side of our city.

And upon that phrase, upon the phrase "Ich will dir derhergehen," the District Attorney of this county attempts to predicate murder in its first degree.

I don't want to argue with you on that subject, but you heard the paid expert of the People, who gave you the tenses and derivatives of the word, the paid expert of the People, and he said it meant to kill. And then, in answer to my question, he said that it might mean to beat or lick.

And then, without pay, and from the great east side, came man who knows more about it than any one else whoever walked into the court room, and I am referring now to Adler, and he said "When I was a baby, at home in the old country, my mother used that expression."

But, gentlemen, don't think that I am trying to impute crime to the women who use it, the mothers of the east side.

And the young lady told you the common acceptance of the term "I will beat you."

And if the husband did say, "I will beat you," does that indicate that he intended to murder Bertha Roth, that night?

He denies it. And he says to you what his wife said to him, when he said to her, "Don't frighten the children."

You gentlemen who understand the language knows the word she used to him. The word as used by her means "Go get killed," and if you have any personal knowledge, you have a right, and it is a duty under your oaths, to bring that knowledge into the discussion of this case.

Now Israel Roth did blunder a bit on cross examination I think. And, as far as the little girl is concerned, her evidence is considered by the law so light, of such light value, that his Honor will charge you, gentlemen of the jury, that you have no right to find a verdict

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of guilty against the defendant, unless her evidence is corroborated.

What is her evidence?

She thinks she saw her father walk into the bedroom; she doesn't know; she isn't sure. She answered in reply to a question of mine.

Now, there was some proof in this case, I believe, that the two little girls went to bed in the large bed, and when Abraham Roth came home, that night, at half past twelve, and he walked into his room, and decided to kill into his wife, as it is claimed, he walked into the bedroom where he found the two younger tots, and he said to himself, "Well, in view of the fact that I am going to kill my wife, I think I ought to move these children into the other bed." That is the theory of the People.

Why, if he intended to murder his wife, did he move those children away from the bed in the bedroom?

In the bedroom, the room next to the kitchen, is the place where the children should have been, if he intended to kill his wife. What difference was it to him if he cut his throat in the large room or the small room?

Is that an indication that Mollie doesn't know much about what she is talking about?

And can you believe, after the excitement of that night, she knew whether her father came into the bedroom

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or not, that night? Isn't it reasonable to believe that that little tot did not know what occurred there?

As I said to you before, gentlemen of the jury, her testimony, in the eyes of the law, as his Honor will charge you, you must find corroboration for, corroboration, before you can convict upon it, even if it were a thousand times as strong as it was, the evidence of a girl like that must be corroborated.

Why did the law say that it must be corroborated? Because the evidence is not the evidence of a substantial trained mind. It is not the evidence given by a person of remembrance. It is the evidence given by someone to whom the slightest thing may mean a thousand things. The law says, therefore, you cannot trust the memory of a child like that, and, therefore, you must have corroboration.

Now, even if Mollie Roth were to tell you, gentlemen of the jury, and she did not tell you, that she saw her father stick a dagger into the throat of her mother, the law would say that her evidence must be corroborated.

Now, she did not say very much. She said that she went to bed, and she heard her mother speak. She doesn't know why she didn't hear her father. And so on.

Now, if she went to bed, and heard her mother speak, but doesn't know that her father spoke, is it not some

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indication that the mother did awake, and the fact that she did not hear her father, isn't that some indication that he was in bed?

Of course, the District Attorney will say that, if Mrs. Roth was in a frenzy from the quarrel with Mrs. Hirsch and with her husband, that day, why didn't she do away with her children too.

Who can tell what that mother thought? Who can tell whether she remembered her God at the last moment before she did it, or whether she did not heap upon the defendant at the bar all the curses that Damnation itself could not surpass?

And Mollie did not hear her father's voice, because her father was in bed, asleep, fortifying himself for the next day's work. She thinks that she saw him walk to the bedroom, but she only thinks, this little tot, upset by the happenings of that awful night.

Who can tell what dreams come upon us between wakefulness and sleep? She did not see her father walk to his bed when he first came in. Can she tell the second that she awoke? Can she, or you, or anyone in this court room, or myself, tell exactly what happens the minute we regain consciousness?

Have you ever gone to a sleeping person, and, awakening him suddenly, heard him say something so foreign to

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what you expected him to say, that you have started back, in astonishment?

Now, I know of an important case in point, the case of some one related to me, who takes at least fifteen minutes to get back into consciousness, when roused from sleep.

But this little girl does not know whether he walked into the bedroom when he first came in, or after he came from the kitchen, if he was there.

And then she went over to him, after she heard a shout or scream, perhaps the mother's -- it was not the father's that's sure -- and then she saw the mother go to the window, and then she went to her father, and shook him, and said, "Father, we have no more mother."

Well, gentlemen of the jury, it certainly must have been a hard few moments for Mollie Roth, no doubt about it, to see her mother go through a window into Eternity, and then go to her father's bed, and find him covered with blood.

It must have been a terrible shock, that would unnerve an older person. And what did he do to Mollie Roth?

Do you think, gentlemen of the jury, that, after seeing her mother go through the window, to meet her God, and then to go back, and find her father fading away from

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life on his own bed, that Mollie Roth could have remembered what had occurred there, that night?

Is that baby such a great mimetic genius as to be able to memorize exactly what took place under such circumstances? Or could you or I? And how they dared to call Mollie Roth and put her on the stand to testify against her father, I can't understand.

Gentlemen of the jury I pledge you my word that I intend no reflection upon the distinguished gentleman in whose hands the People's case is, but Mrs. Roth had sisters and she had brothers. Where were the children while the father was in prison? We couldn't prove it, we didn't know, I didn't know, and I am the attorney for this man, but I know that no brother or sister of Abraham Roth had those children in their care or keeping.

MR. MOSS: I shall object to any statement, outside of the testimony, at this time.

THE COURT: Yes, confine yourself to the testimony in the case, Mr. Sachs.

MR. SACHS: Where were Mollie Roth and Israel Roth from the time of this occurrence until this trial? Where did they come from to this stand to try to add the necessary links to the chain that would send this man to the electric chair?

Israel, who slept in the room with his father, knows

nothing. He slept on.

But Mollie Roth, who was in the room with her mother, who heard her mother scream, she awoke.

Now, do you want to know why the mother screamed?

It was not because, lying on her couch, she saw the defendant approach her, with murder in his eye.

No. But, after Bertha Roth had cut her husband's throat, after Bertha Roth had cut her husband's throat, and in that terrible frenzy in which she was -- and, proven or unproven, it must have been so -- after she had cut her own throat, then came upon her the horror of it all, and the desire to live again.

She said, "Why did I kill myself? I want to live, for my children's sake, for my husband's sake, to be a good wife to him."

Then, in appreciation of the fact that she was going to die, as the result of her own act, and was going before her Maker, she cried out to Almighty God to save her. There was no answer from Almighty God, except the answer "Come, my child, unto me." That is why Bertha Roth screamed.

With the quietness and stealthiness of Lady Macbeth, she went to her husband's couch, and there she took what she could not give, or attempted to take what she could not give back.

Whether she saw the blood gushing from his throat or

not, matters not here, but in that room, or in the next room, by her couch, in that room or in the next room, and leaning over her baby, Bertha Roth, in completion of the act that she had conceived, in completion of the act of her frenzied brain, if it was frenzied, or normal, if it was normal, bending over, perhaps her tiny tot, or taking it into her arms before she went on that last long journey, Bertha Roth inflicted upon herself the fatal wound that caused her death.

Bertha Roth may have screamed before, or Bertha Roth may have screamed afterwards; but if you gentlemen have any knowledge of the wounded, though that wound may be self inflicted, of the horror of dying in the way that we all hope not to die, but with friends around our couch, or in that desire to live again, when the horrible appreciation of the fact reached her that she was going across the dark river came into her mind, then she screamed, and then perhaps Mollie Roth may have heard her, and may have whispered, in her childish way, a word of sympathy that may have accompanied her mother across the great valley of the shadow of death.

Or it may have been a word of horror from the little throat, or it may have been a word of sympathy.

But Mollie Roth was awakened by the scream of her mother, and she went to the couch.

Between the scream and her awakening there may not have

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elapsed any time. If there was any lapse of time, she certainly could not have been her father come back to the bed, because he was there already.

If no time elapsed, why didn't she see her father bending over the couch of her mother?

No, the room, the kitchen, was empty when Mollie went to her mother.

And I tell you, gentlemen, it is impossible for her to know whether or not she arose from the folding bed in the kitchen, or the large bed in the back room.

July 27th, 1910, on the crowded, overcrowded, congested east side of the city of New York, on that night, there slept Mrs. Roth (indicating) by the window. Here slept the father and his son (indicating), the male members of the family. They had to bear the blunt of life's battle. They slept by no window.

Do you think that the mother, with her hatred of the father, would have put the two little girls in that room? Or would she have put them in the folding bed in the kitchen, where they could get a little of that very little air that came to them?

You have a right to consider that question, and find from that whether or not the little girl Mollie is of sufficient mental power, sufficient capacity to remember whether or not she slept in the big bed in the bedroom, or in the folding bed in the kitchen.

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Now, gentlemen, if you were in such an apartment, where would you put the two little babies, or where would your wife put them? In the dark back room or by the window, where they could get some air?

And she says that her mother sent her downstairs to get the knives sharpened. What did they need sharp knives for over there, particularly in the summer? To cut turkey or chicken? Why they even tear the bread apart with their fingers, when they eat over there .

And we know not how long, how long in some dark corner of this woman's brain, lurked some purpose to rid herself of this hated husband.

It may be true that, at the time, she did not intend to take her own life, and it may be true that she did. It may be true that she did not intend to take his life, and it may be true that she did.

But it is a most peculiar, very peculiar circumstance, in view of the circumstances under which those people live over there, in the summertime particularly, when they eat very little meat, and they eat very little of it, at all times, in fact, that, for no particular reason, knives should be sent out to be sharpened.

And I am dwelling on a fact that my learned friend doesn't know doesn't occur in those tenement houses over there, every day, and he doesn't know about the matter as

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well as I do, he says that they needed sharp knives. They eat very little meat, anyway, but scarcely any in the summer, and the knives were sufficiently sharp already.

And the little girl says that her father ordinarily slept in the big bed.

Now, if that was his usual place of slumber, why was it changed, that night, or did he come back to his accustomed place to sleep?

Now, gentlemen of the jury, if Abraham Roth committed the crime, and if he drove the dirk or dagger into his wife's throat so deep that it was necessarily a mortal wound, would there not have been some blood upon him? Would not his hands have had some fresh, hot, human blood upon them?

And if there was blood upon his person, why is it that, from the couch at the window to the bed on which he lay, there was not a drop of blood upon the floor?

The baby and the mother were all covered with blood, the mother bleeding profusely, but yet from the couch to Abraham Roth's bed, all along that floor, not one single speck or drop of blood was found.

On the other hand, gentlemen of the jury, if Mrs. Roth did it, why was there no blood on the floor?

But whether Mrs. Roth did it or Mr. Roth did it, you have the doubt there, and his Honor will tell you

that is a reasonable doubt, and that must acquit the defendant.

If she did come to that bed, and cut his throat, and in the horror of it all, dropped the knife on the bed and then back to her own couch, where, bending over her baby, for, perhaps the last farewell, she shrieked and died.

But do you think that Abraham Roth could have gone from her bed to his, without a drop of blood showing on the floor?

Was there a compact to commit suicide?

Did Mrs. Roth say, "I will kill myself here, and you go inside and kill yourself?"

No other human being could have inflicted the wound that was found on Abraham Roth, that day, than his wife.

Now, gentlemen, he wouldn't have moved the children, that is a certainty, if he intended to murder his wife.

So that you must believe that it is true, when he says that he came home, and walked directly into his usual place of slumber, and lay down to sleep.

Now, his Honor will charge you that, if you believe that any witness has wilfully testified falsely as to any material matter in this case, you may throw out their entire testimony. Now, I ask you to consider the testimony of the witnesses for the defense, and ask yourself,

earnestly and honestly, if they have any reason to falsify.

Mrs. Brodsky, a witness called on behalf of the defendant, says that the wife threatened to take the life of the husband.

Mr. Moss, upon his cross-examination, brought out the fact that Mrs. Brodsky's husband was a friend of the defendant. She is a woman. She must arise in the defense of her sister, she must arise in the defense of her sex. She is not related to the defendant. It must be a natural desire on her part to see punished one who does to death a woman, and she comes here, under oath, and tells you that to her, and in her presence, Mrs. Roth threatened to take the life of her husband, and herself and children. And she spoke of the defendant Roth's love for his children.

Now, gentlemen, I don't know that my ability is such that I should be instructed with a case of murder in the first degree, but I tell you I would think little of myself, if I did not speak to the witnesses that I was going to produce in a case where a man was charged with the stealing of a chicken even, before I put them on the stand.

Do you think that the District Attorney spoke to his witnesses? If he did not, he is unworthy of the splendid reputation that he has acquired. Of course he did. And I spoke to mine, and I tell you so frankly and freely,

I spoke to my witnesses.

But do you think, gentlemen of the jury, that, because I spoke to a witness, I would ask that witness to commit perjury?

Naturally, it is the duty of every attorney to know what he is going to try to prove, and I did speak to Mrs. Brodsky, and she told me that she had heard Mrs. Roth threaten to kill the defendant, and told me of her attitude towards him.

Was there any evidence of hatred on her part or anything of the sort towards Mrs. Roth?

And what did the defendant say as to the care of his children when he was away from them? "I told Mr. Polansky", said the defendant at the bar, "give the children what they want, and I will come and settle it with you, at the end of the week."

And that was when he was not living with his wife, and giving her only five dollars a week, so that she would come and take him back.

And Mrs. Brodsky tells you of his attitude towards his children, that it was always that of a devoted, kind and loving father.

Now, she tells you that, while they were living on Cook street, in Brooklyn, Mrs. Roth sold out the furniture, without the knowledge of the husband, and left him.

We show you this, gentlemen of the jury, so that you

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will understand the attitude of Mrs. Roth to her husband, why I don't know.

There was quite a laugh when this woman, blushing and hanging her head, hung her head and said "Well, she didn't want children," and there was a titter in the court room. But don't you know, gentlemen, that that is not remarkable?

But Mr. Roth is working on Bleecker street, and living on Cook street, Brooklyn, and he gets up at about half past four and gets over here in time, and he is working over here all day long, and he has money in his pocket, sixteen cents, after his four cent breakfast, and yet he feels happy and the work sweeps out of his hands over that machine, all the day long, and, at night, he hurries over to meet his wife, the woman he loves, the mother of his children, in Brooklyn, not in this case a richly dressed woman, but clean and neat, and the children whom he has fathered should be there to meet him after his day of toil, but he comes back and finds what? Empty rooms, a deserted home.

Does that show love, or the fulfillment of wifely duty?

There he goes to Cook street, and finds an empty apartment, and he goes away.

Then Mrs. Polansky says -- I think that she invited him in -- and says "Come in and have some supper with us."

And Mrs. Fink, the janitress, testified that the

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defendant called at her rooms, and the defendant was indignant at the dispossession notice. And then he learned, perhaps, that Mrs. Roth has been dispossessed because of her quarrels with her neighbors.

And then they left the janitor's apartments, and they meet Mrs. Hirsch.

Now is the time, and all it needed was a referee to call time; and they went at each other, not perhaps with their hands, but women, gentlemen of the jury, sometimes have tongues, and sometimes they know how to use them.

And Mrs. Roth met Mrs. Hirsch, and Mrs. Hirsch was the cause of her being dispossessed. Ye Gods, what a time there must have been in that hallway, on that July 9th.

Talk about your fairs -- is it not some fair in Ireland -- I don't know the name of it -- where everybody tries to kill everybody else? But what a time they must have had?

And there stood Abraham Roth, with his baby on his arm, and saying, "Come on Bertha, come on upstairs."

But he couldn't get her to leave. She was bound to have it out, and she did. And I believe that Bertha Roth was a woman of violent temper, and I don't believe that any of the tenants got the better of her when she determined to engage in a quarrel.

And he had the baby on his arm, and he tried to drag her away, and couldn't, and went upstairs, and she came up

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after awhile, and she threw the dishes on the floor, and threw the irons on the floor, and broke them. And I believe she did break them in her rage and temper and frenzy.

And then the husband said "Oh, think of the children, Bertha," and she said, in her frenzy, that she cared nothing for the children.

And I wish I could picture to you that frenzy that she was in, all that evening, and that frenzy, that hatred prompted her to do that evil act for which the defendant at the bar, an innocent human being, is now brought before twelve of his peers, to ask them to declare him guilty of the greatest of crimes.

And Mrs. Fink says that she told her that she did not like him because she was a cold woman, and did not care for men, and that she would take his life, and that of her children, rather than live with him any longer.

And she said also that his reputation was good, and that she had a later conversation with Mrs. Roth, and that she said that she didn't like him, and, therefore, she did not want to live with him.

The next witness says that Mrs. Roth said she would kill herself by gas, and kill her children, also, and said everything that a woman of that type, in that part of the city might say.

And she says that, when she was beating Roth, she was cursing him, and I suppose he cursed her too when he struck her, if he ever did, when they were fighting.

Now, young Rubin was a cutter, and he was some relative of the family, and he had his lunch with him when he went up there, and it was during the strike, and he thought that he would go up into the defendant's rooms, and eat his lunch up there.

He says she was drinking beer, and talking wildly, and he spoke to her about drinking beer, and she said, "I am boss here, and, if the defendant tries to stop me from drinking beer, I will kill him and take my own life."

Now, if you are going to say that this defendant is guilty because he said in Yiddish, as they claim, "I'll kill you" why can't we say that this woman was guilty of this crime, because she made threats, more positive and determined that those that are laid to him.

And Mrs. Singer testified that she said, "No divorce for me. I would rather have death than live with him."

If this is the bad husband who has illtreated his wife, why didn't she want a divorce? She sends him to jail, and goes there, and gets him out of jail again. But the District Attorney will tell you that Bertha Roth, during those two weeks, thinking of her husband in jail, out of the kindness and weakness of her heart, determined to get him

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out.

But it was not so. Bertha Roth appreciated the fact that she did what was not right, and that her husband was innocent, and she went around and got a bondaman for him, and took him out. It was not because of her goodness of heart. She took him out because of his goodness of heart, because he was bringing her every cent of his pay, every night that he was paid.

Now, Mrs. Harry Roth said that she met Mrs. Roth, and she said that she couldn't agree with her husband. And she said to her, "Bertha, why don't you stop drinking? If you would, you would get along nicely and quietly," and she said that she couldn't stop. And she said that she didn't like her husband, and didn't want to live with him. And she said that she was nervous and unstrung, and had to drink.

And Mrs. Harry Roth is the woman to whom this defendant gave his watch, so that it might be pawned to buy furniture or a better apartment for his wife and his children.

Think of that, gentlemen. The woman to whom this man's wife said, "I don't like him," and all that, is the same woman who got the watch, to pawn it, so that his wife and children might have a better home.

Now, gentlemen, you will pardon me, but I am going to

close very, very soon. I have taken much longer than I thought I would.

Anna Rubin, an aunt of the defendant, said that she came to her house, one morning, at eight o'clock, and said, "If you want your nephew to live, take him away from me."

The woman must have been mad, absolutely mad, to talk as she did. But the defendant, Abraham Roth, did not want to go away. And why should he? There was his wife, and his duty was by her side.

And she told Mrs. Anna Rubin that she would take her life, and leave him burdened with the children. And that is what she did.

Now, she knew there was nothing to compel her to live with him. She was quite accustomed to the courts; she had been there before; and she knew that it was but a short journey to the court of any Magistrate, and that it was easy to have the injunction laid on the defendant that he should not go near his wife, and yet have to support her and the children.

Why didn't she do that, if she feared and hated him. She knew how to do it. It was a usual place for her to go to, to court. Answer that question, gentlemen.

Now, gentlemen of the jury, I have just one more word to say to you. I know how many things I have left unsaid,

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but the hour when I should close has come.

His Honor will charge you that proof of good character must be taken into consideration in a case of this kind. His Honor will tell you that proof of good character is, at times sufficient to create that reasonable doubt, when no other doubt exists. And, gentlemen, answer to yourselves the question of whether I have or have not proved the good character of the defendant at the bar.

The District Attorney will tell you that every man is a man of good character, until he commits a crime. But not one word has been said against this man, except as to the result of a quarrel with his wife, for the twenty years that he has been in this country and before that.

For twenty long, unbroken years, he worked and toiled, as I said before, by the sweat of his brow, to earn a home, and food, and clothes for his wife and children.

What was there about Abraham Roth, that night of July 27th that should have prompted him to have committed this awful crime?

Mr. Schwartz, his employer for about eight years, and the other gentleman who employed him for ten years; Silverstein, who had worked for Mr. Schwartz for six or seven years, Samuel Fox who had worked for him for years, and Leventhal & Spiegel, who had employed him appeared

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here, and not one of them says a bad word against the defendant.

If you are not going to take that into consideration, why should a man lead an honest, reputable, decent life, if it is not going to go in his favor, in his hour of trial and trouble and need? Where is the benefit of living a pure, honorable, honest existence?

The law, therefore, says the proof of good character is material, because it understands that, if we show that a man like Roth has lived a life of honest labor and toil, that you ought to take that into consideration.

Gentlemen, the defendant at the bar in the case of the People of the State of New York against Abraham Roth has had his say. There may have been many things that might have been called to your attention, and I may have guilty of constant repetition, but I have tried my very best to present to you my client's cause.

The matter now goes from us into your hands, and I have doubt but that, if you, when closeted in your jury room, will discuss the evidence in this case with the care and consideration with which you have listened to it, that we will not regret your verdict.

As I said before, Bertha Roth is gone, but I feel that, if her voice could be raised from the village of the dead, where she lies sleeping, it would be raised in behalf of

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this man.

Take this case, gentlemen, and take it with the seriousness that befits a case involving life and death. If you make a mistake, and it be against the defendant, you can never bring him back, remember that.

I ask not for mercy, but I ask for justice, and I ask you to bear in mind every instant, that, some day in the future, little Mollie Roth may walk beneath the canopy of her religion, to have a circlet of gold put upon her finger, and do not let her then have the thought of a mistaken word that weighed heavily against her father. And do not let the boy, when, on his thirteenth birthday, he takes the oath of his forefathers, and he hears the law made by his forefathers read, remember that he perhaps, too, has made a mistake.

Remember, gentlemen, too, that in this great city of ours eye, in this very hall, await an aged father and mother, whose hearts hang upon your words.

I say it not for sympathy, but, gentlemen, though I know you will not be flippant, you cannot be too serious in this case.

With my sincerest thanks for the great consideration and courtesy of his Honor, and with my sincerest thanks to you, gentlemen, for the care and consideration and the attention you have paid to my somewhat broken line of thought and of word, I leave the case with you.

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SUMMING UP FOR THE PEOPLE

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ASSISTANT DISTRICT ATTORNEY FRANK MOSS.

Your Honor, Mr. Foreman and gentlemen of the jury,
and Mr. Sachs,

Please do not think that it is part of a prosecutor's desire to present matters to you always in such a way that you can add anything to his record by any verdict that you render.

It has been suggested that, if the case were different, and Mr. Roth were dead, and Mrs. Roth were living, the District Attorney would now be trying Mrs. Roth. From that you might infer that the District Attorney has nothing to do but try people that are under suspicion, nothing to do but to try to get convictions. That is not so.

The defendant's counsel has but one thing to do, and that is to acquit his client, if he can; and he realizes that, if he can detach but one gentleman of you twelve from the others in your deliberations in the jury room, he has, for the time being at least, accomplished his purpose.

But the District Attorney represents the People of the State of New York. He represents an august client, he represents a client that is served well only in honor and

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in truth. It is not his business to prosecute every person that falls under suspicion. It is not his business to make a record for so many convictions. It is not his business, his right, nor his privilege to try any case in any way that is not square and upright, and according to his conscience and the conscience of all men.

If the District Attorney is of opinion in any case that the great interests of the People of New York would be served by recommending a dismissal of the indictment, it is his privilege to do so, and defendants are frequently discharged, without trial, upon the recommendation of the District Attorney. There is nobody here that is anxious to try people. If it is difficult for you to hear a case of murder in the first degree, may I say to you that it is difficult for us to present it.

If the case were as suggested in the address of the learned counsel for the defendant, if it were that the wound in the neck of Mr. Roth, if he were the dead person -- if it were a wound that he could not have inflicted upon himself, then perhaps Mrs. Roth would have been on trial. You see the difference.

I remind you, gentlemen, that, when you took your oaths to try this case, it was after you were examined carefully, and after you were brought face to face with the proposition that this was a case involving life and death.

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You were asked whether, if you believed this defendant to be guilty, you would be able to bring in that verdict. You were asked whether there was any reason at all why you should not serve in this case, and we probed your conscience as to whether in your own past you had had any experience that made it wrong for you to try this case, and whether you would be governed by the evidence in this case, and not by considerations of sympathy, or prejudice or anything outside of the evidence in the case.

And it was not simply a bargain between us, between counsel and you gentlemen and the Court, but it was an oath taken by you as citizens that, sitting here in this community of law and order, you would do your duty the best you knew how, rejecting from your action those outside considerations of sympathy and prejudice that sometimes get ahold of unintelligent, and careless and thoughtless man. It was because we, on both sides, at that time, believed that we had a jury that would try this case as it ought to be tried, that each one of you was accepted.

Now, I think, gentlemen, you and I understand each other as to our relative functions, and as to the spirit that prompts our action in this case; and just as I believe in your spirit of fairness and righteousness, so I trust you believe in mine.

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I certainly have no criticism to make of the earnest and ardent counsel for the defense. If I had occasion to make objections once in a while, or even if I had to make occasional criticisms, it has nothing to do with the spirit of the man who throws himself into the defense of a client. I merely suggest that he had but one interest to serve, one object to gain. And I have been on that side of the bar, many a time, and perhaps it makes me more careful on this side of the bar, and I know how earnest one feels when he realizes how much depends upon him.

Now, gentlemen, this case is not going to be decided by oratory. You are not going to decide it upon orator, you are not going to decide it upon any balancing of addresses, as to which address stirs your heart or not, but you are going to decide this case on evidence, and it is going to be my duty to call your attention to the evidence to call your attention to the facts which have been brought out in this case, the facts which we believed we ought to submit to a jury, and not take into our own hands, one way or the other, the facts which we believe show this man to be a guilty man.

I did try to hold this defendant, when a witness, down to the questions that were asked of him, and yet, in my very best way, I tried to be fair with him; I tried to give him the opportunity to say that which he had a right

to say; and, even when his answers went beyond my questions; and, therefore, I felt obliged to stop him, in order that my connected line of thought might not be broken, I suggested, again and again, "That will come afterwards, when your counsel

Now, you were told in the very beginning that your verdict must be carefully considered, because it might send this man to the death chair; that, if you brought him in guilty, infallibly his life would be taken. Of course, you have nothing to do with the sentence that follows a verdict; that is entirely beyond you. You impose no sentence. The law has provided that. It is a thing that really should not concern you. You said as much when you said you would be able to render a verdict which you believed the evidence would warrant. And yet I make this suggestion to you. You will not be frightened from a proper consideration of this case by being told that the verdict of guilty is necessarily followed by death. You will find that the court will lay before you, and, lest anybody should forget it, I say it to you now, the court will lay before you the different degrees of crime, and, while we believe and insist that the highest degree of crime is justified by this evidence, yet it is my duty, and my privilege, and my right to tell you that there will be submitted to you all the degrees of homicide.

I shall give you in my address the reasons why I

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believe the highest degree of homicide is proved, but there is nothing that need frighten sensible and wise men about their verdict. Nor are you to be frightened by some vague chimera raised in your mind as to the possibility of some mistake.

Gentlemen, as we go through life, we must do the best we can. If we look to God for guidance, and do what we do without malice, and do the best we can, we will not go far wrong, if at all. All that men can do is to do the best they can.

We are not obliged to prove this man's guilt by a mathematical calculation. Mathematics, as mathematics serve their purpose. But there is very little mathematics in the ordinary business of life. We have only to prove to your satisfaction, beyond a reasonable doubt, a moral certainty. That is all that is incumbent upon us to do. And the reasonable doubt, it has been suggested, should go to the question as to whether the defendant is telling the truth or not. That is carrying it a little further than I ever heard it put before, that, if you have a doubt as to whether the defendant is telling the truth, you must give him the benefit of that doubt. But I will take, right from the lines of my learned opponent, this suggestion, that, if you come to the conclusion, in considering the testimony of any man, that he has wilfully testified

falsely to a material fact, then you can reject the whole of his story. You can, of course, even with a doubtful witness, take that which has been corroborated and say, "because this has been corroborated, I will believe it."

But, if you find that the defendant or any other witness has wilfully told something which you believe to be untrue, you have the right, in your best judgment, to reject his entire testimony.

The defendant always is under a great temptation; he is under the greatest kind of temptation in this sort of case, the greatest temptation to make out the best story he can make out for himself; and when it is suggested by the counsel for the defendant that you may reject the testimony of a witness who, you believe, has deliberately falsified, I do not know of any witness upon whom that rule falls more heavily than upon the defendant. It is a rule that works both ways.

May I suggest, before I enter upon the discussion of the evidence, may I suggest this to you: A great deal has been injected into this case of a character antagonistic to the character and reputation of Mrs. Roth, some in the speech of the counsel for the defendant, some in the testimony of the defendant, some in the testimony of his little army of friends. Deftly it has been suggested that

she drank, and yet that is a mere visionary thing, when you come to look for the evidence of it. But the suggestion is there in your mind. Suggestions upon the most sacred things in a woman's life have not only been made by witnesses, but, in subdued voice put before you by counsel. That woman is not here to say a single word in her own defense. The effort that I made to put a relative on the stand failed, because of the emotion that that woman had, and I did not care to have fireworks in the case. So there is not a soul here to speak that word for her which might be spoken, if she were present, against the calumnies that have been heaped upon her. She has been killed in the body, and it is intended not only that her body shall perish through death, but that her good name shall go also in this case. And, as a man, I protest against it, and I ask you, as men, to consider all that has been said about that poor woman in the view of men who see her stripped of defenses, and vilified by those associated with her husband, so that she is left simply to the kind offices of this American jury.

It was a hard thing to put those little children on the stand. You saw the three of them here. One of them was so very young that I did not put her upon the stand. I have no desire to string those things out, and to play for effects in that way. It was necessary, as we saw

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the case that you should get testimony from those that were in the rooms.

Israel was eleven years old. The father said that Mollie was ten, not eight, but ten.

Now I shall ask you to be a little patient while I bring to your attention dry evidence. It is much more pleasant to speak, without reading, and it is much more pleasant to hear speech without reading, but you are here not to be pleased but to do an important duty.

Now I will ask you to go with me for a minute to the testimony of Officer Kepko, and you will see whether Officer Kepko's testimony as read to you bears out the suggestions made to you by counsel for the defense.

He said he heard the woman fall. He was attracted to the place by an outcry. He heard the cries for police. He went to the building, and, waiting for something, or looking for something, he heard the fall above. That, together with similar testimony shows that there was something appearing in that window which attracted the people on the street, some outcry from the window before the woman fell through. That is perfectly plain.

The first thing he saw upstairs was the children gathered in the room, five children, excited, covered with blood, the little baby in the arms of one of the little girls, covered with blood. He spoke to them.

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he went into the bedroom. There he found Roth, lying sort of on his left side, more with his face toward the bed. He was covered with blood and was sort of groaning.

"Did you see any knife there? A Well, not at that time, no, sir. Q. Did anyone give you a knife? A. No, sir. Q. You say not at that time. What knife did you see? When and where? A Well, after I turned Mr. Roth's body over, or after we turned his body over --

Q. Well, what did you see then? A. I found a knife underneath him. Q. Is this the knife (indicating)? A. Yes, sir. Q. People's Exhibit 2? A. Yes, sir. Q. And was that knife bloody? A Yes, it was just as it is now, that is the blood was wet at the time."

And you will observe that such is the condition of the knife, a round pointed knife, a very decidedly round pointed knife, with very considerable blood on it yet.

"Where did you see this knife --" referring to Exhibit 1, which you see, also has traces of blood on it now - "A. That was lying on the window sill where the fire escape is."

Then we come to the cross examination of the witness.

"Officer, while knife did you say you saw lying on the bed? A. The table knife, the white one. Q. And when you saw it lying on the bed, did you pick it up? A. Well, I don't know whether I picked it up or whether

Officer Wartalsky, the special officer picked it up. I can't recollect now."

I am calling your attention now to the lack of definite recollection by Officer Kepko concerning that knife. He did not, as stated by counsel, say that the knife was not in the defendant's hand. Now listen:

"Q. And when you came into the smaller room, the defendant was lying on his left side? A Well, sort of on his left side, but more on his face. Q. Well, was his face towards the bed and the rear of the apartment, or towards the bed and the front of the apartment?

A Towards the front. Q. Towards the front?

A Yes, sir. Q. And the knife was lying on the bed?

A. Yes, sir. Q. You don't know whether you picked it up or Officer Wartalsky? A No, sir, I can't recollect now, counselor."

Now, we will pass on to where we strike the matter of the knife again.

"Q. Did you take charge of that knife, the silver plated knife? A I did. Q. And you say you saw it lying on the bed? A. Yes, sir. Q. Well, was it near the defendant? A Yes, sir, right underneath him.

Q. Where were the defendant's hands? A One of his hands was underneath him, that is, under his left side, and I can't place where the other hand was. Q. And did you see Officer Wartalsky pick up the knife? A Now I ain't

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sure who picked up the knife; it's so long ago since.

Q. You are not sure who picked up the knife? A. No, sir.

Q. But you saw the knife while it was in the bed?

A. Yes, sir, I saw the knife there in the bed, but I ain't sure whether I picked it up or Officer Wartalsky did.

Q. Did you say it was lying under the body of the defendant?

A. It was lying on the bed underneath his body, that is, over under his left side. Q. And you say his left arm

was also under his body? A. Under his body as he was

laying there, I think. Q. Now how great a space was it

from the knife to his body? A. Oh, I should judge about

three or four inches. Q. The nearest point of his

body to that knife was three or four inches away from it?

A. Yes, sir. Q. and there was no part of his body

nearer than three or four inches to the knife? A. Well,

I can't remember to the left side now, but I know the

right side was a little above it. The knife was more

towards the left. His right side was about that much from

the bed (illustrating). Q. And his right side was right

close to the bed? A. Yes, sir; you couldn't see the

knife underneath him, the way he was laying. Q. What is

that? A. You couldn't see the knife underneath him the

way he was laying. Q. Well, when did you first see the

knife? A. When we turned him over. Q. When you turned

him over? A. Yes, sir. Q. At the time you turned

him over you saw the knife? A. Yes, sir. Q. That was lying in the bed? A. Yes sir, that was lying in the bed. Q. And no part of his body was less than three or four inches away from it? A. Yes, sir, about that. Q. At the time you saw the knife? A. Yes, sir.

Q. Did you notice how the defendant was dressed? A. Why, I think he had his -- was only in his nightshirt and drawers.

MR. MOSS: You say you think; I move to strike out the answer.

THE COURT: Yes, strike it out.

THE WITNESS: I can't remember now, Mr. District Attorney.

BY MR. SACHS:

Q. Well, was he in his undershirt? A. He had no nightshirt on, no, sir. He had on an undershirt. Q. Well, I mean the undershirt, the ordinary undershirt? A. Yes, sir, he had his undershirt on. That's what I meant. Q. And a pair of ordinary underdrawers? A. Yes, sir. Q. And the drawers and the shirt were covered with blood? A. Yes, sir. Q. And he didn't wear shoes; did he? A. I can't recollect whether he had shoes on or not. Q. Well, did he wear hose or socks? A. I couldn't tell you that either. Q. Were his feet covered with blood? A. I couldn't say. Q. Did Officer Wartalsky hand you that silverplated knife? A. Yes, he did.

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Q. Did he pick it out of the bed in your presence?

A. I couldn't say. I can't recollect now who picked it out. Q. Well, you say you saw it in the bed when

you went in there? A. Yes; and I was busy turning the man over, and I don't know who picked it up from the bed. Q. You didn't see Officer Wartalsky take it

out of his hand; did you? A. No, sir. Q. Were you in the room when you started turning over the body of the defendant? A. Yes, sir. Q. In fact you

helped him to turn it over? A. Yes, sir. Q. When you came to the bed, and before you saw the body turned over, before you helped to turn the body over, did you see that silverplated knife? A. No, sir. Q. The silverplated knife was then lying underneath the body of the defendant? A. Yes, sir. Q. And when you turned him

over you saw the knife? A. Yes, sir. Q. His hand wasn't upon it; was it? A. I couldn't say."

That is the question of Mr. Sachs and that is the officer's answer.

"Q. Well, you were right there, officer? A. I know, but I didn't notice whether his hand was on it or not. I was busy turning him over, too busy to see whether it was in his hand or not."

"Q. You didn't see Officer Wartalsky take a knife out of his hand? A. No, sir, I was too busy turning the

body around to see where he was injured, so that I could ring for another ambulance. Q. And you don't know whether you picked the knife out of the bed, or whether Officer

Wartalsky gave it to you? A. I know he gave it to me, but I don't know who picked it up out of the bed. Q. Well, if you had picked it up there would have been no necessity for Officer Wartalsky giving it to you; would there?

A. I suppose not."

"Q. And, being on the same side of the bed, and almost next to Officer Wartalsky, you don't know now whether you picked the knife out of the bed or Officer Wartalsky gave it to you? A. I know he gave it to me. I didn't notice him picking it up. I was busy with the body there."

Now I have read Kepko's testimony pretty fully and I have taken considerable time to do it, because so much was made of it by defendant's counsel.

And I show you that Kepko had no recollection, positive recollection, concerning the picking up of that knife. He would not deny that Officer Wartalsky picked it up, and he would not say whether the defendant's hand was on the knife or not. He was so busy attending to the body, and considering whether an ambulance should be sent for, that he was not paying much attention to the knife.

You will find, therefore, that there is no conflict between the testimony of Officer Kepko and that of Officer Wartalsky.

Now, as to officer Wartalski, there is absolutely no reason why he should falsify in the least degree. He was a man on duty there, a man of the same people, of the same faith, a man from Russia, like the defendant. He has been on duty there, guarding the stores, for ten years. Not a word has been said to his detriment. And this is what he says about the knife.

He said that he found the children in the room; a table knife upon the window. The children covered with blood. Observed particularly the condition of the little baby, which was very bloody.

He said that he hunted around for the other part of that knife, and somebody else did the same. They hunted the apartment in vain for the other part of the table knife which was found upon the window sill.

Now then here is his testimony:

"Q Well, now having found the knife, tell us what else you did? A Then I started to look around for the other half of the knife, and I couldn't find it. And I went in the bed room, and I seen a man laying in bed, and he was full of blood; and then I picked up his head, like that (illustrating) and he turned around and did that, 'Ugh, ugh,' and I seen he had a cut on his neck, from here to there (indicating). Q Indicating from the jaw bone to the jaw bone? A Yes, sir. And he had a plain

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table knife, a silver plated table knife in his hand, and that's the way he was laying, with his mouth that way in the bed (illustrating)."

And you remember that he indicated that the defendant was lying downward in the bed, with both hands down underneath him, and the knife in his hand. So that the defendant was face down, lying face down on the bed, with the knife in his hand, and with his hands crowded together under his body, not a natural position (illustrating). He said the knife was full of blood.

Now, on the cross examination, that testimony was repeated in all details, with absolutely no variation as to that important fact, that the knife was in his hand, that the knife was covered with blood; and that there was blood on the pillow, blood on the bed, blood underneath him where he was lying.

And he said then: "I turned him over. I hollered out, 'He's alive yet,' and I hunted for the knife."

"By Mr. Sachs: Q At the time the officer came in, where was the silver plated knife? A In his hand.

Q In whose hand? A In this gentleman's hand over there (indicating the defendant). Q The defendant's hand?

A Yes, sir. Q And did the officer see it in his hand?

A I don't know whether he did or not. Q Well, did the officer see the knife? Do you know? A I gave it to

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him myself. Q You gave it to him? A Yes, sir.

Q Well, had the knife been taken out of the defendant's hand before or after the officer came in? A I took it out, and gave it to the officer."

Again and again in the course of cross examination and re-direct examination, that matter was examined into, and always with the same result.

So, gentlemen, you start out with this fact that, when that man was found lying with the gash in his throat, that knife was in his hand, and the bed was full of blood, and that knife was covered with blood.

What was it doing in his hand? Who put it there? How did it get there? Why was it in his hand? What had he done with it?

It is not a stabbing knife. The point of it would not stab anybody.

Gentlemen, I contend upon the evidence before us that that knife was in the defendant's hand, and that he gashed his own throat with it.

He may have stood by the side of the bed when he did it, I do not know; he was found in an unnatural position, and there was blood on various parts of the bed. It is altogether probable that, having gashed his throat, as he stood by the side of the bed there, he tumbled forward upon the bed, or laid down upon the bed,

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head down, face down, most naturally grasping the knife in his hand, and lying on the knife.

The testimony of Wartalski and of Kepko, those two pieces of testimony, are absolutely consistent, and the evidence in this case shows that the defendant had that knife, and if he had that knife in his hand, he lied when he said that his wife came there, and cut his throat with it.

And is it to be that this woman's life shall be taken from her by foul murder, and that she shall go out into the recollection of this community as a murderer besides? This is a very wicked case, in my judgment.

Well now, let us see about this cut in the throat. You have seen it at some distance. I didn't want to trouble this man to show it more, but you had a description of it from the doctor, and the description of the doctor should be enough for our purpose.

It was from two and a half to three inches long. It was about a quarter of an inch deep. It cut some small veins. It did not cut the wind pipe, it did not cut the oesophagus, or the food pipe.

There was nothing for him to vomit up through his mouth in the way of blood. The wind pipe was not cut, the food pipe was not cut. There was no way in which

blood could get down into those tubes, and come up in the mouth. Every man who nicks his face with a razor, when he shaves, knows that there will be quite a deal of blood from the superficial vein at first, but that that will end quickly.

Now, let us look at the other knife. We are in no doubt as to what this knife was. This was the bread knife of the family. The defendant said so, to-day.

And the defendant said that, when they had supper, that night, that knife was whole; the rest of it was there (indicating).

And I called his attention -- or rather, I have no right to say how what I called his attention to -- but I have the right to call your attention to this fresh break in the metal, and I ask you to say whether there was not perhaps a flaw in the metal at that point, and whether it is not a fresh break, made after supper, that night, on the testimony of the defendant himself.

Now, then, that woman went head first out of that window. There is no question about that.

The doctor told about the abrasion of the scalp, or the scalp wound, and a child told about her going out, head first.

Her head struck first, and it must have made a great jar there, because the policeman who was wondering what

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the trouble was, heard the body strike the fire escape of the second floor.

That knife was lying on the window sill, just where her body had gone over. There was blood on it. The family history of the knife connects it directly with her taking off.

It was perhaps thoughtlessly suggested, in one part of my adversary's address, that a wound of three quarters of an inch could not have been made with this knife, but, a short while afterwards, he had no difficulty in saying that the woman killed herself with this knife.

MR. SAGGS: No, not with this knife. I beg pardon for interrupting.

MR. MOSS: Well, that is what I understood you to say.

You are to remember, gentlemen, considering the measurements of that wound, that the doctors did not testify from memoranda. Evidently they made no memoranda giving the exact measurements. They testified to their best recollection concerning the length and size of that wound.

Now, then, let us, for a moment, pass from the consideration of that knife to the consideration of the wound in the woman's neck.

It was not a cutting of the throat, such as the defendant suffered. It was a stab; it was a stab three

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inches deep, about; it was a stab which went through this strong muscle of the neck (indicating) -- I have forgotten the technical term that the doctor used, but he gave you the technical term -- which went through that, through that muscle, and downward and inward, and severed the inner jugular vein, and cut the ring of the oesophagus, and entered into and invaded the oesophagus, or food pipe.

And I call your attention to this little matter as we pass along, that that downward wound into the oesophagus naturally drained into the stomach. There was some natural evacuation of blood from the surface cutting, but the downward drainage from the wound was downward, through the oesophagus into the stomach, the draining was internal.

The doctors testified, -- one said from a quarter to half an inch, and the other from half to three quarters of an inch -- but, as I suggested, a moment ago, they were not testifying from memoranda or notes, but from memory as to what occurred last summer.

THE SECOND JUROR: What is the width of the knife?

MR. MOSS: Here it is. You see the knife at the middle now, but you don't see the point now.

THE SECOND JUROR: It was probably wider at the point before it was broken. I judge that from the shape of the knife.

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MR. MOSS: Well, it might have been and it might not.

THE FIFTH JUROR: How sharp is it?

MR. MOSS: You may look at it. It is in evidence.

Now, gentlemen, this knife being right there by the window, having been broken after supper, being covered with blood, being right under the body, as it went out of the window, is, to my mind, connected with that stab wound, and the variation of measurement by these two doctors is enough to show only that their memory was not accurate. If one gave one measurement, and the other another, it is evidence that they did not measure at all, but were simply giving an opinion. And then you will realize, too, that wounds have a way of closing up, especially stab wounds, those that are driven in. A large wound gapes, but a moderately small wound, driven in, will close up, especially in a muscle.

Now, the point of it is that there were three inches of wound driven in downward, driven in diagonally toward the centre of the body.

You heard Dr. O'Hanlon's testimony upon the question asked by the defendant's counsel: "Could the deceased have done this thing?" "Physically, yes."

That is to say that, if a person was going to do something to show that he could do it, he could take a knife

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just like that (illustrating) and push it into himself.

I suppose that any one can see that it is physically possible to do just such a thing as that (illustrating).

But suppose that one is committing suicide, with all the hurry and rush and excitement incident to that dreadful operation, if he had a knife in this hand (illustrating), would he stab his throat that way, or would he plunge the knife into his heart? And this woman was rather stout for her stature. She was well nourished. And would she naturally take such a position as this (illustrating), and cut a great gash in this way (illustrating)? No, the whole character of that wound is tremendously against the theory of self destruction. It shows, gentlemen, an outside cut, driven with most desperate force into that woman's neck, an entirely outside force.

Now, you have the testimony of the wound, and that does not lie.

You have the mute testimony of those knives, to be properly considered.

And I suggest to you, as a fair deduction from these things, which are in themselves truthful evidences, that this woman, being stabbed by this knife, the knife breaking in the stab, either because of the opposition from the ring of the oesophagus, or because of some twist in it, or some flaw in the steel, it broke, the woman rises,

with the broken piece of knife in her throat, and she pitches out of the window, the piece of knife going with her, and, as her head strikes the fire escape, the piece of knife is jarred out, and falls to the sidewalk, and it is lost in the street, and that is the reason why Wartalsky did not find it in the apartment.

That, however, is not anecessary theory of the prosecution, but is merely what occurred to me in passing as the probable way of accounting for the missing half of that knife.

Now, Mrs. Roth had that baby, that baby was part of her existence, it was a little tender creature, and they cannot say, they have not attempted to say, with all they have said about this poor woman, that she neglected her children -- indeed, I think from what we have seen of the appearance of these children, their manners, their brightness, that they reflect a great deal of credit upon the dead mother. Whatever her hardships were, whatever her poverty and privations were, at the critical time in their existence she took the children, and she seems to have been allowed to take the children, she seems to have been allowed to have them, this desperate, drunken woman. Nobody seems to have interfered with that at all.

And this little child was on her arm, on her heart. It was, in its appropriate place, with her on that couch

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where she slept.

And the child was somewhere near, somewhere near, when all this blood was let, for, as one of the witnesses said, it was so covered with blood that it was as though it had been painted.

Now, that woman was killed, there can be no doubt about that, and she was killed by a desperate knife thrust, a strong, powerful, sturdy blow.

And that blow was inflicted in such a place and under such circumstances that it is like a fairy tale to say that she did it herself.

There is no suggestion of any outsider being in the apartment. There was no one there but the family. If the lock of the door was broken, yet the door was secured, and something was set against it, and there is no suggestion that any stranger got in there, and did any wicked act, no suspicion that any burglar did these things, for this desperate man said that he knows that it is his wife who stood over him; he rejects all such defenses as that an interloper did this act.

Surely the little children did not do it.

So the deed lies between the husband and the wife, no one else.

If she did not do it, he did.

And, if he lied about that knife, if he lied about

the circumstances in that room: If the knife with which his throat was cut was in his hand, he is bad enough to lie about the rest of it, and he just yielded to the temptation, a rat caught in the trap.

But their claim is not only did she take her own life, but she tried to take his, she with her little children around her, and her little baby in her arms.

Now, he might say, "We had a desperate quarrel in that room. She made me angry, and I made her angry. She went and got a knife, and I went and got a knife, and we had it out together, and unfortunately she was killed, and I was badly hurt."

But, no, he does not say that. A defense of that sort might have something in it. But you must reject that, because he does not say anything of that kind.

He does not say, "My wife made me very angry, and needlessly and violently I killed her, and I was so sorry for it that I went into the back room, and tried to take my own life. Deal with me mercifully."

But he does not say that.

Is it possible that he was starved to some anger, that night, by something that she said, something that she did, some rankling feeling in his own heart, and, in a burst of sudden anger, he struck her with the knife, and

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then went back, in horror of what he had done, and, with a revulsion of feeling, tried to cut his own throat? Is it possible that he did that?

Well, if he had said so, I should have said it was very possible, but he does not say so. He says directly to the contrary.

Had he come here and said, "I found my wife trying to take her own life. I found that she was succeeding. She was too strong for me to prevent her. Seeing that she was about to succeed, I was so horrified that I went into the back room, and tried to take my own life."

Well, of course, the position of the wound would have been against that. But, if he had said that, maybe I might have had some patience with him. But, no, he does not say that.

Don't you see, gentlemen, that it is not simply what little Israel said about the threat at the supper table, but that it is the logic of the events; it is not only what the defendant has said, but what he has not said; that it is the position taken by the defendant, the cowardly, despicable position taken by him, that illuminates the state of his own mind, and drives you forward to say, "I have got to consider this in the most serious light."

Well, let us go a step further.

Was there any reason why this man might have desired to kill her? Was there any reason why he might have been

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so urged forward by his own mind that, coming up suddenly to a question of decision, when he might have said yes or no, he said yes?

I do not believe half of the testimony that was produced here as to the statements made by this woman. All those could be very safely and easily gotten together, without meaning any reflection upon Mr. Sachs.

Here is a live man; there is a dead woman; and the live man has got friends, and a dead woman's friends are so distracted that it is hard to handle them. Now, then, to save the man who is on trial?

Is it not the greatest temptation in the world to his relatives and associates to get together, and say "Yes, I had conversations with that woman," and then, perhaps with one little thread of truth, to add to it, to distort it, twist it and make it seem a great deal?

I did not spend very much time in cross examining those people. I trusted that they would make the proper impression on your minds. It is not well to beat a dog, after he is dead. And I did not cross examine those witnesses longer than, in my judgment, was enough to let an intelligent jury see what they were like, and what their motives were.

But, assuming that there was some basis for what some of those people said, and adding to that the proven

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facts in this case, I want you to see, gentlemen, without going now too closely into the evidence -- I mean the reading of evidence -- I want you to see, in broad lines, what you have here. You have here a woman who stood by the side of this man when she could, for thirteen years, and bore him five children, and who, if those statements be true, or have true is horrified with the idea of having to live with him. Well, why, why?

I do not think it is very nice to attempt to throw into this case the suggestion that was made in the testimony of that rather malicious Mrs. Pink.

Mrs. Pink, in one breath, said, "I didn't tell Mr. Roth these threats of his wife, because I noticed that he didn't like to be seen talking with another woman when Mrs. Roth was around" -- now that seems very likely; does it not? -- And, in the next breath, she states, with some show of privacy, the secret reason which she said Mrs. Roth had given to her; and, a moment afterwards, she really admits that this woman had five children.

And somebody else comes forward and says that she said "If you don't take that man away from me, something will happen to him. I can't bear to live with that man. I would rather die than live with that man."

Now, gentlemen, it is one thing to be a wife in every sense of the word, and we honor the women who stand by the homes of our land, but since it has been drawn out,

and since it has been suggested, I wonder what that horror was that this woman had of that man, and what it was that she had to suffer from that man, which made her more willing to die than to live, if that testimony be true, and which drove her from him, again and again, until the pinch of poverty compelled her to let him come back again.

Oh, yes, and somebody said -- this woman who seemed to have forgotten something, this morning, said that she had seen some trouble between them, just the usual thing of a husband correcting his wife, or something to that effect.

I suppose there may be some kind of people living among whom it is assumed that a husband has a right to correct his wife, but I am sure that is something that we have no patience with, and I suppose there may be some conditions of life where a woman with five little children, and the need of a home over her head, will endure something of physical chastisement. But it must be something terrible that will hold on to a woman's mind and thought, if it be true so as to lead her to prefer to die rather than live with such a man.

Now, even if that be true, it was not the position of a wanton woman. No one says that she frequented places that she ought not to, or went off and lived with anyone else, or was anything else than a true woman. All that

she seemed to desire was to live with her children, and she seems to have been a pretty good mother to those children. I do not know whether it's true or not that this man gave her, every week, his sixteen dollars, and took each day twenty cents. I doubt it very much, that he expended no more than this for breakfast and lunch. But he can say it very easily, and she is not here to contradict him.

But we do know that, when she was forced, in the intolerable condition of things, to move to No. 24 Rivington street, with her children, we do know that he gave her five dollars a week, and then he gave her eight dollars a week, because Mr. Schwartz told him he ought to; and then for the period of separation, about two months, the five children and the woman were living on eight dollars a week; and she stuck it out until she could not stand it any longer, and then she went over, poor woman, to Schwartz's and invited him back.

Well, there is this one little bit of testimony by her here, this complaint and conviction, which is in evidence, signed, "Bertha Roth, her mark." That is her mark (indicating). That is the only word that you have from her in this case, and it is her affidavit in which she says that, on the 7th day of September 1909, and the city and county of New York, Abraham Roth, deponent's husband, now here was, at 24 Rivington street, using threatening, abusive

and insulting behavior, with intent to provoke a breach of the peace, and that said defendant did, then and there, strike deponent on the body and face with his hands. And that is signed before Paul Krotel, City Magistrate.

On the side of that is noted the conviction by Magistrate Krotel, under which he held this defendant with the unusual bond of two thousand dollars to keep the peace for six months.

Surely Judge Krotel could not be accused of anything unfair in a case of this sort.

And, while it is true that Mrs. Roth, sorry for her husband, no doubt, and sorry for her little children as well, went and got that well known lady of the east side, Mr. Porces, to give a bond for her husband, there was this result: She did get her husband out of prison, but the bond still remained, he was held for six months under that bond, under a penalty of two thousand dollars. She had six months of reasonable certainty that his hand would not be lifted against her again.

This is the woman, Mrs. Kuba, to-day, rather reluctantly testified that she was the one who went to the rescue of Mrs. Roth, at this very time, and found that she had been beaten and called the policeman, and, as she said, "I arrested Mr. Roth."

The testimony of these people is quite clear that there was trouble all the time there. This woman Mrs.

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Fink testified she heard the troubles up there. It was either Mrs. Hirsch or she who said that she heard knocking around, the beating and pounding around there. And poor little Israel said they were always having trouble, his father was always quarreling with his mother.

The situation is perfectly clear that there were those conditions existing between those two people which might well bring forth just the explosion that occurred.

And this man had been judicially convicted for wife-beating, and put under an exemplary sentence, certainly had enough down in his heart, rankling, to fill him with anger against that woman. He had been taken to court three times by her, once when she was getting five dollars a week from him, and one before, and this third time.

Three times had this woman taken him to court.

Now, you have a long story from Mr. Roth as to what occurred after supper in that house.

He tells a long story about the encounter between Mrs. Hirsch and Mrs. Roth, and his rather philanthropic attitude in the matter.

But his story of that matter utterly leaves out of consideration what really did occur. What really did occur you have in the testimony of Israel Roth.

Israel Roth is a credible witness, is a witness that testified with a great deal of decorum, and in a way, I am sure, to have impressed everybody who heard him. The

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poor little fellow was under considerable feeling, he was not testifying flippantly; the tears fell from his eyes when he talked about his mother, and when he spoke about what his father had done, and when he said those few little words in defense of his mother, the tears flowed, and the coming man was plainly to be seen in the little boy.

As to the child Mollie, it was said that her testimony not being under oath, must be corroborated. But how could you have a stronger corroboration of her testimony than that which came from the defendant himself?

Do you remember Mollie's attitude? She did not answer yes or no to every question that was put to her, but she would occasionally give her reason for it, and she would say to a question under cross examination, "No, because --".

As to whether her father was in the bed, she said, "I didn't look. That is true, I didn't look specially, but I know that he wasn't there," and then she gives her reasons for knowing he was not in the bed.

Then you remember how Mollie stood by her mother, and held onto her dress, for a few moments, and then her mother fell out of the window. And then she said "I went to the bedroom, and I found my father laying on the bed, and I said, 'Papa, we have no more mother.'"

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And do you remember that the father said, in his testimony that she said that?

And I did not hear any attempt, beyond what may be considered a general denial, I did not hear any attempt made by seriously deny the statements made by those children. If they were denied, it must have been by what we call a general denial.

No, no, those little ones impress us all, gentlemen, as little ones who knew the seriousness of this matter. Little, it is true, but smart for their age, intelligent, earnest and honest, realizing everything that was meant in what they said, realizing the weight of what they said.

Now I want you to consider, for a moment or two, the testimony of those two children. Remember the testimony of Israel: "Now, at the table my father said he was going to kill my mother."

Then we have the testimony to the meaning of that phrase.

And I will tell you just where we are left with that discussion. I think I see the point of view of each one of the so-called expert witnesses. And may I say that it is not wise for counsel, in summing up, to testify, or assume things. How did counsel for the defendant know that the young lawyer who testified here was paid, or testifying in any other relation than Mr. Adler did?

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It is not right to assume anything of the kind. And, if what Mr. Sachs said about Mr. Adler was true, it was equally true about the young lawyer. This is a hard place for lawyers, this town, but I do not think that lawyers have quite reached the necessity of going upon the stand as expert witnesses in languages.

Now, we are left just here. We know very well, as we go around the streets, and go into such parts of the town, that we will hear children say "I'll kill you," or we will hear men or woman say "I'll kill you if you don't do so and so." We hear that said in English often, and I have not the slightest doubt that, in some cases, people will say that in Jewish homes, in homes where they speak the Yiddish dialect. I do not doubt that for a moment.

But it has all got to be considered as it stands. You have got to take the circumstances that surround it.

If I smile at a man, and say, "I'll kill you" he knows very well I will not do it, and if I say anything else in a thoughtless and careless way, he knows it, and the people around us know it, too.

But when people are in antagonism with each other, and they are in the midst of a serious quarrel, and things are going on desperately, and if one half was going on that this man said occurred there, and then the words

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were used, "I imagine that you think they would have a stronger meaning." Suppose that the words meant simply "I'll beat you, I'll strike you," then we have the threat of an assault, at least. Has that occurred to you?

But, if those words were used in a serious way, when the parties were engaged in a serious altercation, when there was bad blood between them, and when something follows it, then we have a right to look back and see what was in the mind of the man who said that.

You will notice that from all the witnesses the words came, when they were asked, "If a man really meant that he would kill another, what would he say?" And "derhargenen" came out promptly.

And so a man is to be judged by the situation, by what he does do, as to what he says; and, if a man does what he threatens to do it ought to convince you that he meant pretty near what he threatened to do.

Of course those words spoken at the supper table had a very serious bearing on the question of whether or not this man is guilty of murder in the first degree. Those words have a large part in the question as to whether this man committed murder with premeditation and premeditation. But they are not all. The whole picture, the manner of the wounded, the whole situation, the attitude of the defendant in his trial, whether he is truthful or

not, all those things illuminate the question.

Now here is what Israel says was the cause of difference between his father and his mother. It was not this philanthropic discussion of the attitude of Mrs. Hirsch, but it was this.

"My mother owed some money to the grocery store, and she had a skirt which she couldn't wear any longer, and she wanted some goods to make another one, and there was a lady below us and she -- as soon as my mother bought the goods for the skirt, she asked my mother for a piece of the goods, and my mother gave it to her, and she went over to the grocery store, and showed it to the lady there, who owned the grocery store, and the lady said to the grocer, 'She buys goods and everything, and doesn't pay you back your money.' And then the quarrel began. Q. And how did your father know that? A. The lady told my father. He heard it when he came home from work."

Now, that is what the quarrel was about.

You see this woman, Mrs. Hirsch, the intimate friend of Mrs. Pink, the janitress, doing a thing like this: Having her own bitter grievance against Mrs. Roth, interfering in this devilish way in family matters, and saying, "Oh, yes, Mrs. Roth, I see you are getting a nice new dress, and I like the look of those goods. Won't you give me a little piece?" And she gives her a little piece of the goods, and Mrs. Hirsch runs right across the street to

the grocer,, and she says "Look here. This is the beautiful goods that Mrs. Roth is buying. She can buy dresses but she can't pay for groceries."

And she knows that the grocer will tell Roth, and he will go home, and give his wife a beating.

And then they have the audacity to come here, and try not only to swear this man out of this murder, but swear away her good name.

Then you have this woman Mrs. Brodsky, who has not seen her before in a half year, and comes over here by accident, and happens to meet her on the street, and she says, the very first thing, to the deceased, "Now, Bertha, how are you getting along with your husband now?"

And so it is with the sister-in-law, and it is a remarkable coincidence that, the very first thing, the very same question is asked, in precisely the same words. It is rather a singular coincidence, is it not?

The six months bond had expired you know, by this time, and you have from little Israel the real cause of the trouble. The bond was for six months from September 8, 1909, and Mrs. Porges's bond had expired. And this man got madder and madder.

And he went downstairs, and there was time for reflection and talk, and he came upstairs, about half-past one.

There comes in the testimony of the Italian woman,

Mrs. Cioppino. She heard the knocking at the door.

She was asked "Well, you didn't see Roth, did you?"

A. No. Q. Then how do you know it was his knock?

A. Because I heard him calling his little girl."

And then she said he went in, and ten minutes afterwards, this terrible thing happened, and she saw Mrs. Roth on the fire escape. She was looking out of her window at the time. What Mrs. Roth said to her was out out of the case, of course, under the rules of evidence.

She could not have very well gone to sleep in that ten minutes. This whole thing happened in that ten minutes.

If Israel did not mean to be perfectly truthful, if he meant the slightest bit of knowledge towards his father, if he was of an inventive mind, or had been coached by anybody, Israel could have easily seen things, because he was right there in the room. He had a juvenile temptation to imagine things as against his father, and in favor of his mother. There was the chance.

He was a very, very self contained little boy, and every word that came out of him hurt him; he realized the position he was in.

I want to ask you, for a moment, to consider the testimony of the little girl Mollie.

By the way, you remember that Israel testified that

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he did not go to sleep until it was very late; that this quarrel was so severe that it kept him awake, and that he did not attempt to go to sleep until his father had gone downstairs.

Mollie testified that she went to bed in the bedroom, in the big bed. She testified to her father going away, which undoubtedly was the time that Israel says the father went downstairs.

She says that her mother was sleeping near the window. And they all put the mother and the baby at that window.

She says that the mother put them to bed in the big bed in the back room.

She said that, later, she heard her mother's voice, and she got out of the bed, and went out in the kitchen.

"Q. Did you see whether anything was the matter with your mother when she was on the lounge? A. Yes, sir.

Q. What did you see? A. I saw all around her blood.

Q. And did you see your father then? A. Yes, sir.

Q. Where did you see your father? A. In bed.

Q. In bed in the bedroom? A. Yes, sir. Q. Did you see your father go into the bedroom?"

This I want to read, because I don't want to quote anything when it is just as easy to read it.

"Q. Did you see your father go into the bedroom?

A. I can't remember. Q. Did you see your father in

the kitchen? A. At first I saw him in the kitchen.

Q. Yes. Did you see him in the kitchen while your mother had blood on her? A. Yes, sir. Q. And where

was he standing when you saw him? A. I think I saw him walking to the bedroom."

That is the part where the "think" came in. But she says positively that she saw him in the kitchen while the mother had blood on her.

"Q. Did you speak to your mother while she was sitting on the lounge? A. Yes, sir. Q. What did you do? A. My sister and I took hold of her skirt.

Q. Yes. And then what did she do, your mother? A. She was going to the fire escape. Q. Did you see her go to the window? A. Yes, sir. Q. And what did she do when you saw her go to the window? Don't tell what she said. Did she call out, did she holler? A. Yes, sir."

And she must have spoken, because Mr. Posea wanted to tell what she said, and she was displeased that, under the rules of evidence, she could not tell what she said, and it very evident that Mrs. Roth said something.

"Q. And did you still have hold of her dress?

A. No, sir. Q. Did you follow her to the window?

A. No, sir. Q. Did you just stand still and watch her? A. No, sir, I was on the lounge. Q. Did

you see whether there was any blood on the baby? A. Yes,

sir. Q. Did you see anything on the window? A. Yes,

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sir. Q. What did you see? A A broken knife, a knife. Q. Did you see that knife on the window, (indicating People's Exhibit 1)? A. I don't know if it was this one. It was all covered with blood. Q. Well, what happened to your mother when she was by the window? A. My mother was calling Mr. Polansky."

Then she speaks of the lady next door asking her mother something. Then she says:

"A. I saw her holding onto things on the fire escape. And then I was sitting there, and my mother fell down. I was near the lounge. I went over to my father's bed, and told him we had no more mother. My father was lying on the bed then."

On the cross examination she said:

"Q. You didn't see him in the kitchen when you got out of bed, and walked into your mother; did you?

A Yes, sir. Q. Well, was he sleeping in the kitchen?

A. I saw him standing there. Q. How long before you went into the kitchen did you see your father? A. I

didn't see him go into the bedroom. Q. Well, how did you know he was in the bedroom? A. When I went to

tell him. Q. Well, when you went to tell him, you

went as soon as your mother fell; didn't you? A. I

don't remember. Q. You just said so, Mollie? A. What?

Q. You just said so, didn't you, that you went right to

your father, and told him? A. Oh, after my mother fell

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down? Q. Yes. You went right over to your father in the big bed? A. Yes, sir. Q. And you don't know whether or not your father walked into the bedroom at that time; do you? A. No, sir. Q. For all that you know, he might have been in that bedroom for a long time, in that bed? A. When my sister and I was in the bed, I didn't see him."

And, remember, gentlemen, they were in that very bed.

"A. When I was sleeping in the bed, when I got up, I didn't see nobody in the bed. Q. No, that may be true. But did you look around to see if anybody was in bed? A. I didn't look around, but nobody was there."

Then, in the re-direct examination, she said:

"Q. Was it in the bed where you and Becky had been sleeping that you saw your father, when you told him that there was no more mother? A. Yes, sir. Q. In your bed? A. Yes, sir."

Now, you have added to the circumstances which I detailed to you at the beginning of my address, this corroborating testimony of the child. That is, that having been put to bed by her mother, in that very bed, the large bed in the bedroom, she heard her mother's voice. She ran out into the room, with her little sister Becky, saw her mother in the room there, with the blood upon her, and saw her father in the kitchen while the mother had the blood on her, and stood by her mother,

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at least with her little childish hands holding on to her dress, stood by her mother until the poor creature pitched out of the window, and then went back, looking for her father, and found her father in the bedroom, and said to her father, "Papa, we have no more mother," and he says "That is true" and found her father lying on the bed where she had been with her sister, and had just before vacated, and there she said there was nobody when she left it.

Now, I had it in mind to say quite a little in the discussion of the testimony of those persons that said that Mrs. Roth had declared some intentions, but it seems to me there must be an end of talking sometime, and you must have got the drift of all that testimony, and must have got the general meaning of it, and it seems to me that I ought not to weary you, and take up your time, though I would like to discuss it, but I will leave it out.

Now, you start in that room with this knife on the window sill, this knife that was whole at the supper table, from which the upper half is gone, and has never been found, this bloody knife, close by the woman, or close by where she went out of the window .

You find the little baby there, bathed in blood.

You find all those circumstances there at that couch.

In the other room you find this man, with a kind of

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superficial gash of the throat, a quarter of an inch deep, severing nothing very serious. Perhaps it hurt too much, I don't know; but he did not cut very deep. His wind pipe and food pipe were intact. He was lying on his face, grunting and groaning.

And he says that he remembers everything that transpired, heard everything, but could not speak, because his mouth was full of blood, which certainly did not come from the cut. He was lying on his face, with his hands under him, and this knife clasped in his hand (illustrating.)

The wound upon the woman's neck was a wound which she never could have inflicted herself. It was a desperate, wicked wound. The wound on the man, if I may say it, was a coward's wound, made with a feinting arm.

You have all those circumstances which I have detailed to you, and which are so fresh in your mind that I will not weary you by recounting them.

You have the testimony of the quarrel before you, and the threat which, if it were no more than a threat to give a beating, is illuminated by what was done under that threat.

You have the past history of the couple, where it is clear that the burden imposed upon this woman by his conduct was something intolerable, and it illuminates his character and way of treating her.

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And so we come around to the beginning of the circle again, to the testimony of little Mollie, in which the words coming from the child's mouth are tremendously powerful. Out of the mouths of babes and sucklings comes the truth, as I have said to myself a hundred times in this trial.

She saw her father in that kitchen, where the blood was on her mother.

He was not in her bed when she left him, immediately after her mother had fallen, and, according to the testimony of Mrs. Cioppino she was at the window for some little time, that is, Mrs. Roth was, and a few moments after, immediately after that, she finds her father in her bed, with the cut.

And there is nothing left for you to do, gentlemen, but to conclude that this man here, Abraham Roth, stabbed that woman with that bread knife, and broke the blade of it, and left it there, a broken knife, and laid it on the window sill, and, going back from the scene of his evil deeds, leaving her and the babe there, with some new thought coming to him, perhaps of horror, perhaps of dismay, perhaps the thought that he would cheat the police, he picked up the first knife that came to his hand, one of the table knives, and took it into his room and made that jagged cut upon his throat which you have seen;

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and, a few minutes afterwards, was found by the police with this knife in the bed under him, according to the testimony of both policemen, under him, under him, and, according to the controlling testimony of Officer Wartalsky, with this knife clenched in his hand.

Gentlemen, difficult as the task is, hard as it is for me to ask it, I have got to present it to you just as I have stated it.

Here was a wicked murder, a dreadful murder, the murder of the woman and almost the murder of the children. Oh, what a dreadful thing to drive those little ones out into this stormy world, with this memory on their little minds; to drive them out into the world without the tender care of that mother who had nurtured them through all the storms of their family life, and brought up the sweet children that you have seen. It was a wicked thing, and I say not only a wicked, but a damnable thing, for we come here, to-night to hear the character of that dead woman assassinated, and assassinated by the man, with the consent of the man, who took her physical life.

Oh, I followed with much interest, and some sympathy, the pathetic appeal of my friend, and I realize that district attorneys must not soar up into the atmosphere of sentimental appeal. But I thought, when I saw some evidences of sympathetic feeling, when I saw some bedimmed

eyes -- a tribute due to you, Mr. Sachs -- when I found my own heart stirred by the pathetically oratorical effort of this gentleman, my esteemed adversary, I thought, "But who will say a word that is necessary to be said now in justice to that woman who cannot take her own part?" And it did not seem to me that it was necessary in any view of this case, to put the defense to quite where it went. And yet, if a man will do that to his wife, and the mother of his children, he will do the rest.

Gentlemen, I realize the bond of good citizenship that holds us all together here, I rejoice in the good citizenship in such a city as ours, where the people come together, and in just such affairs as this, reason together and try to do justice.

I put the case of the People of the State of New York in your hands, believing that no case that has been presented, this year, calls for more serious, earnest and brave treatment on the part of a jury.

If defendants -- and I express my own view now, of course, will defend this way, if they will take life, and defend this way, with the whole community looking on, with the vast multitude of people looking on, and they can walk off with it, it is a bad day.

I will just remind you that people committing these crimes do not ordinarily call an audience to witness every

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detail of the crime. We have studied and prepared this case, and put the facts before you, and it is for you now to draw the proper deductions, and there is nothing for a district attorney to do, when he sees his province of mercy has no application to such a case as this, except to present it fairly and squarely to a jury.

Gentlemen, you have your function, I have mine; we have all our functions. You are going to be the judges of the facts. It is not for me to quarrel with you in your function. I have just got this urgent word to say to you. I have tried to present to you the facts as they are, and the fair deductions from those facts. If you agree with me, I trust you will have the courage to render the verdict that you believe you ought to render.

THE COURT: Gentlemen of the jury, you are admonished that you are not to discuss any matter connected with this trial, nor to form or express any opinion upon it, until it is finally submitted to you, which will be to-morrow morning.

The court will stand adjourned until to-morrow morning, at half past ten o'clock.

(The further trial of the case was then adjourned until Friday morning, December 9, 1910, at 10:30.)

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People vs. Abraham Roth.

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TRIAL RESUMED.

New York, December 9th, 1910.

THE COURT'S CHARGE.

O'SULLIVAN, J.:

Gentlemen of the Jury: The indictment in this case charges Abraham Roth, the defendant here, with the crime of murder in the first degree.

"The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate and premeditated design to effect the death of the person killed."

You will remember that a deliberate and premeditated design to effect death is a controlling element of murder in the first degree.

Without deliberation and premeditation, but with a design to effect the death of the person killed, is murder in the second degree.

The killing of a human being, without deliberation and premeditation, which constitute murder in the first degree, and without the design, which constitutes murder in the second degree, is manslaughter in the first degree.

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when committed in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

It is charged against the defendant that, without excuse or justification, and from a deliberate and pre-meditated design to effect the death of Bertha Roth, the wife of the defendant, he killed her on the 28th day of July, in this County of New York. The indictment alleges, in legal effect, that the defendant, with criminal intent to effect the death of Bertha Roth, did cut and stab her in the neck and throat with a knife, and did thereby inflict mortal wounds upon Bertha Roth, from which, it is alleged, that she died then and there. These are substantially the allegations of the indictment.

The charges which it sets forth are no proof of guilt against the defendant. They do not raise a presumption against his innocence. In every criminal action, the defendant is presumed to be innocent until the contrary be proved, and, in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

The reasonable doubt mentioned in the statute seems to define itself. That it is a legal expression does not make it more difficult for reasonable men to understand. Our Court of Appeals has said that it is such a doubt as reasonable men may entertain, after a careful and honest

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review and consideration of all the evidence. It must survive the test of reason or the mental process of reasonable examination. Unless the guilt of the defendant be proved beyond a reasonable doubt, he is entitled to acquittal. "Beyond a reasonable doubt" equals the expression "to a moral certainty".

In cases which deal principally with circumstantial evidence, such as the case at bar, the circumstances must exclude, beyond a reasonable doubt, every hypothesis but that of guilt. A reasonable doubt is not a mere whim, guess or surmise; nor is it a mere subterfuge to which resort may be had to avoid doing a disagreeable thing. It must arise, if it arise at all, from all the evidence in the case for and against the defendant, but from nothing outside of the case. It may arise from evidence of good character, when otherwise there would be no reasonable doubt. I say it may arise, not that it must arise, for you are the sole judges of the fact, and you are to determine the guilt or innocence of the defendant. You are to determine whether the evidence is conclusive of guilt, or whether there is a reasonable doubt of guilt. But as matter of law, I charge you that if the proof satisfies your judgment and conscience that the defendant has committed the crime charged against him, and that no other reasonable conclusion is possible, then you have no reasonable doubt.

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When it appears that a defendant has committed a crime, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only; but, if he be found guilty of the highest degree charged, that is the degree of which he should be convicted. You have a solemn duty to perform under your oaths, and a degree of crime which is warranted by the evidence should not, through sentiment or sympathy, be reduced to a lower degree. Your verdict should be warranted and supported by the evidence in the case.

"No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of the killing by the defendant as alleged are each established, as independent facts; the former by direct proof and the latter beyond a reasonable doubt."

Whenever in any criminal proceeding a child actually or apparently under the age of twelve years offered as a witness does not, in the opinion of the Court, understand the nature of an oath, the evidence of such child may be received, though not given under oath, if, in the opinion of the Court, the child is possessed of sufficient intelligence to justify the reception of the evidence; but no person shall be held or convicted of an offense upon such testimony unsupported by other evidence.

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In this case, the prosecution produced as witnesses against the defendant two children of the defendant, both under the age of twelve years. The Court examined each of them in turn, and found the boy, Israel, although under the age of twelve years, of a mental capacity to understand the nature of an oath. He appeared to be a lad of unusual intelligence for his age, and the Court caused him to be sworn. You have a right to weigh and consider his testimony as that of any other witness under oath. The other child did not manifest a sufficiently clear understanding of an oath to permit her to be sworn. She appeared to be a child of sufficient intelligence to relate facts within her knowledge, and, therefore, her evidence was received, though not given under oath. Under our law, no person shall be held or convicted upon such testimony, unless supported by other evidence. Whether or not the other evidence in the case supports the testimony of the unsworn child is for you to determine.

The fact that the Court permitted her to testify is no indication that you are obliged to receive her testimony. You may consider it, and give it the weight which you believe it merits from her capacity to understand the things concerning which she testified.

You are the ~~the~~ judges of the fact, and you are to determine the weight or the worth of any testimony submitted

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to you.

If you believe that any witness testified knowingly falsely to any material matter, you may reject all of that witness's testimony, or you may reject such of it as you believe to be false and corrupt, and consider that which appears to you as credible. It is within your province to determine from the demeanor of the witness on the stand, from his apparent bias or prejudice, or self interest, or from the apparent improbability of his testimony, or any other reason which may suggest falsehood, whether his testimony appears credible to you. If it does not, as I have said, you may reject it all, or consider such portions of it as you may believe.

A contention has arisen in this case with regard to the meaning of a word said to be used in an alleged threat by the defendant against his wife. The defense contends that the word "derhargonen" has the meaning of beat or strike among the people who use the language in which that word is found. The prosecution holds that the word means to kill, in the plain and ordinary accepted meaning of the word. In the matter of interpretation and definition, words are to be taken in the usual and ordinary meaning given to them by usage and having the sense given to them by persons learned in the language and familiar with the general and local use of the word in question. With this

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in view, you may arrive at a better understanding of the meaning intended by the word when you consider the provocation for its use, if there was any, the situation in which it was used, the condition of the parties then and there, their previous relations and the attitude of the person toward the one against whom the alleged threat was made.

As has been said, the evidence in this case is largely of the kind which is known as circumstantial evidence.

Direct evidence is that given by witnesses who testify their actual knowledge of the fact to be proved.

Circumstantial evidence is evidence of facts and circumstances from which the existence of the particular fact to be established may be legitimately deduced or inferred.

You are not unacquainted with the use of circumstantial evidence. Men are frequently guided by it in their daily affairs. They use it when from one established fact they infer the existence of another. But they may be reluctant to conclude upon the issue of guilt in criminal cases upon evidence which is not direct, and yet, if the facts brought out, when taken together, all point in the one direction of guilt and to the exclusion of any other hypothesis, there is no substantial reason for this reluctance. Purely circumstantial evidence may be often more

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satisfactory and a safer form of evidence for it must rest upon facts which to prove the truth of the charge made must collectively tend to establish the guilt of the accused. A fact has the sense of and is equivalent to a truth or that which is real. In the evidence of eye-witnesses to prove the facts of an occurrence we are not guaranteed against mistake and falsehood or the distortion of truth by exaggeration or prejudice; but when we are dealing with a number of established facts, if upon arranging, examining and weighing them in our mind we reach only the conclusion of guilt, the judgment rests upon pillars as substantial and sound as though resting upon the testimony of eye-witnesses, for a criminal act is sought to be formed in secrecy and the intending wrong-doer usually chooses his time and an occasion when most favorable to concealment, and sedulously schemes to render detection impossible. All that we should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn and that that inference is the only one which can reasonably be drawn from these facts.

In cases of circumstantial evidence, motive for the commission of the crime is important. Motive and intent are sometimes regarded as one and the same thing. While they are related terms, there is a clean and clear distinction between them. Motive moves to the criminal

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intent. Whether there was motive on the part of the defendant for the commission of the crime charged against him is a question for you to determine. Whether or not this defendant was actuated by a motive, by a motive of hatred or revenge, resulting from the charges made by his wife against him in the courts, by her arrest of him for his treatment of her, and his subsequent conviction and imprisonment therefor, whether a motive, if any, continued from that time down to the time of her death, are questions for you to determine from his acts and conduct.

But it is not necessary that you find that there was any motive. It is not an essential, but it becomes of great importance when taken into consideration with the other facts and circumstances in the case. Murder in its first degree may be committed without motive having been preconceived or pre-existing. It is not absolutely necessary. The essential elements for you to find are, was there a criminal intent; was there a premeditated and deliberate design to kill? But if a jury find a motive to exist for the commission of a crime, if you find that a motive was present here, along with the other elements mentioned, it then becomes an element in the case from which you may infer intent, and it operates by way of corroboration of the other evidence as to the facts in the case.

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The defendant's answer to the charge is that his wife, on the night of her death, cut his throat and then committed suicide. To support this defense, testimony has been introduced to the effect that the deceased frequently threatened to kill her husband, her children and herself.

You are to consider that testimony, and, if you believe that she attempted to carry out the threats which she is said to have made by attacking and injuring her husband and then destroying herself, you will acquit him of the charge against him.

There is no claim of self defense by the defendant; no claim that the death of his wife resulted from any encounter between him and her; no claim of death by accident to his wife in an attempt by him to disarm her; no claim of an attempt to defend his own life against her, nor of a justifiable killing of her to save his life. His testimony of the last occurrences of that night; as I recall it, is that he returned to his home shortly after midnight; that his wife opened the door for him; that he went to bed, and, shortly after, while sleeping there, he felt a knife drawn over his throat, cutting it; that from shock of the wound and faint from his bleeding throat, he was unable to move or rise, but lay there and lapsed into unconsciousness. If you believe the defendant's story with regard to that, it is your duty to acquit him.

But, on the other hand, if from all the evidence in the case you conclude that, with a deliberate and pre-meditated design to effect the death of his wife, he did kill her, you will convict him of murder in the first degree.

You will have little difficulty in proving the death of Bertha Roth. Beside the direct evidence as to the death, the fact of death is not disputed. The question is, how did Bertha Roth come to her death? To determine that, you are to consider all the evidence in the case.

The testimony describes the married existence of Roth and his wife as filled with quarrels, separations, assault by him upon her, appeals to the court, complaints by her of him, resulting in his conviction and imprisonment, and, finally, the alleged threat made by him against her on the night of her death that he would kill her. There is also testimony of expressions from the wife concerning her alleged hatred of the husband. That is the testimony, as I recall it, but you, gentlemen, are the sole judges of the fact and the testimony is peculiarly within your knowledge and for your final determination.

The Court of Appeals has held that threats to commit the crime for which a person is upon trial are constantly received as evidence against him as circumstances proper to be considered in determining the question whether he

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has in fact committed the crime, for the reason that the threats indicate an intention to do it, and the existence of this intention creates a probability that he has in fact committed it.

The same rule applies to the alleged threats of the wife against her own life, and to the threats said to have been made by the defendant against the life of his wife on the night of her death. You should give each the same careful consideration in connection with all the other testimony in the case.

As you were told, at the outset of my remarks, the killing of a human being, without a deliberate and pre-meditated design to effect the death of the person killed, and without design of any kind or character, when committed in the heat of passion but in a cruel and unusual manner, or by means of a dangerous weapon, is manslaughter in the first degree.

If you find that the defendant caused the death of Bertha Roth, did he do it without deliberation and pre-meditation? Did he do it without design; was it not pondered over previous to the act of killing? If there was no design to kill at the time of the act, but if when in the heat of uncontrollable passion, he struck and killed his wife with a knife, you would then find him guilty of manslaughter in the first degree, but to so find, your verdict must be warranted and supported by the facts in

the case. If there was design on his part to kill his wife and he did kill her, without premeditation and deliberation, he would be guilty of murder in the second degree.

Is there in the testimony that which would warrant you in finding that the defendant killed his wife with a suddenly conceived design to do so and with that design he did kill Bertha Roth, but without deliberation and premeditation? If so, you would find him guilty of murder in the second degree.

Examine the testimony, gentlemen, weigh it well, consider its every phase, to find whether or not the defendant did deliberate. If the defendant did premeditate a design to kill, and, if you decide that the testimony does not warrant you in finding deliberation or premeditation, but that it does warrant and support a finding that Roth killed his wife solely with a design to effect her death, your verdict would be murder in the second degree.

But if you find from all the facts in the case that the defendant did, from a deliberate and premeditated design to effect the death of his wife, Bertha Roth, stab and cut her in the throat, as alleged in the indictment, and that from the wounds inflicted thereby she then and there died, you would find him guilty of murder in the first degree.

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If the defendant killed Bertha Roth, was it from the result of a deliberate and premeditated design? You will have to determine that, gentlemen, from all the testimony in the case. If in your judgment and conscience you are satisfied beyond a reasonable doubt that he is guilty of the charge, you have but one course to pursue, but one duty under your oaths to perform, namely, to find him guilty as charged.

In the language of the Court of Appeals, which I now quote for your direction and instruction:

"If the killing is not the instant effect of impulse; if there is hesitation or doubt to overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder. Under the statute, there must not be only an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time, but the time need not be long. It must be sufficient for some reflection and consideration upon the matter for choice to kill or not to kill and for the formation of a definite purpose to kill, and, when the time is sufficient for that, it matters not how brief it is. The human mind acts

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with celerity which it is sometimes impossible to measure and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case."

Gentlemen, I have referred to the defense of the defendant, that his wife died by her own hand after inflicting a severe injury upon him. You are to give all the testimony for and against the defendant just and fair consideration, guided only by a desire to determine the truth. If truth be on the side of the defendant, then acquit him. If, on the other hand, you have an abiding conviction of his guilt, after an honest examination of the testimony, and believe from it that no other conclusion than the defendant's guilt is possible, your verdict should find him guilty.

The defense has presented to the Court certain requests to charge. Some of them have been covered by the charge in general, some will be charged as requested; in a few, the Court has, in a measure, modified the request, and will charge the request in the modified form, and I think, in one instance only, the request to charge is denied. The Court will now read to you the requests to charge:

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First: In order to convict the defendant the jury must find the corpus delicti proved beyond a reasonable doubt, and even though the fact of death is fully established the corpus delicti is not satisfactorily proved until it is fully and satisfactorily proved that such death was not occasioned by accident or the act of the deceased.

Charged.

MR. SACHS: Thank you, sir.

THE COURT: Second: It is necessary that a witness should possess adequate mental capacity to comprehend the facts to which he or she is testifying.

Covered in the general charge, but charged as requested.

MR. SACHS: Thank you.

THE COURT: Third: The testimony of infants is only credible so far as their mental capacity is commensurate with the facts seen and testified to by them.

Generally covered in the charge, but charged as requested.

Fourth: The circumstances from which guilt is to be inferred must be proved by the direct evidence of witnesses who saw them. Such witnesses may misrepresent or be mistaken as to the circumstances they testify to.

Charged.

Fifth: The fifth request is modified, and, as mod-

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ified, it is charged in this language: Before the jury can convict they must find that all the circumstances from which guilt is to be inferred must as proved be consistent with guilt and taken together beyond all reasonable doubt point in the direction of guilt.

Sixth: The sixth request to charge is modified, and charged as modified, by striking out part of the first line. It reads as follows: One of the rules of criminal evidence is that every person is presumed to be innocent until his guilt is determined by the verdict of the jury. Jurors must be convinced of the guilt of the defendant beyond a reasonable doubt before they can convict and they need not be able to give a reason for their doubt.

Charged as modified.

Seventh: Where the proof of certain facts is necessary to find the guilt of the defendant he should be acquitted if the jury entertain a reasonable doubt as to the proof of any one of these facts.

Charged.

Eighth: The eighth request is modified by supplying the words "and necessary," and is charged in that modified way: A verdict of guilty is not warranted if any one of the jurors has a reasonable doubt as to the guilt or innocence of the defendant or a reasonable doubt as to the proof of any material and necessary fact or a reasonable doubt as to whether a material and necessary fact has been proved.

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Ninth: The ninth request is charged, as modified, and the modification consists in striking out the last sentence of the request to charge. As modified, it is charged in this language: The defendant is presumed to be innocent until his guilt is proved beyond all reasonable doubt and nothing need be proved by him nor is any evidence necessary as a basis for this presumption. This presumption does not cease when the jury retires. It accompanies the defendant throughout the trial and entitles him to an acquittal unless each and every juror can say that he believes beyond a reasonable doubt that the defendant is guilty.

Tenth: There is a word and its connectives stricken out in the tenth request, and, as so modified, the tenth request is charged: In case of a reasonable doubt whether the guilt of the defendant is satisfactorily shown, he is entitled to an acquittal.

Eleventh: The burden of proof and the obligation to convince the jury of the prisoner's guilt beyond a reasonable doubt as to all the facts and circumstances essential to the guilt of the accused, including the criminal intent, are upon the prosecution throughout the trial.

Charged.

Twelfth: The defendant is entitled to the benefit of any evidence given by the witness for the prosecution which

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sustains or tends to sustain his innocence or his defense.

Charged.

Thirteenth: The thirteenth request has been modified, and, as modified, it is charged: The jury are not required to permit the fact that the accused is burdened with an imputation of crime to influence them to such an extent that they will disregard his evidence. They should remember that though accused, he is presumed to be innocent, and their verdict must be based upon all the evidence including his own.

I have charged the gentlemen of the jury that they are the sole judges of the facts, and, upon their examination of the testimony, they may receive or reject such evidence as it satisfies them in their judgment to receive or reject.

Fourteenth: Before the defendant can be convicted of murder or manslaughter in any of their degrees the jury must find that the circumstances arrayed against him form so complete and strong a chain of evidence as to exclude beyond a reasonable doubt every hypothesis save that of his guilt.

Charged.

Fifteenth: The fifteenth request is modified by striking the first three and a half lines from it, and is charged as so modified. Evidence of the good character of the defendant may be sufficient to create a reasonable doubt

where such a doubt would not otherwise exist. It might warrant the jury in acquitting a defendant, no matter how strong the evidence against him may be.

Sixteenth: The claim of the defense that the dead woman committed suicide need not be established beyond a reasonable doubt but if the testimony given in the case creates in the mind of the jury a reasonable doubt as to whether she did or not they must acquit.

Charged.

Seventeenth: The seventeenth request is modified by striking out the last line and a half, and inserting another line in its stead, and, as so modified, it is charged: The declaration by the deceased of intent to commit suicide should be considered by the jury and given such weight as they deem proper.

Eighteenth: Of the eighteenth request, the first line and a half is stricken out, and it is otherwise modified by striking out the words of the last line, and, as modified, it is charged: The credibility of every witness in a criminal action is a question for the jury.

Nineteenth: The nineteenth request reads: Premeditation and deliberation are never inferred or implied from the act alone or the means used but must be affirmatively established like all other material facts in the case.

Charged.

Twentieth: The mere fact of death does not create the implication that the defendant took or attempted to take the life of the deceased.

Charged.

The twenty-first request is denied.

Twenty-second: In order to warrant a conviction of a crime on circumstantial evidence each fact necessary to the conclusion sought to be established must be proven by competent evidence beyond a reasonable doubt.

Charged.

Twenty-third: When the evidence against the defendant is made up wholly of a chain of circumstances and there is a reasonable doubt as to one of the facts essential to establish guilt, it is the duty of the jury to acquit.

Charged.

Twenty-fourth: While it is the duty of each juror to discuss and consider the opinion of other jurors he must decide the case upon his own opinion of the evidence and upon his own judgment.

Charged.

MR. SACHS: Will your Honor, for the purposes of the record, allow me to except to your Honor's refusal to charge---

THE COURT: I must have the written requests on the desk. That is a rule of my Court.

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MR. SACHS: But I am referring to those which your Honor has modified, and denied now. Will your Honor allow me to except to your Honor's refusal to charge request number twenty-one, and also to your Honor's refusal to charge in the language requested, requests marked fifth, sixth, ninth, tenth, thirteenth, fifteenth and seventeenth?

THE COURT: Yes. If there are any exhibits, gentlemen of the jury, in the case that you desire to have, in the examination of the testimony, you may have them, with the consent of the attorney for the prosecution and the attorney for the defense. Is that consented to?

MR. SACHS: If the jury desires them, they have my consent.

THE FOREMAN: I would request that the jury be supplied with the exhibits in the case.

THE COURT: Yes, the exhibits will be produced, and, by the consent of the attorneys for both sides, they will be given to the jury.

Gentlemen, you may retire.

(The jury retired at 12:00 o'clock M.)

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(At 12:45 o'clock P. M.)

THE COURT: Mr. Sachs and Mrs. Moss, a representative from the place of business of the foreman is here, with a cablegram of importance for the foreman, and is it agreed by counsel on both sides that, as the jury are about to go out to lunch within fifteen minutes, the gentleman may hand the cablegram to the foreman, in the presence of Mr. Leo, representing Mr. Moss, and your representative, Mr. Sachs, or in your presence, and in the presence of an officer of the Court, the officer in charge of the jury, and that he may receive from the foreman an answer to be sent to the person who sent the cablegram?

MR. SACHS: Yes, sir; we consent.

MR. MOSS: And we certainly consent, sir.

(The jury returned to the courtroom at 6:25 P. M.)

THE COURT: Gentlemen: You have communicated, through your foreman, this request to the Court:

"The jury respectfully request to have read to them the charge of the Court relating to the different verdicts we must bring in."

I take it that you mean relating to the different degrees of crime under which you might find a verdict?

THE FOREMAN: Yes, sir.

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THE COURT: In the first place, the Court has charged you that, if you believe the story of the defendant, your verdict should be not guilty.

Then I defined to you the crime of murder in its first degree, that of murder in its second degree, and that of manslaughter in its first degree.

You were told that the killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate and premeditated design to effect the death of the person killed.

You were told that, if you found that Bertha Roth was killed by the defendant, but that there was no previous deliberation or premeditation upon the design to kill, then there was not murder in the first degree.

If, with a design to kill, the defendant, without having pondered or thought upon that design previously, without having meditated upon the design before, without having weighed the thought in his mind to decide for or against the design to kill, but if he did have a naked design, without premeditation or deliberation, and with that design then and there did kill, it would be murder in the second degree.

Now, then, to get at manslaughter in the first degree, you leave out deliberate and premeditated design to kill, or the element which constitutes murder in the first

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degree, to get at manslaughter in the first degree, you would have to leave out the design to kill, and then, if the testimony supported your finding and you came to the conclusion from all the evidence that the defendant killed Bertha Roth in the heat of passion, but in a cruel and unusual manner or with a dangerous weapon, you would find him guilty of manslaughter in the first degree.

But the Court also reminded you, gentlemen, in its charge concerning these matters, that, under your oath, you are bound to bring in that verdict which is warranted and supported by the testimony. The Court also warned you against seducing from a higher to a lower degree the crime committed, simply through sentiment or sympathy. You cannot do that and be true to the oath which you took to bring in a verdict supported by the testimony.

Now, as you have requested me to charge concerning the various degrees, I shall comply with your request, and say that you are to look into all the testimony, to discover if there was guilt.

The killing of a person does not, of itself, manifest an intent to commit the crime, but the act may manifest it. You are to consider that. The character of the weapon used, if any weapon was used, is a matter for your consideration. The previous relations of the parties, the defendant and the deceased, may be examined, and should be invest-

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igated, to determine, if you can, what was the nature of the crime committed, if any.

Was there a threat made by the defendant to take the life of the deceased? What was the situation; what was the attitude of each party towards the other, when the alleged threat was made?

Is there any evidence of a condition of hostility? Is it true, as the defendant said, that his wife threw dishes and irons on the floor? Was there passion aroused? If there was, to what do you attribute it? Find that in the testimony. Find from the things which marked the conduct of the defendant whether there was in his mind, before the last act was played in this sad drama, whether he had in his mind a deliberate and premeditated design to do the thing with which he is charged. All the testimony, examined conscientiously, and with a desire to arrive at the truth, may answer that for you, gentlemen. And, and if it does answer, and seems to show to your conscience and judgment that this man from any motive, of hate, of revenge, for humiliation suffered by him, if there was any, at the hands of his wife, for violence existing between them, for violence and assault perpetrated upon her, for suffering conviction and imprisonment upon her complaint, committed this act, did these things furnish a motive leading to an intent to take this woman's life? If they did,

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did that intent manifest itself from the evidence so as to show that there was any deliberate or premeditated design on the part of this man to take that woman's life? If it does, gentlemen, as I have said to you, you have only one course to pursue under the solemnity of your oath, and that is to find this defendant guilty of murder in the first degree.

If the evidence does not answer that question to you, so that you may be able to determine beyond a reasonable doubt whether or not there was deliberation and premeditation, is there enough in the case to satisfy you that suddenly, with no preconceived design, with no thought that was sheltered in his mind theretofore, but suddenly, and with a design, conceived then and there to kill her, he did kill her, that would be murder in the second degree.

And if you find none of these things, if the evidence does not warrant you in finding from all the case, from the relations between these parties, from his attitude towards her during at least a part of a course of their married life, if, as I say, these things do not furnish you testimony sufficient to find deliberation before the act, sufficient to find a deliberate design before the act, sufficient to find that he had given thought to it, or premeditated the design before the act, or if you find that there is not testimony sufficient to warrant you in

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believing that the defendant entertained any design whatever upon his wife's existence, but suddenly, with a conception then and there formed, he killed her, it was murder in the second degree. 414

But if suddenly, and from the result of heat of passion, he struck her then and there with the knife, without intent to kill, and killed her, it was manslaughter in the first degree.

Gentlemen, no human eye, save that of the woman now dead and of the man at the bar here, saw what took place in the rooms of the defendant, that night, and there is no human tongue, save that of the defendant, to tell you whether or not it was the result of immediate and uncontrollable passion. But you, with your judgment from the facts which you already know, leading you, may enter that room. You may, from the testimony of the doctors, examine the wounds upon the parties, and say whether or not the double deed was the act of the wife, or whether it was the act of a man simply inflamed with passion at that moment.

What about the weapons, you may ask yourselves? What about the possibility of the woman inflicting upon her throat the wound which the doctors described to you?

What about the probability that this man lay upon his bed, and, sleeping, felt the passage of a knife across his throat, saw his wife, but was unable from the shock of the

wound and the loss of blood, to do any more than lie supinely there and lapse into unconsciousness? 411

You may ask from all these facts which are in your possession, not what is the probability, but what is the reasonable certainty, because probability does not furnish a basis of conviction, nor does reasonable certainty furnish a basis of conviction; it must be beyond a reasonable doubt to a moral certainty.

If your conscience and judgment are satisfied that the evidence does not produce a sufficiency of conviction in your mind to say that there was a premeditated and deliberated design to kill, or a design to kill that was not premeditated and deliberate; and if it does not produce a sufficiency of conviction in your mind that this woman was killed without design, but in the heat of passion, it would be manslaughter in the first degree. But, if it was with design, it would be murder in the second degree, and, if it was with a premeditated and deliberate design, it would be murder in the first degree.

I have tried, gentlemen, to the best of my ability, to explain these things at your request; and I say again, gentlemen, that any degree of crime which you may find to have been committed must be sustained by the evidence in the case; and, if there is any reasonable doubt that any crime whatever was committed, this man should have the benefit of that doubt, and be acquitted.

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You have already given several hours of thought and examination to this charge, and you appear to be earnestly endeavoring to arrive at the proper conclusion, as I knew you would; but let me warn you again, gentlemen, that you can arrive at no conclusion unsupported by the evidence in the case, and any verdict which you bring in must have that support, or it is not the correct verdict. However, whatever verdict you bring in is your judgment, and must be considered correct.

Let me warn you, gentlemen, for the last time, that you are not to be affected in your judgment by any matter outside of this case, by any influence outside of this case. The influence which directs you should be the endeavor under your oath to find the truth and nothing but the truth, and then bring in your verdict.

Have I answered your question?

THE FOREMAN: Yes, sir.

THE COURT: Your verdict may be either one of the three degrees of crime submitted to you, or a verdict of acquittal.

SACCH: May I call your Honor's attention to one remark made by your Honor? At the opening of these latter instructions, your Honor said if they believe the story of this defendant, they must acquit.

THE COURT: Yes.

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MR. SACHS: And will your Honor charge that, if they have a reasonable doubt as to the truth of the People's case, they must acquit?

THE COURT: I will say, as I have said before, that the reasonable doubt, if it arises at all, must come from all the evidence.

MR. SACHS: Exactly, sir.

THE COURT: From that for the defendant, as well from that for the People.

You may retire, gentlemen.

(The jury returned to the courtroom at 8:25 P. M.)

(The jury found the defendant guilty of manslaughter in the first degree.)

MR. SACHS: Has your Honor any preference as to the day upon which I am to make my motions? I think, in this case, that we ought to have about ten days, say a week from Monday, this being Friday night.

THE COURT: A week from Monday?

MR. SACHS: Yes, sir.

THE COURT: All right. What probation officer?
Isa Jossam?

MR. SACHS: I presume so, your Honor.

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THE COURT: You may make your motions now, or reserve them until that day.

MR. SACHS: I should prefer, with your Honor's permission, to reserve my motions until the 19th of December. }

THE COURT: You may do so.

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DEFENDANT'S REQUESTS TO CHARGE.

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FIRST. In order to convict the defendant the jury must find the corpus delicti proved beyond a reasonable doubt, and even though the fact of death is fully established the corpus delicti is not satisfactorily proved until it is fully and satisfactorily proved that such death was not occasioned by accident or the act of the deceased.

SECOND. It is necessary that a witness should possess adequate mental capacity to comprehend the facts to which he or she is testifying.

THIRD. The testimony of infants is only credible so far as their mental capacity is commensurate with the facts seen and testified to by them.

FOURTH. The circumstances from which guilt is to be inferred must be proved by the direct evidence of witnesses who saw them. Such witnesses may misrepresent or be mistaken as to the circumstances they testify to.

FIFTH. Before the jury can convict they must find that all the circumstances from which guilt is to be inferred must as proved be consistent with each other and taken together surely and unerringly and beyond all reasonable doubt point in the direction of guilt.

SIXTH. The first and foremost of the exclusive rules of criminal evidence is that every person is presumed to be

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innocent until his guilt is determined by the verdict of the jury. Jurors must be convinced of the guilt of the defendant beyond a reasonable doubt before they can convict and they need not be able to give a reason for their doubt.

SEVENTH. Where the proof of certain facts is necessary to find the guilt of the defendant he should be acquitted if the jury entertain a reasonable doubt as to the proof of any one of these facts.

EIGHTH. A verdict of guilty is not warranted if any one of the jurors has a reasonable doubt as to the guilt or innocence of the defendant or a reasonable doubt as to the proof of any material fact or a reasonable doubt as to whether a material fact has been proved.

NINTH. The defendant is presumed to be innocent until his guilt is proved beyond all reasonable doubt and nothing need be proved by him nor is any evidence necessary as a basis for this presumption. This presumption does not cease when the jury retires. It accompanies the defendant throughout the trial and entitles him to an acquittal unless each and every juror can say that he believes beyond a reasonable doubt that the defendant is guilty. This presumption of innocence is stronger where the defendant and deceased were husband and wife.

TENTH. In case of a reasonable doubt whether the

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guilt or innocence of the defendant is satisfactorily shown, he is entitled to an acquittal.

ELEVENTH. The burden of proof and the obligation to convince the jury of the prisoner's guilt beyond a reasonable doubt as to all the facts and circumstances essential to the guilt of the accused, including the criminal intent, are upon the prosecution throughout the trial.

TWELFTH. The defendant is entitled to the benefit of any evidence given by the witness for the prosecution which sustains or tends to sustain his innocence or his defense.

THIRTEENTH. The jury should not permit the fact that the accused is burdened with an imputation of crime to influence them to such an extent that they will disregard his evidence. They should remember that though accused, he is presumed to be innocent, and their verdict must be based upon all the evidence including his own.

FOURTEENTH. Before the defendant can be convicted of murder or manslaughter in any of their degrees the jury must find that the circumstances arrayed against him form so complete and strong a chain of evidence as to exclude beyond a reasonable doubt every hypothesis save that of his guilt.

FIFTEENTH. Good character should be permitted to operate as a positive, appropriate and substantial defense. Good character is of special importance when the incrimin-

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ating evidence is wholly circumstantial. Evidence of the good character of the defendant may be sufficient to create a reasonable doubt where such a doubt would not otherwise exist. It would warrant the jury in acquitting a defendant, no matter how strong the evidence against him may be.

SIXTEENTH. The claim of the defense that the dead woman committed suicide need not be established beyond a reasonable doubt but if the testimony given in the case creates in the mind of the jury a reasonable doubt as to whether she did or not they must acquit.

SEVENTEENTH. The declaration by the deceased of intent to commit suicide should be considered by the jury as tending to show that the death of the deceased was not caused by the accused.

EIGHTEENTH. The plea of not guilty and the presumption of the innocence of the defendant make the credibility of every witness for the People in the criminal action a question of fact for the jury.

NINETEENTH: Premeditation and deliberation are never inferred or implied from the act alone or the means used but must be affirmatively established like all other material facts in the case.

TWENTIETH. The mere fact of death does not create the implication that the defendant took or attempted to take the life of the deceased.

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TWENTY-FIRST. In cases where circumstantial evidence is presented, motive becomes not alone important, but all-controlling. In the determination of the question of the guilt or innocence of the person charged, absence of proof of motive or a reasonable doubt as to whether it has been proved, entitles the defendant to an acquittal.

TWENTY-SECOND. In order to warrant a conviction of a crime on circumstantial evidence each fact necessary to the conclusion sought to be established must be proven by competent evidence beyond a reasonable doubt.

TWENTY-THIRD. When the evidence against the defendant is made up wholly of a chain of circumstances and there is a reasonable doubt as to one of the facts essential to establish guilt, it is the duty of the jury to acquit.

TWENTY-FOURTH. While it is the duty of each juror to discuss and consider the opinion of other jurors he must decide the case upon his own opinion of the evidence and upon his own judgment.

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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART V.

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The People of the State of New York,
-against-
Abraham Roth.
-----X

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Before:
Hon. Thomas C.
O'Sullivan, J.

New York, December 20th, 1910.

Indicted for Murder in the First Degree.

Indictment filed August 29th, 1910.

A P P E A R A N C E S :

ASSISTANT DISTRICT ATTORNEY FRANK MOSS, for the People.

M. A. SACHS, ESQ., for the Defense.

T H E S E N T E N C E .

Frank S. Beard,
Official Stenographer.

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T H E S E N T E N C E .

New York, December 20th, 1910.

(The defendant being arraigned for sentence.)

MR. SACHS: If your Honor please, I have a number of witnesses in Court, if your Honor would care to hear them. This is as to the general good character of the defendant at the bar.

THE COURT: Well, I do not care to interfere with any procedure that you may desire to adopt, but the Court has made up its mind about that matter.

MR. SACHS: I feel, if your Honor please, that it is not very necessary to call them. Your Honor has heard, during the trial of this case, witnesses on the stand testify as to the good character of the defendant.

Outside of a short time spent in the Workhouse, for assault, the defendant at the bar has borne the very best of characters.

Your Honor knows and I think we have shown that, for twenty years, this defendant worked daily. Your Honor will recall his testimony, the fact that he arose at half past five every morning, and your Honor will recall his four cent breakfast and the twenty cents a day that was allowed him for his expenses. Your Honor has no doubt received from an officer of this Court, delegated by your

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Honor to make investigation as to this man's character,
the fullest kind of report.

THE COURT: Yes.

MR. SACHS: And I have but very little to add to
that, if your Honor please. This is the season of the
year when mercy and good will and charity to mankind is in
the very air. Christmas bells will soon ring, and we
must all feel, all over the world, like giving thanks that
He who taught mercy to mankind was born. To us, of a
different faith, Christmas time has lost its strictly
religious significance, and we rejoice too because of the
general spirit of joyousness that is in the air.

Now, I ask that your Honor to-day will show Roth,
the Jew, some of the mercy that He, in whom you believe,
taught.

If the defendant is guilty, and he has been determined
to be so by twelve men, good and true, who were sworn to
try him, your Honor must understand that it was at a mo-
ment of uncontrollable passion.

As I said to the jury, I don't desire to speak ill
of the dead, but I know that she was a woman of uncontroll-
able temper, and that, time and time again, she drove her
husband away from her, and it was only his love that
brought him back to her, that prompted him to try and try
again to live with her.

I wish-- no, I need not say that -- it does not re-

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quire the greatest oratory in the world to touch the springs of mercy that repose in your Honor's heart, and I know that your Honor will give him that which will please him, and please you who give it.

In this case, if your Honor please, I have the right to ask for extreme clemency. He has been a hard working man, a man who has toiled and struggled and labored all his life.

He has a mother, old, gray, and a father still more aged. I ask that your Honor will let their span of life, all too brief now, to be blessed with the knowledge that there is mercy in the world. Think of them when you impose sentence upon this defendant. They are going away soon now; they are old and bowed, and weak, and they sit here now, weeping.

Your Honor has the right to and I know that your Honor will take that into consideration.

And he has brothers and sisters, one of whom, a brother, is fast going out of the world, as the result of the Great White Plague. Think of that, think of the trouble that must be upon his parents and his brothers and sisters, one brother dying, and the other standing here convicted of the murder of his wife. I know that your Honor will consider that.

I wish I had the words to tell you what I feel about the case. I feel that I may say, in all truth and

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sincerity, that I tried to do my very best for him, but the evidence was against him, it is true.

And I say again, and I say it in all reverence, that, at this season of the year, if any at all, and I trust your Honor will consider it, I trust that your Honor will feel that mercy should be extended to this man.

And, oh, if your Honor please, in this case, in this case, think well before sentence is imposed. Recall what I have said; the man's earnest, honest, honorable life, and his parents and his brothers and sisters.

His heart is overflowing with love for those two babies who testified against him. He has not said that only since his trial, but ever since I became his attorney. And as for his other children, he loves them honestly and devotedly, truly and strongly, and time and time again, as he sat near me at the trial, in those two dreadful days when those two babies were testifying against him, even then he whispered to me his love and his pity. He loves them devotedly as an honest father must and should, and for their sakes, if your Honor please, for the sakes of the two who testified against him, and the other three children waiting for him, I ask that your Honor will be merciful and lean greatly to the defendant at the bar.

THE COURT: The Court has given much attention to this case, and has, in fact, received a great number of communications from various persons who know this man.

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There is not any doubt in my mind that the verdict was a fair and just verdict, and he has been convicted of one of the lowest degrees of the crime charged against him, namely, manslaughter in the first degree. The fact which struck me on hearing that verdict was this, "they find this man guilty of killing his wife while he was in the heat of passion. Why did he not do the thing when his anger appeared, from the testimony, to have most reason to be aroused, at the supper table, when, as he says, his wife smashed the dishes against the floor and broke other domestic utensils until he threatened to kill her? Why, if it was the result of angry passion, did he not do it then? But he goes out and come back again at the dead hour of midnight, when the children are asleep, and nobody is there, and he kills her there, according to the verdict, while he is in the heat of passion. But the thing which had aroused his anger had gone, had passed by, hours before.

Nevertheless, I do not find any fault with the verdict, which was the verdict of men who have respect for the law, which was the verdict of men who are not willing to let those whose hands are red with blood go out free into the streets of New York. How American citizens, under their oath, and with the approval of their conscience, can do that thing is beyond my understanding. I do not know of a more treasonable act, in times of peace, than to have

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twelve men sit in a jury box, hear evidence that is plain, and go out and come back and say "not guilty."

I should not want to harbor their conscience, for my peace of mind for the rest of my lifetime. But when men come in from the jury room impressed with the sanctity of their oath, when they come in having examined all the testimony, and without any foolish or sentimental regard, without any nonsense, and with a full understanding of the responsibility which is upon them, and the duty which they owe to the community, and say, "This man is guilty," why the Court believes that the man is guilty.

The Court believed that the jurymen who so find him were reporting according to their conscientious convictions in the case. For such men, the Court has the most profound respect. For the men who shirk their duty, and for some mysterious reason report falsely upon the evidence, the Court has nothing but scorn.

The upholding of the law is more oftentimes the duty of the jury than the Court, and, in a country like ours, where the most important, the most serious matters are left to a decision of the jury, respect must be had for the jury, but it is almost impossible to entertain that sentiment for them when their conduct is not only wanting in decency, but wanting in regard for the solemnity of an oath.

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I want to say about this case here that Mr. Moss tried it fairly, without any vindictiveness on his part whatever, without a desire to add to his record of convictions. He went straight forward and did his duty which he owed the People of this State, and which he owes to his important office.

And I can say, sir, without any flattery to you, that your client was ably defended. He was defended in a manner to cause admiration for the lawyer who devoted his time with such ability to the defense of his client. All through the trial I could not be impressed otherwise, and, at the conclusion of the case, I came to the conclusion that it was your able defense of this man which saved him from a verdict of murder in the first degree, and I told you, when I met you in the corridor as I passed out, that I considered this verdict a victory for you, and so I do; and so considering it, I can do nothing else than to impose the sentence on this defendant which I think he deserves. I think that he was very fortunate indeed in escaping either murder in the first degree or murder in the second degree, and, believing that, although it is a hard thing to send a man, the father of children who have already lost their mother, away for a number of years---

MR. SACHS: Think very much, Judge, think very much, Judge, please, before you pronounce that sentence. Con-

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sider it very carefully. Give him a chance. He has had a hard life, a very hard life.

THE COURT: Yes, I have done that, and I cannot escape the conviction that my duty impels me to give this man all that the verdict imposed upon him requires.

The sentence of the Court is that he be imprisoned in the State Prison for a term, the minimum of which shall not be less than ten years, and the maximum not more than nineteen years and six months.

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