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COURT OF GENERAL SESSIONS OF THE PEACE
IN AND FOR THE COUNTY OF NEW YORK
PART FIVE.

2931

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-----X

THE PEOPLE OF THE STATE OF NEW YORK

B e f o r e:

-Against-

HON. CHARLES C. NOTT, Jr., J.

J O H N H A C K E T T.
(two cases.)

And a Jury.

-----X

New York, Thursday, April 4, 1918.

DEFENDANT IS INDICTED FOR MANSLAUGHTER IN THE SECOND DEGREE.

INDICTMENT FILED February 20, 1918.

A p p e a r a n c e s:

GEORGE N. BROTHERS, Esq., Assistant District Attorney,
For The People.

L. J. BERSHAD, Esq.,
For the Defendant.

During the examination of the talesmen, the following proceedings were had:

MR. BERSHAD: Juror Number Nine said that he did not think a young man should be permitted to operate a machine, and that he had naturally - I am not quoting his words exactly, but in substance that he should not have operated this machine.

THE COURT: What does he mean by a young man?

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People's idea of what a young man is varies considerably.

MR. BERSHAD: I put the question to him of his youth or apparent youth, and he said that he did not think he should operate a machine.

THE COURT: I don't know how old the defendant is, and I don't know what the juror means by a young man. Do you think, Mr. Juror, that you could try this defendant on all the evidence in the case?

JUROR NUMBER NINE: I shall, certainly.

THE COURT: I don't know how old he is, and you don't, either, but if it appears that there is no law against his running a machine, as far as his age is concerned, would you have any prejudice against him in this case?

JUROR NUMBER NINE: No, sir.

THE COURT: I will overrule the challenge.

MR. BERSHAD: Will your Honor respectfully allow me an exception, and I will challenge him peremptorially.

THE COURT: Challenge them one at a time.

(The jury is duly impanelled and sworn.)

MR. BERSHAD: I ask your Honor to be good enough to permit this case to go off until two o'clock, at which time I will be able to go on.

THE COURT: Why aren't you able to go on now?

MR. BERSHAD: I want the father of this young man here.

THE COURT: I can't take an hour of the jury's time

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on that account, to have his family here. He does not need his family here at all. No, the case will go on.

Mr. Brothers then opened the case to the jury on behalf of the People, as follows:

May it please the Court, and gentlemen of the jury -

MR. BERSHAD: Pardon me, Mr. Brothers. May I ask that the prosecution's witnesses be excluded?

THE COURT: Yes, witnesses on both sides will be excluded.

THE CLERK OF THE COURT: All witnesses on both sides please retire and remain outside until summoned.

MR. BROTHERS: On the 23rd of March, 1917, Mr. Chapman, who is in business on Park Avenue and living over in New Jersey, had in his employ a young man named DeWeil, as chauffeur; they had a limousine Cadillac car, in which Mrs. Chapman came over from Jersey to do shopping on that day, and along about the noon hour, lunch hour, the chauffeur, DeWeil, took her to Altman's store, and she went out of the car there, and he was instructed to return at a certain time to the store to get her, giving him time for his lunch, so he went over into the neighborhood of Lexington and Thirty-third Street, and in Thirty-third Street between Third and Lexington, as I recall the testimony, he stopped his car, left it on the north side of the street, facing toward the west, towards Lexington, and locked it, so that it could not

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be operated.

Then he went immediately across the street, into a barber shop, to get a shave. He will tell us that he kept his eye on the car as long as he could, and then, while the barber was attending to his wants, he turned his head over, and lost sight of the vehicle. In a moment or two he looked back and saw that the car was gone.

He left the shop, in a dishevelled condition, went out on the street and found the car was nowhere in sight. His attention was almost immediately called to the corner of Lexington and Thirty-second Street, only a short distance away.

On going there, he found that his car was at that corner, the northwest corner of Lexington and Thirty-second street. The right and left wheels of the vehicle were up upon the sidewalk; the front end was against an Edison electric light pole which stands there on the corner, has a lamp, I think, to light the street. The front end of the vehicle was against that.

The car was very seriously damaged, so much damaged that they couldn't operate it and finally had to give the car up entirely. The electric light pole was knocked down, smashed, and on the sidewalk lay a man who turned out to be Irving Levine.

The chauffeur, before he got to that scene, had telephoned to his employer, Mr. Chapman, who was not very far

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away, in 101 Park Avenue. He came immediately over there, and he saw the car damaged up.

There were witnesses upon the street. There was a doctor, Dr. McTierney, who was coming north up Lexington Avenue, driving an automobile, and at Thirty-third Street and Lexington he saw this Cadillac car coming down in such fashion that it collided with him. The car struck his fender, and he noticed the speed, which seemed to be high, and a man operating it was going about the street as though unaccustomed to the use of a car, and he observed what he did and saw where he went and what happened, and he returned in his car to the corner, a hundred feet or so from where he first observed the man driving this limousine, and there he found Levine, very seriously injured. He rendered first aid to him, and he will testify here as one of the witnesses.

The People also have other witnesses. I shan't go into details as to what each one will say, but they agree, all of them, that this car coming down Lexington left the roadway, which is set apart for the use of vehicles, and went upon the sidewalk, where, of course, it had no business, and at that corner, you will learn that there is an emergency station, where they keep the emergency wagon of the street railway company, and there is a driveway that goes into that building.

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The curb has been removed, so that a vehicle may proceed from the Lexington Avenue roadway across the sidewalk without having to mount any obstruction; it is all flush there for a distance of some twelve feet, and that is very close, the southerly part of that driveway is very close to this electric light pole, which is only a few inches in from the curb.

This vehicle, operated by the defendant, had gone up through Part of that driveway and then had struck this pole. It struck it with such a crash that people at some distance heard the noise and came running there.

We have a gentleman, Mr. Graf, who was employed by the New York Edison Company, who had a duty there to perform in regard to these poles. He had gone over and examined this particular pole just a moment before. He had returned over to the southeast corner, where there was another pole, and, as you recall, those poles have a large base, and there is a door in them, so that access is had to the wires; and he had just gotten down, the pole has its door on the south side, and he was employed there, with his face to the north, when he heard a noise, and he looked over and saw this vehicle coming almost to the pole and saw it crash into the pole and knock the pole down.

He ran, it being his employer's property, he immediately ran to see what the damage was. He went up

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to the northeast corner, to cross over, and as he started he observed the defendant leave the driver's seat of that automobile which struck the pole, get out upon the easterly side of the car and go towards the northeast corner; and he observed that the defendant was bleeding from the mouth and that the glass windshield of the automobile had been shattered by the blow; and he ran to the northeast corner and intercepted the defendant, got in front of him and said, "Here, where are you going? Why are you running away? Wait". And the defendant said something to the effect, "For God's sake, let me go", or something of that sort; and he said, "No, wait. What is your name? Who are you? Don't leave. Now, stay here"; and this defendant made a threatening gesture at him, and the while, thinking perhaps he had better be discreet, stepped aside, but not until he had a very good chance to see the man's face; and the defendant then, he says, proceeded towards the east, through Thirty-second Street.

Now, there were officers who came there, some in uniform; there was one officer who was not in uniform, named McKeogh, who was off duty; he had gone into the saloon on the corner to get some beer for his midday lunch.

When he heard this crash, he ran out, and his attention was called to a man running down towards Third Avenue, and he pursued him down Thirty-second Street, and

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he had on only a pair of slippers. He pursued him, the man had a lead of 150 feet or 200 feet, and he was almost on the point of putting his hand on this man, he will tell us, when something, he knows not what, caused him to go down on the sidewalk like a shot, and he hurt his knee badly, and got up, and he says he resembled this defendant who is here on trial. He got away from him, and he went all the way down to Second Avenue, and when he came back to the scene of the collision the car had been removed and the injured man taken to Bellevue Hospital.

Now, we have other witnesses and officers who came out there, other citizens who saw this man.

He was all ripped open in the lower part of the abdomen; his leg was torn, was fractured, both legs were fractured, and the lower part of his abdomen was exposed, bleeding, and he never regained consciousness.

The officer, Officer Schneckner, got an ambulance, put him in it and took him right to Bellevue Hospital, went right up into the operating room with him and stayed there.

Doctors worked upon him, but could do nothing for him. He died within 40 or 50 minutes, without regaining consciousness. It was then learned that in his pocket was a card, a plumber's license card, giving the name of Irving Levine, and he was taken to the morgue that day and there.

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received, and his widow and two friends who were in Levine's employ went there and identified his body to Mr. Turner, one of the employees of the morgue.

The body was turned over to Dr. McAllister, who examined it, who states that these multiple injuries, fractures and consequent hemorrhages caused his death.

Now, the chauffeur, Mr. DeWeil, and Mr. Chapman, will tell you that they don't know this defendant, and did not authorize him nor give him any permission whatsoever to take that automobile and use it.

Now, that being so, if the defendant is the man who took the car from Thirty-third Street and ran it down Lexington, he was in unlawful possession of that vehicle.

THE FOURTH JUROR: May I ask a question?

MR. BROTHERS: Not now; it wouldn't be quite proper. When the witnesses are called, you may ask a question.

The accused then had stolen the car, under the law of the State of New York.

We will show you that the chauffeur, Mr. DeWeil, and I think we will have the barber here who shaved him, was not in possession of the car at the time.

Now, the law says that the operation of any vehicle upon the highway in such a way as to cause death, if the operation be so negligent as to come within the definition of the law as to what is criminal negligence,

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such operator is guilty of manslaughter in the second degree.

Now, if the defendant, according to our proofs, having no right to use that car, having no experience in running the car, was operating that car upon the public highway, with such disregard of the rights of other people to use the streets, that he left the roadway and went up upon the sidewalk to that place that is reserved for the use of pedestrians, and caused the death of Levine, he would be guilty of manslaughter in the second degree.

Now, without stating anything further, I think that the jury has a fair idea of what we intend to prove in this case.

Mr. DeWeil.

ALFRED PHILIP DeWIL, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

MR. BROTHERS: We offer in evidence, if the Court pleases, upon consent, a diagram drawn to scale, one inch being equivalent to ten feet, showing Lexington Avenue from a point a few feet south of Thirty-second Street and a few feet north of East Thirty-third Street.

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THE COURT: Is it consented to?

MR. BERSHAD: Yes.

THE COURT: It may be marked in evidence.

(Same received in evidence and marked People's Exhibit No. 1.)

Q Mr. DeWeil, where do you live? A 35 Whitfield Street, Cauldwell, New Jersey.

Q And what is your age? A Thirty-one past.

Q And how long have you lived in Cauldwell, New Jersey?

A Eighteen months.

Q And what is your occupation? A Chauffeur.

Q By whom are you employed at this time? A The Standard Aeroplane People, New York.

Q Where are you located? A In Linton, New Jersey.

Q Linton? A Yes, sir.

Q How long have you been employed there? A Five weeks this Saturday coming.

Q Are they engaged in Government work? A Yes, sir.

Q In March, 1917, by whom were you employed? A John M. Chapman.

Q In the capacity of chauffeur? A Yes, sir.

Q Where did Mr. Chapman live? A 10 Rutledge Road, Montclair, New Jersey.

Q How long did you work for him? A A year and six months

Q Do you recall the 23rd of March, 1917? A Yes, sir.

Q Did you operate Mr. Chapman's car over here in New York

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City? A Yes, sir.

Q What kind of a car was it? A A Cadillac limousine.

Q Of what make? What year? A 1917.

Q How long had you been operating that car? A About a year.

Q Did anybody come with you in the car? A Mrs. Chapman.

Q That is, Mr. Chapman's wife? A Yes, sir.

Q And what place in New York City did you bring her? A I brought her to Altman's, B. Altman & Company, Thirty-fifth Str. and Fifth Avenue.

Q About what time did you get there? A About a quarter to twelve.

Q Middle of the day? A Yes, sir.

Q And did you leave her there at the store? A Yes, sir.

Q And at what time were you to return? A I was to return around half past one.

Q After you left her, you drove away in the car? A She told me to go over and get lunch.

Q And to what place did you go? A I went over to Thirty-fourth Street and Third Avenue, in a restaurant there, a bakery shop and restaurant.

Q After having your lunch, where did you go? A Over to the barber shop, in 164 East Thirty-third Street.

Q That is located between what avenues? A Third and Lexington.

Q Between Third and Lexington Avenues? A Yes, sir.

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Q On which side of Thirty-third Street? A On the down-town side.

Q And that place that you speak of is in the City and County of New York? A Yes, sir.

Q About how far is the barber shop from Lexington Avenue?

A I guess about 350 feet.

Q Would it be about in the middle of the block? A No, sir.

Q Or nearer Third? A Nearer Third Avenue, only a few feet from Third Avenue.

Q At that time, were you the only person in the automobile? A Yes, sir.

Q And when you came to the barber shop tell us where you left the car? A Right across the street, directly opposite the barber shop, where I could see it.

Q And the front of it was pointed in which direction?

A Pointing towards Lexington Avenue.

Q And it stood against the north curb on Thirty-third Street? A Yes, sir.

Q Would you say that it as it stood there was directly opposite the barber shop? A Yes, sir, directly opposite.

Q Had you ever been to that barber shop before? A No, sir.

Q You just went there by accident? A It was the nearest one I seen, yes, sir.

Q When you left the car to go to the barber shop, what, if anything, did you do about the car? A Locked it all up.

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Q And in locking it, what did you do? A Took the keys with me.

Q What part of it did you lock? A The switches and the door.

Q The doors that lead into the car you locked? A Yes.

Q And then you locked some switches? A Yes, sir.

Q What switches? A The main switch.

Q That shuts off - A Supposed to shut off the car.

MR. BERSHAD: I suggest that the witness testify without being led.

THE COURT: Just let him state what he did.

Q When you speak of locking the switches, what was the effect upon the car? A Supposed to be so you can't move it.

Q What did you do with the keys? A Put them in my pocket and took them with me.

Q At that time, did you know the defendant here, the man on trial? A No, sir.

Q Do you know him now? A No, sir.

Q After locking your car, did you go immediately to the barber shop? A Yes, sir, walked right across the street.

Q What did you do there? A I had to sit down and wait for my turn. There was two ahead of me.

Q After your turn came, what was done? A Got in the chair and got a hair trim and a shave.

Q Are you able to remember if there was more than one car in the car - in the barber shop?

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MR. BERSHAD: I object to that, if the Court please.
I can't see its materiality.

THE COURT: It may bear on the length of time he was
in there, that is all. I will allow it.

MR. BERSHAD: I take an exception.

A There was two chairs at the time, but there were people in
there getting shaved and so.

Q When you sat down, in which chair did you sit with
respect to the front? A Second chair from the front.

Q As you sat in the chair, state whether or not you saw
your automobile across the street? A It was still there yet,
yes, sir.

Q For how long a time while in the barber shair did you
have the automobile in your sight? A Well, until I was
getting shaved on this side of the face (indicating), and I
had to turn away, and when I got through there I got up and
the car was gone.

Q About how long a time, are you able to tell us, that
the car was outside of your vision before you missed it? A Well
about three-quarters of an hour, the time I had to wait and
everything.

Q You were in there about three-quarters of an hour?

A Yes, sir.

Q But you say you had it in sight for part of the time?

A Yes, sir.

Q From the time that you last saw the car there across the

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street until you saw that it was no longer there, how much time elapsed? A A few minutes. I just jumped up and didn't bother putting my collar on, just threw my coat on and ran out.

Q Had you gotten your hair cut? A Yes.

Q And your face was completely shaved? A Just a little here on one side (indicating).

Q You were not entirely through with the barber? A No, sir, he didn't part me or anything else.

Q What did you do when you ran out on the street? A I ran up through Thirty-third Street, and didn't see no car, and I ran to Third Avenue, and I saw a car coming through Thirty-second, and I followed them, and on Thirty-second Street I found the car smashed up.

Q When you came to Thirty-second Street and Lexington Avenue, through what street did you come? A Through Thirty-second.

Q From Third Avenue? A Yes, sir.

Q Before going to the place where you found your car, had you telephoned? A Yes, sir, I telephoned as soon as I seen it.

Q Did you telephone before you saw the car, or after you saw it? A Before I seen it, as soon as I come out of the barber shop, I telephoned.

MR. BERSHAD: I object to that, his telephoning.

THE COURT: I will allow the fact to appear that

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he telephoned. I won't allow what he said.

Q To what person did you telephone? A Mr. Chapman.

MR. BERSHAD: I make the same objection.

THE COURT: The objection is overruled.

MR. BERSHAD: I respectfully except.

A To Mr. Chapman, at the office.

Q Your employer? A Yes, sir.

Q Do you know whether or not at that time Mr. Chapman had a place of business in New York? A Yes, sir.

Q Where was it? A 101 Park Avenue, his main office.

Q When you came to the corner of Thirty-second Street and Lexington Avenue, at what place did you see your automobile?

A On the southwest corner. No, northwest corner. The car was smashed up at Thirty-second Street.

Q What was its position with reference to the street, the corner and sidewalk? A Up on the sidewalk; up against the Edison telegraph pole - Edison electric light pole.

Q How much of the automobile was upon the sidewalk?

A I guess pretty near all except the lefthand wheels.

Q In which direction was the front of it? A Facing south, sort of southwest.

Q You said something about a post. Where was that located? A Right on the corner, a few feet off the corner there.

Q Look at this plan, People's Exhibit No. 1, and if you

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understand it, would you be able to find the place where you saw the car standing (handing witness People's Exhibit No. 1)?

A Right here (indicating on People's Exhibit No. 1).

Q That place that is marked "E. L."? A Yes, sir.

Q Intended to represent an electric light post? A Yes.

Q Does that correspond with your recollection of where the post was? A Yes, sir, just a few feet off the corner.

Q And indicates where the car stood? A The car was standing on a slant, here (indicating on diagram, People's Exhibit No. 1), the hind wheel was off the gutter.

Q The left wheels were on the roadway? A Yes, sir.

Q Did you observe the condition of the car? A Yes, sir, it was all smashed in.

Q Which part of it was smashed?

MR. BERSHAD: I object to that as calling for a conclusion, "it was all smashed in", and ask that the answer be stricken out.

THE COURT: I don't know how he can describe it any better. I think that is a statement of fact, "it was smashed in". I will allow it to stand.

MR. BERSHAD: I respectfully except.

Q What parts of the car were broken? A The bumper and the main rod from the chassis to the engine was driven back, the radiator and all was smashed in.

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

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THE COURT: Objection overruled; motion denied.

MR. BERSHAD: I take an exception.

Q —How about the front fender? A All smashed in.

MR. BERSHAD: I ask that the witness describe the condition of it.

THE COURT: He has described the condition. Suppose he said it was broken, smashed is just as much a descriptive term as broken.

MR. BERSHAD: I object to the question as leading.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q Could you tell us a little more in detail the extent of the damage to the fender? A It was broke completely in half, and so was the mainstay rod that they put through the chassis itself when the car comes out of the shop, that was driven back into a v-shape, radiator and all.

Q The fenders are the metal parts that go over the wheels?

A No, that was not damaged. I meant the bumper.

Q What do you mean by the bumper? A The guard they put on the front of the machine, called a Hartford bumper.

Q That was broken? A That was broke in half.

Q The radiator, how about that? A Bent in, into a v-shape.

MR. BERSHAD: The same objection, if the Court please.

THE COURT: The same ruling.

MR. BERSHAD: I respectfully except.

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Q When you left the car and went into the barber shop, was the car - in what condition was the car then? A In running condition, but locked, so it could not be moved.

Q I mean, as to whether it was all in good working order?

A Yes, sir.

Q Or whether it was broken. What was its condition then?

MR. BERSHAD: I object to the form of the question, as leading.

THE COURT: The objection is overruled.

MR. BERSHAD: I respectfully except.

A In running condition.

Q Was it in the condition you found it at Thirty-second Street and Lexington Avenue? A Oh, no, sir.

BY THE COURT:

Q Did you observe any damage to the car except what you have spoken of? A Just that the wind-shield was broken, the front wind-shield was broken.

BY MR. BROTHERS:

Q The fenders, the metal parts that go over the wheels that keep the mud from flying, were they damaged? A No, sir.

Q At what point in the radiator or bumper, as you term it, was the damage? A Direct centre, right through the centre.

Q Do the fenders upon that car extend beyond the front of the radiator? A Yes, sir., about a foot.

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Q How far was the point where you found the damage to the bumper from this electric light pole? A Right in on top of it.

MR. BERSHAD: I object to the form of the question as calling for facts not in evidence here.

THE COURT: Objection overruled.

MR. BERSHAD: I respectfully except.

BY THE COURT:

Q What is the answer? A Directly in the centre, about a foot over they extend.

Q I don't understand. Was the bumper that was bent, was it near the electric light pole? A Stuck right on top of it, it was over it.

Q Where was the pole? A Broken down in front of it, laying across the gutter, in two or three pieces.

BY MR. BROTHERS:

Q Was there a part of this electric light pole that still remained standing? A No, sir, broke right off.

Q Broken off? A Yes, sir.

Q And am I correct in saying that the bumper passed further south than the pole? A Yes, sir, it passed over the base of the pole. The wires and everything was underneath the car.

Q Did you observe at that time any other damage to the car?

A No, sir.

Q Did you look to see what, if anything, was done with

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respect to the lock upon the switches? A No, sir, it was locked still.

Q It was still locked? A Yes, sir.

Q Did you make any examination at that time to ascertain how the car had been operated? A No, sir, I did not.

Q Had you authorized any person whatsoever to move that automobile from in front of the barber shop? A No, sir.

MR. BERSHAD: I object to that. It does not appear that this man would have any authority to authorize anybody. He is only an employe.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

THE WITNESS: No, sir, I did not.

Q Did you see any person at or near the automobile while you were in the barber shop? A No, sir, I didn't notice anybody.

Q Was your attention called by a noise or in any other way to the automobile? A No, sir.

Q State whether or not that car you have been telling us about, when it is started the engine is started and it is ⁱⁿ operation, whether or not it makes much noise, or little noise? A Pretty silent.

MR. BERSHAD: I object. Please, when I object, don't answer. I object to the question as leading and improper, this witness not having been qualified.

MR. BROTHERS: It certainly is not leading.

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THE COURT: The objection is overruled.

MR. BERSHAD: I respectfully except.

A (Continuing) No, sir, there was no noise from it.

Q The motor runs quietly? A Runs quietly.

BY THE COURT:

Q Is it a self-starter? A Yes, sir.

MR. BROTHERS: This I desire, your Honor, as preliminary to the testimony of another witness:

BY MR. BROTHERS:

Q In operating that, car how do you operate it from a stand-still?

MR. BERSHAD: I object to that, if the Court please, as improper.

THE COURT: On what ground is it improper?

MR. BERSHAD: I can't see how it is material how this car operates.

THE COURT: I take it from the District Attorney's opening that he intends to trace the course of the person who operated the car. There may be a question of negligence as to how the car was put in motion originally. I will allow it.

MR. BERSHAD: I respectfully except.

A Just by throwing the switch and you step on another peddle in the front towards the centre of the car, that is the self-starter, and you throw your clutch and shift your speed.

Q What speeds were on that car? A First, second and

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third.

MR. BERSHAD: Objected to on the ground it shows no time.

THE COURT: On the day in question. I don't suppose the mechanism of the car was altered from hour to hour. At about 2:30 o'clock on this day, what speeds did the car have?

THE WITNESS: Three speeds forwards and one reverse.

Q And when you brought it into high speed you had to go from first into second, ^{and} from second into high, is that right?

MR. BERSHAD: Objected to as leading.

THE COURT: Yes, it is leading. Let him tell how it is shifted.

Q The car is standing still, with the motor running. How do you get into high speed? A It is supposed to go from first to second and high, but the car is so powerful you can put them in high and go away on a silent noise, you can't hear them.

Q Was that an eight-cylinder motor? A Yes, sir, eight-cylinder Cadillac.

Q Did you see any people nearby the automobile at Thirty-second Street and Lexington Avenue? A Quite a crowd there when I got there.

Q Did you see any person nearby the car who was injured? A A fellow laying right in front.

Q How close was he to the front of the automobile? A When

I see him he was about two foot away from the base of the engine, laying in front of it; a piece of the pole was laying over him when I got there.

Q And was his body upon the street or upon the sidewalk? A On the sidewalk when I got there.

Q Would you describe what you saw about the condition of that person?

MR. BERSHAD: I object to that, if the Court please, as incompetent and improper.

THE COURT: I will admit it on the District Attorney's promise to identify the person that he saw as the person named in the indictment, as the deceased.

MR. BROTHERS: I think we will be able to show there was only one injured man there.

THE COURT: On that statement, I will allow it.

MR. BERSHAD: Your Honor will respectfully allow me an exception.

A The man was all cut up through the groin when I see him.

Q Speak louder. A I say, I seen he was all cut up through the groin here (indicating).

Q And what portion of his body do you indicate?

A Right through the groin, the stomach.

Q The part of the body where the lower belly joins the legs? A Yes, sir.

Q Did you see any blood? A Yes, sir, he was all blood.

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Q And did you see any portion of his flesh exposed?

A I seen everything was cut open.

Q Did you know that person? A No, sir, I did not.

Q And while you were there did you see any person do anything to him? A No, just -

MR. BERSHAD: I object to that, if the Court please, as incompetent.

THE COURT: He may answer "yes", or "no".

A (Continuing) Just the people that was attending to him.

MR. BERSHAD: I ask that that be stricken out.

THE COURT: Yes, just answer, "yes" or "no". Did you see anybody do anything to him?

THE WITNESS: Yes, sir.

Q Do you know who the people were who did anything to him? A No, sir, I do not.

Q Did you see anybody remove that person from the place where you first saw him?

MR. BERSHAD: I make the same objection.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A When the ambulance got there they picked him up and put him in the ambulance.

Q Did you observe what ambulance it was? A I think it was the Roosevelt, if I am not mistaken.

Q You are not sure of it? A No, sir.

Q You didn't pay any particular attention? A No, sir.

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Q Did you see any police officers there? A Yes, sir, there was two or three at the time.

Q About how long after you arrived there at that corner where the car was do you recall that his body was removed in an ambulance?

MR. BERSHAD: I object to that, if the Court please, as already answered. He says he didn't know.

THE COURT: I don't recall the answer.

MR. BERSHAD: I take an exception.

A About 20 minutes.

Q While you were there, did you see your employer, Mr. Chapman? A Yes, sir, he came down about ten minutes after I got there.

Q What, if anything, was done with the automobile?

A We had to go and get a car from the Thirty-second Street garage - Thirty-first Street garage, and have it towed in. We couldn't move it.

Q And did you after it was removed from that corner make any further examination of the car? A No, sir, I went back with the boss to the office.

Q What is that? A I went right back with the boss to the office.

MR. BERSHAD: I ask that the answer be stricken out, as irresponsible.

THE COURT: He says No, he didn't make any.

MR. BERSHAD: I mean, the balance of the answer.

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THE COURT: Well, it is immaterial. Yes, it may be stricken out.

Q Did you go to the garage to which this car was towed?

A Yes, sir, I steered it the best I could.

Q You sat on the seat and steered it? A Yes, sir.

Q Was the steering apparatus damaged? A Out of line on the right hand side.

MR. BERSHAD: The same objection to that, if the Court please.

THE COURT: On what ground?

MR. BERSHAD: On the ground it is incompetent.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q When you last operated the car before locking it in front of the barber shop, state the condition of the steering gear? A It was in first-class condition.

MR. BERSHAD: I object to that and ask that the answer be stricken out.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q You had driven that car how long? A Driven it pretty near a year.

Q You had been operating motor cars as a chauffeur for how long a time? A Eight years.

Q You are something of a mechanic, too? A Yes, sir.

Q Did you take care of this car? A Yes, sir.

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Q Repair it? A Yes, sir.

Q Adjust it? A Yes, sir.

Q And you are familiar with the use and methods of operating those cars? A Yes, sir.

Q Know the engine? A Yes, sir.

Q You are now working upon aeroplane motors, are you?

A No, I am working for the Cadillac people down there.

Q Have you worked in the shops of the Cadillac people?

A Yes, sir, I did.

Q After the car got into this garage to which it was towed, did you ever see it after that day? A No, sir, I did not.

Q How long after that did you remain in the employ of Mr. Chapman? A Until September 26th.

Q And where did you go to work then? A Went to work for Mrs. A. D. Smith.

Q That is where? A In Orange, 255 Centre Street.

Q During the time that you continued to work for Mr. Chapman, from March 23, 1917, until September of that year, you never again operated this same Cadillac car? A No, sir.

Q Was it ever brought back to Mr. Chapman's garage?

A As far as I know, it has been back with a new chassis on it.

Q But was it brought back during the time you worked for Mr. Chapman? A No, sir.

Q Did you ascertain by examination how this car was

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operated from in front of the barber shop when the switches were locked? A No, sir I did not.

MR. BERSHAD: I ask your Honor to instruct the witness not to reply when I object.

THE COURT: Yes, when an objection is made by counsel, give him time to object before you answer.

THE WITNESS: Yes, sir.

MR. BERSHAD: He has answered "no".

MR. BROTHERS: You may inquire.

MR. BERSHAD: No questions.

W I L L I A M L. G R A F, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Graf, how old are you? A Forty-five.

Q And you live where? A Jersey City.

Q What is the address? A 85-1/2 Lincoln Street.

Q Where are you employed? A New York Edison Company.

Q At what place? A Thirty-second Street.

Q Is there a number there, and what is the location?

A 104 East Thirty-second Street.

Q What is your position? A Shopman, electrical shopman.

Q How long have you been employed by the Edison people?

A Twenty-nine years.

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Q Do you remember the 23rd of March, 1917, being at the corner of Lexington Avenue and Thirty-second Street in this city?

A Yes, sir.

Q What were you doing there at that time? A I was installing an electric time switch on the New York Edison post on the southeast corner.

Q What time did you go to work on that job? A Around two o'clock.

Q In the afternoon? A In the afternoon, yes.

Q And do you see the location of that pole upon this plan, on People's Exhibit No. 1, where you were working that day (handing witness diagram, People's Exhibit No. 1)? A There (indicating on diagram, People's Exhibit No. 1).

Q Indicating south of the corner? A South of the corner, yes, sir.

Q Was there any other Edison Electric light pole in that neighborhood? A Right directly opposite, over here (indicating on diagram, People's Exhibit No. 1).

Q And you point to the one on the northwest corner? A The northwest corner.

Q And were they similar in construction? A Yes, sir.

Q Were you doing this work alone? A At the present time, I was alone, yes.

Q While you were there at that corner of Thirty-second Street, did you have occasion at any time to go over to the northwest corner pole? A Yes, sir.

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Q And how long did you remain at that pole? A Well, I was there maybe about a couple of minutes, four or five minutes.

Q Then where did you go? A Directly opposite, to the southeast pole.

Q And when you arrived at the southeast pole, how long were you working before your attention was called to anything that had happened nearby? A Within about say a minute; just the time elapsed to cross the street.

Q In what position were you standing when you observed that something unusual had taken place? A I was in a crouched position, and was just opening the door of this pole.

Q Where is the door located? A It is on the south side of the pole, facing south, the door was.

Q And with respect to the top or bottom or middle of the pole, where is it? A It was on the side of it.

Q The pole runs from the sidewalk up in the air? A Yes.

Q About how high is it? A The entire pole?

Q Yes. A I guess about 20 feet, I guess, something like that.

Q Where is the door located? A On the base of the pole.

Q Down near the sidewalk? A Near the sidewalk.

Q What is inside of that door? A A switch and cables.

Q And was it upon that that you were working? A That was the door I was working on on the pole.

Q As you were in a crouched position, your face was pointed in which direction? A North.

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Q What, if anything, did you see at that minute?

A I saw an automobile coming down, and it was within about two feet of a pole, which it struck, on the opposite corner, on the northwest corner, and I saw the pole go down; I stood there a little amazed from seeing it coming down, and I watched it fall; it came right down, and it fell north, the top of the pole fell north; it came down to the ground.

Q That is, the automobile ran into the pole and knocked it down? A Yes, sir.

Q Was there any noise occasioned by this collision of the car with the pole? A Well, it made a little jamb, the noise of glass.

Q You heard glass break? A Glass break, yes.

Q What next did you see after the pole fell? A After the pole fell I heard a man holler.

Q Yes? A And that drew my attention. I looked and he hollered, "Oh, oh", like moaning in a man, and I saw him drop to the sidewalk.

Q Where was this man who dropped to the sidewalk? A Well, he fell south of the pole, a couple of feet south of the pole.

Q And then he was upon the northwest corner of the street? A He was on the northwest corner.

MR. BERSHAD: I ask at this stage that the District Attorney not lead the witness, if the Court please.

THE COURT: Yes.

Q Well, on which corner was he? A Where the man fell?

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Q The man who fell down. A On the northwest corner

Q And how far was he from the automobile when he fell?

A Oh, I should say about four feet.

Q Had you observed that man before you heard the noise of the collision? A No, sir.

Q What did you do and see after that? A Well, I stood there about a minute, and I watched the chauffeur in the car. I seen him get out of the car, and I goes over to him. I meets him on the south - on the northeast corner, which has a saloon on that corner, and I stopped him and I asked him to give me his aname and address.

Q When you saw this chauffeur, as you term him, get out of the automobile, what automobile do you speak of, what automobile are you talking about? A The automobile that struck this post.

Q And from which side of the automobile did he alight? A The east side of the machine.

Q Did you see where he went? A Yes, sir.

Q Where did he go? A He went down through Thirty-second Street.

Q Before you spoke to him, did you see which way he went? A Before I spoke to him?

Q Yes. A Yes, he was going east.

Q And you came to him at what place? A Right on the north east corner I met him; there is a saloon on that corner, and I stopped him there.

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Q And what happened when you stopped him? A Well, I asked him for his name and address, and he made a remark, he says, "God, let me go", so I said to him, "I will let you go if you give me your name and address"; I says, "You wrecked one of the company's poles"; and he made a motion, and I was a little afraid something would happen, and I let the man go.

MR. BERSHAD: I object to that, and ask that it be stricken out, if the Court please.

THE COURT: Motion granted.

Q What, if anything, did this chauffeur do just before he left you? Tell us all that he did and all he said. Do you understand me? A Yes, I am just thinking. He said - he repeated that twice.

Q Repeated what? A "For God's sake, let me go".

BY THE COURT:

Q Did he do anything? A I judged that he made a motion for his pocket.

BY MR. BROTHERS:

Q What did you see him do?

MR. BERSHAD: I ask that this witness be cautioned not to give us his imagination, but to tell us exactly what he saw.

MR. BROTHERS: I am doing the best I can.

THE COURT: He is not giving his imagination, but he is giving his recollection.

BY THE COURT:

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Q Now, just tell us what you saw him do? A Well, I saw him - he dropped one of his hands.

Q Show us just how he did it? A I had him on the left arm; he dropped one of his hands this way (illustrating), and I imagined he was going to pull a weapon.

MR. BERSHAD: I ask that that be stricken out, if the Court please.

THE COURT: Yes, objection sustained. He dropped his hand.

BY MR. BROTHERS:

Q Did you have hold of him? A Yes, on the sleeve, on the left hand sleeve.

Q And what, if anything, was the matter with this man? Did you see anything the matter with him? A I seen him cut.

Q Where was he cut? A He was bleeding from the mouth.

Q And would you show us by doing it yourself how he moved his right hand?

MR. BERSHAD: He has testified and demonstrated what he did, and I object to the question as already answered.

THE COURT: the objection is overruled.

MR. BERSHAD: I respectfully except.

Q Stand up and show us what he did? A When I asked him to give me his name and address his hand went ^{back} in that position (illustrating).

Q Indicating towards the back? A Yes, towards the back.

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MR. BERSHAD: Will you please let him testify?

MR. BROTHERS: I have a right to put on the record what he says, and counsel's objections are frivolous. Now, I am getting out of patience, your Honor.

THE COURT: He was not telling us anything. He was simply describing his gesture, so the stenographer could get it on the record.

MR. BERSHAD: I submit my objection is strictly proper. I asked Mr. Brothers not to tell the witness what to say. The witness is pretty intelligent, and he can tell us himself.

THE COURT: I overrule it on the ground he did not tell the witness anything. He described his gesture for the purposes of the record. Proceed.

Q Now, at the moment that the person who came from the automobile moved his right hand, as you say, what, if anything, did you do? A I let him go.

Q You mean by that what What did you do? Tell the jury just exactly what you did? A After I seen that move made with his hand -

MR. BERSHAD: I object to it as already answered. He said he let him go.

MR. BROTHERS: I would like to know what he means by it.

THE COURT: I think it is very evident what he means. He left, and he didn't stop him?

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THE WITNESS: He left, I didn't release him.

Q Which direction did he go? A Through Thirty-second Street, east.

Q Where was he when you last saw him that day? A Well, he was about in the middle of the block. I watched the man going down the street as far as I could see, and the last time I saw him was about the middle of the block.

Q Were there any other people upon the street? A At the time I was watching him going down?

Q Yes. A Yes, there was quite a few people.

Q Did you see that man that you have been describing and who was cut upon the face and to whom you spoke at any time after that day? A Yes, sir.

Q Do you see him today? A Yes, sir.

Q Where is he now? A Sitting right over there (indicating).

Q Would you go down and indicate? A Point him out?

Q Yes. A (Witness approaches table reserved for defendant's counsel and points to defendant).

Q Indicating defendant. Did you see any persons go in the direction towards Third Avenue and Thirty-second Street after the defendant left you? A No, sir.

Q After you lost sight of the defendant, what was the next thing you did? A I went over to the machine, over to the automobile, and I looked -

Q And what did you find over there? A I found a man

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laying on the sidewalk.

BY THE COURT:

Q At what gait, or in what manner did the defendant leave after he left you? A On a good walk, not a run, a speedy walk.

BY MR. BROTHERS:

Q When you last saw him, he was still going at what rate? A Just on a speedy walk.

Q And when you went over, as you say, to where the automobile was, what did you see there? A I saw a man laying there on the sidewalk, all cut open.

Q Where was he cut? A He was cut on his left leg, right up here (indicating), and his stomach was all ripped.

Q Was his skin exposed? A Yes, sir.

Q That is, the skin of his body near his leg? A Yes, sir.

Q Did you observe anything else about him? A Well, I noticed he had a pair of overalls on.

Q Did you know the man? A No, sir.

Q About what age did he appear to be, whether he was a young man, middle aged, or an elderly man? A I would take him to be twenty-eight or thirty, something like that.

Q And did you observe any blood at any place? A Yes, sir.

Q Where was it? A Right where this man was laying, the blood was running from his body on to the sidewalk.

Q Did you at any time hear the injured man speak? A Not speak. I heard him moan.

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Q And were you there when he was removed from the corner?

A Yes, I was there, yes.

Q How was he taken away, in what conveyance? A Taken away in an ambulance.

Q Did you see any officers there? A Yes, sir.

Q Going back to the time that you went to the pole on the northwest corner, when you left the pole, was it in perfect condition, or was it damaged in any way? A It was laying at the ground.

Q No, just before the collision? A Oh, before the collision?

Q Yes. A The pole was in perfect condition.

Q Just like the ones you described on the southeast corner?

A Yes, sir.

MR. BERSHAD: I object to that, and ask that it be stricken out.

THE COURT: Objection overruled; motion denied.

MR. BERSHAD: I respectfully except.

Q About how big around is the base of that pole, could you indicate with your hands, if you don't know the exact measurements? A Yes, about like that (illustrating).

Q About fifteen inches in diameter, would you say? A Yes, I would say that, on a rough guess.

Q It is made of what? A It is made of iron.

Q And the post the size you described, is there any metal that goes from the sidewalk up inside of that? Is there an

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inside lining or pole or piping? A Some has and some has not. This one I can't remember.

Q You don't remember about this one? A No, I don't remember whether this had, or not.

Q How far away from the pole was the front of the automobile at the time you first observed the motor? A Well, about two feet.

Q And the pole is located how far from the curbstone? A Well, about ten inches on the Lexington Avenue side.

Q And it is upon the sidewalk? A Yes, sir, upon the sidewalk, yes.

Q Did you observe when the motor was moving toward the pole whether it was then upon the street or partly upon the sidewalk? A It was partly on the sidewalk.

Q Did you have a sufficient view of it to determine the speed at which the motor was moving?

MR. BIRSHAD: Just a moment. I object to that as incompetent and improper.

THE COURT: Answer "yes", or "no".

A Will you give me that question again?

Q (Question read, by stenographer, as follows: "Did you have a sufficient view of it to determine the speed at which the motor was moving?")? A Well, two feet, that is all I could see the speed of it.

Q So, you didn't have a chance to judge its speed? A No.

Q Did you see it at the moment it struck the pole? A Yes.

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Q At that moment, did you observe whether there was anybody in the motor, in the car? A No, not at that very moment, no.

Q When was the first time that you saw that there was anybody in the car? A Maybe about a minute after.

Q By a minute, do you mean 60 seconds, or what do you mean?

MR. BURSHAD: I object to the qualifications. The witness said about a minute. That is an answer.

THE COURT: Yes, objection sustained.

Q How long was it after you heard or saw the collision that you first observed a person in the car?

MR. BURSHAD: Just a minute. It has already been answered, if the Court please.

THE COURT: I will allow it.

MR. BURSHAD: I respectfully except.

A Do you want me to answer that?

Q Yes. A One minute, I would say.

Q Were you looking at the car during that minute, or where were you looking? A I was looking at the car and at the pole.

Q And then you saw a person get out? A Yes, sir.

Q That you say is the defendant on trial? A Yes, sir.

Q Did you see any other person get in or out of the car during that time? A No, sir.

Q And you were looking at it during all that time? A Yes.

MR. BROTHERS: That is all.

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CROSS-EXAMINATION BY MR. BURSHAD:

Q How many times have you been to the office of the District Attorney? A I think I have been down there four times.

Q And do you remember on one occasion, some time in June, 1917? Talk up. A I think I do, yes.

Q And do you remember the occasion when this defendant was brought up into the District Attorney's office? A Yes, sir.

Q And do you remember what took place there in the District Attorney's office at that time? A Yes, sir.

Q Tell this jury? A Well, a man was brought up to me to identify.

Q Yes? A And he was brought up by - two men brought him up.

Q By officers? A I don't know; they were in citizen's clothes; I couldn't tell you whether they were officers or detectives or what they were.

Q Go ahead. A And they asked me if that was the man.

Q What did you say when that question was put to you?

A I didn't say anything right away. I examined the man, at least, looked -

Q And didn't you state you thought the man was a heavier man? Didn't you say that? A Not that I can remember, no.

Q How? A Not that I can remember.

Q Didn't you say, sir, at the time when he was brought up into the District Attorney's office, in the presence of

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those two men that brought him up, you thought that man was a heavier set man? A Yes, I might have said that, yes.

Q Don't you remember whether you said it, or no? Didn't you say that? A Well, I judged he was a heavier man, yes.

Q Than he was? A Yes, sir.

Q So, in other words, from your identification in the office of the District Attorney, way back last June, you were unable to state accurately whether or not that was the defendant; that is so, wasn't it? A No.

Q You couldn't identify him in 1917, in June, could you?

A Certainly, I could.

Q Didn't you say you thought that the man was a heavier man than he was? You did say that, didn't you? A The man might have got thinner.

Q I am not asking you that. I asked you whether you didn't say that the man that you identified was a heavier man than he was? Didn't you say that? A Yes, I said that.

Q And wasn't it suggested to you by one of the men in citizens clothes that he had been confined and that he might have grown thinner? That was the suggestion made to you, wasn't it? A Yes.

Q Then, it was not, then, was it? A Not that I know of, no.

Q The suggestion was made to you by one of the men in citizens clothes that he might have grown thinner, and it was on that that you identified this defendant? A No.

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Q What do you mean "no"? A Well, because the features was there; I looked at the man's features.

Q About how long did you observe the man that you say was this defendant at the time when you first talked to him?

A When I was looking at the man?

Q When you first talked to him? A When I first talked to him?

Q Yes. A How long was I at him?

Q Yes. A Well, maybe about five minutes, four minutes, something like that.

Q Four or five minutes? A Yes, sir.

Q Sure about that? A Yes, sir.

Q Did you time yourself? A Well, no; that is just a guess; I didn't time myself, no.

Q Might it have been less? A It might have been less at that.

Q There was a crowd gathering there, wasn't there? A No.

Q Wasn't there a crowd gathered there? A Not that I know of, no.

Q After this crash that you testified to? A Oh, up here?

Q Yes. A Oh, yes, sir.

Q From the time that you say you saw somebody leave the chauffeur's seat you didn't see the man, did you? A I saw him come out of the machine.

Q But you couldn't identify the man at the time, could you? A At that time?

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Q Yes, when he left the chauffeur's machine, you didn't know who the man was? A I never saw the man before.

Q And that man went away? A Yes.

Q And you didn't talk to him, did you, from the time that he left the chauffeur's machine, the chauffeur's seat, he walked away, didn't he? A No, I stopped him; I talked to the man.

Q You saw him come out of the chauffeur's seat? A Yes, sir.

Q And you went right over there and talked to him? A Yes.

Q And then what occurred? A Well, I asked him to give me his name and address.

Q You grabbed his sleeve, you say? A Yes, sir.

Q Which side did you grab? A The left sleeve.

Q The left sleeve? A Yes, sir.

Q And then you held him there? A Yes, sir.

Q And then what happened? A He said he wanted to get away, and I says, "Well, give me your name and address and I will leave you go".

Q Did people gather there near you? A Well, there was a few people while I was talking to him.

Q Standing there right near you, weren't they? A Well, they might have been. I didn't pay any attention, because my whole attention was on the man I was talking to.

Q But there were people standing near you? A Yes, there might have been a few people.

Q Don't you remember whether they did or not gather near

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you? A I didn't look- -

Q You testified here, or tried to say, in answer to the District Attorney, that the man made a move apparently to his pocket for the purpose of reaching for some weapon. Didn't you say that, or try to say that? A Yes, sir.

Q And yet you don't remember whether or no there were citizens there? A There was a few people standing there.

Q What was there to fear? You could call on their assistance, couldn't you? A Oh, I don't know, because the thing went so quick.

Q You had him there for four or five minutes, you said, didn't you? A I am mixed up in that. I thought you meant when I was here in the District Attorney's office, talking to the men.

Q Well, now, let us get that straight. I am talking now - I have - I ask you when he left the chauffeur's seat. You can't be mistaken. I am asking you, and I have been talking about the time after he left the chauffeur's seat. Now, do you wish to change that? A I asked you first, the first time I saw the man after the accident, up at the District Attorney's office?

Q No, I said after he left the chauffeur's seat, and you said you followed him, and you took his sleeve, and you talked to him for four or five minutes; is that correct? A No.

Q How long did you talk to him? A A couple of minutes, two or three minutes.

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Q Two or three minutes? A Yes, sir, just time enough -

Q Wait a minute.

MR. BROTHERS: Let him answer.

MR. BURSHAD: He has answered.

MR. BROTHERS: Have you finished your answer?

THE WITNESS: The time elapsed from the time these words were spoken, I asked him for his name and address, and he said he wanted to get away, and I asked him again, and he said he wanted to get away.

Q So, you were mistaken when you said there were other citizens around there? A I say I didn't notice anybody around when I stopped the man.

Q You were mistaken when you answered me previously that there were some people around, you were mistaken about that? A That there were some people?

Q Yes. A Yes, there was some people around.

Q Now, I am asking you, with those people around there and with this alleged threatening gesture that this man was about to make, you say you let him go? A Yes, I let him go.

Q And, nobody else attempted to interfere? A No.

Q And you didn't call on any of the citizens to assist you? A No.

Q How do you explain that? Here is a man apparently who had done something that was illegal, had damaged the property of your employers, and that was the reason you say that you wanted to find out who it was? A Yes, sir.

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Q Why didn't you call on the citizens there? A Well, I didn't think of that, because I was all amazed - I was all out of my mind for a minute.

Q And yet you were quite clear in your mind to get the name and address of the man, weren't you? A Yes, sir.

Q You were not confused on that? A No.

Q Your idea was to get this man, wasn't it? A At that minute, yes.

Q We are talking about that minute. Wasn't it your idea to get him? A Not the man himself. I wanted his name and address, so I could report it to my employer.

Q That was in your mind? A Yes, sir.

Q You had an opportunity there, you had him by the sleeve, and you had citizens there to assist you, didn't you? A I don't know whether they would assist me.

Q I am not asking you that. You had them there. Did you make an effort? A There was a few people -

Q Did you make an effort to get them to assist you if this man should resist you? A No.

Q Yet you knew that something serious had occurred? A Yes.

Q And you knew a man had been struck with a machine, didn't you, and you knew that somebody had been injured, perhaps fatally? That you subsequently discovered, isn't it? A Yes.

Q And yet you did nothing at all to attempt to detain this man that you say is this defendant?

MR. BROTHERS: I object to that. He said he took hold

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of him and spoke to him.

THE COURT: It is cross-examination. I will allow it.

Q What do you say? A Well, I let the man go, because, to tell you the truth, I was afraid of my own life.

Q But you said there were citizens there?

THE COURT: He has already said so.

Q You took him by the sleeve and you showed no fear, did you? A Well, I only -

Q How tall are you? A Five foot five and one-half, I think I am.

Q And how tall was this man whom you grabbed hold of by the sleeve? A Oh, I guess he was about - I don't know myself. About five foot two, something like that.

Q He was shorter than you were, wasn't he? A He must have been, yes.

Q Naturally? A Sure.

Q About how heavy ~~xxx~~ were you? A How heavy am I?

Q At the time, yes. A About 160, something like that.

Q Do you know how tall this man is, this defendant? A No, I don't.

Q Hasn't it been told to you? Hadn't anybody told you how tall he was? A Not that I can remember, no.

Q Will you swear that you have not been told how tall this man was? A I couldn't swear to it, because I am not sure.

Q Didn't somebody tell you how tall he was, or is? A Somebody told me?

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Q Yes. A Not that I can remember, no.

Q You are not sure about that? A No.

Q Now, tell us, after you grabbed him by the sleeve, and you showed no fear, why did you let him go? A Well, I didn't grab him by the sleeve because I was not afraid. It was merely to stop him, just to stop him; it wasn't a death grip, or a lock grip; it was just to stop him so I could talk to the man.

Q Yes? A And that is the reason I let the man go; he couldn't give me no information - at least, he wouldn't give me his name and address, and that is why I let him go.

Q What did you say to him after he said, "For God's sake, let me go"? A What did I say?

Q Yes. A I didn't say anything that I can remember. I let him go. That is all.

Q Did you say anything else to him? A No.

Q Did you accuse him, that he was the one that did these things? A On that corner at that time?

Q Yes. A No, because I knew he was the man, because I seen him do it.

Q Did you accuse him? A Did I accuse him?

Q Yes. A I accused him in this way, that he damaged a pole that belonged to the New York Edison Company.

Q That was in your mind? A Yes, sir.

Q You wanted to get the information as to the name and address of the person who did that damage? A Yes.

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Q You didn't know anything about anybody being injured at that time, did you? A No, I did not.

Q Now, you talked to him for three minutes, about three minutes, and then your attention was directed afterwards to what occurred on the corner, so you were mistaken when you told the District Attorney that you looked up about a minute after, when you were crouching in that position?

MR. BROTHERS: I object to that question.

THE COURT: He was not crouching after he had this conversation.

MR. BURSHAD: Not after. Before.

Q You said you were crouching at this post? A Before the accident occurred, yes.

Q And you looked up a minute after, and you were still crouching, and this man was lying on the sidewalk, bleeding?

A Yes, sir.

Q Is that right? You said that, didn't you? A Yes, sir.

Q You were mistaken, weren't you, as to the time? A I saw the man -

Q You were mistaken as to the time, weren't you, Mr. Graf? A Well, in one minute. That was the time that elapsed before I saw everything, and I didn't know that man was hurt until I heard a moan.

Q And that was about three or four minutes after, wasn't it?

BY THE COURT:

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Q Did you hear a moan before you had a talk with the defendant, or after you had the talk with the defendant? A Before I had the talk with the defendant.

BY MR. BURSHAD:

Q Then, in other words, your attention was detracted for how many minutes?

MR. BROTHERS: I object to this. It does not appear from what his attention was detracted, whether from the injured man, or from the defendant.

THE COURT: Objection sustained.

A You want to know how many minutes it was -

Q Wait a minute. You need not answer that. What did you observe the first thing at this particular time that we are talking about, what was the first thing that attracted your attention? A When the accident happened?

Q Yes. A Well, I happened to be looking north.

Q You said you were crouching? A Yes.

Q And your attention was attracted to the door? A I was in a crouched position, looking north.

Q And the post was in front of you? A The post was in front of me, yes.

Q It didn't conceal things from your view? A My head was on one side of the post.

Q Then, you were not looking at what you were doing? A Not at that minute, no.

Q From the time your attention was fixed north from your

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southeasterly position, where you were crouching, how long elapsed until the time you first heard or knew that something had occurred on the northwest corner, about how many minutes?

A Just about half a minute, I guess.

Q A half a minute? A Yes, sir, just as I got to the pole and looked north this machine come down.

Q And then this thing occurred? A Then this occurred.

Q How long did you keep looking in that particular direction? A I looked until the crash was over and the pole fell down.

Q How long would you say that took? A I guess a minute or so, something like that.

Q A minute? A Yes.

Q And you stayed at your pole watching that? A Yes, sir.

Q And what was the next thing that you saw? A The next thing I saw, I heard a man moan?

Q And how long did you pay attention or have your mind fixed on that man moaning, how long would you say? A Oh, maybe another minute.

Q And then you were still standing near your post?

A Still standing at my post, yes.

Q About how many feet away from that post, from the northwest corner? A From the northwest corner?

Q Yes. A From the post I was working on?

Q Yes, about how many feet away. A I was right on top of the post, standing right alongside of the post.

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Q You were along side of the post where this accident occurred? A No, where I was working.

Q How many feet was your post away from this northwest post on the opposite side of the street? A It is a distance of across the street.

Q How many feet? A I don't know what the distance of the street is; maybe about fifteen feet, I suppose, across the street, but on a diagonal course.

Q After the next thing - what is the next thing you did after you heard this moan and your attention was fixed to the man's moaning for another minute, what is the next thing you did? A I stood there for a minute.

Q For another minute? A Yes.

Q So, you stood there for three minutes at least then; is that right? A Well, according to that.

Q Then what did you do? A Then I saw the chauffeur coming out of the machine.

Q The next thing was your attention was attracted to some body walking out of the machine? A To the chauffeur.

Q Was he dressed like a chauffeur? A Well, he had a blue suit on.

Q With a chauffeur's cap? A With a cap.

Q A chauffeur's cap? A I wouldn't swear it was a chauffeur's cap; it was a soft cap.

Q Yes? A And then he come across -

Q You know it was a blue suit? A yes, sir.

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Q You don't remember what sort of cap he had on? A No, that I couldn't remember.

Q Yes? A Then I met him -

Q Do you know what eyes this man had, the color of his eyes? A No, I couldn't tell you that, no.

Q Or the color of his hair? A The hair I could tell you

Q What was the color of his hair? A It is between a blonde and a black.

Q And where did you get that description from? A As far as I could see him.

Q Where did you get that description from? A When I looked at the man.

Q At that time? A Yes, sir.

Q At that time, or now? A No, it was at that time.

Q At that time? A Yes, sir.

Q What sort of tie did he have on? A I don't know; I didn't take notice.

Q What sort of shoes did he have on, do you remember?

A That I couldn't tell you, either.

Q Now, getting back again - and the next thing you talked to this man that stepped out of this machine, and he was a heavier man than this defendant, wasn't he? A Well, he was a little heavier at that time.

Q About how much would you say that he weighed at that time, this man that you talked to? A I would say about one hundred and thirty-five.

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Q 135? A Or 130.

Q 130 to 135? A Yes, sir.

Q Didn't you say in answer to the question in the district attorney's office when those two men brought you there that the man weighed about 145, didn't you say that? A 45?

Q 145. A I might have said that.

Q You might have said that? A Yes, sir.

Q And your recollection now is clearer than it was almost ten months ago, is it? A Well, I don't know.

Q Your recollection last June as to the description of the man, was it clearer than it is now, or is your recollection of him clearer now than it was in June, 1917? A No, it is about the same.

Q And you don't know now whether you said 145, or not? You wouldn't say that you didn't say it, will you?

THE COURT: he just said he might have said it.

A I might have said it.

Q Well, were you mistaken? A Well, to my judgment. I aint a very good fellow in judging weight, but that is what I judge in my own mind.

Q And you told me a minute ago you judged the man to whom you talked to be about 135 or 130 pounds? A I said that, yes.

Q You are doing that on your oath, aren't you? A As far as I can remember.

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Q How do you reconcile your statement with your testimony now that you are not a judge of weight, and at the time you might have said that he weighed 145, and now you say that the man might have weighed 130? How do you reconcile that, in your identification of this man?

THE COURT: What is it now that you want him to reconcile?

MR. BURSHAD: How he reconciles his identification.

MR. BROTHERS: He testified he recognized him by the face, your Honor.

MR. BURSHAD: He says this man whom he grabbed by the sleeve weighed about 130 pounds. He said last June, in 1917, this man might have weighed 145 pounds.

THE COURT: That is what you want him to reconcile?

MR. BURSHAD: Yes.

THE COURT: I understood him to say he was not a very good judge of weight, and that is how he reconciles it.

Q So, you are giving us your guesses? A I am giving you the best I can give you, the way I can average a person's weight.

Q Have you a pretty good memory for faces? A Yes, sir.

Q How? A I can remember a face.

Q You are a mechanic, are you? A Yes, sir.

Q How long have you been a mechanic? A 29 years.

Q And it is your business to know distances, isn't it?

A Well, not in my business, no.

Q Do you have to weigh metals frequently? A Weigh

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metals, no, I have nothing to do with weighing at all.

Q Nothing to do with weighing? A No.

Q You are handling materials and metals continually, are you not? A In the line of wire and stuff like that, cables.

Q Carrying them? A Yes, sir.

Q Lifting them? A Yes, sir.

Q Don't you get an idea as to weights that way? A I never pay no attention to any weights, because my business don't call for it.

THE COURT: Gentlemen, the law requires ^{that} during the progress of every criminal case on each adjournment of the case the Judge must request the jury not to form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to the jury, also not to converse among themselves or with other people about the case. The law does that so the jury will keep their judgments in abeyance and simply during the trial store their memory with the facts, but keep their judgments impartial and unbiassed, so that when they go into the jury-room they won't go there as partisans or advocates for one side or the other, but go there in a judicial frame of mind, prepared to confer over the case with their fellow-jurors in that capacity. Now, on each adjournment of the court, I shall have to repeat this admonition, which I

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shall do briefly, but I explain to you why I have to do it. It is an important thing, and a great many jurors have lost a great deal of valuable time in the jury-rooms by not regarding that admonition, by making up their minds in advance, instead of keeping their minds open and conferring with each other in a spirit of judicial balance. We will take a recess until two o'clock.

(The Court then accordingly took a recess until two o'clock p. m.).

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AFTER RECESS.

WILLIAM L. GRAF, resumes the stand.

CROSS EXAMINATION (Continued) BY MR. BERSHAD:

Q Mr. Graf, after you left here at one o'clock, where did you go? A Went to have something to eat.

Q Where? A Over right opposite on the other corner; I don't know what street it is; right on this corner, a saloon.

Q How long were you there? A Maybe about fifteen minutes.

Q What did you do after that? A I went down to the station, in Duane Street.

Q What station? A The Edison Station.

Q And how long were you there? A Maybe about ten minutes.

Q And then where did you go? A I come here, come in this building here.

Q Did you talk to anybody? A (No answer).

Q Why do you hesitate? A Well, I got to stop and think.

Q Half an hour ago? A Yes,, sir.

Q What you did? A I was talking to a man outside.

Q Who was that? A I don't know who he was.

Q What were you talking to him about? About this case? A Well, I said a little something to him. I said I got mixed up a little bit, that is all.

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Q Got mixed up in your identification? A No; on the weight.

Q On the weight? A Yes, sir.

Q Did you say you got mixed up on your identification?

A No, no, no.

Q Did you tell him that? A No.

Q What else did you tell him? A That is all.

Q Who was it, do you know? A I don't know who the man is.

Q Just somebody you met in the hall? A Yes, sir.

Q Did he tell you who he was? A I don't know. I think he is on this case himself. I don't know.

Q You don't know? A No. He is standing out in the hall. He was out there.

Q Did you see him before? Was that the same man that you talked to in the District Attorney's office at the time when this identification took place? A No.

Q Who was he? A I don't know who the man is. He was here this morning.

Q A perfect stranger to you? A A stranger to me.

Q You had never seen him before? A I never seen him to-day, before, not that I remember.

Q What did he ask you? A He didn't ask me anything.

Q You just walked up to him and talked to him?

A That is all, yes.

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Q What did you tell him? A I told him I got a little mixed up; I am a poor judge of weight; I can't remember a fellow's weight; that is all.

Q So then you recall now that when you made your identification of this young man, in June, you said you judged that his weight was about 145 pounds; is that right?

A Yes, sir.

Q That is, you judged that the weight of the man who walked out of the chauffeur's seat was about 145 pounds?

A Yes, sir.

Q And then you saw this young man? A Yes, sir.

Q In the District Attorney's office, and you knew then that he did not weigh about 145 pounds, didn't you? A No, not at that time, when I saw him in the District Attorney's office, he was light in weight.

Q How much would you judge him to weigh, about, now?

THE DEFENDANT: About 130 pounds.

MR. BERSHAD: I am not asking you.

MR. BROTHERS: May that be struck from the record, and the jury instructed not to regard any statement made by the defendant?

MR. BERSHAD: That is consented to.

THE COURT: Yes, any statement made by the defendant not under oath as a witness should not be regarded by you.

Q Graf, what were you doing at this post. Did you have to make some repairs there? A I was installing an electric

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time switch.

Q How long had you worked on that? A Before the accident happened?

Q Before the accident? A Well, I just started in to work there when the accident happened.

Q You just got there? A Just got there, yes.

Q Were you alone? A I was alone at the time, yes.

Q Did you have a bag of tools? A No, but I had an automatic switch with me.

Q You indicated with that pole in this way, by closing your hands at the tip of the fingers (illustrating); is that about it? A Yes, sir.

Q And how much would you say that measures? A I don't know; maybe about fifteen inches; something like that.

Q Fifteen inches around, and that is your best judgment as to the distance, from the tips of your fingers around, both your arms meeting (illustrating)? A About fifteen inches across this way (illustrating).

Q Suppose you indicate to us on here, by making a circle with a pencil or something, indicate to the jury (handing witness people's exhibit No. 1, diagram)?

BY THE COURT:

Q When you are indicating the circumference of this pole, do you mean at its base, where it joins the sidewalk?

A Yes, sir.

Q I presume it is larger there than it is up above?

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A Yes, sir.

THE COURT: All right, then, give the base.

BY MR. BURSHAD:

Q The base, where you were working? A (Witness marks on the reverse side of people's exhibit No. 1) That is about as near as I can remember.

Q Will you assist me in measuring that (Counsel measures circle marked by witness with twine)? A Yes.

THE COURT: Take the diameter, and the circumference is a little more than three times the diameter.

MR. BURSHAD: May I ask that this be marked as an exhibit, if the Court pleases?

(Twine received in evidence and marked defendant's exhibit A, of this date)

Q Do you remember what time you got to the place?

A It was some time around two o'clock.

Q And do you remember how long you were there before this thing occurred? A Maybe about fifteen minutes.

Q Had you been working for fifteen minutes? A No, I was not working steady; I was working at the first pole first.

Q How long had you been working at the pole on the southeast corner, we are talking of, where you were working, how long had you been working before this thing occurred?

A I had just started, just time enough to open the door.

Q Where had you been before that? A On the north-

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west corner.

Q The place where this thing occurred? A Yes, sir.

Q You had just left that and came over to the southeast corner, and you had just started to work? A Yes, sir.

Q How long would you say you had already been working before this thing occurred? A Just the time to open the door and get in a crouched position; maybe a minute.

Q And when this thing occurred you say you were looking out, your face-- your head bent? A On the side of the shaft of the pole.

Q Northwards? A Yes, sir.

Q Directly facing the other post; is that right?

A No, not directly facing the other post, but looking that way, looking ~~catacornered~~ across the street, looking north.

Q What was your reason for doing that? You had completed that, hadn't you? A I had to look some place, and that is the only place I was looking.

Q You were working on the southeast pole? A I started to work. I wasn't working at the time; just started.

Q Why was your attention attracted to the northwest pole at that particular time? A My attention was not attracted to it at that time. I just happened to be looking that way.

Q So you were not working on the southeast pole at the time? A No, just starting in to work.

Q When did you first observe the car? A When? When

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it was about two feet away from the pole.

Q About that distance away from the pole (indicating)?

A About that, yes, sir.

Q That was the first time you observed that car or that it had attracted your attention? A That is had attracted my attention.

Q Before that time you saw nothing and observed nothing; that is correct, is it not? A Yes, that is correct.

Q Are you sure you observed that car before it struck the pole? A Yes, sir.

Q Quite positive about that? A Yes, sir.

Q Were there any other vehicles or cars passing north or south at that particular time? A Not that I can remember, no.

Q Sure? A I wouldn't say sure. I don't remember. I didn't take notice of any vehicles or any cars.

Q Lexington Avenue cars are on that street?

A I know there is.

Q Wasn't there a car passing? A I paid no attention, because my attention was drawn to that machine.

Q Why was it drawn to that machine before the accident occurred? What was there about it that drew your attention to that machine? A I see it coming down. It was nothing particular drew my attention to it, because I just happened--

Q Did you see any other vehicle, any other machine, near it? A Not that I can remember, no.

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Q When you met this man that got out of the chauffeur's seat, he stopped, didn't he? He stopped? A He stopped, yes, sir.

Q Wasn't running? A No, he wasn't running.

Q And then after you released him you say he walked down 32nd Street? A Walked on 32nd Street.

Q Into a saloon? A No.

Q Where, then? A Right down the block, on the sidewalk.

Q You kept watching him? A As far as I could see him, yes.

Q And he was walking all this while? A And he was walking; he was not running.

Q Were there any officers around there? A Not at the time the accident happened, no.

Q How long were you watching this man going down?
A I suppose maybe it was until he got half way the block, until I couldn't see him any more.

Q How many minutes were you watching him?

A I couldn't tell you how many minutes.

Q You faced around and deliberately watched him walk away? A Yes, sir.

Q Did you call the attention of any passers-by or of anybody to assist you? A No.

Q In capturing or arresting that man? A No, sir.

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Q Did you say anything to anybody about that being the man who ran in and struck the pole and did the damage there that it is alleged was done? A No, sir, didn't say anything.

Q When did you talk about this case after that? When did you talk to anybody about it, about what you knew?

A I talked maybe within an hour after, I made a report to my firm on it.

Q When the officer got there, you were there, weren't you? A I was there when some officers got there.

Q Do you know the number of the officer? A No, sir.

Q Do you know his name? A No, sir.

Q Did you see him in court here to-day? A Well, there is an officer in court.

Q Was that the officer that you talked to at the time? A I didn't talk to no officer.

Q You didn't say anything to any officer at the time at all about what you did? A No.

Q Sure about that? A Yes.

Q Why didn't you do it? Why didn't you tell it to the officer? A I reported to my Company.

Q Why didn't you report it to the police officer as to what took place between you and this man that you saw coming out of the chauffeur's seat? A Well, because I thought it was all right by telling my company and my company would notify the police department.

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Q You did think it was all right? A Yes, sir.

Q Your impression of the man with whom you talked and with whom you had this conversation was that he was a pretty dangerous character? Wasn't that your impression, Mr. Graf? A Well, I couldn't say that, because I never saw the man until that time.

Q You say he made a movement, and that movement seemed to indicate to you as though he was reaching for something in his pocket? A I said that, yes.

Q That is so, isn't it? A Yes, sir.

Q So, immediately an impression was shot to your mind that you were dealing with a dangerous crook; that is why you said you released him, isn't it? A Well, I released him through fear.

Q Fear? A Yes, sir.

Q Because of the fact you suspected he was a dangerous character, isn't that it? A At the impulse of the moment.

Q Didn't you tell that to some of the officers or some of the men who were there at the time, just what occurred, what you did? Did you, "yes", or "no"? A Up at the accident?

Q Yes. A No, not that I remember.

Q When did you tell and report to the police what you told here to this jury? A The first time I was down to the District Attorney's office.

Q How long was that after the occurrence? A I don't

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know; I guess that was about three months after, I guess.

Q And you never told anybody else what happened between you and this man until three months after? A I told the firm.

Q To whom of the firm did you tell this? A To my superior.

Q To whom? What is his name? A Mr. Dempsey.

Q Told him exactly what you are telling us here?

A As far as I can remember, yes; I made a statement.

Q Is Mr. Dempsey here in Court? A No, sir.

Q And where is Mr. Dempsey's place? A 32nd Street, 104 East.

Q What is his full name? A William.

Q Where is his place? A 104 East 32nd Street.

Q What did Mr. Dempsey say to you?

MR. BROTHERS: I object to what Mr. Dempsey said.

THE COURT: Yes, how is it material what Mr.

Dempsey said? You are getting a long way off from this accident.

Q What else did you observe about this man whose sleeve you grabbed at that time, aside from what you have told us, his suit and the color of his hair and cap? what else did you observe about him? A A cut on his mouth.

Q Yes; what else? A That is all.

Q And did you tell Mr. Dempsey about the cut on the

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mouth? A I did.

Q Did you tell Mr. Dempsey about the kind of hat that he wore? A I told him he had a cap.

Q A cap? A Yes, sir.

Q Did you tell him what kind of suit he had on?

A I did, yes, sir.

Q And the description of his hair did you give to Mr. Dempsey? A No, I don't think I give him the hair; I don't remember.

Q You didn't recall the description of the hair at the time, did you? A Oh, yes, but I don't think I gave it to him. I wouldn't say "yes" or "no" on that now.

Q Do you remember at the District Attorney's office, when you had this young man there, you were not quite sure about your identification then, were you, last June?

A Certainly I was, yes.

Q What? A Sure I was, yes.

Q You were sure? A Yes, sir.

Q How did that suggestion come to be made that he had been in prison and that he had lost weight? Who made that suggestion? A Nobody that I know of. I judged him being confined he ought to pull down in weight.

Q Did you know how long he had been confined?

A No.

Q How did you know whether he had been confined or not? A Well, because they told me to come down here to

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identify the man, so he certainly must have been confined.

Q You didn't know how long he was confined? A No, I didn't know how long, no.

Q Do you remember what you said this morning when I asked you this question, as to whether anybody had suggested that by reason of his confinement he might have lost weight, you said there had been a suggestion made. Didn't you say that this morning? A I might have said it, yes.

Q What do you say now? A I say the same thing, that he might have lost weight through--

Q No, but the suggestion was made to you by somebody else; you had difficulty in identifying him, and that a suggestion was made to you that he lost weight. That is so, isn't it?

MR. BROTHERS: I object to that. There are two questions there. I don't know which one is to be answered.

A He didn't look the same as the day I saw him the first time.

Q That is, the man you had seen the first time looked different than the young man you identified in June, 1917, didn't he? A He changed in his features, in my judgment.

Q Considerably? A No, I wouldn't say considerably, no.

Q But you had difficulty in identifying him, didn't you?

A No, not that I know of, I didn't have no difficulty. I

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couldn't say "yes" right away. I had to give the man a chance first.

Q You had to do what? A I had to think the man over. I wouldn't say "yes" right away.

Q About how long did you talk to him at the time up on 32nd Street and Lexington Avenue when you grabbed the sleeve? A I don't know how long it was. It was just these words I spoke. We only spoke a couple of words. That was the time. I couldn't time it.

Q Didn't you in answer to one of the questions put to you by somebody in the office there say "I think it was the man, but he was stouter"; didn't you say that? A In the office?

Q Yes. A In the District Attorney's office?

Q Yes. A Not that I know of, no.

Q You wouldn't say that you didn't say that?

A I never made a remark that "I think".

Q What did you say? A I said "that is the man".

Q You didn't say that this morning? A What, that I think it is the man? I never said that yet.

Q You didn't? A No, not that I remember.

Q You remember me asking you this morning whether there had been any suggestion made as to the identify of this man at the District Attorney's office? Do you remember what you said this morning? A I remember part of it.

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Q What did you say? A I don't know. I got to stop and think myself now. I can't remember everything.

Q Yes, give us your best recollection?

THE COURT: Well, it is for the jury to say what he said, not for him. You can't go over his whole testimony that he has given this morning. The jury must recollect that and judge accordingly.

Q Do you know officer Keogh? A Since this case is on, yes.

Q Do you know officer Flaherty? A No, sir.

Q Do you remember when you were with officer Keogh and were going to the Coroner's court, do you remember that time? A Yes, sir.

Q Do you remember officer Flaherty saying to officer Keogh -- wait a minute; let me finish the question. Do you know what I am going to ask you? A No.

Q Don't shake your head then. Do you remember officer Flaherty saying to officer Keogh, with whom this man was, "here is the kid"?

MR. BROTHERS: I object to anything that officer Flaherty said to officer Keogh at a subsequent time.

THE COURT: Objection sustained.

MR. BERSHAD: I respectfully except. That is all.

RE DIRECT EXAMINATION BY MR. BROTHERS:

Q You said something about seeing some officer here today whom you saw at the scene of the collision; is that right?

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A Yes, sir.

Q Is one of the officers here to-day? A Officer Keogh is here, but I didn't see no officer at the collision.

Q Did you see officer Keogh? I have his name McKeogh? Is that the name? A Keogh is the only name I know.

Q Officer Patrick McKeogh, did you see him at 32nd Street and Lexington Avenue on the day of the collision?

A No, I did not, no.

Q You have seen him here to-day? A I seen him here to-day, yes.

Q No officer asked you anything at the time of the collision, did they? A No, sir.

Q Did you continue your work there? A Well, I covered up my work temporarily and then went in and reported.

Q And then you came back and finished it? A Then I came back and finished it.

Q How high is the base of that pole from the sidewalk before it diminished in size? A Well, I guess -- I don't know much about the dimensions of posts, I don't know much.

Q There is a point at which the post grows smaller?

A Yes, something like a rib. Maybe it might be a couple of inches off the sidewalk before it starts to graduate.

Q And it gets smaller as it goes up? A Yes, sir.

Q Was it about the 5th of June that you were in the District Attorney's office? A I think it was in June, but

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I can't remember.

Q When you saw the defendant there, you say that you recognized him as the man who was in this automobile?

A Yes, sir.

Q Did anybody tell you at that time that he was the man, or say that you must pick him out or identify him?

A No, not that I remember, no.

Q When you recognized him, did you do it yourself?

A I did it myself, yes.

Q And you took your time, did you? A Yes, I took my time.

Q So as to be careful? A Yes.

Q And are you positive that he is the man? A I am pretty sure that he is the man, yes.

Q At the time you were talking with him at 32nd Street and Lexington Avenue, did you look him over with a view to ascertaining how much he weighed?

MR. BERSHAD: I object to that, if the Court please, as improper.

THE COURT: Yes. I don't think you need go any further into that. He said he is not a good judge of weight.

MR. BROTHERS: That is all.

RE CROSS EXAMINATION BY MR. BERSHAD:

Q You answered to the District Attorney that when

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you were in the District Attorney's office for the purpose of identifying him, whether anybody had suggested to you to pick him out, or to identify him, and, as you said "not as you remembered". You are not certain about that, are you?

A What, to identify him?

Q No, a suggestion might have been made by somebody as to the difference in the weight and description? A No.

MR. BROTHERS: I object to that. We have been all over that a number of times.

THE COURT: I will allow him to answer once more.

Q What do you say? A No, I used my own judgment on that. I didn't take any--

Q Why do you say "not as I remember?" Is there any doubt in your mind? A No, there is no doubt, but I can't remember everything. I have got a whole lot of other stuff.

Q And that might have occurred at the time, a suggestion or an insinuation might have been made by somebody in the difference in appearance for the purpose of aiding you in picking out this defendant; is that right? A No.

Q Do you understand my question? A You think I had some help to pick out the man; that is the point, isn't it?

Q That is the point, that is it? A No, there was nobody. I used my own judgment.

Q Why did you say to the District Attorney "Not as I remember", whether any suggestions had been made or not?

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MR. BROTHERS: I didn't ask him that, your Honor.

I object to it.

BY THE COURT:

Q Why did you use the expression "not as I remember",
to whatever it applied? A On what question was that?

BY MR. BERSHAD:

Q On the question as to whether anybody had insinuated
or suggested to you to pick out this defendant? A No, nobody
told me anything about it or helped me out.

Q Why did you use the expression? Why weren't you
positive? Why did you use the expression "not as I remember"?

A Meaning that there was nobody there?

Q That is your meaning now? A Yes, sir.

Q That is how you expressed that you picked him out
independently? A Yes, sure.

Q What? A Sure.

Q Sure about that? A I had nobody help me pick him
out, no.

Q No doubt in your mind about that? A No, no, there
aint.

Q And on your oath, Graf? A Yes, sir.

Q You picked this man out?

THE COURT: He has already said so. Now, don't ask
him again, please.

MR. BERSHAD: That is all.

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J O H N S C H N E C K N E R, police officer, shield No. 2428, attached to the 25th precinct, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a member of the police force of the City of New York? A Yes, sir.

Q Serving in the 25th Precinct? A Yes, sir.

Q How long have you been upon the force? A About thirteen years.

Q Do you remember the 23rd day of March, 1917?

A Yes, sir.

Q Did you at any time during that day come to the corner of Lexington Avenue and 32nd Street and see an automobile in collision with a post there? A I saw the automobile standing there after the collision.

THE COURT: -- Kepp your voice up a little louder, Officer, please.

Q Were you in uniform that day? A Yes, sir.

Q At what place were you when you first learned there had been any trouble at that corner? A I was at 28th Street and Lexington Avenue.

Q And do you remember what the time was, the hour?

A As close as I can remember, it was about 2:25.

Q 2:25 in the afternoon? A About, yes.

Q How long did it take you to get to 32nd Street?

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A I jumped on a car and went right up. Exactly how long, I couldn't tell.

Q When you came to that corner, what did you see?

A I saw a man lying on the sidewalk, injured.

Q Which corner would that be? A Northwest corner of 32nd Street and Lexington Avenue.

Q What else did you see? A I saw the automobile standing there. It looked as though it was wrecked, and the electric light pole was snapped off, broke.

Q And did you observe the position of the automobile as to being on the street or on the sidewalk? A It looked as though it was partly on the sidewalk and partly on the street.

Q And which way was the front of it facing? A South on the Avenue.

Q And how close was the injured man lying to the automobile? A From the automobile?

Q Yes? A About six or eight feet, something like that.

Q There were other people present, were there? A Yes, sir.

Q Did you look at the injured man to see his condition? A I did.

Q What did you observe about him? A I saw that one leg was pretty well cut up.

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Q What part of the leg? A Right below the pelvis, about here (indicating).

Q Right where the leg joins the body? A Yes, sir.

Q Was the flesh exposed? A Yes, sir.

Q And did you see any other injuries upon him ?

A Not as close as I could ascertain.

Q Keep your voice up as much as you can, please. Did the man speak at all while you were with him? A No, sir, there was a citizen there whom I afterwards learned was a physician; he tried to get his name. We got no response.

Q Did you get the name of the physician? A I did, sir.

Q What was his name?

MR. BERSHAD: I object to that, if the Court please, as incompetent and immaterial.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A Doctor James McTierney, 103--

Q Did you see whether or not this physician administered any treatment to the injured man?

MR. BERSHAD: I object to that, if the Court please, as incompetent and improper.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A I believe he called for whiskey, if I am not mistaken.

Q What is that? A I believe he called for whiskey.

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I am not certain about that, whether it was whiskey, or not.

Q What was done with the injured man? A He was removed to the hospital.

Q What hospital? A Bellevue Hospital.

Q By what means? A By ambulance.

Q Did you accompany him? A I did, sir.

Q And about what time, do you remember, that you arrived with the injured man at Bellevue Hospital? A I don't recollect that very close. I know I put in a hurry call.

Q About how long after you had first seen him was it that you got to the hospital? A Probably ten or fifteen minutes, probably more.

MR. BERSHAD: I wish you would talk louder, please.

Q A question of ten or fifteen minutes, was it?

A Probably a little more, as close as I can recollect.

Q When you arrived at the hospital with him, did you go right with him all the time? A I did.

Q Where did you go with him? A I went into the receiving room.

MR. BERSHAD: I ask that the witness be not led at this time.

THE COURT: Yes, the question is, where did he go?

THE WITNESS: I went to the receiving room. The doctor said it was an urgent case, hurry it to the operating room.

Q And what did you do? A I accompanied the patient

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to the operating room.

MR. BERSHAD: I object to that, if the Court please.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q. In the operating room, how long did you remain there with him?

MR. BERSHAD: I make the same objection.

THE COURT: The same ruling.

MR. BERSHAD: I take an exception.

A. Until I ascertained who he was and his occupation.

Q. How did you learn who he was? A. By a small journeyman plumbers' card he had in his pocket.

MR. BERSHAD: I object to that if the Court please, as not proper means of ascertaining his identity.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q. The card you described you found in the injured man's pocket, did you? A. Yes, sir.

Q. How was the man dressed? A. As much as I can recollect, he appeared to have working clothes on.

Q. And did you find any name upon the card? A. I did, sir.

Q. And after you had taken the name from the card what was done with the card? A. Returned to the hospital authorities.

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Q. What name did you ascertain upon the card?

MR. BERSHAD: I object to that, if the Court please, that the card is the best evidence.

THE COURT: The objection is sustained.

MR. BROTHERS: In the event of our being unable to have the card, are we not entitled to show its contents?

THE COURT: No, there will have to be proof of that. I don't see how it is very material anyway. I suppose you have witnesses to identify the deceased?

MR. BROTHERS: My purpose in showing his identity is that he died there a few minutes later, in the hospital, and I would not be obliged to go any further with the proof.

THE COURT: The fact that he had that name on the card would not prove his identity anyway.

MR. BROTHERS: Well, it is some evidence.

THE COURT: There is no proof that the card is not available. I will sustain the objection at this time.

Q. Whatever name you found upon the card, did you give the information about the name to the hospital people?

A. Yes, sir.

Q. Did you see anyone making a record of it? A. No sir.

Q. To whom did you give the name you found? A. If I am not mistaken, to one of the nurses.

Q. And was the patient still alive when you left?

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A Yes, sir.

Q Did you ever see him after that time? A No, sir.

Q You didn't take the card away, did you? A No, sir.

Q About how old a man was this injured person?

A He appeared to be about in the thirties.

Q A young man? A A young man.

Q Do you remember anything about his face? A Smooth face, clean shaven.

Q He was a man unknown to you, was he? A Unknown to me.

Q Now, can you remember the name of the doctor who took him to the hospital in the ambulance? A Doctor Tyner.

Q And do you remember whether you had the names of any of the physicians who took charge of him at Bellevue?

A No, sir.

Q You didn't get their names? A No, sir.

Q Is that the only injured man that you took to Bellevue that day? A Yes, sir.

Q Did you receive any notification to go to the morgue in this case? A No, sir.

MR. BERSHAD: I object to that.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q Did you at any time view the body of this man after you left it in the hospital?

MR. BERSHAD: I object to it. He has answered that

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he did not.

MR. BROTHERS: Well, there is no harm in asking again.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A No, sir.

MR. BROTHERS: I should like the right to recall him on the question of the name later, if your Honor will permit me to reserve that?

THE COURT: Yes.

Q What kind of an automobile was it that stood there? Did you observe its character at all? A Not very close. It looked like a touring car, a limousine. What make it was I don't know exactly.

Q I mean, the body, what was the shape of it?

A It was an open car, touring car.

Q Sure about that? Wasn't it a limousine car with glass sides?

MR. BERSHAD: Wait a minute, I object to that if the Court please.

THE COURT: Yes, objection sustained.

A Open car.

Q Did you look at the car, or at the injured man?

MR. BERSHAD: I object to that. The witness has answered.

MR. BROTHERS: The man is plainly mistaken about it.

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THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q The question is, were you observing the injured man, or the car? A The injured man.

Q Did you take the number of the car? A Yes, sir.

Q What number did you get? That is, the license plate number?

MR. BERSHAD: I object to that, if the Court please.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A He had two licenses.

Q Yes. A 1911, New Jersey.

Q You don't mean the year, You mean that is the license number? A No, that is the number.

Q Was there a New York number? A No, sir.

MR. BROTHERS: All right. That is all.

MR. BERSHAD: Your Honor will permit me to reserve the cross examination until the District Attorney calls him back on that card?

THE COURT: Yes.

MR. BERSHAD: No questions.

AARON D. RHEAD, called as a witness on behalf of the people, being first duly sworn testified as follows:-

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 1608 Avenue H, Flatbush,

Q What is your business, Mr. Rhead? A Nothing at

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present.

Q Formerly, you were in what business? A Help
steward at the Park Avenue Hotel.

Q Where did you live in March, 1917? A 141 East
32nd Street.

Q That is near what Avenue? A That is near Lexington.

Q Upon which side of 32nd Street? A On the north side.

Q Would that be between Lexington and Third?

A Yes, sir, but nearer Lexington.

Q In the afternoon of that day was your attention called
to any occurrence upon the street? A It was.

Q Where were you at that moment? A Standing inside
of the door of my house on the ground floor.

Q Did you hear any noise? A I did, yes.

Q What noise was it? A Well, I thought it was an
explosion first, until I went out.

MR. BERSHAD: I ask that that be stricken out.

THE COURT: I will allow him to characterize the
noise, the impression it made on him.

MR. BERSHAD: I take an exception.

Q And where did you go after ~~you~~ hearing this noise?

A I went towards the corner, where the accident happened.

Q What did you see? A I saw an automobile up against
the ~~post~~ base of an electric light pole and a man sitting in
it.

Q And on which corner was that? A On the north-

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west corner.

Q Of what street? A Lexington Avenue and 32nd street

Q How close did you go to the automobile when you first saw it? A I stood on the opposite side, I stood on the easterly side of Lexington Avenue, and the machine stood on the westerly side.

Q And the man who was sitting in the automobile, did you see what he did, if anything? A He sat there as I saw him, and he jumped over the side of the car and walked across Lexington Avenue.

Q Did he come in your direction? A He did come directly in front of me.

Q What about him did you observe? A Well, the only thing I observed that I thought was--

Q Not what you thought, but what did you see?

A I saw him come across the street and stop and speak to two men, and after he spoke to them about, I should judge, ten seconds, he started down 32nd Street, with his hand over his face and the blood running from his face and his hand up in that direction (illustrating).

Q Would you describe the man, his further appearance?

A Well, he was rather short, and had a dark suit on, and dark hat; his face I couldn't identify, because he had it covered with blood.

MR. BERSHAD: Wait a minute. I ask that that be stricken out, "because".

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THE COURT: Objection overruled; motion denied.

MR. BERSHAD: I take an exception.

Q as to
Could you say anything about his age? A I should
judge he was about twenty.

Q How close did you get to him at any time? A He
passed me within three feet.

Q Did you get a view of his face? A I could not; he
had it covered.

Q He had his hand over his face? A A hand over it,
and the handkerchief, and I saw the blood coming down.

Q Would you be able to recognize him if you saw him
again? A I don't think I would, no.

Q Did you observe anything about his height or build?
A Well, I thought he was rather stout as I looked at him
as he went by me.

Q What do you mean by "stout"?

MR. BERSHAD: I object to that if the Court please.

THE COURT: Yes, I think the word explains itself.

Q Do you mean he was a big, fat man, or a stockily
built man?

MR. BERSHAD: I object to the form of the question.

THE COURT: Yes, objection sustained. Let him
state.

MR. BROTHERS: What is that, -sir?

THE COURT: Objection sustained.

Q Describe more in particular the build of this

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person? A Well, he was rather short, and weighed, I should judge, about 140 pounds.

Q Where was he when you last saw him? A Running east on 32nd Street towards Third Avenue.

Q Did you see anyone else going in that direction?

A I did.

Q Behind him? A I did.

Q Who? A Officer Keogh.

Q Where did he come from? A He came from the southeast corner, as I called him to the attention of the man running down the street.

Q Then you saw McKeogh going after him? A I saw him after I started McKeogh after him.

Q Then did you go over to the other corner where the car was? A I did, yes.

Q What did you see over there? A I saw the front of the car mashed in and a crowd and a man lying on the sidewalk.

Q Did you know the man who was lying on the sidewalk?

A I did not.

BY THE COURT:

Q How near the car was the man? A Well, he laid directly in front of it, your Honor.

Q How was he placed in relation to this post?

A His head was lying-- he was lying east and west and the post lying a little southwest.

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Q The post was lying on the sidewalk? A It was bent over, hanging by some of the wires where it broke off the base.

Q It was not flat on its side? A No, sir.

BY MR. BROTHERS:

Q Was any part of it touching the sidewalk?

A Not that I saw.

Q A crowd gathered there? A Quite a crowd, yes, sir.

MR. BROTHERS: That is all, sir.

CROSS EXAMINATION BY MR. BERSHAD:

Q Mr. Rhead, you say you were in the hall opposite on Lexington Avenue? A I was what?

Q You were in the hall of your home? A When I heard the noise, yes.

Q Did you live on a stopp at that time? A I lived on the ground floor.

Q Were you in your home, or in the hall? A I was in my own home. The hall runs here (illustrating) and the entrance door went into my front room.

Q And you heard a crash? A I heard a crash.

Q And immediately after you heard the crash what did you do? A I went out to see what the cause of it was.

Q Almost the second following the crash? A What is that?

Q Almost immediately after you heard the crash?

A Yes, as soon as the crash came I went out.

Q And how much time do you say to this jury elapsed

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from the time you heard a crash until the time you went out?

A About half a minute.

Q And the very next thing you say you observed was some one, a man, walking across? A I didn't say that, no, sir.

Q Let me finish, Mr. Rhead, please. Was a man walking across, stopping and talking to a man for about ten seconds? A I didn't say, not at that time.

Q What did you say? A I said I saw the car up against the post of the electric pole and a man sitting in the car.

Q Yes. A He then jumped out of the side of the car and walked across the street.

Q Almost simultaneously with your reaching the street?

A He was on the north west corner and I was on the north east corner.

Q And while you were reaching the street, while you were outside -- what I mean, Mr. Rhead, is when you got out into the street and were on the street he was already creeping out of the machine? A No, he was not.

Q Was he sitting in the machine? A He was sitting in the machine, and I walked about thirty feet before he got out of the car.

Q How long would you say he still continued to sit in the machine after you walked the thirty feet -- before you walked the thirty feet? A Well, I couldn't judge how long

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it would take to walk thirty feet. I walked pretty rapid, and I saw him sitting when I went out the door, and as I went about thirty feet he jumped out of the car and came across the Avenue, and I met him on the corner.

Q And then you say somebody intercepted him?

A Yes, sir.

Q Two men? A Yes, sir.

Q Would you know those two men if you saw them again? A I would not, no, sir.

Q And you saw him standing talking to these two men for about ten seconds? A Yes, sir, for about ten seconds.

Q Did you observe what he did while standing there talking to these men? A He did nothing, but had his hand up to his face, with his handkerchief.

Q During all this time? A Yes, sir.

Q During the time he was talking to these two men he had his hand up to his face? A He did, and I stood within about six feet of him.

Q So that from your attempts to observe him you were unable to observe accurately the features? A I was, yes.

Q And you were about how many feet away? A Six feet, about two paces.

Q Did you overhear the conversation that he had with these two men? A I did not.

Q In other words, he was attempting to conceal his face? That was your impression? A I don't know whether

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he attempted to conceal it or not, but he was wiping the blood from him.

Q But by doing that his face was concealed?

A Yes, sir.

Q Your eyesight is pretty good, Mr. Rhead?

A I guess it is.

Q Fortunate. And you could not identify him?

A No, I could not.

Q Solely by reason of his screening his features?

A I presume so.

Q He didn't run away after that, did he? A He certainly did.

Q He did run? A He certainly did.

Q Shot away quite rapidly? A He certainly did.

Q And right after him was this officer, McKeogh?

A Yes, sir, and after him--

Q There was only one man that did this, or did you see more than one man do that? A Do what?

Q What you have described, leave this chauffeur's seat and stop and talk to these two men and then shoot away, did you see more than one man do that? A Run away?

Q Yes? A Yes, sir.

Q How many? A I saw two chase officer Keogh after he chased this man down.

Q Two men? A Two men after officer Keogh.

Q So altogether you saw how many men? A I saw

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four men running.

Q Four men running? A Yes, sir.

Q And they came out of the machine? A They didn't come out of the machine.

Q Where did they come out of? A They come out of a saloon.

Q Let me understand you --

THE COURT: He saw the man get out of the machine, he saw the officer, and he saw two men following the officer, those are the four men.

Q How many men leaving the machine did you see run?

A I only saw one run that left the machine.

Q And that is the man you told us about a few seconds ago? A Yes, sir.

Q And that was the only man that you saw leaving the machine? I am only talking about that. I am not talking about anything else that occurred there, about any other men but the men that left the machine. So there was only one man that left the machine and stopped and talked to these men and then ran away? A That is all.

Q No other man? A No.

Q Sure about that? A I am positive.

Q And you didn't see this man that left the machine stop and talk to these men, walk leisurely, or rapidly-- he ran, the one that you saw? A He ran, after he talked to the men at the corner, and he got about twenty paces from me, he

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ran, and I called officer Keogh's attention to it, and he went after him.

Q Down 32nd Street? A No, East on 32nd Street.

Q In the middle of the street, or on the sidewalk?

A No, on the sidewalk, the northerly sidewalk.

QQ Then you lost sight of him? A I lost sight of him when officer Keogh fell or got tripped, I don't know which.

BY THE COURT:

Q Did you see the officer fall? A No, because a crowd gathered and I saw him disappear all of a sudden, and I presumed he fell, and he came back and was pretty well stirred up.

MR. BURSAD: I move to strike out the statement that he fell.

THE COURT: Yes, motion granted. That he saw him disappear may remain.

MR. BERSHAD: That is all.

RE DIRECT EXAMINATION BY MR. BROTHERS:

Q When these men were on the corner, I mean these two men you speak of, and the man who left the automobile, did anybody have hold of the man who left the automobile?

A I didn't see any one.

Q How close were they together? A Well, within speaking distance, probably two feet or three feet.

MR. BROTHERS: All right, Mr. Rhead. That is all.

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G E O R G E F. T U R N E R, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 215 East 53rd Street.

Q Mr. Turner, where do you work? A Up in the City morgue.

Q How long have you been employed at the City morgue?

A About 15 months.

Q And the morgue is located where? A 29th Street and First Avenue.

Q In the City of New York? A City of New York.

Q Were you employed there on the 23rd day of March, 1917? A Yes, sir.

Q On that day, did you receive a body from Bellevue Hospital? A I received a body, yes, I received lots of bodies that day.

Q You received some bodies on that day from Bellevue?

A Yes, sir.

Q Do you remember the body of Irving Levine?

A Irving Levine, not the day it was received, but the next day, on the next day, it was received there on the 23rd of March.

Q Do you remember whether or not you saw Mrs. Levine there? A I saw Mrs. Levine there that evening.

Q That evening? A Yes, sir.

Q The evening of which day would that be? A The 23rd.

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Q When did the body come? A It came in on the 23rd.

Q Do you remember the hour? A I remember the hour.

It was 8:30.

Q Was there any other person with Mrs. Levine?

A I think there was two or three others.

Q Men, or women? A I think men; two men, I think, and another also; he didn't seem to be implicated; he stayed to one side.

Q Would you recognize Mrs. Levine if you saw her now?

A Yes, I would recognize her.

MR. BERSHAD: I think that is not a proper identification. May I ask him to give a description before she is brought in.

THE COURT: No, she can be brought in.

MR. BERSHAD: Will your Honor allow me an exception.

THE COURT: Yes.

Q Look at this lady. Do you recognize her (indicating Mrs. Rose Levine)? A Yes, that is the lady.

Q Is that the lady who came to the morgue on the 23rd and said she was Mrs. Levine? A Yes, sir.

Q Mrs. Rose Levine? A Yes, sir.

Q Did you show the body of Irving Levine to Mrs. Levine or to the gentlemen who were with her?

MR. BERSHAD: I object to the question if the Court please.

THE COURT: Yes. Ask him what he did.

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Q What did you do when they were there? A They came in to view the body.

Q Not what they said, but what did you do?

A I showed them the body. Did you want me to go through the details?

Q The body was in the morgue? A The body was in the morgue. They were waiting there some time before the body got there, about fifteen minutes or so before the body got there.

Q And you showed a body to them? A To them, yes, sir.

Q To the men? A To the men, not to this lady, not to Mrs. Levine, she didn't see the body.

Q After this gentleman saw the body, did he identify the body to you? A Yes, sir.

Q What did he say about it?

MR. BERSHAD: Wait a minute. I object to that as not binding on the defendant. Not the best evidence.

MR. BROTHERS: We have the gentlemen here.

THE COURT: I will allow it.

MR. BERSHAD: I take an exception.

BY THE COURT:

Q What did he identify the body to you as? A As Irving Levine.

BY MR. BROTHERS:

Q After this body was so identified by this gentleman, did you see where he went? A Up stairs again; the morgue

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is situated down stairs; he had to come from up stairs down stairs.

Q He went away with Mrs. Levine again? A He went up stairs. I don't know where he went to.

Q You didn't see him any more? A No.

Q Was this body tagged in any way? A A tag on the wrist and also on the ankle.

Q And did you after this gentleman identified the body as Irving Levine examine the tag? A I examined the tag; it is a compartment list.

Q What has become of those tags? A There is a record kept of those.

Q Have you examined the records? A The tags are destroyed. There is a record kept of them.

Q You have examined the record, have you? A Yes, sir.

Q Recently? A Yes, sir.

Q And what was the name upon the tag?

MR. BERSHAD: Wait a minute. I object to that. The record would be the best evidence.

THE COURT: I will allow him to show what the name was on the tag.

MR. BERSHAD: I respectfully except.

A The name on the tag? A

Q Yes? A Irving Levine, was on the tag, and his address, the ward he was in.

Q The body came from Bellevue? A Yes, sir, from

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Bellevue, from Ward M-6.

Q Do you remember the address? A The address was--

MR. BERSHAD: The same objection. I object to it, if the Court please, on the ground that the record is the best evidence.

THE COURT: He is not testifying to the record. He is testifying to a tag which he said was destroyed.

MR. BERSHAD: Of which a record was made in another book somewhere.

THE COURT: I will allow it.

MR. BERSHAD: I take an exception.

THE WITNESS: Jennings Avenue, or Jennings Street was on the wrist tag.

Q Look at this paper. Would that help refresh your recollection (handing paper to witness)? A Yes, sir.

Q As to the exact number of the house? A Yes, sir.

MR. BERSHAD: I object to that, no proper foundation having been laid.

THE COURT: I will let him say whether the paper refreshes his recollection.

MR. BERSHAD: There has been no proper foundation laid for that yet.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

BY THE COURT:

Q Does the paper refresh your recollection? A Yes,

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sir, that was the address, 141 Jennings Street, Bronx.

MR. BERSHAD: That is objected to.

THE COURT: That is not responsive.
BY MR. BROTHERS:

Q Having refreshed your recollection from the paper which you have seen, are you now able to tell us the exact number of the street that appeared upon this tag?

MR. BERSHAD: Just a moment. I urge my objection, and your Honor ruled it was not responsive, and until he responds whether that refreshes his recollection, or not, I don't think it is competent.

THE COURT: He said it did refresh his recollection, and the further question has been put to him.

MR. BERSHAD: I except.

A That record that we copied on our books was taken from the wrist tag.

Q Having refreshed your recollection from the paper, are you able to give us the exact address? A That is the exact address that was on the wrist tag.

MR. BERSHAD: I make the same objection.

THE COURT: The same ruling.

MR. BERSHAD: I take an exception.

Q What was the address on the wrist tag? A 141 Jennings Avenue.

Q The paper which I show you, what is that (handing paper to witness)?

MR. BERSHAD: I object to that, if the Court please,

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as improper and incompetent.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A That is 141 Jennings Street.

Q What is the paper that you are looking at? Is it a copy of something? A This is a record.

Q That is not the original record? A That is not the original record, no, sir.

Q Have you looked at the original record? A I have looked at the original record, yes, sir.

MR. BERSHAD: Objected to as incompetent and improper and not the best evidence of what the record contains.

THE COURT: He has not offered it in evidence. He has asked him to look at it.

MR. BERSHAD: That is incompetent.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q And did you prepare a copy of it at my request?

A Yes, sir.

MR. BERSHAD: I make the same objection.

THE COURT: The same ruling.

MR. BERSHAD: I take an exception.

Q And have you compared the copy which you have in your hand with the original entries in the book? A Very carefully.

MR. BERSHAD: I make the same objection.

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Q Is that correct? A Correct.

MR. BERSHAD: I object to that, and ask that the answer be stricken out.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q The original entries that you spoke about that are made from the tags is in what kind of book? A A very large book.

MR. BERSHAD: I object to that, on the ground it is calling for the contents of written documents.

THE COURT: He is asking him what kind of book it is kept in.

MR. BERSHAD: As to the entries.

THE COURT: He is not asking for entries. He has asked what kind of book it was kept in.

A (Continuing) The book is a very large book, very heavy, it weighs about 25 or 30 pounds.

Q And is it in present use? A It is in present use; we couldn't take it away.

MR. BROTHERS: May this paper be marked for identification?

THE COURT: Yes.

MR. BERSHAD: I object to it being marked on the ground the witness has already testified from it.

THE COURT: It is not offered in evidence.

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MR. BERSHAD: My objection is that he has already testified to it.

THE COURT: They want the paper marked for identification, so it can be recognized.

MR. BERSHAD: I beg your Honor's pardon. I thought he was offering the paper in evidence.

(Paper marked people's exhibit No. 2, for identification, of this date)

Q After Mrs. Levine had been there with these two gentlemen, did Dr. McAllister come in? A The following day, on the 24th.

Q Do you know whether he examined the body of Levine?

A Yes, sir, he examined the body.

Q And the tags were still on it when he examined it?

A The tags were still on it. We never take a tag off a body until it is taken out of the morgue for burial.

Q Did you have anything to do with delivering the body to an undertaker? A Did I have anything to do with it?

Q Yes. A No, sir, I have nothing to do with that.

Q And at some time after Dr. McAllister saw the body it was removed from the morgue, wasn't it? A Yes, sir.

MR. BERSHAD: I object to that as leading.

THE COURT: Well, I will allow it.

MR. BERSHAD: I take an exception.

Q Did you observe the body, the injuries upon the body, or have you any recollection of them? A I just give

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it a -- I didn't memorize it. I just seen the body there and seen where he was hurt.

Q Were there any other papers attached to the body?

A Any papers?

Q Yes? A Well, there is a compartment tag that goes outside the compartment.

Q But was there any record accompanying this body from the hospital? A Yes, sir, a coroner's record.

MR. BERSHAD: I object to that and ask that the answer be stricken out.

A (Continuing) From Bellevue, as to data --

MR. BERSHAD: Mr. Witness, please, when I object.

I object to that if the Court please.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q Look at these papers I show you and tell me whether you recognize all of those papers that belonged with this body?

MR. BERSHAD: I object to that if the Court please.

THE COURT: He may answer "yes" or "no".

A That is the paper, there, sir. (indicating) That is the paper sent over and by us put on file.

Q This long sheet (indicating)? A Yes, sir.

MR. BROTHERS: May that be marked for identification?

(Paper marked People's exhibit No. 3, for identifica-

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tion of this date)

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. BERSHAD:

Q Mr. Turner, how long have you been working at the morgue? A The morgue, about fourteen or fifteen months, as near as I can say.

Q Down to date? A Down to date? I started in 1917, on the 15th of January.

Q So that in March you had only been working at the morgue about two months, a little over two months? A I thought you meant up to the present time. Yes.

Q And what had you been doing before that time?

A What was I doing before that time?

Q Yes. A I was up in Stamford, Connecticut.

Q What business? A I was superintendent of a farm up there.

Q And this was your first experience in the morgue?

A First experience in the City morgue, yes, sir.

Q You had never handled cadavers before, had you?

A I don't handle them now.

Q Or did you have anything to do with them? A No.

Q That was your first experience of the kind?

A Yes, sir.

Q You got there when? On January 15th? A Yes, sir.

Q And to what particular duties were you assigned?

A Mortuary care taker.

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Q Of the bodies? A Yes, sir.

Q What other duties? A I see that the bodies are properly tagged, and if an undertaker calls for a body see that he gets the right body.

Q How many bodies have you examined a day, or do you take care of? A Average thirty-five a day. That doesn't mean that they are all adults. That is babies, still births and all.

Q Men and women and children? A Yes, sir.

Q About how many a day, on an average? A That I couldn't say. Might have only five. The majority are children.

Q Do you remember how many bodies you had occasion to deal with or handle on March 20th, 1917? A About twelve.

Q You have a pretty good memory, haven't you?
A About twelve.

Q I say you have a pretty good memory? A Fairly good memory.

Q How many bodies did you handle on the 19th of March?
A The 19th of March?

Q Yes. A That I couldn't say, on the 19th.

Q On the 21st? A 21st, that I couldn't say.

Q On the 22nd? A That I couldn't say?

Q And on the 23rd? A Well, about twelve or fifteen.

Q And also on the 19th, twelve? A No, I can't remember that; I can't memorize that. We have on an average

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of six or seven thousand bodies ~~came~~^{coming} in there during the year.

Q When you said, in answer to my question, that on the 19th you handled about twelve bodies, you were in error?

A No, I didn't say on the 19th.

Q What did you say? A I said on the 23rd.

Q I asked you about the 19th, how many you handled, and you said to me about twelve. Did you misunderstand my question?

MR. BROTHERS: He said it was the 20th, and not the 19th.

Q The 20th. Did you misunderstand my question? A No.

Q Did you think I had reference to the 23rd, Mr. Turner?

A Yes, sir.

Q Before you came here to Court, did you look at any record or refresh your recollection with reference to this particular case? A No, I didn't have to. I remember the special cases. Those cases are very rare, and I can memorize those cases.

Q They are very rare? A Yes?

Q At the morgue of the City of New York, accidental deaths that are brought in to you are rare? A Very rare. We are not--

Q What bodies are brought usually to the morgue?

A Well, all homicide cases.

Q And you handle how many a year? A Five or six

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thousand.

Q And yet you say that is an unusual case? A Yes.

Q What are the unusual incidents about it?

A An unusual case is because I don't always have to identify-- the family don't always have to come to me to identify these bodies. They have an officer.

Q You mean that this body was so mangled that it was difficult of identification? A No, sir, that is not what I am trying to get at. It is a very rare case that I have to-- that the people identify the body in front of me; it is very rarely done; that is what I am trying to get at, not that the body was so mangled up.

Q Let's see if we understand each other. All bodies that are brought to the morgue are homicides or from accident or otherwise that are apparently unidentified, or unclaimed; that is correct, is it? A Yes.

Q And there come to the morgue of the City of New York between five and six thousand? A Yes, sir.

Q Yearly? A Yes, sir.

Q Of those four or six thousand, how many annually remain unidentified and are buried in Potter's field, if you know? A That I couldn't memorize, all that.

Q About? A I couldn't say; I couldn't begin to memorize it.

Q There are a great number? A A great number, yes.

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Q Do you not find that hundreds of people visit the morgue weekly or monthly for the purpose of identifying various corpses at the morgue? A Yes.

Q And there are a great many of these cadavers that are unidentified? A Yes, sir.

Q And by reason of that fact they are buried in Potter's field? A Potter's field.

Q And that is at the expense of the City?

THE COURT: Now, what are you trying to prove by this?

MR. BERSHAD: I want to find out if this--

THE COURT: This body was not buried in Potter's field.

MR. BERSHAD: I know it.

THE COURT: I don't see what you are driving at.

MR. BERSHAD: I am trying to find out whether he identified the body of Irving Levine and how he identified it, from what these men whom he does not know told him.

THE COURT: He does not say he identified it. He showed says he ~~saw~~ a body with a certain tag on it to those men.

MR. BROTHERS: And those men are here.

MR. BERSHAD: Are they here?

MR. BROTHERS: Yes, they are here.

Q Do you know how long this body had been at the hospital? A No record. I don't keep any record of that.

Q You say it came to you on the 23rd? A 23rd.

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

Q Have you got that record here? A Have I got that record here? There is a record there.

(Mr. Brothers hands paper to Mr. Bershad)

Q Did you appear before the grand jury? A Yes.

Q Did you take the names of these two men who came there for the purposes of identifying the body? A No, sir.

Q You don't know them? A I know them if I should see them, yes.

Q Aren't you required to take the names of the men?

A Required to take the names of them? That is up to the medical examiner.

Q That is not your duty? A No.

BY MR. BROTHERS:

Q You took Mrs. Levine's name, didn't you? A Yes.

BY MR. BERSHAD:

Q You didn't talk to her at all, did you? A Oh, yes.

Q Did you talk to Mrs. Levine? A Yes.

MR. BERSHAD: That is all.

I S I D O R E F R O M E T, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 187 Rochester Avenue, Brooklyn.

Q Where are you employed? A By M. Rosenthal & Company.

Q Where is that? A 1178 Broadway.

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Q And what is your position there? A Engineer.

Q How is that? A Engineer.

Q Engineer of the building? A Yes, sir.

Q You have come right down from your work, have you?

A Yes, sir, I did.

Q Did you know Irving Levine? A Yes, sir, I did.

Q Did you know his wife? A Well, I know his wife, certainly, I do now, but before I didn't know her.

Q Did you at any time visit the City Morgue? A Visit who?

Q The City Morgue. A Yes, sir.

Q Did you go there more than once? A No, I just was there once.

Q Who did you go there with? A With Mr. Lewis, Fred Lewis.

Q Yes and who else? A That is about all; him and I were there.

Q Did you see any other person there whom you knew? A I did.

Q Who was that? A Not downstairs at the morgue, but upstairs I seen his brothers and sisters and his wife; that is where I got acquainted with her.

Q You didn't know the wife before that day? A No, sir, I did not.

Q Was that the 23rd of March, last year? A Yes, sir.

Q And did you see Irving Levine's body there? A Yes, sir.

Q In what part of the morgue did you see it? A Down in

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the basement.

Q And who showed the body to you? A The attendant.

Q Did you know him? A Yes, sir.

Q Would you know him now? A Yes, sir, I would.

Q Have you seen him since that time? A No, I didn't see him since that time.

Q How long had you known Irving Levine? A Two years.

Q And what was his business? A A plumber.

Q Do you know where he lived? A Well, he lived in New Brunswick, but I didn't know the address or anything.

Q About how old a man was he? A He was about twenty-seven or twenty-eight years.

Q Now, when you saw his body there in the morgue - do you recognize this gentleman here (indicating witness Turner)? A Yes.

Q Who is he? A That is the party that showed me the body down in the morgue.

Q Mr. Turner? A Mr. Turner.

Q Did you tell Mr Turner when you saw Irving Levine's body whose the body was? A Yes, sir.

MR. BERSHAD: That is objected to.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q And you identified it as your friend, Irving Levine?

A Yes, sir.

Q Was the body clothed when you saw it, or stripped? A No, it was covered; they was just bringing it down, and they just

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uncovered - took off the rag off his face; I only seen his face; that is all.

Q You didn't see any injuries upon his face? A No, nothing at all.

Q At what time that day were you asked to go down to the morgue? A Well, it was this way, now -

Q I would rather you just answer my question. About what time was it? A Oh, it was around eight or eight-thirty.

Q At night? A Yes, sir.

Q Did you attend Levine's funeral? A No, sir.

MR. BROTHERS: That is all.

CROSS-EXAMINATION BY MR. BERSHAD:

Q You say you knew a Irving Levine who lived where? A I didn't say Irving Levine and I lived.

Q Listen to me, Mr. - A Fromet, F-r-o-m-e-t.

Q Fromet? A Yes, sir.

Q Listen to what I am asking you. A Yes, sir.

Q I am asking you if you said you knew an Irving Levine?

A Yes, sir.

Q Where did he live? A He lived in New Brunswick.

Q Where? A In New Brunswick.

Q New Brunswick? A Yes, sir.

Q New Jersey? A I suppose it is New Brunswick, New Jersey.

Q Is that the Irving Levine that we are talking about here now? A Yes, sir, that is the Irving Levine?

Q Do you know where he lived on March 23rd? A March 23rd, I was told that he was making a visit to his father's house. The father was sick.

Q Where? A Uptown, Jennings St. somewhere; I don't know.

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J O H N M c A L L I S T E R, called as a witness on behalf
of the People, being first duly sworn, testified as
follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 43 West Forty-eighth Street.

Q What is your profession? A Physician and surgeon.

Q You graduated from what institution? A Albany Medical
College, 1879.

Q Have you been practicing the profession of medicine
ever since? A I have.

Q In this State? A In this State.

Q For some time past, Doctor, have you been engaged in
performing post-mortem examinations? A I have.

Q Of bodies? A I have.

Q On behalf of the Coroner's Board? A Yes, sir.

Q Are you still engaged for the Medical Examiner? A Not
now.

Q Did you view the body of Irving Levine at the City
Morgue on or about the 23rd of March? A On March 24th.

MR. BERSHAD: I object to that as leading.

THE COURT: Yes, objection sustained.

MR. BERSHAD: I ask that the answer be stricken out.

THE COURT: Motion granted.

MR. BROTHERS: That is the usual form of question.

THE COURT: There must be some proof that the body
examined was the body of Irving Levine.

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Q Do you remember whether you examined any bodies at the City Morgue on the 23rd of March, or the 24th of March, 1917?

A 24th of March; I did.

Q Was there any body there of a male, a dead body, that was identified to you? A There was a body identified to me.

Q By whom was the body identified to you? A It was identified to me by an attache of the morgue, a man named Turner, who just left the room, and a hospital record.

MR. BERSHAD: I ask that the latter part be stricken out as not responsive.

THE COURT: Objection overruled; motion denied.

MR. BERSHAD: I take an exception.

Q Would you examine Exhibit No. 3, for Identification, and tell me whether or not that is the record of which you speak?

MR. BERSHAD: I object to that. I object to the form of the question.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A This is the paper that came with the body from the hospital.

MR. BERSHAD: I object to that and ask that the answer be stricken out.

THE COURT: Yes, I will sustain the objection.

Q This is the paper that you saw with the body?

MR. BERSHAD: I object to the form of the question.

THE COURT: Well, that is leading.

BY THE COURT:

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Q Where did you see that paper? A That paper was given to me at the morgue.

Q By whom? A I believe at the time it was given to me by the superintendent.

Q That was not with the body, then? A Then when we get that paper we go downstairs and the man downstairs identifies the body to us.

MR. BERSHAD: I ask that that be stricken out.

THE COURT: Motion denied.

Q You showed that paper to the attendant? A Yes, sir.

Q And took that and identifies the body to you? A Yes, and on the body I found a card from the hospital, and that card must coincide with this before I look at it.

BY MR. BROTHERS:

Q In this instance, when you made the postmortem examination, do you remember seeing this paper, People's Exhibit No. 3, for Identification? A Yes, sir.

MR. BERSHAD: Objected to, no proper foundation having been laid.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q When you received this paper did you look at a body?

A I did.

MR. BERSHAD: I make the same objection.

THE COURT: The same ruling.

MR. BERSHAD: I take an exception.

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Q Did anybody identify that body to you? A Yes, sir.

Q Who did, Mr. Turner, the attache of the morgue,

MR. BERSHAD: I object to that and ask that the answer be stricken out.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q He identified it to you as the body of who? A Mr. Levine.

MR. BERSHAD: The same objection and exception.

A (Continuing) Irving Levine.

Q Did you make any comparison then between the tags upon the body and this paper?

MR. BERSHAD: That is objected to. Wait a minute.

Q Did you see any tags on the body?

MR. BERSHAD: I object to that as already answered.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q Did you read the tags? A Yes.

Q Did you compare the writing upon the tags with Exhibit No. 3, for Identification, the hospital record? A No, sir.

Q You say the body was identified to you by Turner?
A Yes, sir.

MR. BERSHAD: I object to that.

THE COURT: Yes, he has already said that.

Q Describe the body? A The body was a male, about, I should say, twenty-eight years of age, probably about 160

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pounds. Now, do you want the injuries?

Q Yes, please. A Upon examining the body, the first thing we do is to have the attache of the morgue remove the shroud which encircles the body. I then found a compound fracture of the pelvis, that is, there was a great hasping wound here, (indicating), and the pelvis and the hip bones were broken, and both thighs, right and left femur, were broken. There were other minor injuries, but those were the principal ones.

Q Were there any lacerations of those parts? A Yes, sir, there was laceration, tears, crushes.

Q Did you form an opinion at that time as to the cause of this person's death? A After a careful examination -

MR. BERSHAD: I object to the form of the question.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q "Yes", or "no"? A Yes, sir.

Q What, with reasonable certainty, is your opinion you formed at that time as to the cause of his death?

MR. BERSHAD: I object to that, on the ground there is no proper foundation laid for the testimony of this witness as an expert.

BY THE COURT:

Q Well, did you examine the other organs of the body?

A I did not hold a postmortem in this case. The wounds were self evident, so it was not -

MR. BERSHAD: I ask that that be stricken out, if

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THE WITNESS: I am answering the Judge.

THE COURT: I will allow it.

MR. BERSHAD: Exception. I ask that the word "self-evident" be stricken out.

THE COURT: Motion denied.

MR. BERSHAD: I take an exception.

A (Continuing) When I examined the body and found both femures fractures, the pelvis fractured, and found the cause of death, that was sufficient so as not to necessitate making an autopsy.

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

THE COURT: Yes, objection sustained.

BY MR. BROTHERS:

Q What opinion did you form as to the cause of death, with reasonable certainty?

MR. BERSHAD: I make the same objection.

THE COURT: Objection overruled.

MR. BERSHAD: I take an exception.

A Shock and hemorrhage.

Q Caused by what? A By an injury that had broken -

MR. BERSHAD: I object to the question, on the ground that no proper foundation has yet been laid.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A (Continuing) Shock and hemorrhage due to the injuries this

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individual had received, the fracture of the pelvis and the broken femures.

Q What would be a competent producing cause of the injuries that you found upon this body?

MR. BERSHAD: I object to that, no proper foundation having been laid, no basis laid for the testimony.

THE COURT: Objection sustained, as speculative.

MR. BROTHERS: The Court of Appeals has held that that is the only proper question that can be asked.

THE COURT: It might be in some cases, but in a case like this there might be a great many things that might cause it. It was caused by violence, I suppose?

THE WITNESS: Exactly, yes, sir.

MR. BROTHERS: That is all I was trying to get, that it was caused by violence.

THE COURT: It may be assumed that where a man's two thighs and hips are broken that he was subjected to violence.

MR. BERSHAD: Your Honor will kindly allow me an exception, please?

THE COURT: Yes.

MR. BROTHERS: That is all.

CROSS-EXAMINATION BY MR. BERSHAD:

Q I understood you to say, Doctor, that you did not make an examination of the body, aside from what you physically observed; is that correct? A You mean I didn't make an

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autopsy?

Q Correct; did you? A I did not make an autopsy.

Q That is the usual procedure in a case of that kind?

A Not necessarily.

Q Did you examine this man aside from your observing him with the eye? A Yes, sir.

Q Examine him carefully? A Exactly.

Q You have known cases, Doctor, have you not, where a man is stricken with appoplexy and drops? A Yes, sir.

Q And the only way you would have of ascertaining that fact would be by an autopsy? A Autopsy.

Q Otherwise it would be practically impossible to determine the cause of death; that is correct; is it not? A Yes, I would see, though -

Q And, of course, you can't say whether or not this man Irving Levine was an appoplectic, can you, Doctor? A No, I could not.

Q And, of course, Doctor, you can't say whether or no before this man received these lacerations and injuries, whether or not fright, the impending collision, might have shocked him to such an extent that he might have dropped from appoplexy; that is correct, is it not, Doctor? A I doubt it, absolutely.

Q You are purely giving us your best guess, but you don't know whether or not that was the case here, do you, Doctor?

A From my observation of that body, and from the condition of

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his arteries, I would say absolutely he never had appoplexy.

Q Tell us how you can say that? A I have made six or eight thousand autopsies in my time, and in that time I have rarely or have never found a case of appoplexy where there was not ^{an} atheroma.

Q A what? A A hardened condition of the arteries.

Q So you say invariably when an appoplectic condition exists in a person there is a hardening of the arteries?

A Absolutely.

Q Throughout the entire body? A Yes, and there must be a rupture to produce appoplexy.

Q And that would be in an appoplectic in its incipient stages? A It wouldn't rupture if it was in its incipient stage.

Q There must be a stage before that condition arises?

A Yes, sir.

Q Commencing at the beginning of the time when that condition first evidences itself in the body, it would not necessarily harden the arteries throughout the entire body, would it, Doctor? A No.

Q So that only the particular part of the body where the lesion is existing would be so affected; that is correct, isn't it, Doctor? A No, where there is a hardened condition of the arteries of the brain; it is the same ⁱⁿ the foot; it is the same in the abdomen, it is the same in the hand.

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Q What I am trying to get at is, the only place where the hardening would take place is where it commences, and in no other part of the body? A It commences throughout the entire anatomy.

Q You don't mean it is a simultaneous process? A Certainly, it is a disease of the arteries throughout the entire blood vessels, where you get atheroma.

Q I am talking of the condition, whether it is a simultaneous condition throughout the body, or gradual? A Gradual.

Q Getting back to what I am asking you, Doctor, at the first stages of the affection, it would not necessarily disclose a hardening of the arteries throughout the balance of the body, with the exception of the particular place where the commencement of the affection is evident; that is correct, isn't it, Doctor? A Your question is as clear as mud to me.

BY THE COURT:

Q I think he means this, Doctor. When hardening of the arteries begins, when it starts say in one place like my wrist and then spreads over the body, the whole of the arteries begin to show a deterioration? A Exactly, all begin to show a deterioration.

Q It does not start like a skin disease, and spread from one place to another? A No.

BY MR. BIRSHAD:

Q You mean the entire body becomes affected? A The blood vessels entirely.

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BY THE COURT:

Q But it begins gradually all over? A Yes, sir.

BY MR. BERSHAD:

Q See if I understand you correctly: So, it doesn't spread simultaneously? A It gradually begins in all the arteries, every one of them is the same.

Q From the time it commences, wherever the affection might be, if shortly after that, if an injury such as you have described in this case occurred, would you be able to say with the same degree of certainty that the patient, not disclosing the hardening of the arteries in the ^{lower} regions, that he was not affected with apoplexy? A I would, sir, absolutely, he was not.

BY THE COURT:

Q He could not have an apoplectic stroke until the hardening had progressed to a certain extent? A No, sir, he could not. It is a rupture of a weakened blood vessel itself.

Q When they first begin to get hard, they are not hard enough to produce apoplexy? A No, sir.

BY MR. BERSHAD:

Q If the hardening was about the heart and was of recent origin, it would not necessitate the spreading to the entire body before -

THE COURT: He said it does not spread from one part of the body to the other.

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MR. BERSHAD: As I said, it would show evidence throughout the entire body.

THE COURT: That is what he said. It begins through out the entire system of the arteries, but does not spread from one to the other.

THE WITNESS: The Judge has explained it correctly.

Q What is your best knowledge of how a condition of that kind is incipient in a body? A What condition?

Q The condition such as you have described, before death would result from a shock. A You mean those injuries? The hypothetical question you ask?

Q That I have submitted to you. A I have seen men come to eighty or ninety years of age and not die of apoplexy with arteries as hard as pipe-stems. I have broken them up in front of the class.

Q And still live? A Yes, sir, I have had them ninety years of age with atheroma.

MR. BROTHERS: Could we stop here, Judge? It is almost four o'clock, and Mrs. Levine went to telephone for that card.

THE COURT: All right. (To the Jury) Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence, until the case is finally submitted to you. We will take a recess until 10:30.

(The Court then accordingly took a recess until tomorrow, Friday, April 5, 1918, at 10:30 o'clock a. m.).

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THE PEOPLE, ETC., - Against- JOHN HACKETT.

New York, Friday, April 5, 1918.

TRIAL CONTINUED

JACOB D. ROSENMAN, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

(The witness states that he resides at Bellevue Hospital)

Q What is your profession? A Physician.

Q And you graduated where? A Columbia University, New York City.

Q When, Doctor? A 1916, May the 10th.

Q You are now connected with Bellevue Hospital, in this city? A Yes, sir.

Q Where is the hospital located? A Twenty-sixth Street and First Avenue.

Q Were you connected with that hospital on the 24th of March, 1917? A Yes, sir.

Q And what was your position at that time? A As Junior Surgeon.

Q Now, do you remember in the afternoon of that day, between two and three o'clock, receiving a patient by the name of Irving Levine? A I remember having received a patient at that time, but I didn't obtain his name. He came in as an unknown patient.

Q Was there a police officer in uniform accompanying the

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body? A Yes, sir.

Q To what part of the hospital was he taken? A He was taken to Ward M, I think 6, a dressing room, which is a surgical building.

Q Do you remember whether the officer stayed in that room for a while with you and the patient? A Yes, sir, I remember having seen him there for some time; I couldn't recollect the exact duration of time.

Q And did you receive from the officer any information concerning the patient? A A history of the patient from the officer, as it was not obtainable from the man.

MR. BERSHAD: Please answer the question. I ask that the balance be stricken out.

THE COURT: He said the history was obtained from the officer. That may stand. The man was unconscious?

THE WITNESS: The man was conscious, but he was in shock, and he did not remember the details of the accident.

Q You were unable to get any information from the patient? A Unable to get any information from the patient.

Q Would you tell us the appearance of the patient? A The general appearance, the patient appeared to be extreme shock, and there was extreme pallor of the skin, slow respiration, and the pulse was barely palpable at the radius, the wrist.

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BY THE COURT:

Q Can you identify the officer? A I may identify him, but I wouldn't make an affidavit to it.

Q Would you look at this, Officer, and tell us whether you recognize him as the one who came with this patient (indicating Officer John Schneckner?) A I do not remember.

Q Did you examine this patient to see what injuries he had? A Yes, sir.

Q What injuries did you find that he had sustained?

A He had a compound fracture of the right femur, that is the right thigh, a compound fracture of the left thigh, about the junction of the middle and upper or middle and lower, I don't remember the exact location, but I remember that ^{one} was a compound fracture between the junction of the upper and lower, and one was a compound fracture between the junction of the upper and middle third; he had lacerations of the soft tissues around the bone, with exposure of the muscle, a tearing of blood vessels, from which there was a profuse hemorrhage; there was a fracture of the bones of the pelvis; there was a laceration of the pelvic tissues, including the penis and scrotum and other tissues around the perineum and so on, and these lacerations seemed to have been accompanied by a marked destruction of tissue, tearing it into shreds.

MR. BERSHAD: I ask to strike out what it seemed to be.

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THE COURT: He can state whether it was accompanied.

THE WITNESS: It was actually accompanied, as I can recall.

Q Will you tell the jury what you mean by a compound fracture? A We call a compound fracture a fracture as it is understood in surgery, a fracture associated with an exposure of a bone, that is when the bone is broken and the soft tissues covering the bone are lacerated and the bone is exposed so either you can see or feel its exposure by an instrument through the lacerated tissue, we call that a compound fracture.

Q That is distinguished from a simple fracture, where there is no exposure of bone? A No exposure of bone, either direct or indirect.

Q Did you observe whether or not the clothing of the patient before he was disrobed was torn so the flesh was exposed to view? A Yes, sir, it was torn and covered with blood.

Q Could you give us some description of the man's appearance as to his age? A I should judge he was a man of about twenty-five to thirty. It is difficult to say the exact age, because he was in shock and was covered with blood, but he was a young man, between twenty-five and thirty.

Q And what was done in the way of treatment? A Well, the immediate treatment was to stop the hemorrhage and the general condition as to shock, a saline or salt solution was injected into one of the veins of the arm, about seventeen ounces

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of a salt solution; it is a simple procedure; it is to replace the loss of fluid - blood.

Q Did the patient respond to the treatment? A He did not respond to it at all.

Q And what finally occurred? A Well, the second procedure was, of course, to stimulate his heart. We gave him a heart stimulant. He did not respond to it, but he died, I should say, in about an hour from the time he was admitted to the ward.

Q Did you make some record at that time in your own handwriting upon the hospital forms? A A record as to what, might I ask you?

Q As to the patient? A Yes, sir.

Q Have you that with you? A Yes, sir.

Q Can you refresh your recollection from those records as to the time that this patient was seen by you and the hour of his death? A Yes, sir.

MR. BERSHAD: Just a moment. I object to it on the ground that it does not appear that the witness cannot testify from his memory.

THE COURT: Yes, objection sustained. Can you remember now?

THE WITNESS: No, I can't remember without referring to the chart. I know it was early in the afternoon.

Q What? A I remember it was early in the afternoon; I should say it was around two or three o'clock.

Q Would you say that he died about three o'clock? A Yes,

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about that time.

Q Did you receive any information from the officer who was with this patient concerning the man's identity? "Yes," or "no".

MR. BERSHAD: I object to that, if the Court please, as not binding.

THE COURT: He may answer "yes", or "no".

A No.

Q Did you receive any information before that patient left the hospital concerning who he was? A No.

Q Did you make any entry upon these blanks as to who he was? A Not in person.

Q What? A Not in person.

Q Did you see some other doctor do it? A I have seen the record.

Q Do you find that the record discloses the identity? To that say "yes", or "no".

MR. BERSHAD: I object. He says he did not see the record of the entry made. He says some other doctor made the entry.

THE COURT: I will allow him to answer, "yes", or "no".

MR. BERSHAD: I take an exception.

A No.

Q Do you understand what I ask? Is there no record upon the blanks that you have with you that discloses the identity of the man? A Do you mean the identity, may I ask you, re-

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garding his name, or occupation, or where he lived?

Q Is there any record upon the blanks that you wrote on yourself, either written by you or some other person in your presence, which shows who this person was, either by name or occupation? A Not by me.

Q Is it there in some other person's handwriting? A I should like to refer to the chart to refresh my memory.

Q Look at it, please, and then only answer "yes", or "no".

A The only identity I can find here as to his name -

MR. BERSHAD: That is objected to.

Q Just say "yes", or "no". A Yes.

Q There is? A Yes.

Q And state whether or not you obtained from the officer who was with this patient any information concerning the manner in which the patient had received the injuries? A Yes.

Q Just "yes", or "no". A Yes.

Q And do you remember what that information was, without referring to the record? A Yes, sir.

Q Do you recall whether or not any other patient was brought into the hospital as an emergency case that afternoon, other than the one that you have been telling us about?

MR. BERSHAD: One moment. I object to that, as incompetent.

THE COURT: The objection is overruled.

MR. BERSHAD: I respectfully except. The testimony is that he recalled this particular case. He said he did.

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THE COURT: On the question of identity, it may become material as to whether there were two cases just like that on that afternoon.

MR. BERSHAD: Your Honor will respectfully allow me an exception?

THE COURT: Yes.

A I do recall.

Q Was there any other case? A There was not.

Q Do you know what was done with the body of this man after he died?

MR. BERSHAD: I object to it, as incompetent.

THE COURT: I will allow him to say if he knows of his own knowledge.

A Yes.

Q What was done with it?

MR. BERSHAD: The same objection, if your Honor pleases.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A It was taken to the morgue.

Q To the City Morgue? A Yes, sir.

BY THE COURT:

Q I understood you to say that on the 23rd of March you only had one case brought in by a police officer with injuries similar to what you have stated? A In that ward.

Q In that ward? A Yes, sir.

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Q Did you have any case like it brought into any other ward by a police officer, where both thighs were broken and the pelvis was broken? A That I couldn't state, your Honor.

Q Don't you think you would remember it if you had two cases like that in the same day? A No, not in the ward I am connected with.

Q Under your observation? Ax No, not in the ward I am connected with, no other similar case to this was brought in on that day.

BY MR. BROTHERS:

Q What other physicians were present at the time you were observing the patient and treating him? A Dr. McCreery and Dr. Easton and Dr. Fornell.

Q Where is Dr. Easton now?

MR. BERSHAD: I object to that, as incompetent.

THE COURT: Objection overruled.

MR. BERSHAD: I except.

A I believe that he is at Ft. Oglethorpe, in the Army.

Q That is in Georgia? Ax Yes sir.

Q And Dr. Fornell is where?

MR. BERSHAD: I make the same objection.

THE COURT: The same ruling.

MR. BERSHAD: I take an exception.

A In Boston.

Q In Boston? A The Navy there.

Q In the United States Navy? A Yes, sir.

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MR. BROTHERS: Now, your Honor, subject to being connected, I should like now to ask the Doctor because I don't want to keep him here - what information he received as to identity from this officer, either the place he was brought from or anything connected with this collision, subject to being connected. I believe I am going to be able to connect it by other witnesses.

THE COURT: I don't think it would be safe to do that in advance. Can the officer identify the doctor?

MR. BROTHERS: I don't know. I haven't asked him.

THE COURT: I will sustain the objection now.

MR. BROTHERS: You see, it is very difficult to get the doctor here.

THE COURT: It will only take a minute to bring out the immediate truth, if it can be done.

MR. BROTHERS: Well, Doctor, will you step aside.

J O H N S C H N F C K N E R, being recalled on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer, you testified that you accompanied the body of the man from Thirty-second Street and Lexington Avenue on the 23rd of March in the ambulance to Bellevue Hospital?

A Yes, sir.

Q And that there you remained with the body and accompanied it into a room where several physicians were present

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and who examined the body and gave treatment; is that right?

A Yes, sir.

Q Will you look at Dr. Rosenman here and tell me whether or not you recall he being present at that time?

MR. BERSHAD: I submit that is not a proper way of identifying .

THE COURT: For what reason?

MR. BERSHAD: The question it self is in such a form, such an objectionable form, if its purpose is to identify, the question itself is objectionable.

THE COURT: You say the question is objectionable. In what respect?

MR. BERSHAD: By indicating the person sought to be identified. I hardly think it is a proper method of seeking to identify.

THE COURT: You don't have to have a line-up in court any time anyone is asked if he can recognize some particular person. Objection overruled.

MR. BERSHAD: Your Honor will respectfully allow me an exception.

A I don't recall. They were all in white uniform at the time.

J A C O B D. R O S E N M A N, resumed the stand.

DIRECT EXAMINATION (CONTINUED) BY MR. BROTHERS:

Q Will you look at this paper, People's Exhibit No. 3,

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for Identification, and tell me whether that is one of the forms of Bellevue Hospital (handing exhibit to witness)?

MR. BERSHAD: That is objected to, if the Court please. The form speaks for itself, if it were in evidence, it is not in evidence.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A Yes, it is.

Q What are those forms used for, if you know?

MR. BERSHAD: I make the same objection.

THE COURT: The objection is overruled.

MR. BERSHAD: I respectfully except.

A These forms -

MR. BERSHAD: I object to the statement of what the forms are.

THE COURT: I understood you to object. I overruled it.

MR. BERSHAD: I respectfully except.

A This is a statement by the doctor regarding the injuries of the patient.

Q Yes, I understand that, but what do they use those forms for? Is there a specific purpose?

MR. BERSHAD: I make the same objection, if your Honor please.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q The form is filled out? A The form is filled out,

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and it is taken to the main office and from there sent to the morgue.

Q In other words, this form when filled out and signed is sent with the dead body to the City Morgue? A Exactly.

MR. BERSHAD: I object to the form of the question as leading and improper and ask that the answer be stricken out.

THE COURT: The objection is overruled.

MR. BERSHAD: I respectfully except.

Q Do you know whose handwriting is upon that paper, People's Exhibit No. 3, for Identification?

MR. BERSHAD: I object, if the Court please, on the ground this witness has not been properly qualified to testify, unless it is shown that he had personal knowledge, that he was present at the time that was written.

THE COURT: He does not have to be present if he recognizes the writing. Objection overruled.

MR. BERSHAD: I respectfully except.

A I do.

Q Whose writing is it?

MR. BERSHAD: The same objection and exception.

A Dr. J. R. Easton, House Surgeon

Q Is he the same Dr. Easton who assisted you in caring for this patient? A Yes, sir.

MR. BERSHAD: I object to the form of the question as

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leading and ask that the answer be stricken out?

THE COURT: Objection overruled; motion denied.

MR. BERSHAD: I respectfully except. I want to state, if the Court pleases, a paper has been used and is being used here that has only been marked for identification. I don't think it is proper to use it and get the contents of that before the jury.

THE COURT: No question has been asked as to the contents of the paper.

MR. BERSHAD: I beg your pardon?

THE COURT: No question has been asked as to the contents of the paper.

MR. BERSHAD: He is asking what that form is used for.

THE COURT: That is not asking for the contents.

MR. BERSHAD: As near as I can gather, I do not know what else it can do, stating as to what a paper of that kind would contain. Your Honor will allow me an exception?

THE COURT: Yes.

Q Will you describe, Doctor, if you can, the clothing that this patient wore? A May I ask you what you refer to? As to color, or condition?

Q No. Well, any condition, about the color, or were there any other distinguishing marks about the clothes? A All I can recollect is that the clothes were torn in the region of the thighs and pelvis, and I believe they were light colored.

Q Did you form an opinion, Doctor, as to the cause of this

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patient's death? A Yes, sir.

MR. BERSHAD: I object to that question. No proper foundation has been laid for it.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q What is your opinion of the cause of the man's death, with reasonable certainty?

MR. BERSHAD: The same objection, if the Court please, on the ground no proper foundation has been laid for this expert testimony.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A Shock and hemorrhage.

Q Caused by what? A Caused by injury.

Q The injuries that you have described here to the jury?

MR. BERSHAD: I take the same objection. I object to the form of the question, as leading.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

MR. BROTHERS: I suppose I will have to ask the Doctor to remain until I put in that other proof?

THE COURT: Yes.

MR. BROTHERS: I will do it as speedily as I can.

Can you reserve your cross-examination?

MR. BERSHAD: Yes.

Q Then, will you wait a moment, Doctor? A Yes.

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R O S E L E V I N E , called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 1338 Stebbins Avenue, Bronx.

Q Mrs. Levine, are you the widow of Irving Levine? A I am.

Q Do you remember the 23rd of March, 1917? A I do.

Q At that time where were you and your husband living?

A We were living in New Brunswick, New Jersey.

Q Now, coming to the 23rd of March, 1917, were you actually living in New Brunswick, New Jersey, or were you stopping in New York? A We were just stopping in New York.

Q And at what address? A At 841 Jennings Street.

Q The name of the street? A 841 Jennings Street.

Q Where is that? A In The Bronx.

Q Whose residence is that? A That is my father's.

Q And how long had you been stopping there? A From Sunday until that Friday.

Q What was your husband's occupation? A Plumber.

Q Plumber? A Plumber.

Q What was his age? A Twenty-eight.

Q Do you know for whom he was working on the 23rd of March? A Bernard Fox.

Q Where is his place? A If I can get my bag I will give you the address (after examining paper) -- 301 East Thirty-sixth Street, New York.

Q Now, can you tell us whether your husband was a member

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of any plumber's labor union? A He was.

MR. BERSHAD: I object to that, if your Honor please as incompetent and ask that the answer be stricken out.

THE COURT: It is not material whether or not he was a member of the union. It may affect this card. I suppose that is the purpose.

MR. BERSHAD: Your Honor will allow me to reserve my objection?

MR. BROTHERS: Of course, if counsel will concede that Levine was struck by this car and died in Bellevue hospital, we won't have to go into all this extended examination. Do you want to concede that?

MR. BERSHAD: If your Honor please, I have no way of knowing, unless the District Attorney proves it.

THE COURT: Proceed.

MR. BERSHAD: I hope you appreciate that fact.

Q Do you know whether or not your husband carried any card in his clothes purporting to give the name of the union to which he belonged? Have you ever seen such a card?

MR. BERSHAD: I object to the form of the question as improper.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A He always carried his plumbing and journeyman's card with him.

Q Did that card contain his name? A His name and also

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the name of the commissioner -

MR. BERSHAD: I object to that as calling for the contents of the card.

THE COURT: Have you the card?

MR. BROTHERS: No, I have not. I have got to prove that I can't get the card, so I can offer secondary evidence on it.

THE COURT: I will overrule the objection. She may state the card contained his name.

MR. BERSHAD: I respectfully except.

A Yes, sir.

Q It contained his name? A Yes.

Q Would you describe the card, as to size? A The card is, I should judge, about that long (indicating), that would be about four inches long; and it had the date of the year on this card.

MR. BERSHAD: Just a moment, Mrs. Levine.

MR. BROTHERS: She is not giving the date. She is simply stating it contained the date.

Q Did you go at any time to Bellevue Hospital on the 23rd of March, 1917? A I did.

Q At what hour? A About seven o'clock p. m..

Q Did you see your husband at the hospital? A I did not.

Q Did you receive from the hospital any property that belonged to your husband? A I did.

Q The following day, or that same day, did you go to

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the City Morgue? A That very night.

Q And with whom did you go? A Myself.

Q Did you meet any persons there? A I did.

Q Who did you meet there? A I met my sister-in-law.

Q Yes? A Mr. Levine's sister, also my brother and brother-in-law; in fact, almost the entire Levine family were there.

Q Any other persons that you met there? A Mr. Fromet and a Mr. Lewis, friends of my husband.

Q Did you see Mr. Fromet here yesterday? A I did.

Q That was the same gentleman who was at the morgue?

A Yes.

Q At the morgue, did you see your husband's body? A I did not.

Q Did you give any information to any of the attendants there about your husband? A Well, I was not asked, so I -

Q Well, did you hear some of the other people? A Yes, my sister-in-law.

Q Now, among the things which you received at Bellevue Hospital which were the property of your husband, did you receive this card that you have described? A I did.

MR. BERSHAD: I object to the form of the question as leading, if the Court please.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A I did receive this card and also a book from the union.

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Q And what else? A A watch.

Q What was the condition of the watch? A Smashed.

Q Now, what became of the card which you say was a union card bearing his name? A Well, to get the death benefit I had to turn in these books.

MR. BERSHAD: I object to that as incompetent.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q What did you do? A I had to turn in these books and also this card, which I gave to the President of the Union, Mr. Duffy.

Q Where is the union headquarters? A In New Brunswick, New Jersey.

MR. BERSHAD: That is objected to as incompetent and improper.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q Since giving it to Mr. Duffy, have you ever seen that card? A Beg Pardon?

Q Have you ever seen that card since giving it to Mr. Duffy. A No, I did not.

Q Have you searched in any place for the card? A Yes, I searched my trunk, where I kept the other belongings.

Q Did you find it? A I did not.

Q Did you last night go to New Brunswick, New Jersey, and see Mr. Duffy? A I did.

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Q Did you get the card from him? A I did not.

Q Have you made diligent effort to find the card? A I did.

Q You have not found it? A I have not found it.

Q When did you see your husband's body? A I seen it in the undertaker's chapel at 5 p. m. on the 24th of March.

Q How long had you and your husband lived in New Brunswick? A We lived in New Brunswick from about July until up to his death.

Q What was the name of this labor union, do you know?

A I have no idea.

Q Was it distinguished by a number? A Well, yes, it was 432, local number 432.

Q Were there any numbers of any kind upon this card?

A Yes, every card is numbered.

BY THE COURT:

Q Did you on the afternoon you went to the hospital meet Isidore Fromet there? A I did.

MR. BROTHERS: That was the morgue, sir.

THE COURT: I mean the morgue.

BY MR. BROTHERS:

Q Does this envelope contain the other small articles that you received at the hospital (handing envelope to witness)? A Well, naturally the cash I have taken out and the keys I have returned to New Brunswick, to the landlady where we were stopping, and the railroad tickets I used in New Brunswick otherwise -

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MR. BERSHAD: That is not responsive. I ask that be stricken out as not responsive.

THE COURT: Yes, motion granted.

MR. BROTHERS: I asked her whether this envelope contains the articles, and she says it does except for these things.

THE COURT: She did not say that. She testified as to what she did with certain things that are not in the envelope.

Q Does that contain all the articles that you received at the hospital on the 23rd of March, 1917? A Yes, all these that are in here, excepting a few that I have used.

Q And the card and union book you returned to the union?
A I returned to the local.

MR. BROTHERS: I ask that the contents of this envelope be marked for identification.

(Same marked People's Exhibit No. 4, for Identification, of this date.)

MR. BROTHERS: That is all, Madam. Any questions? Counsel agrees to reserve his cross, and I will call the officer again, Officer Schneckner.

THE COURT: Did she say who gave her those articles and who gave her that card?

MR. BROTHERS: No, she received them at the hospital.

THE COURT: Did she say who gave them to her?

MR. BROTHERS: No. I suppose she got them at the office. That is where they usually get them.

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J O H N S C H N E C K N E R, being recalled on behalf of The People, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer, you testified yesterday that in the clothing of the injured man that you found at Thirty-second Street and Lexington Avenue on the 23rd of March, 1917, that you found a certain card? A Yes, sir.

Q That you read the card and that you made at that time a memorandum of its contents? A Yes, sir.

Q Have you that memorandum with you? A Yes, sir.

Q The memorandum which you made at that time, was it correct?

MR. BERSHAD: I object to that question, if the Court please, as incompetent.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A Yes, sir.

Q Are you able to tell us, without referring to your memorandum, what was written or printed upon this card? A Part; not all.

Q The part that you do remember, will you please state?

A "Irving Levine, Union No. 31, 196"; that is all that I can remember.

Q What else? Is there anything else that was on it that you do not remember? A Yes, sir.

Q And have you any means of refreshing your recollection?

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A Yes, sir.

Q Will you do so? A Yes, sir.

Q And then tell us what you remember, after having refreshed your recollection?

MR. BERSHAD: The same objection, as not binding.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A The card bore the number 99,306. That is all the numbers that were on it.

Q Have you any other memorandum about it? A Yes, sir.

Q About the card? A The others I have stated.

Q What? A The other number, his union number, 170, and No. 39.

Q And did the card state anything as to what kind of union it was, or the occupation of the person?

MR. BERSHAD: Just a minute. I object to the form of the question, as leading.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A A journeyman plumber's card.

Q After you received this information from the card, did you give any information to the hospital people? A The nurse took possession of the card. That is as much as I recollect.

MR. BERSHAD: I object, and ask that the answer be stricken out.

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THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q Do you recall any other article that you found in the clothing of this injured person? A I do not, no, sir.

Q Would you examine the contents of this envelope, marked People's Exhibit No. 4, for Identification, and tell me whether there is anything there that you remember seeing on that occasion?

MR. BERSHAD: I object to it. The witness says he cannot remember.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A I recollect a rule was sticking out of his side pocket.

Q A rule like this (exhibiting rule to witness)? A Yes.

MR. BROTHERS: That is all, Officer.

CROSS-EXAMINATION BY MR. BERSHAD:

Q Do you know whether that is the ruler? A No, sir.

Q May I see that entry that you have in your book, Officer, please? I want the part that you read from here.

A (Witness hands memorandum book to Mr. Bershad).

Q Where does that end? Just indicate to me with your finger where the reference to this particular case ends? A There (indicating on memorandum book).

Q Right there (indicating on memorandum book)? A Yes, that was all that was on the card.

Q What I want to know is where the memorandum with refer-

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ence to this case ends on this page? A Down at the bottom (indicating on memorandum book).

Q From here to here (indicating on memorandum book)? A No, there is more on the other pages; there is three pages of it.

Q I want to see the pages that have reference to this particular case? A Right here (indicating on memorandum book).

Q Page 14; what else? A Page 14, 15 and 16.

Q Is there anywhere on any of these pages the name of Irving Levine? A Yes, sir.

Q Please show me on which page? A (Witness indicates on memorandum book).

Q Are you sure that was the name that was on the card?

A Yes, sir.

Q Irving? A Irving, yes, sir.

Q Sure of that? A I made a memorandum immediately.

Q Sure it was not Irwin, I-r-w-i-n? A Positive.

Q Positive about that? A Yes, sir.

Q Just answer, instead of shaking your head? A Yes, sir, Irving Levine was on the card.

Q You copied it from the card? A From the card, yes, sir.

MR. BERSHAD: That is all.

J A C O B D. R O S E N M A N, resumed the stand.

BY MR. BROTHERS:

Q Now, Doctor, you said that you found upon the original records of the hospital some identification of the patient that

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the officer brought to you, is that right? A Yes, sir.

Q And is this first page the record to which you refer (indicating)? A Yes, sir.

Q Part of this record is in your handwriting, is it not?
A Most of it.

Q This upper writing, at the top of the page, is that in your writing? A That is mine, yes, sir.

Q Is the name in your writing? A Excepting the name.

Q Is this your writing here, the occupation? A No.

Q Do you know who wrote that? A I do not.

Q Now, I ask you what information you received from the officer who accompanied this patient, as to the manner in which he received the injuries?

MR. BERSHAD: I object to that, if the Court please, as incompetent, improper, and not binding on this defendant.

MR. BROTHERS: Merely for the purposes of identification.

THE COURT: Objection sustained.

Q And did you receive any information from the officer concerning the place from which the patient was brought?

A I do not remember.

Q Can you refresh your recollection by referring to this record or to any record that you have in your hand? A There is a reference made here regarding the nature of injury, that is, how the injury was sustained, but it does not specify the

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exact place, as to street and number.

Q The information, however, that you received about the way that the man was injured was received from the police officer?

A Exactly.

MR. BROTHERS: And your Honor has excluded the information?

THE COURT: Yes.

MR. BROTHERS: Then, I suppose we have gone about as far as we can, have we not?

THE COURT: Is there any evidence as to who put that tag on the body?

MR. BROTHERS: Well, I have not been able to find the person who did it.

BY THE COURT:

Q Did you see the tag put on the body? A I did not, your Honor.

Q Do you know who does that? A It is done by, I believe, the employe of the mortuary.

Q They have testified that the body is already tagged when it comes in? A But it is done on the ward, by one of the men who comes for the body.

MR. BROTHERS: Well, that is all.

CROSS EXAMINATION BY MR. BERSHAD:

Q Doctor, you say that there was no other emergency case brought into the hospital on March 23rd, into your department? A Yes, not into my department.

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Q But you do not know whether or not there were other emergency cases brought into the other departments? A No, I do not know that.

Q There might have been a dozen other cases brought into the different departments of the Bellevue and Allied Hospitals?

A Yes, sir.

Q They came under the same head in your department; that is, one record is kept at the office of the Bellevue Hospital of each department? They are not treated as separate departments, are they? A They are.

Q Each a separate department? A Each ward has its own record.

Q And so all you know what you got in to your own ward. You don't know how many cases of an emergency nature got into the other wards? A Not into the wards belonging to the surgery. I would like to make a particular specification, so as to make it more explicit.

Q Just answer my question. What I want to know is, do you know of your own knowledge whether or no no other emergency cases came into the different departments on March 23rd? A Not into the different departments.

Q All you know is about your own department? A Yes, sir.

MR. BERSHAD: That is all.

JAMES MICHAEL McTIERNAN, called as a witness on behalf of the People, being first duly sworn,

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testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 103 West Eighty-fourth Street.

Q You are a physician and surgeon, are you, Doctor? A I am.

Q Where is your office? A 103 West Eighty-fourth Street and 23 Centre Avenue, New Rochelle.

Q And you have been practicing medicine in this city for how long a time? A Nine years.

Q Do you remember the 23rd day of March, 1917, being in the neighborhood of Lexington Avenue and Thirty-second Street? A I was.

Q Were you driving an automobile? A I was.

Q In which direction were you going? A Driving north on the East side of Lexington Avenue.

Q About what time was it, as near as you can recall?

A Between the hours of 2:00 and 3:00, about 2:45 or '40.

Q Was your attention attracted to another automobile in that neighborhood? A I was driving north, just in the block between Thirty-second Street and Thirty-third Street, approaching the southeast corner of Thirty-third Street and Lexington Avenue, when an automobile, it was a large touring limousine, came grinding out of Thirty-second Street from the east.

Q Thirty-second Street? A Thirty-third Street, from the east, and driven by a young man who was sitting not directly behind the wheel, but slightly to the right, behind the wheel.

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Q Upon which side of the vehicle was the steering wheel?

A On the left side.

Q What occurred when you saw this car? A I saw that it was going to hit me, and I threw out my clutch with my left foot, pushed on my brake with my right foot, and grabbed my emergency brakes, bringing my car to a standstill, and he passed in front of me, in front of my car, and his left rear mudguard passed over and hit my left forward mudguard.

Q Was he then going toward the west, or was he turning the corner? A He was turning the corner into Lexington Avenue from East Thirty-third Street.

Q Then did you see in which direction he went? A I did.

Q Where did he go? A He passed down Lexington Avenue.

Q Did you watch him? A I did.

Q Did you watch him from your vehicle while it was standing still, or did you move your car in the meantime? A The speed with which I had been traveling caused me to slough slightly, and I also turned my steering wheel, so as to bring the facing about in a northwest position, instead of being directly in the middle of the street, and I looked, thinking he had done more damage, and I wanted to get his license number, but as I watched he was driving at the time at such a terrific speed I let the license number go, when I saw him try to avoid a man, who was pushing a cart down Lexington Avenue, just at the corner of - at the northwest corner of Thirty-second Street and Lexington Avenue. His machine swerved to the right,

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partly over a driveway, hit the push-cart and telegraph pole, knocking down the telegraph pole, which I could see from where I was sitting. I then put my car into first speed and went down to the corner, found a gentleman laying on the sidewalk, on the side where the electric pole had been broken.

BY THE COURT:

Q You spoke of a telegraph pole. Is that correct? A It was an electric lamp post.

Q An electric light post? A An electric light post.

BY MR. BROTHERS:

Q When you got to the corner you found out it was a lighting pole, and not a telegraph pole? A Yes, it was an iron post.

Q Did you notice whether or not there was more than one person riding in the limousine? A I did.

Q How many did you see? A Only the one.

Q Only one? A Yes, sir.

Q Now, describe the person who was driving it? A Well, I could merely describe him, as I stated in the Grand Jury room, that he was a young man, and that he was rather light.

Q Rather what? A Light complexioned.

Q Did he wear, do you know, a regular chauffeur's uniform, or not? A I couldn't positively state that.

Q Whereabouts was this car when you first noticed it?

A Coming west from the direction of Third Avenue on Thirty-third Street, about thirty feet away from me.

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Q You spoke of the speed being high. What was the speed?

A That he was traveling?

MR. BERSHAD: Just a minute. I object to that.

THE COURT: I will sustain the objection, unless you qualify the witness.

Q You have driven a motor car for how long, Doctor?

A Oh, since I was about - oh, we drove one of the first Franklin Automobiles that ever came out, in Massachusetts.

Q You have been driving fifteen or twenty years? A Fourteen, anyhow.

Q With a speedometer upon it? A Not in those days.

Q Well, recently? A Recently, I have been driving seven years different machines of my own - six years.

BY THE COURT:

Q You have driven machines many thousands of miles?

A I drove one machine forty thousand miles last year.

BY MR. BROTHERS:

Q Are you familiar with the various rates of speeds of moving vehicles? A I have driven a machine ninety-seven miles an hour, on the speedway.

Q Did you form an opinion as to the rate of speed at which the limousine car proceeded from Thirty-third Street to Thirty-second?

MR. BERSHAD: I object to it, if the Court pleases.

THE COURT: Could you form a reasonably certain estimate?

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THE WITNESS: I surely could.

THE COURT: I will allow him to state.

MR. BERSHAD: I take an exception.

Q What rate of speed? A I think he came around that corner between a speed of twenty-eight and thirty-four - twenty-eight and thirty-two miles an hour.

Q Was that speed maintained going down Lexington Avenue, or did it change? A It increased.

Q It was what? A It was increased.

Q Increased? A It traveled faster.

Q Did you observe the manner in which the vehicle went down the avenue, as to whether it went straight, or otherwise? A It did not.

MR. BERSHAD: I object to the form of the question as leading.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q You may answer. A It did not go down straight.

Q How did it go? A Because he had come so close to hitting me directly, instead of a slanting blow, he swerved towards the curbstone, then into the car track, and then again towards this driveway which runs across the corner at Thirty-second Street and Lexington Avenue; he almost made a figure "8" coming out there.

Q Did you hear any noise from the vehicle? as it was coming along? A Yes, I formed the conclusion from the -

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MR. BERSHAD: That is objected to.

Q Just what kind of noise was it? A Grinding of gears.

Q You are familiar with the sounds made by various motor cars, are you? A Yes, sir.

MR. BERSHAD: I ask that that be stricken out, no proper foundation having been laid as to how this man can testify to noise.

THE COURT: The motion is denied.

MR. BERSHAD: I take an exception.

Q Now, you are familiar with the operation of a motor vehicle in first, second and third speeds, are you? A Yes.

Q You formed an opinion from the manner in which this car was operated and the noise it made in what speed it was being operated?

MR. BERSHAD: That is objected to as irrelevant, incompetent and immaterial, also as leading.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A I came to the conclusion that the machine must be in second speed.

Q And that was based on what? A On the -

MR. BERSHAD: I object to what it was based on.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

A (Continuing) On the grinding and the characteristic noise which it is in a second speed.

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Q When you arrived at the corner of Thirty-second Street, you saw an injured man upon the sidewalk near this post? A I did.

Q What were his injuries? A I couldn't state positively every injury the man had, because I did not examine him thoroughly.

Q Give us as well as you can? A I saw that the man was apparently split open through the entire pelvis, from about the middle of the left thigh up through the testes and groin into the bladder; his bladder and bowels were protruding through the pelvis, externally. He had a broken pelvis and a broken hip also.

Q Did you render any aid to him? A I did.

Q What did you do? A I gave him morphia and a stimulant.

Q Did you do anything to stop any hemorrhage? A I put on a ligature to control the hemorrhage from the femoral artery in the hip.

Q Did you see what, if anything, the man who was driving this automobile did after the collision with the pole? A Yes, he jumped out of the machine on the right hand side of the machine first, the right side, looked at the man, at the injured man, and went around the front of the machine to the wheel, stepped on the running board, looked back at myself, and then ran right across Lexington Avenue east and stopped for just a moment, and I believe he ^{stopped} ~~spoke~~ for just a moment, beside where two men were standing. Whether he spoke to them, or not, I

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couldn't say.

Q Did you see whether or not either of those men put their hands upon him? A No; my attention was turned to the injured man.

Q Do you remember stating before the Grand Jury that one man grabbed him by his shoulder?

MR. BERSHAD: I submit, if the Court please, that is incompetent and improper.

THE COURT: Objection sustained.

Q Does that refresh your recollection?

MR. BERSHAD: Wait a minute.

THE COURT: The objection was sustained.

A I made my statement -

MR. BERSHAD: There is no question, Doctor.

Q Do you want to say something, Doctor? A I do.

Q What were you going to say, Doctor?

MR. BERSHAD: I submit, there is no question, if the Court please.

THE COURT: Yes, objection sustained.

MR. BROTHERS: That is a question. What was he going to say?

MR. BERSHAD: I object to the question.

MR. BROTHERS: I press the question.

THE COURT: That may be brought out by questions.

MR. BROTHERS: The Doctor said something, and counsel interrupted him. I don't know what he was going to say, and I want to find out what it was.

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THE COURT: Counsel objected, and I sustained the objection.

MR. BROTHERS: It occurred after that.

MR. BERSHAD: I didn't ask any question.

THE COURT: There is no question pending now.

THE WITNESS: I hadn't finished my answer, your Honor.

THE COURT: That may be brought out later by questions

Q You say the man stopped on the northeast corner. Then where did he go, if you saw him? A The northeast corner, and I couldn't state whether or not he spoke to him. That was the object previously of my testimony. I don't know whether he spoke to him, or not, but as he started away from him one of the men attempted to grasp him, and he ran east on the avenue to - out of sight.

Q He ran on what street? A East on Thirty-second Street.

Q Toward Third Avenue? A Toward Third Avenue.

Q Would you look at the defendant here - stand up, please - look at him.

MR. BERSHAD: I submit that is not a proper question of identification.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q Can you state whether you had ever seen him before?

A Well, I don't think it is fair after a year to put me in the position -

Q Just say you can't say, or you can say? A What is it?

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Q Will you say whether you have ever seen him before, your best recollection? I think that is fair enough. A I would like to be excused, your Honor, from positively identifying this man.

THE COURT: You are not asked to do it if you cannot do it.

THE WITNESS: I have seen 50,000 men since then, personally.

THE COURT: You can't identify him?

THE WITNESS: I can't identify him positively.

Q About how old a person was it driving this car? A A young man, about 21 to 23 years of age.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. BERSHAD:

Q Doctor, I understood you to say you were accustomed to very rapid driving, and the fact that you yourself had operated a machine at the rate of 97 miles? A An hour, yes.

Q That is pretty rapid driving? A Yes, but if you would like an affidavit to that effect I can submit it.

Q No, Doctor, I am not questioning it at all. So that speed, as a matter of fact, to you, is not an unaccustomed and unusual sight; it doesn't attract your attention; there isn't anything out of the ordinary? A Unless it is coming towards me.

Q Otherwise there is not anything about it to attract your attention? A No.

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Q Because you are accustomed to great speed? A Yes.

Q And from your knowledge and experience of cars and from your method of driving cars you do not regard thirty to thirty-four miles as an excessive speed? A In the city streets, yes.

Q I mean, it would not attract your attention of itself?

A Yes, in the city streets, or on an avenue.

Q Now, at what rate were you driving your car on this day?

A I should judge I was driving my car about 24 or 25 miles an hour. I always drive on the limit.

Q That is almost as rapidly as that car was going? A No, it was 10 miles an hour difference.

Q You say he was driving at 34? A 28 to 32.

Q And you were driving at what speed? A 22 to 24; I couldn't say how fast, positively.

Q The maximum speed wouldn't be so much? A Mine was 24.

Q And his minimum was 28? A His maximum was 32. My maximum and his minimum would bring it about 8 miles difference. He was coming out of a street. I had the right of way north and south.

Q Let us use this chart (exhibiting People's Exhibit No. 1); I am holding it in the position, if you will be good enough to assist me by holding it? A Certainly.

Q You were driving on Lexington Avenue? A I was driving right there (indicating on diagram, People's Exhibit No. 1).

Q On the east side of the avenue? A Yes, sir.

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Q Going north? A Yes, sir.

Q Then, when was your attention first attracted to him?

A His car swung east from Thirty-third Street.

Q You mean west, going west? A Yes, he was going west, but he came from the east into Lexington Avenue, staying too far south, on the corner - he was against traffic. He was on the south side of Thirty-third Street, instead of being on the north side, or half way.

Q And where were you? A Right there (indicating on diagram, People's Exhibit No. 1).

Q About how many feet from the corner? A If that is a chart that is given according to architectural scale, you can measure where I was, and I couldn't be where I couldn't see him from the corner of the houses.

Q But he was still on Thirty-third Street when you first observed him? A Yes, sir.

Q And on Thirty-third Street there was no excessive speed? A There was ^{not} what?

Q On Thirty-third Street there was no excessive speed.

A On his part?

Q On the part of the driver of that machine. A Oh, yes, there was.

Q So, you saw him on Thirty-third Street but a fraction of a second? A Yes, just time enough to save me.

Q You observed him right there (indicating on diagram, People's Exhibit No. 1)? A No, I didn't observe him right

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there (indicating on diagram, People's Exhibit No. 1); I observed him right there (indicating on diagram, People's Exhibit No. 1).

Q And where were you? A Right there (indicating on diagram, People's Exhibit No. 1).

Q How could you see him in Thirty-third Street? A This is not a building here; it is a sidewalk (indicating on diagram, People's Exhibit No. 1).

Q That is a sidewalk (indicating on diagram, People's Exhibit No. 1)? A By looking directly at him.

Q And the next thing he did was he crossed Lexington Avenue, veered along side of you and touched your machine?

A Not here (indicating on diagram, People's Exhibit No. 1).

Q Where? A Right there (indicating on diagram, People's Exhibit No. 1).

Q At the corner? A Yes, sir.

Q And then you turned around to see the machine? A No.

Q What did you do? A The suddenness with which I threw on my emergency brakes caused me to turn in the direction which was about - my wheels were over the car track that was going north, the inside car track going north, and I was facing partly into -

Q East Thirty-third Street? A East Thirty-third Street.

Q West? A West.

Q You say this was a limousine? A Yes, sir.

Q An open car? A Yes, sir.

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Q And you saw but one person in the car? A One person.

Q Sure about that, Doctor? A Positive.

Q And that person who was in the car was not sitting directly in front of the steering wheel? A No, sir, he was not sitting in front of the steering wheel at all. He was sitting part way behind the steering wheel.

Q And what conclusion did you draw from the position that he occupied at the steering wheel as to the operator?

A Oh, I didn't draw any conclusions as to the operator.

Q That drew your attention? A It drew my attention.

Q You noticed that fact, that the man was not sitting in the regular position? A If I am allowed to state conclusions, I would say that I said to myself, "That crazy rascal will surely hit some one," and I turned around and saw the result.

Q And you watched? A I did.

Q And the next thing you saw this thing happen? A Yes.

Q He crashed into the pole at this corner here (indicating on diagram, People's Exhibit No. 1)? A No, he hit the cart first.

Q A Push-cart? A Yes, sir.

Q That is, he hit a man who was driving the push-cart, or pushing a push-cart? A Yes, sir.

Q Are you sure about that, Doctor? A I am positive of that, but that he was pushing the push-cart I couldn't say; he was standing right behind the push-cart. Whether he had his

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hands on it, or not, I can't say, because he was then three-quarters of a block away from me.

Q You said he attempted to steer out of the way of hitting the man with the push-cart? A I don't know whether he attempted to steer out of the way, or lost control of his machine. I know he shot off on to the curb stone.

Q And then he hit this man with the push-cart? A And he hit the man with the push-cart and drove the man into the electric post.

Q And the machine on top of the electric post? A Yes, sir.

Q Smashing the machine a V-shape into the pole? A Yes, sir.

Q About how much of the machine was cut into? A My attention was given to the patient and not very thoroughly to the machine.

Q You say this man then jumped out of the machine, on which side? A Right side.

Q Towards west? A He jumped out and put his ~~hand~~ foot down on that driveway.

Q Then what did he do? A Ran and looked at the man, around in front of the machine, to the left side of the machine, stepped his foot up on the running board, then directly across Lexington Avenue, to the northeast corner, right there, to two men standing there (indicating on diagram, People's Exhibit No. 1); one man came out of a store at the corner.

Q A house? A A house; the man that came out of the house at the corner - the man that came out of the house at the

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corner speeded after him and fell; I remember he fell down here a little distance (indicating on diagram, People's Exhibit No. 1).

Q You said your attention was attracted towards the injured man? A Yes, sir.

Q You seemed to be watching with great detail? A Not the machine.

Q I say, you watched the movements of this man? A I did, yes, and the movements of the patient in front of me.

Q You say your attention was given to the man immediately you drove up? A Yes.

Q Didn't you? A Yes.

Q How long a time did this thing take, this jumping out of the machine and running across the street and shooting away? A Well, running across the street -

Q About how long did it take, Doctor, would you say, to your best recollection? A 7 seconds.

Q The entire - A The entire action, from 27 to 30 seconds.

Q Did you see how long he was at the injured man? A He didn't stop at the injured man - just like that (illustrating).

Q To look at him? A Yes, sir.

Q And he then went back to the machine? A Yes, sir. He never left the machine. He was practically - he could put his hand on the machine all the way around it.

Q I understood you to say he left the machine, stepped

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out on the right side? A My dear man, the machine was driven into that telephone post, and part of the body was lying under the machine.

Q You say he had stepped out of the machine? A That telephone post was knocked down.

Q I know that. A The machine was resting partly over the stud of that electric post, and the man's body was lying one leg on the iron where the post was knocked down, and his right - his left leg was lying where the post was knocked down, and the right leg was just in under the left forward wheel.

MR. BERSHAD: I ask that be stricken out as irresponsible.

THE COURT: It is very important, and I will let it stand.

MR. BERSHAD: I take an exception.

Q I didn't ask you that. I am asking you whether you didn't say the man stepped out of the machine and walked around towards the pole, to look at the man. Did he, or not, do that? A He did.

Q Then you say he went around the east side of the machine?

A Yes, sir.

Q The left side? A Yes, sir.

Q And stepped on the running board? A Yes.

Q For a moment? A Yes.

Q And then ran away? A Yes, sir.

Q How long after he went over to see the body of the injur-

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ed man, how long did he stand on that running board again?

A One and one-half seconds.

Q Did you see him do anything there? A Put his hand up.

Q On what? A I was right behind him.

Q Put his hand on what? A I don't know whether it was on the steering wheel, or on the seat, for something, but he put the hand in, and he was out in a moment.

BY THE COURT:

Q Now, Doctor, there is one thing I don't understand. Just where ~~was~~ ^{was} the push-cart when you first saw it? A The push-cart was going down Lexington Avenue.

Q Going down? A Going south on Lexington Avenue.

Q On which side of the car track? A I can show you where the push cart was. The push-cart was going down Lexington Avenue, right there (indicating on diagram, People's Exhibit No. 1), right in the middle of the driveway, so that one wheel of his machine went over the driveway, and the other over this curbstone, into that post, and that push-cart was right there (indicating on diagram, People's Exhibit No. 1); the push-cart was pushed over to there (indicating on diagram, People's Exhibit No. 1).

Q The push-cart was shoved over? A Shoved across Thirty-second Street.

Q To the south side of Thirty-second Street? A Yes, your Honor.

Q Is it your idea that the man who was killed was the man

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the man who was pushing the push-cart? A He was standing behind the push-cart.

Q When you saw the push-cart first, was it in motion, or stationery? A In motion.

Q Somebody was pushing it? A Yes, sir.

Q That person who was pushing it, was he the man who was killed? A He was the man who was killed.

Q Do you know what was on the push-cart? A No, your Honor, I do not.

Q You didn't see that afterwards? A I didn't see that afterwards.

BY MR. BERSHAD:

Q Doctor, you said that one of the men attempted to grab this young man? A Yes, sir.

Q One of those two men? A Yes, sir.

Q You didn't see whether or not they laid hands on him?

A I remember - well, I couldn't say positively whether his hand was laid on him, but my idea in my testimony a moment ago, I want you to distinctly understand, both of you gentlemen, I didn't know whether he had any conversation, or not, but his acts were to grab him.

Q You saw him move with his hands? A Yes, I saw him move with his hands, but whether his hands went on him, or not, I couldn't say, but I know this young man ducked down between the two of them and got away.

Q And he got away? A Yes, sir.

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Q And he got away? A Yes, sir.

Q But you don't know whether or no any hand was laid on him? A I positively could not state that.

MR. BERSHAD: That is all.

J O H N M. C H A P M A N, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A Montclair, New Jersey.

Q Mr. Chapman, what is your occupation? A Commission merchant.

Q And your office is where? A Park Avenue and Fortieth Street.

Q On the 23rd of March, 1917, did you have in your employ as chauffeur a man named Alfred DeWeil? A Yes, sir.

Q How long had he worked for you? A About ten months.

Q At that time, what motor cars did you have? A I had a Cadillac Limousine and a Hupmobile touring car.

MR. BERSHAD: Pardon me. If the District Attorney will state what he wishes to prove by this witness, I will concede it - I presume it is what the chauffeur testified to - so we can save a good deal of time.

THE COURT: What does this gentleman know about the matter?

MR. BROTHERS: I will show that he went there, and the chauffeur was there. It is very short. It will only take

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five minutes.

THE COURT: I don't see how it is material.

MR. BROTHERS: Well, it is corroborative of Mr. DeWeil.

THE COURT: Well, there is no dispute that this automobile broke that pole.

MR. BROTHERS: Well, I don't know what dispute may arise later.

THE COURT: Well, will you concede that?

MR. BERSHAD: I will concede that he will so testify.

THE COURT: Put the concession on the record, then. What will he testify to?

MR. BROTHERS: Mr. Chapman will testify that on that day he owned this Cadillac limousine, that he received a telephone message, in the neighborhood of two o'clock, from DeWeil, that he went to Thirty-second Street and Lexington Avenue, where he saw his chauffeur, and found the car damaged, near this broken pole; that he had it towed away and subsequently repaired.

THE COURT: You will concede all that?

MR. BERSHAD: We will concede that, yes.

MR. BROTHERS: That is all, Mr. Chapman.

R O S E L E V I N E, being recalled, testified as follows:

CROSS) EXAMINATION BY MR. BERSHAD:

Q Mrs. Levine, of your own knowledge, you don't know how - I will withdraw that. I understood you to say that you

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testified that you did not see your husband either at Bellevue Hospital or at the morgue? A Yes, sir.

Q Is that right? A No, I didn't see him.

Q That the next time - I withdraw that. That you saw your husband on March 22nd? A 24th.

Q Did you see him on March 22nd? A Oh, yes.

Q 1917? A Yes, sir.

Q And did you see him on the morning of March 23rd, 1917? A No, I did not.

Q When did you last see your husband? A On March 22nd.

Q Out in New Brunswick? A In New York.

Q Where were you stopping with him? A With my parents then.

Q And when you next saw your husband you saw him at the chapel of the undertaker's? A I did.

Q And from the time that you saw him at your parents' home until the time that you saw him in the chapel you didn't lay eyes on him? A No, I did not.

MR. BERSHAD: That is all.

PATRICK McKEOGH, police officer, shield No. 6686 attached to Traffic C, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a member of the police force of this city, are you? A Yes, sir.

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Q Doing duty in the traffic squad? A Yes, sir.

Q And were you so engaged in March of last year? A I was temporarily assigned to the Manhattan Bridge, doing the late tour, for one week.

Q In the middle of that day, where were you? A I was at home; I got home that morning at 9 a. m.

Q Where was your home? A 124 East Thirty-second Street.

Q Is that near Lexington Avenue? A Yes, sir.

Q Was your attention called that afternoon to an automobile in collision with a post at Thirty-second Street and Lexington Avenue?

MR. BERSHAD: I object to the form of the question as calling for facts not within the knowledge of this witness.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q "Yes", or "no". A Yes, sir.

Q At that time, when you first heard that, where were you?

A I was in the southeast corner of Thirty-second Street and Lexington Avenue.

Q What place was that? A That was a saloon.

Q At that time you were off duty? A I was off duty, yes, sir, just got out of bed.

Q Were you dressed in your uniform? A Yes.

Q And how long had you been in the saloon? A I figure about three minutes, two or three minutes.

Q What, if anything, drew your attention to what had

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happened outside? A I heard a crash outside, and I didn't pay any attention to it, because I had been living in front of the car barns there, until somebody said there was a man knocked down.

Q Then you went out? A I went out.

MR. BERSHAD: I ask that that be stricken out.

THE COURT: What he heard said may be stricken out.

Q You waited a little while, and then some one spoke?

A Yes, sir.

Q And you went outside? A Yes, sir.

Q And when you got out on the street, what did you see?

A When I went out -

Q Don't state what any one said. A Some one called me and said, "McKeogh -"

Q Don't state anything anyone said. State what you saw with your eyes? A I seen a man knocked down across the street and I saw a man running down the block, on the north sidewalk, about two or three hundred feet away from me, going very fast. I ran after that man.

Q Before you chased this man, was your attention called to this person in any way? A Yes, sir, somebody said to me -

Q No, not what somebody said, but your attention was called to him? A That an accident had happened there, yes.

MR. BERSHAD: I ask that that be stricken out.

THE COURT: Yes, it will be stricken out as irresponsible.

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Q Your attention was called to the man who was running; is that right? A Yes, sir.

Q And then you ran after him? A I ran after him.

Q As you ran after him, what happened?

MR. BERSHAD: Just a moment, please. He has testified -
I withdraw the objection.

Q What happened as you ran after this man? A I closed in on him near Third Avenue, he was going very fast, and I was going very fast, and about 25 yards of Third Avenue I got tripped somehow or another, and I fell. He crossed the street to the south sidewalk and rebound on east across Third Avenue. I followed him as far as Second Avenue, calling to several pedestrians along the line to stop thief. I lost track of him at Thirty-second Street and Second Avenue.

Q What were you wearing upon your feet at that time? A A pair of slippers.

Q Before you took up the chase, did you observe an automobile standing there? A Yes, sir.

Q Where was it? A On the northwest corner of Thirty-second Street and Lexington Avenue.

Q And just where did it stand with reference to the street and sidewalk? A Well, I judge about a yard or on the cross-walk.

Q And what was the condition of that car? A Well, the condition I did not see, because I did not cross the avenue.

Q You did not cross. From where you were did you observe

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anything about the car? A No, sir, I didn't wait to observe any thing. I went after this man.

Q Did you notice anything about the electric light poles?

A I seen that knocked down and a man laying down.

Q How long were you gone from the corner of Lexington Avenue and Thirty-second Street? A Well, I would figure about half - between half an hour and an hour. I went to the station house before I came back.

Q When you did return to Thirty-second Street and Lexington Avenue, was the automobile there? A It was taken away.

Q Was the man who was upon the sidewalk still there? A He was taken away also.

Q He was taken away? A Yes, sir.

Q Will you give us what description you can of this man whom you were pursuing? A Well, he was about five feet five or six, round-shouldered, kind of stubby, wore a dark suit, dark hair, and I would figure his age to be in the twenties.

Q Did you get a view of his face? A Not his face, no, sir, I got no view of his face.

Q When you came back to Thirty-second Street, did you see a push-cart or a little wheeled wagon there? A I didn't come directly back, I was taken to the station house. I was attended in the Twenty-fifth Precinct by an ambulance.

Q You were injured? A Yes, sir.

Q Do you know this defendant? A No, sir.

Q Are you able to say whether or not you have ever seen

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him before today? A I saw him after his arrest, whichever detective arrested him, I seen him up in the District Attorney's office, in the Homicide Bureau, or in the Coroner's office, either one place or the other I have seen this young man.

Q Aren't you able to say whether or not you had ever seen him on other occasions? A No, sir.

MR. BROTHERS: That is all, Officer.

MR. BERSHAD: If your Honor pleases, shall I cross-examine the witness now? It is almost one o'clock.

THE COURT: Have you any cross-examination of him?

MR. BERSHAD: I beg your Honor's pardon?

THE COURT: Do you wish to cross-examine him?

MR. BERSHAD: I wish to ask some questions of him.

THE COURT: He doesn't identify the defendant. On what do you want to cross-examine him?

MR. BERSHAD: On the running and on the description.

THE COURT: Any questions you want to ask him, ask him now.

MR. BERSHAD: That is all, no questions.

THE COURT: No cross-examination?

MR. BERSHAD: Just one question.

CROSS EXAMINATION BY MR. BERSHAD:

Q You say this man was round shouldered that you were pursuing? A When a man is running it is pretty hard to tell. I was going fast, I was on my first speed, and from the way he ran he certainly must be round shouldered..

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Q He was stooping then? A Like he put all his pressure into his run.

Q And from the round shouldered position in which he was you should say that he was about five feet six? A Yes, about.

Q And if he had straightened out would you say he was taller? A Well, I would figure so; when a man is going on his speed he shortens up.

Q How much would you say? A That I wouldn't say.

Q Give us your best judgment? A Well, I figure a man could stretch, if he was standing up, could stretch maybe five or six inches, straight, standing still.

Q Would you say that man you were pursuing would be about five foot ten if he stood straight? A It depends. He may be a shorter man. He may be a high-heeled man, or short-boned. It depends on his muscles. It depends on medical science to answer that question.

Q He was a heavy man? A No, not heavy; about 140 pounds.

Q To you he looked to be 145 pounds? A I would say about, not directly, between 140 and 145, perhaps 130 to 145.

Q And you say he had dark hair? A From what I could see I figured it to be dark hair.

MR. BERSHAD: That is all.

THE COURT: (To the jury) Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you.

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We will take a recess until two o'clock.

(The Court then accordingly took a recess until two o'clock p. m.).

A F T E R R E C E S S

C H A R L E S R O S E N W A S S E R, called as a witness
on behalf of The People, being first duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Rosenwasser, where do you live? A 155 Newton Str.
Brooklyn

Q Newton Street, Brooklyn? A Yes, sir, Brooklyn.

Q And what is your employment? A I am a packer for the
Pyrene Company.

Q Where are they located? A 410 East Thirty-second Str.

Q Do you remember on the 23rd day of March, 1917, being
at the corner of Thirty-second Street and Lexington Avenue,
in this city? A I don't remember the date.

Q Did you see an automobile accident there? A Yes, I
seen an accident.

Q And you gave your name at that time to the police, did
you? A What is that?

Q You gave your name then to the police? A Yes, sir,
they got my name.

Q You testified before the Grand Jury in this case?

A Yes, sir.

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MR. BERSHAD: Wait a minute. I object to that, if the Court please.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

Q At that time, by whom were you employed? A At that time, by the New York Railways Company.

Q Have they any barn or station at that corner? A Yes, sir.

Q Which corner is it on? A On the west corner, Thirty-second Street and Lexington Avenue.

Q And is it on the upper, or lower, side? A On the uptown side of Thirty-second Street.

Q Did you see an automobile there? A Not when I passed the corner.

Q But you did finally see an automobile? A Yes, after the accident happened.

Q And where were you coming from at the time? A I was coming down Thirty-second Street, walking east on Thirty-second Street.

Q Where had you come from? A Just come down from Lexington Avenue, the car barns.

Q Where is the Madison Avenue car barns located? A Between Thirty-second and Thirty-third Streets.

Q And where were you going? A I was going down to the first aid room, down at Thirty-second Street.

Q Where is that located, the first aid place? A On the

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uptown side of Thirty-second Street, west side of the street.

Q West side of the avenue? A West side of the avenue.

Q As you came to that corner, was it your intention to go around the corner into this building? A Yes.

MR. BERSHAD: I object to what his intention was and ask that the answer be stricken out.

THE COURT: Objection overruled; motion denied.

MR. BERSHAD: I respectfully except.

Q You will have to speak loud, because it is noisy.

A I see.

Q As you came to the corner of that building, on the north west corner, what did you see happen in front of it? A I heard a smash.

Q Yes? A And I seen a man fall, and I seen a fellow run; that is all.

Q Well, now, did you see an automobile there? A Yes.

Q Where was this automobile when you first saw it? A After it hit the pole?

Q I didn't ask you when, but I am asking you where it was.

A On the sidewalk, half on the walk, on Thirty-second Street - on Lexington Avenue, I mean.

Q Did you see any persons there near the automobile?

A No, only the man laying on the ground.

Q What is that? A The man laying on the ground, that is the only man I seen.

Q Did you see that man before you heard the crash? A Yes

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sir, I did.

Q Where did you see him? A Seen him coming down Lexington Avenue, trying to cross the street.

Q On which side of the avenue was he? A On the west side of the avenue.

Q And how far away from the corner of Thirty-second Street?

A Right on this side of the pole; I couldn't judge just how far away from the corner.

Q And by "pole" you mean what pole? A That big Edison pole that the automobile hit.

Q The man was how far away from that pole? A When? Before he got hit?

Q When you first saw him. A When I first seen him, he was coming down the street.

Q How close or how far away was he from that post? A About from here to there, (indicating), two or three feet.

Q Two or three feet away from the pole? A Yes, sir, coming down Lexington Avenue, before he got hit.

Q At the time you saw the man, did you see the automobile? A No, sir, I did not.

Q And did you observe whether or not this man who was struck had anything with him? A I know he was shoving some cart, I know.

Q Did you see what became of that cart? A No, sir, I did not take notice of that.

Q Was that man at the time he was struck upon the side-

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walk, or upon the roadway of the street? A On the sidewalk.

Q And how close were you to this man when the crash came?

A Well, I should say about seven feet away from him.

Q What is that? A From here to there (indicating).

Q Indicate that again? A From here to there (indicating,) or a little further.

Q That is about three feet? A Say about five feet, I would judge.

Q About five feet away? A Five or six feet.

Q What happened to this man who fell down? A All I know, after I heard the smash, I seen the man lay there.

Q Did you see whether there was anything the matter with him? A Yes, I seen he was all ripped open.

Q Where was he ripped open? A Right around the tight, around here, (indicating).

Q You indicate what part? A His tight.

THE COURT: His thigh, he means.

THE WITNESS: His thigh.

THE COURT: Did you see whether it was the pole, or the automobile, that hit him?

THE WITNESS: No, sir, I couldn't judge.

Q What happened to the pole? A The pole was sort of split when I noticed it, the bottom up this way and the top ~~for~~ this way, like a triangle shape (indicating).

Q Did it come down? A No, sir, I didn't notice the top coming down. I think it was up there when I seen it last.

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Q How long did you stay there? A I stayed there at least twenty minutes.

Q Did you see anybody in this automobile? A No, sir; I seen the fellow after he got out of it.

Q Did you see him get out? A I see him after he made the run, after he jumped, after he jumped the car.

BY THE COURT:

Q Now, the automobile, did that stop at the pole? A Yes, sir, it was stopped right at the pole.

Q And where was the man lying in reference to the automobile? A The man was on the - the automobile on that side of the pole, and the man on this side of the pole (illustrating).

BY MR. BROTHERS:

Q The pole was between the automobile and the man? A Between the man and the automobile, yes, sir.

Q Did you see anybody jump out of this automobile? A Yes, sir, I seen that fellow jump.

Q And did you see where he went? A All I noticed, I seen him run down Thirty-second Street, the last I noticed of that man.

Q Toward what street did he run? A I seen him running down; I lost myself; I couldn't just judge.

Q You were somewhat upse t? A Yes, I lost myself altogether.

MR. BIRSHAD: I object to that, if the Court please.

THE COURT: What?

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MR. BERSHAD: The District Attorney asks the witness whether he was somewhat upset. I object to that, and ask that the answer be stricken out.

THE COURT: Objection overruled; motion denied.

MR. BERSHAD: I take an exception.

Q Tell us whether the man ran towards the west, or towards the east, in Thirty-second Street?

MR. BERSHAD: I object to it as already answered.

THE COURT: The objection is overruled.

MR. BERSHAD: I take an exception.

BY THE COURT:

Q Did he run toward Third Avenue, or toward Park Avenue? A He ran east on Thirty-second Street; that is the last I saw him.

BY MR. BROTHERS:

Q Did you get a view of his face? A No, sir.

Q Could you describe his appearance in any way? A No, sir, I couldn't; I don't think I could.

Q What, if anything, happened to the automobile? A How do you mean? I don't understand you.

Q Was it damaged in any way. A I didn't nother with that.

Q What? A I didn't notice that.

Q Didn't you see anything the matter with it? A Well, I judge it was smashed up, because it made an awful smash there.

Q Did you hear anynoise in addition to the smash? A No,

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sir, I heard one awful smash.

Q Did you notice anything about glass? A Yes, glass breaking, that was the wind-shield, I suppose.

Q Now, did you observe the man who left the automobile when he got over on the other side of Lexington Avenue?

A Yes, sir.

Q What happened over there on the east side? A Well, I think two men made an attempt to stop him, but I couldn't swear to that sure; I think they made an attempt to stop him.

Q Is it your best recollection that two men were near him when he was on that corner? Is that your best recollection?

MR. BERSHAD: Wait a minute. I object. That is not what the witness said.

THE COURT: Objection sustained.

Q Tell us your best recollection of what happened on the northeast corner? A What do you mean? When?

Q This man who ran across from the car, what is your best recollection of what happened over on the other corner?

A All I can remember at the present time, I imagine two men tried to stop him; that is all I can say.

Q That is your best recollection? A Yes, sir.

Q Did you know either the injured man or the man who ran away? A I noticed most the injured man lying on the ground.

Q Did you know him? A No, sir, never saw him before.

Q After the collision, did you again see this cart that the man had? A No, sir, I did not.

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Q Did you notice whether or not it was anywhere near the automobile after the collision? A I couldn't tell you; I don't recollect.

Q A crowd gathered there, did they? A Yes, after the smash a crowd gathered.

Q Could you say whether the man who ran from the automobile was young, or old? A Well, I wouldn't judge, because I couldn't get a good appearance at him, because I was sort of dizzy like.

Q Could you tell us how he was dressed? A I can only imagine so; I couldn't just make a guess at it.

Q We don't want anything but your recollection. A No, I couldn't say for sure how he was dressed.

Q Are you familiar with the sidewalk at that corner?
A Thirty-second Street and Lexington Avenue?

Q Yes. A Yes, sir, I am a little familiar with it.

Q Do you know whether there is a driveway there, where you can drive from the street into this corner building? A I think there is; I am not sure about that.

Q You are not sure? A No, sir.

MR. FROTHERS: That is all.

CROSS EXAMINATION BY MR. BERSHAD:

Q Mr. Rosenwasser, where were you working on that day?

A At the New York Railroad Company, as conductor.

Q Were you in uniform? A In uniform, yes, sir.

Q And where were you bound for? A I just got my swing;

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and I cut my finger, somehow, and I wanted to go to the first aid room on Thirty-second Street and Lexington Avenue.

Q To have your finger or your hand treated? A Yes, my finger was cut, and I wanted to get it fixed up.

Q About what time of the day was this? A I couldn't say. Something after my swing, on my lunch hour. I think between twelve and one.

Q And when did you have your hand cut? A On the trip coming up.

Q What time? A I couldn't say what time it was.

Q Had you had it bandaged up before? A Yes, sir, I had a handkerchief tied on it; I tied it on myself.

MR. BERSHAD: That is all.

MR. BROTHERS: I have another witness, but he is not here.

MR. BERSHAD: If the District Attorney will state what he expects to prove, I may concede it.

MR. BROTHERS: Mr. Bernard Fox, of No. 201 East Thirty-Sixth Street, your Honor, is the man for whom the deceased was working on that day, and I want to call him to testify to the fact that the deceased had with him a push-cart with plumbing materials and tools at that time, and that after the accident he secured it from that corner. That is merely on the question of the identity of the deceased. Mr. Fox so testified, I am informed, before the Industrial Commission, but I can't get him here, because he is out on a job, and his place is locked.

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THE COURT: Will you concede that?

MR. BERSHAD: If the District Attorney will state all the witnesses he has, I will concede, for the purposes of expediting the People's case, where they can't get the witness; I want to save time; if you will take it ^{as to} all the witnesses, I will do it.

THE COURT: He might want the jury to see some of the witnesses, but we will take the witnesses as they come. What other witnesses have you, Mr. Brothers, besides Mr. Fox?

MR. BROTHERS: That is all.

THE COURT: Fox is the only one?

MR. BROTHERS: He is the only witness remaining.

THE COURT: Will you concede his testimony?

MR. BERSHAD: I will concede that the witness will testify that a man by the name of Irving Levine worked for him, and I will concede that he will testify that he obtained a push-cart at Thirty-second Street and Lexington Avenue.

MR. BROTHERS: Well, that does not help me in the least.

THE COURT: What he wants to prove by him is that Irving Levine left his store that day with a push cart.

MR. BERSHAD: I will concede that a man by the name of Irving Levine left his store with a push cart.

THE COURT: That Irving Levine was in the employ of the witness, that he left the store with a push cart and

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tools, and that later in the day Mr. Fox recovered the same push cart and tools at where?

MR. BROTHERS: At Thirty-second Street and Lexington avenue, so I am informed. The push cart belonged to a news dealer, and the materials belonged to Mr. Fox. When the man went there this morning to subpoena Mr. Fox, he found the office locked and Mr. Fox out on a job, and he left word to bring him here immediately.

THE COURT: Why didn't you subpoena him yesterday?

MR. BROTHERS: This situation did not arise until late last night. We haven't Fox's home address. We only have his shop address.

MR. BERSHAD: I will concede that he will testify that a man named Irving Levine worked for him -

THE COURT: Either you will concede what the District Attorney asks, or I will give him an opportunity to get the witness here.

MR. BERSHAD: Not in the way he states it.

THE COURT: Then, I will grant him an adjournment, and in the meantime, you can open your case and proceed, subject to calling this witness.

MR. BERSHAD: I will make the concession as requested by the District Attorney.

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MR. BERSHAD: If your Honor please, I move to dismiss the indictment, on the ground the People have failed to prove that this defendant has committed - in the first count, alleging the larceny of the automobile, on the ground ~~it~~^{there} is absolutely no evidence here -

THE COURT: There is no such count in this indictment. That is in a separate indictment.

MR. BERSHAD: The second count, I move to dismiss the indictment, the second count, alleging the larceny of the automobile.

THE COURT: There is not any larceny charge in the indictment we are now trying. We are trying the manslaughter indictment. There are two indictments, but we are only trying one of them.

MR. BERSHAD: I understand, if your Honor please -

THE COURT: You can't try a man on two indictments at once.

MR. BERSHAD: Then I understand that is disposed of?

THE COURT: What?

MR. BERSHAD: Do I understand, if your Honor please, that the District Attorney has proceeded only on the indictment for manslaughter?

THE COURT: Yes; you can't try a man on two indictments at once, at the same trial.

MR. BERSHAD: I move to dismiss the indictment against this defendant as charged in the indictment, for the reason

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that there is no evidence here to connect this defendant with the commission of the crime charged in the indictment. It appears from the witnesses produced by the People, that there has been no identification of the defendant at the bar with the person who drove and operated the automobile as charged in the indictment.

THE COURT: The witness Graf identified him.

MR. BERSHAD: The testimony, if the Court please, of Graf, as I recall it, is very vague and indefinite, and does not identify this witness in such a manner that would warrant this Court in sending the case to the jury on that evidence. He is uncertain, his description of him is vague, the description of the person to whom he talked he said was a man who at that time weighed around 145 pounds. He identifies, or attempted to identify, the person with whom he talked as having light hair and heavy, and he subsequently changed that, and I respectfully urge, if your Honor please, that there is no such evidence as is required under the law for identification, the defendant being charged with a crime of this nature.

THE COURT: I will leave it to the jury as a question of fact and deny your motion.

MR. BERSHAD: I respectfully except. I ask your Honor to dismiss the indictment, on the ground there is not legal competent evidence here to connect this de-

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fendant with the commission of the crime charged in the indictment.

THE COURT: Motion denied.

MR. BERSHAD: I respectfully except. If the Court please, I have several character witnesses. I did not anticipate they would finish today.

THE COURT: I thought you were just putting these concessions on the record so we could get through today.

MR. BERSHAD: I didn't anticipate, I will state to your Honor, from what I understood from the District Attorney, having any witnesses. Have you any witnesses?

MR. BROTHERS: No other witnesses.

THE COURT: Well, maybe the district attorney will concede their testimony, if that satisfies you.

MR. BROTHERS: Well, I don't know anything about their testimony.

THE COURT: He says they will testify as to the defendant's previous good character for peace and quiet.

MR. BROTHERS: I don't feel that I should concede any testimony on that score in a case of this kind, where we don't even see the witnesses, and counsel has been speaking ever since he opened this case this morning that he wanted to finish this case today, and I told him I would help him if I could. He certainly ought to have his witnesses here.

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MR. BERSHAD: I have done everything I possibly could. You know that. I have made every concession that I reasonably could.

THE COURT: Well, I don't see why the witnesses were not summoned, but, at the same time, in a case of this seriousness, I am not going to force the defendant to go to the jury without his witnesses.

MR. BROTHERS: Can't you get them here in half an hour - telephone to them?

MR. BERSHAD: I have some letters here, recommendations. I understand the District Attorney won't have them read in. I therefore will respectfully have to ask your Honor to let it go off.

THE COURT: All right. Gentlemen of the jury, as I said, I am unwilling to force the defendant to go to the jury without calling such witnesses as he may have, though they ought to have been here today, but they are not; therefore, I shall excuse you until Monday morning at ten-thirty, and meanwhile, do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you.

(The Court then accordingly took a recess until Monday, April 8, 1918, at 10:30 o'clock a. m.).

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