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COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York.

-----X  
THE PEOPLE,

VS.

LEOPOLD WISBE, Indicted with  
Another.  
-----X

Indictment filed the 29th day of January, 1903.

Indicted for Manslaughter in the First Degree.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY JAMES R.  
ELY.

For the Defendant, MR. L. F. CHANLER, and MR. COHEN.

Tried before John W. Goff, R., and a jury, on the  
24th day of April, 1903, etc.

A jury was duly impaneled and sworn.

Thomas W. Osborne,  
Official Stenographer.

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GEORGE MILLER McKEE, M. D., called as a witness in behalf of the People, being duly sworn and examined.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2:15.

AFTER RECESS.

PHILIP P. O'HANLON, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A I am a physician.

Q For how many years have you been a physician? A Since 1886.

Q Are you duly licensed to practice under the law of the State of New York? A I am.

Q Were you duly admitted and licensed to practice on the 9th day of September and thereafter, 1902? A Yes, sir.

Q Have you any official connection? A I have.

Q What is it? A Coroner's physician for Borough of Manhattan and City of New York.

Q Did you have such official connection on and after the

9th of September, 1902? A I did.

Q On the 11th day of September, 1902, in the City and County of New York, did you perform an autopsy on the body of a woman? A I did.

Q And did you know who the woman was whose body you performed this autopsy upon? A I did.

Q Whose body was it? A I forget the name.

Q Agnes Lynch? A Agnes Lynch, it was identified by her sister Olivia Lynch.

Q Did you perform an autopsy upon her body on the day--  
A September 10th.

BY THE COURT:

Q You say this body was identified by a young lady?

A This body was identified by the sister of the deceased.

Q Would you recognize the sister if you saw her? A I think I might.

Q The person who identified her? A Yes, sir.

MR. CHANLER: There is no question about the party upon which the autopsy was performed.

THE COURT: Then, it is conceded by learned counsel for the defendant that the person named in the indictment as Agnes Lynch was the person upon whose body the autopsy was performed by the witness.

MR. CHANLER: That is correct, sir.

BY MR. ELY:



Q What in course of the autopsy that was performed by you did you discover? A I discovered the cause of death.

Q What was the cause of death? A Sepsis, following abortion.

Q Sepsis? A General sepsis, blood poisoning following abortion.

Q Was abortion the cause of the death? A It was.

CROSS EXAMINATION BY MR. CHANLER:

Q Was there any evidence of what is known as instrumental delivery? A There was not.

Q Explain what that is? A The instrumental delivery, or the instrumental interference with a woman in childbirth is brought about by inserting into the neck of the womb a dilator, forceps, and dilating the cavity of the canal and packing the inside of the uterus with gauze or putting in tents or some other means, or such other instrument or substance which will make the uterus contract upon itself, and in that way expell the contents of the uterus.

BY MR. ELY:

Q You say there was blood poisoning? A Yes, sir.

Q And does not that ordinarily follow as-- does not that ordinarily follow from the use of instruments in such cases?

A Instruments-- there was no evidence in this case that instruments had been used.

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Q I did not ask you that question? A Does it always?

No.

Q I did not say always.

(Question repeated.)

MR. CHAMLER: I object, upon the ground that Mr Ely is cross examining his own witness.

Objection sustained.

THE COURT: Make your question more specific,

Mr Ely.

BY MR. ELY:

Q Does not blood poisoning ordinarily follow in a case where instruments have been used for the procurement of an abortion? A No.

Q It does sometimes? A Yes, sir.

Q Does the length of time which has elapsed between the time when the abortion was performed and when the autopsy is made, make a difference as to whether or not you can discover the cause of the abortion? A It depends entirely upon the infection.

GEORGE H. MCKEE, resumes the stand.

DIRECT EXAMINATION BY MR. ELY:

Q You are a physician and surgeon? A I am.

Q And you are duly admitted and licensed to practice under

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the laws of the State of New York? A Yes, sir.

Q Where is your office? A 119 West 21st Street.

Q How long have you been located there? A About two and one half years.

Q How long have you been admitted to practice? A About five or six years.

Q What if any institutions have you been connected with?  
A Connected with Bellevue Hospital for three years and Passaic General Hospital one year; the Demilt Dispensary for one year.

Q Did you know Agnes Lynch in her lifetime? A I did.

Q When did you first see Agnes Lynch in her lifetime, as far as you recollect? A I saw her for the first time on Tuesday morning at about eight o'clock, the week following Labor Day, second week in September, 1902.

Q That was on the 9th of September? A Yes, sir, it would be about the 9th.

Q 1902? A Yes.

Q Where did you see Agnes Lynch on the 9th of September, 1902? A West 23rd Street near Ninth Avenue.

Q 364 West 23rd Street? A Yes, sir.

Q That is in the City and County of New York? A Yes, sir.

Q What if anything did you do when you saw Agnes Lynch at 364 West 23rd Street in the City and County of New York on the 9th of September, 1902? A I make a diagnosis of her disease.

Q And what did you find by reason of this diagnosis?

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A I found her suffering from septic peritonitis, general peritonitis.

Q Who if anybody was present, if you recollect, when you saw the patient Agnes Lynch at 364 West 23rd Street in the City and County of New York on the 9th of September, 1902? A Her sister Olivia Lynch.

Q Could you tell from the diagnosis in the examination you made of Agnes Lynch on this occasion, as to what the general septic peritonitis that you have mentioned, as finding her suffering with, came from? A Yes, sir. I satisfied myself as to that.

Q What was it? A Abortion.

Q From an abortion? A Yes, sir.

Q What did you do? A I only-- I gave her a hypodermic injection of morphine.

Q Did you see her again on that day, the 9th-- this is still the 9th of September? A I think I saw her that night, after she had been removed to 52nd Street.

Q To 50th Street? A 50th Street, yes.

Q 52nd Street, you are right, excuse me, 300 West 52nd Street in the County of New York? A Yes, sir.

Q Did you observe her condition on that occasion? A I remember very little about that evening visit.

Q I know, but did you observe her condition upon that occasion, did you make an examination of her there? A Oh, yes.

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yes, I made a very thorough examination then.

Q With what if any-- did you make an instrumental examination? A Yes, sir, I did.

Q What with? A I only used a speculum, that is simply an instrument to allow you to see, that is all.

Q And as the result of what you described as a very thorough examination on the evening of the 9th of September, 1902, at 300 West 52nd Street, in New York County, on the person of Agnes Lynch, what did you find? A I confirmed by previous diagnosis that she was suffering from Blood Poisoning, otherwise, septic peritonitis following an abortion.

Q Do you recollect who if anybody was present then-- before we get on further, just describe what you did when you made this examination and what condition you found the womb in at that time? A The womb was large, very much enlarged; it was soft and flabby; the mouth of the womb was open; there was a sanguineous-- in other words, a bloody mucous purulent discharge exuding through the mouth of the womb, from the womb itself.

Q What did you do? A I just cleansed that secretion out, and that is all I did locally, and then I gave her stimulents and more morphine.

Q This was on the evening of the 9th of September?

A Yes, sir, that was in the evening.

Q Did you notice her finger nails? A Her finger nails

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were cyanosis-- blue-- her lips were also blue.

Q From your experience as a physician, do you know what this condition you speak of, namely, her finger nails being blue and her lips being blue, was a symptom of? A Symptom of very poor circulation.

Q Is that one of the results of blood poisoning? A Yes, sir.

Q Septic peritonitis, I believe you said? A Yes, sir.

Q You say, this second examination of yours confirmed your first examination and made you positive this was an abortion? A Yes, sir.

Q That she was suffering from at this time? A Yes, sir.

Q From your examination of the womb and from the condition of the patient, are you able to say how long, in your opinion, the patient Agnes Lynch had been in this condition? A About two and a half or three months.

Q And what condition was that she had been in for two and a half or three months perhaps? A Pregnancy.

Q Did you see the patient Agnes Lynch, again, after the evening of the 9th of September? A I saw her on the following morning.

Q From your examination of the condition of the patient and from your examination of the womb of the patient, can you state how long prior to the 9th of September, 1902, this abor-



tion from which she was suffering, had been performed? A I cannot state it positively.

Q How long in your opinion, from your experience, and from the evidence that you observed in the condition of this patient, should you say-- how long before the 9th should you say, the abortion had been performed? A Well, about a week.

Q Can you say that the septic peritonitis had-- how long prior to the 9th of September, 1902, can you say that septic peritonitis--

THE COURT: Ask him in his opinion, how long before.

BY MR. ELY:

Q In your opinion, how long before the 9th of September, 1902, had septic peritonitis set in, should you say? A Well, the septic peritonitis probably set in about three days before the day I saw her, which I presume was the 9th.

Q How long after an abortion does septic peritonitis set in, according to your experience?

Objected to.

THE COURT: I sustain the objection to that question.

BY MR. ELY:

Q In your opinion are you able to say how long after an abortion has been performed, septic peritonitis usually sets in?

A Yes, sir.

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Q About how long after the abortion? A Usually from three to ten days-- usually three days. I will eliminate the ten days.

Q You say you saw the patient Agnes Lynch again on the morning of the 10th of September, 1902? A Yes, sir.

Q About what hour in the morning, if you recollect, did you see her? A About eight o'clock.

Q Do you remember who were present when you saw her, her being the patient Agnes Lynch? A Her sister Olivia Lynch, the nurse, Miss Townsend, and Mrs Mackie or McKay.

Q Miss Townsend, Olivia Lynch and who else-- anybody that you can recollect? A There were other people there but I don't know who they were.

(Two women are now brought into the court room.)

BY MR. ELY:

Q Are these the two ladies whom you have referred as Miss Florence Mackie and Miss Olivia Lynch? A Yes, sir.

Q Which is Mrs Mackie? A The one on this side (indicating).

Q The stouter one of the two? A Yes, sir.

Q The taller and stouter one of the two with the dark hair is Mrs Mackie? A Yes, sir.

Q And the other is Olivia Lynch? A Yes, sir.

Q And the two ladies who just came in are the two ladies you testify were present on the 10th of September, 1902, at 300

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West 52nd Street in the County of New York when you saw the patient Agnes Lynch? A Yes, sir.

Q You say that was about eight o'clock you saw the patient Agnes Lynch? A I did.

Q Did you notice her condition? A I did.

Q Did you examine her? A Superficial examination.

Q In what condition did you find her? A I found her in a very poor condition, in a state of prostration, the hands and feet were cyanosis, the respiration labored and rapid; the pulse so rapid I could not count it at all.

Q Did you observe her face? A There was a drawn anxious appearance to the countenance; her face was extremely pale; the lips were blue.

Q Can you say what in your opinion these various symptoms that you have described indicated, if anything? A Indicated very quick death.

Q And this was at eight? A That was at eight o'clock.

Q How long did you remain there? A I remained there until she died, at ten o'clock.

Q And Agnes Lynch died at ten o'clock? A I think so.

Q About, on the morning of the 10th of September, 1902? A Yes, sir. That is right.

Q At the premises 300 West 52nd Street in the County of New York? A Yes, sir, correct.

Q Did you say anything to Agnes Lynch that morning?

A Yes, sir.

Q Did she say anything to you? A Yes, sir.

Q What did she say?

MR. CHAWLER: I object.

THE COURT: How can that become competent, what Agnes Lynch said to this witness?

MR. ELY: The testimony is that the Doctor saw her there and she had all the symptoms of very swiftly approaching death and that at ten o'clock she died.

THE COURT: How long before?

MR. ELY: Eight o'clock.

THE COURT: Eight o'clock on the same day?

MR. ELY: On the morning of the 10th of September, 1902, and at ten o'clock on the morning of September 10th, 1902, she died.

THE COURT: I cannot see how the testimony is competent. It is hearsay.

BY MR. ELY:

Q Did you say anything to Agnes Lynch when you went there on the morning of September 10th, 1902, touching her condition?

MR. CHAWLER: I object, unless it is in regard to a condition of imminent death.

BY MR. ELY:

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Q Did you say anything to Agnes Lynch when you went there on the morning of the 10th of September, 1908, touching her condition, as to her condition of imminent death? A I did.

Q Did she say anything to you in reply? A She did not, as I remember it.

Q What did you say to her about her condition relative to imminent death?

Objected to.

Objection overruled.

MR. CHANLER: My objection is that the deceased having made no reply, the question cannot become competent.

THE COURT: That does not preclude the prosecution from showing the condition of mind that may have been produced in the deceased by the statement of the Doctor.

THE WITNESS: I cannot recall the exact words.

BY MR. HLY:

Q State as nearly as you can what you said to her, in the exact words, or as nearly as you can approximately the exact words.

Same objection.

THE COURT: Give the substance if you cannot remember the exact words.

A I simply told her in substance that I had given up all hope.

BY MR. ELY:

Q All hope of what? A Of her living.

Q Did she then ask you any questions or make any statement after you had made that communication to her?

Objected to.

Objection overruled.

Exception.

A Well, I do not recall what she said after that. She may have said a good many things to me.

Q Don't you recall anything she said to you? A I recall one thing she said to me, yes.

Q What is that?

MR. CHAMBER: I object unless it was in reference to impending death.

THE COURT: Yes, in reference to what he had told her.

THE WITNESS: I recall nothing that would relate to that.

BY MR. ELY:

not

Q Was anything said to you by her in response, about any operation, after or at the time you made the communication to her about which you have testified?

Objected to, unless it appears first that the deceased was in fear of approaching death.

Objection sustained.

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THE COURT: I presume, Mr District Attorney, that you seek to introduce evidence of what is commonly known as a dying declaration?

MR. ELY: Yes.

THE COURT: You must show as preliminary for the introduction of such testimony, the condition of the deceased person, insofar as she believed it to be at that time, after hearing what the Doctor said to her.

BY MR. ELY:

Q At this time, that you made the statement to her that you have spoken of, did the deceased ask you any question touching her condition? A She asked me questions--

MR. CHANLER: Yes or no.

Q At or about? A Yes, sir.

Q What was it?

MR. CHANLER: I object unless it was as to her condition of living or dying.

THE COURT: I will overrule the objection.

MR. CHANLER: I ask that the witness be instructed to confine to his answer to any words with the deceased which went to the question of her belief or disbelief in impending death; any statement she may have made about her other condition cannot be competent.

THE COURT: I think the meaning of the question is very clear.

MR. CHAILER: I except.

THE WITNESS: I did not mean to answer that way.

I meant to answer--

BY MR. ELY:

Q What was it? A I understood you to use the plural term, questions.

THE COURT: There is no question yet.

BY MR. ELY:

Q You say that the deceased asked a you questions just prior or at the time that you made the communication to her that you have testified to touching her condition; now I ask you what those questions were that she asked you?

Objected to.

Objection overruled.

Exception.

A She questioned me at great length but I cannot recall any of the questions that she asked me. She asked me a great many.

BY MR. ELY:

Q What did she say? A I don't know or I would tell you. I don't recall the conversation I had with her.

Q Don't you remember the substance of the questions?

A Yes, sir.

Q What was it? A She asked me if she was going to die. The substance of the questions--

Objected to.

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Objection overruled.

Exception.

BY MR. ELY:

Q Then you made the statement to her?

Objected to.

Objection sustained.

BY MR. ELY:

Q After that, you made the statement to her that you have testified to?

BY THE COURT:

Q What did you say in answer to her questions? A I don't know what I said only in substance.

BY MR. ELY:

Q What in substance? A I told her, as I have already told you-- I have answered the question-- that I had given up all hope of her living.

Q Then did she say anything further to you after you had made that statement to her? A Yes, sir; she talked to me for about half an hour after that.

Q What did she say, and if you don't remember the exact words of the conversation I want the substance of what she said to you then?

Objected to.

MR. ELY: Touching the cause of death.

MR. CHANLER: I object.

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THE COURT: Not touching the cause of death. I will exclude that form of question.

BY MR. ELY:

Q What did she say? A Touching death?

BY THE COURT:

Q What did she say in substance? A She said a great deal but I don't-- well, she made a dying statement to me.

BY MR. ELY:

Q What was the dying statement?

THE COURT: I exclude the answer of the witness and direct it to be stricken out.

BY MR. ELY:

Q What did she say?

Objected to.

Objection overruled.

Exception.

A I don't know just what you<sup>are</sup> after--what you want me to say

BY MR. ELY:

Q I want you to tell me what the deceased said to you at the time in question that I have been referring to? A About her death?

Q The whole conversation that you had with her at this time according to your best recollection of it-- in the words that were given, and if not, the substance?

MR. CHAMBER: I object upon the ground that the

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ground that the District Attorney now calls for all the conversation and your Honor only admitted part.

Objection overruled.

Exception.

THE WITNESS: Well, the substance of that conversation I don't care to give unless I am compelled to by the Court.

R. ELY: I ask your Honor to direct the witness to answer, or that you will hear the witness's statement yourself and then decide.

THE COURT: Have you any objection to that proposition of the prosecution, Mr Chanler?

MR. CHANLER: I would like you to hear the witness's statement very much.

THE COURT: You consent that I shall hear it before he testifies to it?

MR. CHANLER: Yes, and am very glad to.

BY THE COURT:

Q After you said to the deceased that you had given up all hope that she was going to live or that she would live, did she say anything to you in respect to her appreciation of her then condition? A She did not.

THE COURT: Now, Mr District Attorney, put your question.

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BY MR. ELY:

Q After you had made the statement to her as to her condition, did you have any further conversation with her? A I did.

Q What did you say to her and what did she say to you?

Objected to.

MR. ELY: Now, if your Honor please, it appears to me that the conversation this deceased had with this witness, after she had been informed of her condition by him, a medical expert, and after she had been requesting information of him on the subject of life and death, and having been informed by him what her condition was, that she was about to die, that the statements or conversation that were had between the deceased and the Doctor are relevant and competent and should be admitted, and furthermore, in addition to the fact that the deceased had asked about her then condition, had been told that she had but a short time to live, the testimony shows that all the symptoms pointed to approaching dissolution and that dissolution or death did occur at ten o'clock on the morning of that day.

THE WITNESS: Can I speak to the Court again?

THE COURT: Have you any objection, gentlemen?

The Doctor wants to speak to me in private.

MR. CHANLER: No, sir, no objection at all.



MR. ELY: No objection.

THE COURT: Now I will hear you upon the admissibility of an answer to this question. So far, it appears from the testimony of the Doctor that the deceased had not said anything to him regarding her own knowledge or belief as to her condition; in other words, that she had not expressed to him her belief that she was about to die or that she had given up all hope of recovery. The question presents itself upon this proposition: Is it admissible to introduce in evidence what is called a dying declaration made after a physician announces to his patient his abandonment of all hope of recovery of the patient, without the patient saying anything as to his own condition of mind. I apprehend that is the question right at the threshold.

MR. ELY: Yes, but, if your honor please, I think that from the questions that this witness has stated were propounded to him by the deceased before the reply he gave to her to the effect that her end was about to occur, showed the comprehension and the belief that the deceased had of her approaching end.

THE COURT: You contend it is sufficient to show imparting of the knowledge by the physician to the patient that the patient has no hope of recovery, that

that of itself lays a sufficient foundation to admit what is called a dying declaration, without the patient expressing his or her belief as to his or her condition?

MR. ELY: Yes.

THE COURT: I am inclined to the opinion that the foundation is not sufficiently laid.

BY MR. ELY:

Q After you made the statement to the deceased that you have testified to relative to her then speedy dissolution or death, did you hear the deceased say anything about dying?

A I did not.

BY THE COURT:

Q In your hearing to any person? A No; I heard her say nothing about dying after the talk.

BY MR. ELY:

Q Did you hear her say anything about a present expectation of death entertained by her? A I did not.

Q Did you hear any communication that was made by her to Olivia Lynch? A I did not.

Q Immediately after or about the time that you told her that she had but a short time to live, after you observed these symptoms, what did she say, in your presence? A I answered that question. I told you I couldn't remember anything she said.

Objected to.

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THE COURT: I sustain the objection to that question, unless you frame your question in such a way as to elicit from the witness if what she said was in response to the Doctor's observation touching her approaching death, or the probability she would not recover, in substance. In other words, I am of opinion that the law requires that there must be some words or acts by the dying person which would go to the jury to indicate a sense of approaching death and an abandonment of all hope of recovery, and if such testimony be given, then there is sufficient proper foundation laid to admit testimony regarding the declaration.

BY MR. ELY:

Q After you had made the statement to her relative to her approaching death, did she say anything to you or in your presence or within your hearing regarding her then belief as to her approaching end? A No, she did not.

Q Did she say anything to you or in your presence or within your hearing as to her condition?

Objected to.

Objection overruled.

THE COURT: As to her then condition,

MR. ELY: Yes.

don't  
THE WITNESS: I remember of her saying anything regarding her condition.

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BY MR. ELY:

Q What do you mean, that you don't remember the words?

A No, but at the time I couldn't tell you and I cannot tell-- in fact, never been able to tell whether she appreciated what I told her and appreciated her condition or not.

Q She was delirious? A She was not delirious, no, at the time.

Q What? A At the time not delirious.

Q There was no symptom which you observed which in your opinion as a physician would indicate that she was unconscious or could not understand?

MR. CHAMBER: I object. The District Attorney is examining his own witness.

Objection overruled. Exception.

A She was not unconscious and she was not delirious, positively.

BY MR. ELY:

Q Then I repeat my question? A Then I give you the same answer.

Q (Question repeated.) A I don't remember of her saying anything. If she did I don't remember what she said.

Q Now, Doctor, for the purpose of refreshing your recollection, your memory, I will ask you whether or not-- I ask you this question, do you remember on the 15th of April, 1903, having this question propounded to you--

MR. CHAMBER: I object.

Objection sustained.

THE COURT: You have not shown that this witness's memory has been exhausted.

BY THE COURT:

Q Was that last answer in reference to her appreciation of her condition that you just made, or any expression regarding her then condition? A Well, as I remember that answer it was that I don't remember anything she said-- yes, I think that is right.

BY MR. ELY:

Q Can you state whether or not from the statements that the deceased made then, then being after you had informed her of her rapidly approaching end, that either by acts or words the deceased showed an appreciation of her approaching end? A I will have to give the same answer I did before, that she showed no appreciation that I could discover. At least, I don't remember her showing any appreciation.

Q Do you remember whether or not you ever stated that you made the deceased Agnes Lynch understand that she was going to die? A Yes, I remember that.

Q You remember that you did so state? A In substance, yes.

Q At about the time that you say that you made Agnes Lynch understand that she was going to die, did Agnes Lynch say anything?

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Objected to.

Objection sustained.

BY MR. ELY:

Q Did you at that time make Agnes Lynch understand that she was going to die?

Objected to as a conclusion.

THE COURT: I sustain the objection. You may ask the witness if he said anything or did anything in addition to what he has already testified relative to what he believed to be her approaching death.

THE COURT: Answer that question yes or no.

THE WITNESS: No.

BY MR. ELY:

Q Was a priest called in? A He was.

Q About how long after you had told Agnes Lynch that she was about to die was the priest called in? A About one half hour.

Q Do you know of what Agnes Lynch died? A Of course I do.

Q Yes or no? A Yes.

Q And from what did she die? A She died from blood poisoning.

Q Septic peritonitis? A Yes, sir.

Q What did the blood poisoning result from? A An abortion.



Q From an abortion? A From an abortion.

Q Could you say from your examination and your experience in what method the abortion had been brought about?

Objected to.

THE COURT: Strike out the word "experience". I sustain the objection to that part of the question.

BY MR. ELY:

Q From your examination were you in a position to express an opinion as to how the abortion was performed? A No, I couldn't express any opinion.

Q As to whether it was the result of drugs or instruments? A No, I could not.

CROSS EXAMINATION BY MR. CHAMLER:

Q You have testified that in your opinion the septic condition which caused the death was the result of an abortion, is that right? A I state that positively.

Q You state that positively? A Yes, sir.

Q When did you become positive upon that point? A I have been positive all along, ever since the first day when I saw her.

Q Since you first saw her on Monday? A Since I made my thorough examination, yes.

Q Since you made the thorough examination in 23rd Street or 52nd Street? A 52nd Street.

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Q Not since you first saw her? A Well, no.

Q Now, Doctor, would you say that the abortion which in your opinion took place, resulted in septic poisoning or peritonitis? A I would.

Q You say so positively? A I do.

Q Do you remember this question being put to you and this answer being made by you in the Coroner's Court in the case of the inquiry into the death of this girl last September-- you were in the Coroner's Court? A I was.

Q You were examined as a witness? A Yes, sir.

Q "Are you positive that this abortion that you say took place resulted in septic poisoning? A. I am not positive, no?"

A What is the question?

Q I asked you if this question was put to you and this answer made by you in the Coroner's Court last September in the examination into this girl's death, "Are you positive that this abortion that you say took place resulted in septic poisoning or peritonitis", and did you make this answer, "I am not positive, no?" A If I said that I misunderstood the question.

Q "Then you are not positive? A. I am not positive, no?"

A I don't remember the question being put in that way. I certainly must have misunderstood it, because I am positive of what I state now.

Q You say that the examination which you made of this

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unfortunate girl in 52nd Street satisfied you of that fact among other things; now, tell me what examination if any you made of the womb of this girl in 52nd Street or anywhere? A Why, yes, through a speculum I could see the womb with my eyes.

Q Did you make any other examination of the womb? A No, that is the only examination I made.

Q I ask you if this question was put to you and this answer made by you in the Coroner's Court, and, to direct your attention to it I will ask first two questions as preliminary, to make it intelligent, "By Mr Chadwick: Q. In this particular case could it be due to any other cause? A. In this particular case I should say not. Q. Why not? A. Well, from the examination of the womb". Now, this is what I want to call your attention to, "Q. Did you make an examination? A. I did. Q. When you made that examination what did you do? A. I simply examined with my hand"-- was that question put to you and did you make that answer in the Coroner's Court, "When you made that examination what did you do? A. I simply examined with my hand"?

MR. ELY: I object. It does not in any way contradict the testimony that is now introduced here.

THE COURT: I will allow the Doctor to answer the question and overrule the objection.

THE WITNESS: I do not recollect that answer and

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do not recollect the question but if that is the written document written in the court, it must be so, that is all.

MR. ELY: I object to the last part of the answer.

THE COURT: Strike out commencing with the word "but if that is the written document &c."

BY MR. CHANLER:

Q What was the condition of the womb when you examined it?

A I stated that already. A The womb was large, very much enlarged.

Q I mean the condition of its internally? A I cannot see the internal parts of the womb.

BY MR. ELY:

Q Can an abortion be produced by a soft catheter?

Objected to.

MR. ELY: I do not care anything about it specially.

Objection sustained.

THE COURT: Have you finished with the Doctor, Mr District Attorney?

MR. ELY: I have, unless it becomes necessary to recall him on a certain point touching the dying declaration. It may arise later in the trial and if so, on that point I should like to recall him. At

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the present I have finished.

THE 2ND JUROR: I would like to ask a question.

THE COURT: What is the question?

THE 2ND JUROR: I would like to ask if on his first visit to the patient there was not something he could have done toward curing the patient instead of just giving her morphine to relieve the pain?

THE COURT: I will allow the question.

THE WITNESS: Yes, there is a great deal could have been done but it could not have been done in the room and I advised them to take her to the hospital and they would not do it and then I advised them to take her to her sister's home where there was more room, and then I did all that was necessary then.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until Monday Morning, April 27th, 1903, at 10:30.

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April 27, 1903.

TRIAL RESUMED.

Rev. J O H N B. M O C U E, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Catholic priest.

Q Were you such on the 10th day of September, 1902?

A I was.

Q On the 10th day of September, 1902, in the morning, do you remember receiving a call? A I cannot say as to the date.

Q Do you remember that early in September, 1902, you did receive a call? A Many a call.

THE COURT: Call the gentleman's attention to the place and to the individual.

BY THE COURT:

Q With what church are you connected? A The Sacred Heart Church, West 51st street.

BY MR. ELY:

Q About 9th avenue? A Between 9th and 10th avenues.

BY MR. ELY:

Q Did you go to 300 West 52nd street in the early part of September, 1902? A I don't just remember the number; it

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was on the corner of 52nd street and 8th avenue.

(A lady has just been brought into Court in response to the District Attorney's request, that Olivia Lynch be called.

BY MR. ELY:

Q On the morning in September that you went to this place on West 52nd street, did you see that lady there?

A I did, yes, sir (indicating the person just brought into the room by the name of Olivia Lynch).

Q That lady there is Miss Olivia Lynch?

MR. CHANIER: We admit this is---

BY MR. ELY:

Q Did you see anybody there other than Olivia Lynch?

A Yes, sir, I saw two other ladies and a young man.

Q Do you see the young man now in Court that you saw at that time? A That is the young man.

(Witness indicates Dr. McKee).

BY MR. ELY:

Q And did you see anybody in bed? A The person I went to attend.

Q Did that person confess to you? A Made a confession, yes.

Q What, if anything, did you do after she had made her confession? A I administered all the rites of the church, which means confession, gave her holy viaticum and anointed

her.

Q The anointing is the application of extreme unction?

A Oils-- extreme unction, that is what anointing means.

Q Under what circumstances are the last rites of the church administered to its members?

THE COURT: What were the circumstances in this case.

THE WITNESS: We administer extreme unction and give holy viaticum when we think the person is dying or when there are none or very slight chances of recovery.

Q This was under those circumstances? A That was administered.

Q After you administered the last rites of the church and heard the confession and administered the last rites of the church and so forth, what did you do? A I simply went out.

Q Did you see certain people as you went out? A Yes, sir.

Q Did you see Olivia Lynch and the doctor? A I did.

Q You made a communication to them-- do not say what it was? A No, they simply asked me---

Q You had a conversation with them? A I did.

THE COURT: Has the witness said that he saw

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Dr. McKee there?

MR. ELY: Yes.

BY THE COURT:

Q In the sick chamber? A Yes.

MR. ELY: He also stated that he saw and had a conversation with Dr. McKee and others after he had administered the last rites.

BY THE COURT:

Q Before the relation of penitent and priest were established between you and the girl, did she say anything to you relating to her then condition? A No, Recorder, no.

Q Did you talk to her at all before those relations?

A Yes, sir; I was called on the call, and when I went into her, she said she was not a Catholic, and I came out and talked to that lady, or---

THE COURT: strike that answer out.

BY THE COURT:

Q I simply wanted to know if she said anything to you as to her physical condition?

THE WITNESS: You mean before confession.

Q Yes. A No, Recorder, no.

Q Or after? A None whatever, no.

Q Did she say anything to you as to her hope of living or fear of dying? A She simply asked me to save her.

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Q Give her words? A She said "Save me, Father, save me."  
BY MR. ELY:

Q Did you reply to that, Father? A I replied that I would  
do all I could. I asked her to pray to her God.

GEORGE MILLER MCKEE, M. D., recalled by the  
People, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You say that you arrived at premises 300 West 52nd  
street in the County of New York, on the morning of the 10th  
of December, 1902, about eight o'clock? A That is right.

Q You saw the deceased? A I did.

Q That is Agnes Lynch known as Fay Ransom?

MR. CHANLER: I object to this. It is a re-  
petition.

THE COURT: That has been all gone over.

MR. ELY: I simply want to refer him to the  
time so that I can ask a question, that is all.

MR. CHANLER: Get right down to it.

BY MR. ELY:

Q You saw Agnes Lynch otherwise known as Fay Ransom?  
A I did.

Q Now, doctor, please tell me who was in the room when

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you first went in there, at eight o'clock?

MR. CHANDLER: we have been all over this-- if he wants to bring out anything new, come right to the point and ask the question.

BY THE COURT:

Q Were you there when the priest arrived?

BY MR. ELY:

Q Were you there when the priest arrived? A I was.

BY THE COURT:

Q Who else was there?

BY MR. ELY:

Q Who else was there then? A Olivia Lynch-- that is all I clearly remember. It is possible Miss or Mrs. Mackay was there.

BY THE COURT:

Q Now, doctor, before the priest arrived, had you said anything to the sick girl as to the advisability of having her spiritual adviser, whoever he was, or words to that effect? A No.

Q In reference to calling in a clergyman? A No, I said nothing to the sick girl.

Q Did you say anything in her hearing? A Not that I recollect.

BY MR. ELY: Was anything said in the presence of the sick girl, in your presence, with reference to sending for a priest?

A Well, I remember---

Objected to.

Objection overruled. Exception.

A I remember being asked for my advice concerning the Rev. Docter, but I don't remember whether it was in her presence or not, whether it was in the patient's presence.

BY MR. ELY:

Q About how long before the Father came did this conversation in reference to getting one, a priest, occur?

A Well, it was inside of a half hour. They sent immediately.

Q And about what hour in the morning was it, how long after eight o'clock was it? A I think it was about nine.

Q And the patient expired at 10 o'clock? A About ten.

Q Now, when the priest arrived, you and who else was in this deceased's room? A Miss Olivia Lynch was the only one I clearly recollect; the nurse was there, Miss Townsend.

Q And do you remember Miss Lulu Clark? A Oh, yes, Miss Clark was there. I don't know if she was in the room with the patient. She was in the house, in one of the rooms.

Q Was not Mrs. Mackey there? A Mrs. Mackey was in the house, yes.

Q You don't recollect whether she was in the room?

A I don't think she was.

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Q What happened when the priest came into the room as you have stated when you and Olivia Lynch and Miss Townsend, as you believe were there?

MR. CHANLER: I object. If there is anything now he wants to bring out, call the witness's attention to it.

Objection overruled.

Exception.

A As I recollect the priest came into the large room where we were all sitting and went into the sick room and closed the door and remained there some little time and came out and went home.

Q After he came out, did you have a conversation with him? A I do not remember having any personal conversation with him.

Q Did he have a conversation in your presence? A Yes, sir.

Q How long after you had-- how long after the deceased had asked you about her condition and you had replied that you had no hope or that you had given up all hope, that she was going to live, in substance, did the priest arrive?

Objected to. Objection overruled. Exception.

THE WITNESS: I presume about half an hour.

Q Now, I ask you what conversation you had with

the deceased after you had made her the communication that I have just referred to, namely, in substance, that you told her you had given up all hope that she was going to live?

MR. CHANLER: I object as having been already gone over.

BY MR. ELY:

Q. What conversation did you then have with the deceased, by way of question and answer, what did you say to her and what did she say to you; I ask you to give that conversation in the exact words, if you can recollect them, and if not I ask for the substance?

MR. CHANLER: I object to it upon the ground that it has already been gone over exhaustively.

Objection overruled. Exception.

THE WITNESS: Well, I remember her telling me of a dream she had, after that conversation I had with her regarding---

THE COURT: So far as the girl telling the doctor of a dream she had, I sustain the objection.

MR. CHANLER: I want to make the same objection I made on Friday, unless the question asked the doctor calls for some statement made by the witness as to her condition only, it is improper--- before anything further can be asked.

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Objection overruled. Exception.

THE COURT: Leave out what she said about a dream.

THE WITNESS: I only recollect one conversation I had with her and that was her dying statement, ante-mortem statement. As I said before, I refuse to give that unless instructed to do so by the Court.

MR. ELY: I ask your Honor to direct the witness to reply.

THE COURT: You will have to reply to the question.

MR. CHANLER: I object to it upon the grounds that the question is too broad and in the absence of the defendant.

THE COURT: Go on and state what you said to her and what she said to you.

A I asked her who performed the abortion---

MR. CHANLER: I object unless it appears affirmatively upon the record that before this statement was made the deceased had expressed the belief that she was absolutely without hope and in expectation of death.

Objection overruled. Exception.

THE COURT: Proceed.

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THE WITNESS: And she told me that-- I don't remember whether she said--- whether she used the plural, --- whether she meant one or two, but she used the word Hibby, Dr. Hibbie. I understood she meant two doctors.

THE COURT: Strike out the understanding.

THE WITNESS: What I recollect now is that she said Dr. Hibbie performed the operation, and that Dr. Hibbie lived on Stuyvesant street.

BY MR. ELY:

Q Did she say anything about the time? A Labor Day.

BY THE COURT:

Q What did she say about Labor Day? A She said the abortion was performed on Labor Day.

MR. CHANLER: I object to it as before.

Objection overruled. Exception.

BY MR. ELY:

Q Kindly go on and give all of the conversation as nearly in the words that it was given to you, stated to you, or the substance? A That was the substance, all I remember of.

BY THE COURT:

Q Was this which you have narrated just now-- did that occur as part of the conversation in which you told her that you had given up all hope of her living? A No, it did not.

Q How soon after? A Probably about ten or fifteen minutes.

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Q After? A Yes, sir.

Q Did you remain in the room all the time? A No, sir, I went out and got the nurse and brought her in as a witness.

Q That is before she made this statement to you you went out and procured or brought in the nurse as a witness-- a witness of what? A To hear what she had to say to me.

Q Then this nurse was present when the dying girl said this to you? A Yes, sir, she was.

Q Was she present when you asked her the question that you have narrated? A Yes, sir.

Q Present at the whole conversation? A Yes, sir; she was not present at the first conversation, but at the second conversation.

Q I understand, at the time you brought her in? A Yes, sir.

Q Were you present when she died? A Yes, sir.

Q How long after did she die, how long after this conversation did she die? A Probably about three quarters of an hour.

Q Afterwards? A Yes, sir, it was very near that time.

Q Was it after that conversation that the priest went in? A It was after that.

Q Did you have any further conversation with the girl before she died? A No, sir.

Q Did you hear any further conversation with the girl before she died? A No, sir.

Q Did you hear anything she said? A I don't recollect anything she said after that.

Q What were the exact words you said to the girl about her condition before she made the statement? A I cannot recall the exact words.

Q The substance? A The substance was that I had given up all hopes of her recovery.

BY MR. ELY:

Q A jurymen asked you a question on Friday as to whether there was something that could have been done towards curing the patient, by you, the first time that you saw her; could you have done anything to cure her at that time?

Objected to.

THE COURT: I will permit the question, in view of the juror's question.

MR. CHANLER: I except.

THE WITNESS: Nothing could have been done at the moment, but all that could have been done was done very shortly after, within a very few hours.

BY MR. ELY:

Q At the time you were called in, can you state whether or not the patient could have been cured under any circumstances? A My opinion is she could not have been cured under

any circumstances.

BY THE COURT:

Q What is your answer? A My opinion is she could not have been cured under any circumstances.

BY THE COURT:

Q Cured? A Recovered.

Q That is what you mean? A Yes, sir.

MR. HLY: I used the word "cured" because it was embraced in the juror's question.

THE COURT: I know.

BY THE COURT:

Q You say she could not have recovered under any circumstances? A Yes, sir.

Q That is your opinion? A Yes, sir.

Q Is it your opinion that death was inevitable without regard to circumstances? A Death was inevitable without regard to circumstances from the first time I saw her.

BY THE FIRST JUROR:

Q I should like to ask whether if she had been taken to the hospital, the additional facilities there would have benefitted her?

THE COURT: Benefit is a relative term.

THE JUROR: I ask that because the witness last Friday said he offered to take her to the hospital.

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but had not been allowed to, and therefore did the best possible under the circumstances, as I understood.

BY THE COURT:

Q You heard the foreman's observation and question combined: Can you answer it? A In explanation, I will say that it is customary when we are called in to see a patient to advise the people to let us do everything we can to help the girl. Now, it would have been better if she had gone to a hospital-- at least, I think it would, but I do not think she would have recovered in the hospital. My opinion is just as I stated that under no circumstances do I think she would have recovered.

Q That is you think her condition might have been alleviated, somewhat? A Somewhat, but very slightly.

Q By being taken to the hospital? A Yes, sir. I might explain, if you wish, the treatment that she got in the house and what she would have received in the hospital.

THE FOREMAN: I would like to hear it.

THE WITNESS: If she had gone to the hospital we would immediately have put her to bed and packed her in ice, that is her abdomen would have been packed in ice. She would have been stimulated and salt water injections used into the veins. Now, the mortality in those cases,

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in the hospital, is probably as high as 98 per cent. Now, in the house what did I do? I did exactly what they would have done in the hospital with slight modifications. I had her removed to a large light airy room, placed in bed, on her back. I packed her abdomen in ice, not as they do it in the hospital, but as we do it at home, with an ice bag, cracked ice in the ice bag. Instead of injecting salt solutions into the veins, I did it in the rectum, which answers the same purpose, and in regard to medication, of course, she had the same as she would have received in the hospital. The mortality is about the same in those cases in the hospital as they are in the house, but, you have probably heard of the wonderful cures resulting from formalin--

BY THE COURT:

Q In other words, is it correct to say that your meaning is that the facilities for treatment are greater in the hospital than in the house? A Slightly better in the hospital, and under the circumstances it was my duty to suggest the hospital treatment, but my opinion is she would have died anyway-- in fact, I am sure of it, under any circumstances. When I first saw her death was absolutely inevitable, according to my opinion.

THE FOURTH JUROR: Is the injection of salt one of the last resources,

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THE COURT: I do not think it is necessary to go into that question any further.

CROSS EXAMINATION BY MR. CHAILER:

Q I want to call your attention, as Mr. Ely has done, and I want to read the question the juror asked you on Friday, and your answer to it in fairness to you, and ask if you wish to make any alteration, "I would like to ask if on his first visit to the patient there was not something he could have done towards curing the patient instead of just giving her morphine to relieve the pain? A Yes, there is a great deal might have been done, but it could not have been done in the room and I advised her to take her to the hospital and they wouldn't do it, and I then advised them to take her to her sister's home, where there was more room, and then I did all that was necessary there." In view of that answer do you still say there was a great deal could have been done towards curing her? A I just altered that answer. The meaning I convey now is what I meant to have conveyed then.

Q I think you also testified on Friday, the last day of the trial, that the deceased girl showed no appreciation that you could discover of appreciating her approaching end, after you had made your statement to her in regard to her condition, is that right? A That is correct.

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BY THE COURT:

Q With regard to the girl showing appreciation or failing to show appreciation; what was her condition as to her ability or energy to show appreciation of her condition, or of her approaching end? A Well, I do not quite understand that question.

Q Was she strong or was she weak; was she suffering or was she not? A Physically, yes, she was weak. She was not suffering because I just kept her under enough morphine to keep acute pain away.

Q She was under the influence of morphine? A The last stages of peritonitis are not very painful as a rule, anyway. Physically she was very weak.

BY MR. CHAMLER:

Q Was she under the influence of morphine when she made this statement to you that you have given on the witness stand?

A I wouldn't say she was under the influence of morphine.

Q She had taken morphine? A She had taken some morphine, very little.

THOMAS F. HAGUIRE, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. KELY:

Q What is your business? A Police Officer.

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Q Connected with the Municipal Police force of the city of New York? A Yes, sir.

Q Were you so connected on the 16th day of October, 1900? A Yes, sir.

Q Where were you attached? A Second District Police Court.

Q Where is that? A 10th street and Sixth avenue.

Q Did you see this defendant Leopold Hibbie on the 16th day of October, 1900? A Yes, sir.

Q Where did you see him? A I saw him in the Court.

Q What did you see him do if anything? A He signed a bond there to release his brother.

Q He signed a paper? A Yes, sir, a paper.

Q In whose presence did he sign that?

MR. CHANLER: Are you trying to prove the handwriting-- if so, I will probably admit it.

THE WITNESS: He signed it in the presence of me.

MR. CHANLER: We admit that is the defendant's signature.

MR. ELY: Then it is admitted that the signature to a bond, undertaking to answer dated October 16, 1900 Leo H. R. Hibbie is the signature of the defendant?

MR. CHANLER: Yes.

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MR. ELY: Also the signature to the affidavit is in the handwriting of the defendant being Leopold H. R. Hibbie, do you admit that?

MR. CHANLER: Yes.

MR. ELY: I offer these signatures in evidence, simply the signatures as standards.

MR. CHANLER: I have no objection.

THE COURT: Admitted for that purpose only, as a standard of comparison as to handwriting.

MR. ELY: That is all.

MR. CHANLER: No objection to that.

The signatures are received and marked in evidence People's Exhibits 1 and 2.

It is admitted that the signature in blue pencil mark signed to two certain bottles which are marked People's Exhibits 3 and 4 for identification, respectively, were written by the defendant.

DAVID N. VARVALHO, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Examiner of questioned handwriting---

MR. CHANLER: I admit the qualifications of Mr.

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Carvalho as a handwriting expert.

BY MR. ELY:

Q I show you People's Exhibit 1 and People's Exhibit 2, which is a standard of handwriting, and I also show you People's Exhibit 3 and People's Exhibit 4, for identification, and call your attention to the signatures on these two bottles?

THE COURT: The bottles are not in evidence.

MR. ELY: The signature, the bottles themselves are not in evidence.

THE COURT: The signatures are in evidence.

MR. ELY: The signatures are admitted to be in the handwriting of the defendant?

MR. CHANLER: Yes.

BY MR. ELY:

Q I hand you this paper and I ask you if you have examined that paper? A I have examined it before.

(People's Exhibit 5 for identification.)

Q And I ask you if you have compared the writing upon the paper that is marked People's Exhibit 5 for identification with People's Exhibit 1 and People's Exhibit 2, and the signatures on People's Exhibit 3 for identification and People's Exhibit 4 for identification? A I have made such an examination.

Q And such a comparison? A Yes, sir.

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Q Are you able to state in whose handwriting the---

THE COURT: Oh, that form of question is objectionable.

Q You have made an examination and comparison of People's Exhibit 5 for identification with the standards of comparison that are introduced here? A I have.

Q What is the result of that comparison?

Objected to.

Objection sustained.

Q Can you state from such an examination and comparison as you have made, in whose handwriting the writing upon People's Exhibit 5 for identification is?

Objected to.

Objection sustained.

Q Can you tell me whether or not the handwriting upon People's Exhibit 5 for identification is the same as that upon People's Exhibits 1 and 2?

Objected to. Objection sustained.

BY THE COURT:

Q From the examination that you have made and the comparison that you have instituted between what may be termed the standard writing and People's Exhibit 5 for identification, have you formed an opinion as to the identity of the writing or of the hand that wrote the other instrument? A Yes, sir, I

have.

BY THE COURT: State what that opinion is? A In my opinion it was written by the same person.

Q That is all the instrument? A All of the instrument.

Q And Exhibit 5? A Yes, sir.

Q was written by the same person that wrote the standards that you held in your right hand showing to the jury now?

A People's Exhibit 1, Exhibit 2, and the signatures on the labels of the bottle, People's Exhibit 3 and 4 for identification---

BY THE COURT:

Q These you regard as standards? A Yes, sir.

Q And you state in your opinion? A In my opinion the person who wrote these standards is the same person who wrote the pencil writing which appears on People's Exhibit 5 for identification.

CROSS EXAMINATION BY MR. CHANLER:

Q You like all others are human, you occasionally make mistakes? A I presume so. We are all human.

Q Do you notice any difference in the signatures on the standards and on the disputed writing in so far as the formation of the letters is concerned? A The types of letters

are the same, but there are distinctive differences.

Q Do you notice the difference in the D in M. D., signed on one of the standards, the bottle, and the D beginning with Dr. Hibbie on the disputed handwriting; do you notice a distinct difference in those two D's? A Yes-- they are the same types of D, but one has a longer final stroke.

Q All these are alike to me, all these are D's?

A Yes-- the likeness consists in the lower portion.

WILLIE OVERTREE, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Chambermaid and waiting in a boarding house.

Q Where were you employed on the 1st of September, 1902 up to and including the 10th of September, 1902? A 364 West 23rd street.

Q In the City and County of New York? A In New York.

Q Did you know one Agnes Lynch, otherwise Fay Ransom?

A I did.

Q And for how long a time before the 10th day of September, 1902, had you known Fay Ransom? A How long had I known her?

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Q Yes. A I guess about two months, maybe perhaps she had been in the house about that long.

Q Did you see Agnes Lynch, otherwise known as Fay Ranson, on the 4th of September, 1902? A Did I see her?

Q Yes. A I did.

Q Is that the day she came home sick, Thursday?

A Thursday, she came home sick.

Q Thursday is September 4th, 1902? A Yes, sir.

Q She came home sick? A Yes, sir.

Q And what did she do? A She came up to the room -- went up to her room.

Q And went to bed? A Yes, sir, she went to bed.

Q Now, on Friday, the 5th day of September, 1902, that is the day after Agnes Lynch, otherwise known as Fay Ranson had been taken sick, did you see this defendant? A I did.

BY MR. CHAMLER:

Q What day was that?

MR. ELY: Friday the 5th.

BY MR. ELY:

Q And where did you see the defendant? A Where did I?

Q Where did you see this defendant on Friday the 5th of September? A I saw him at the front door, the first time I saw him.

Q What front door? A 364 West 23rd street.

Q New York County? A I did.

Q Was this defendant alone or with anyone when you saw him on Friday the 5th of September, 1902, at 364 West 23rd street? A No, he was not alone.

Q There was somebody with him? A Yes, sir, there was somebody with him.

Q Was that a man or a woman? A A man.

MR. ELY: Henry B. Hibbs.

(In response to the call of the District Attorney for Henry B. Hibbs a man is brought into the Court room and stood at the bar.)

BY MR. ELY:

Q Now do you see this man Henry B. Hibbs? A Yes, sir.

Q When did you first see him? A I first saw him on Friday.

Q When you saw-- A When I saw the other man.

Q This is the man who came in company with the defendant here? A Yes, sir.

Q On Friday the 5th of September, 1902, at the premises 364 West 23rd street, New York County? A Yes, sir.

Q You opened the door? A I did.

Q What if any conversation did you have with the defendant when you opened the door for him and his companion Henry C. Hibbs? A They asked for Miss Ransom.



Q That was Agnes Lynch? A Agnes Lynch.

Q Wait a minute now-- go ahead? A I told them Miss Ransom was sick and they said "I am the doctor." I said "One flight up front, please".

Q What was one flight up front? A Well, to go one pair of steps up to the front room.

Q Whose room was it you were directing them to? A Miss Ransom, Fay Ransom.

Q Agnes Lynch, otherwise Fay Ransom's room? A Yes, sir.

Q Whereabouts up one flight was this room of Agnes Lynch? A Front room.

Q What was it? Ans. Hall bedroom.

Q Did that connect with any other room? A Yes, sir, with another room adjoining.

Q Was the door between those rooms open or closed?  
A Closed.

Q Did this defendant go up to the room of Agnes Lynch otherwise Fay Ransom? A He went up.

Q And did you notice whether this defendant or his companion had anything in his hand? A There was--- a little grip or something one of them had in his hand.

Q A little satchel? A Yes, sir, something like that.

Q Did you see what they did with this satchel? A I did not. They went in the room.

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Q They took it up with them? A Yes, sir.

Q And went into the room? A Yes, sir.

Q Into what room? A Jay Ransom's room.

Q Agnes Lynch otherwise Fay Ransom? A Yes, sir.

Q How long, if you knew, did the defendant remain in Agnes Lynch's room? A I couldn't say. I don't know how long because I went on about my duties. I don't know how long he stayed up there.

Q Did you see the defendant again on that day? A On Friday?

Q On Friday? A No, I didn't see him.

Q Did you see Agnes Lynch, otherwise Fay Ransom on Friday? A I saw her on Friday.

Q Did you observe her condition? A I did.

Q And what did you see? A I saw blood.

Q Do not say blood.

THE COURT: Strike that out.

BY MR. ELY:

Q You saw red spots? A Red spots, yes.

Q When did you see these red spots? A Well, I saw them on, I think it was Friday-- either Friday or Saturday morning, I saw them.

Q Where were these red spots on? A On the bedding and on her clothes.

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Q You mean on the bedding and the clothes? A That she had on.

Q What did she have on? A She had on a night dress.

Q When, after Friday, the 5th of September, 1902, did you next see this defendant here? A I saw him on Friday-- and then I saw him on Saturday morning.

Q And where did you see him on Saturday morning-- this is Saturday the 6th of September, 1902? A At 364 West 23rd street I saw him there.

Q Did you let him in? A I did.

Q Did he come alone or in company with another on Saturday? A I think he was with a gentleman again on Saturday.

Q With the same person? A Yes, sir, on Saturday.

Q Who came into Court a few minutes ago? A Yes, sir.

Q And was identified as Henry C. Hibbs? A Yes, sir, I think they were together on Saturday.

Q About what time on Saturday did this defendant accompanied by another come to the premises 364 West 23rd street, if you recollect; about what time in the day was it? A I think it was before lunch, about twelve o'clock, as high as I recollect.

Q Did you notice whether the defendant or his companion had anything with him? A No, I don't think they did that time on Saturday. I don't think I didn't see anything. If he did, I didn't remember it.

Q Did you have any conversation with the defendant or was any conversation indulged in between you and the defendant and his companion this time? A On Saturday only just asked the way up, to the room, Miss Ranson, and I sent them up.

Q Do you remember how long the defendant remained at the premises 364 West 23rd street on Saturday? A No, I couldn't -- I don't remember that.

Q Now, on Sunday the 7th of September, 1902, did you see the defendant? A I did not.

Q I show you People's Exhibits 3 and 4 for identification and I ask you if you ever saw those two bottles before? A I have.

Q Now, I ask you when you first saw those two bottles? A I first saw them two bottles Sunday.

Q Sunday December 7, 1902? A Yes, sir, 1902.

Q Where did you first see those two bottles? A At the front door 364 West 23rd street.

Q What, if anything, did you do with those two bottles? A I brought them up to her room.

Q To whose room? A Fay Ranson's.

Q Agnes Lynch, otherwise Fay Ranson's room? A Yes, sir.

Q What if anything did you do with those bottles when you got them there? A When I got them there I told her it was

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medicine.

Q Do not say what you told-- what did you do with the bottles? A I gave her the medicine out of one of them.

MR. CHAMLER: I object.

THE COURT: She gave a fluid.

MR. CHAMLER: I object.

THE COURT: Then I sustain the objection.

MR. CHAMLER: My objection goes to what she did in the absence of the defendant, unless he is more nearly connected with the bottles.

THE COURT: Have you shown where the bottle came from?

MR. ELY: I have not, but I will show that in due course. I am not going to offer them now.

THE COURT: Where did she get them?

MR. ELY: She said she received them from somebody at the door.

THE COURT: Does she know from whom?

BY THE COURT:

Q Do you know from whom you received those bottles?

A I do.

Q From whom? A From one of the gentlemen that came to see her; the other man you brought in a while ago. He brought them and gave them to me at the front door.

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BY MR. ELY:

Q That is Henry C. Hibbs brought them to you at the front door and handed them to you? A Yes, sir.

Q You then took them upstairs? A Yes, sir.

Q What did you do with them when you took them up to Agnes Lynch's, otherwise Fay Ransom's room? A I gave her some of it out of this bottle-- this one.

THE COURT: Out of the small bottle?

A Yes, sir, the small bottle.

BY MR. ELY:

Q Did you observe ~~was~~ the small bottle when you received it and gave some of its contents to Agnes Lynch, otherwise Fay Ransom? A Did I observe?

Q Had you looked at it? A Yes, sir, I looked at it.

Q Looking at the bottle People's Exhibit 4 for identification, are you able to state whether or not this label is in the same condition now as it was then when you received it on the 7th of September, 1902, as you have stated? A It was all on there but this blue-- take one teaspoonful, that was on.

Q The direction was on? A Yes, sir, but there was no name.

Q There was no name? A No, sir.

Q This L. Hibbs, M. D., in blue, and the date at the top was not on? A Not on.

Q And you observed that at the time? A Yes, sir, I did.

Q Did you observe People's Exhibit 3 for identification?

A I did, that was the same as that one, this blue was not on.

Q The blue was not on at the time that People's Exhibit 3 for identification was delivered as you state on the 7th of September, 1902, at 364 West 23rd street by Henry C. Hibber?

A Yes, sir, the blue was not on.

Q Then what did you do with the bottles when you got them there? A I gave her some of the medicine out of one of the bottles, the small bottle. I gave it to her. When I gave it to her she got very sick.

MR. CHAMLER: I renew my objection to this evidence on the same grounds as not sufficiently connected with the defendant, the bottle.

Objection overruled. Exception.

BY MR. ELY:

Q What happened after that? A After I gave it to her she threw up and got very sick and then she vomited.

Q Who is she? A Agnes Lynch.

Q What happened after that? A Then I came on out.

Q Did you notice Agnes Lynch's condition at this time, did you observe her condition? A Yes, sir.

Q How was she?

Objected to.

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THE COURT: what did she observe?

MR. ELY: That is all I ask.

BY THE COURT:

Q what did you observe? A I observed the redness on the bedding, bedclothes.

BY MR. ELY:

Q This was Sunday? A Yes, sir.

Q When you say redness, do you mean the stains that you spoke of? A Yes, sir.

Q Red stains? A Yes, sir, red stains.

BY MR. ELY:

Q Did you observe anything else? A That was all, the red stains.

Q Did you see the defendant again after you saw him on Saturday, 1902, at 364 West 23rd street? A Did I see him again -- yes, I did.

Q When did you see him again? A I saw him on the Monday following, Monday, I saw him again.

Q On Monday? A Yes, sir.

Q What time on Monday did you see him? A I couldn't exactly say because I don't know what time, but I know it was Monday.

Q Who if anybody was with him if you recollect on Monday? A Was there anybody with him on Monday, I don't remember

whether there was or not anybody with him on Monday or not.

Q Was that about six or after in the evening, should you say, or cannot you recollect? A I can't recollect that but I knew it was Monday.

Q Where did the defendant go when he came on Monday September 8th? A Went up to Agnes Lynch's room.

Q Did you admit him? A I did.

Q Did you have any conversation with him? A Only just told him where she--- to go up to the room.

Q You do not know how long he remained on this occasion, he being the defendant? A No.

Q Do you know whether or not he had anything in his hand? A No, sir, I do not. I don't think he did.

Q You don't recollect about that? A No, sir.

Q Did you see him again on Monday night or on Monday--- how many times on Monday did you see the defendant? A Once Monday.

Q Did you see the defendant on Tuesday? A Tuesday, yes, I saw him Tuesday.

Q Who if anybody did he come with? A With his brother, the other gentleman.

Q With Henry C. Hibbe just brought in a few minutes ago? A Yes, sir.

Q Did you have any conversation with him? A Yes, sir.

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Q With this defendant? A Down at the front door when they came.

Q What conversation did you have with this defendant?

A He didn't exactly say anything, only just said-- he said the same that his brother did, that it was funny----

Q Give the whole conversation? A Funny they didn't leave where they were taking her to, moving her to.

Q Did he ask for anybody? A Asked for Ray Ransom.

Q Give the whole conversation, what the defendant said and what you said? A He asked for Ray Ransom.

Q What did you say? A I told him they had moved there.

Q Then he said whereabouts? A I said I couldn't tell you. That was all he said to me, this one.

Q Was the conversation participated in by anybody else?

A Yes, sir, he said "Now you have got your pay."

Q Who said that? A Henry C. Hibbs.

Q Who did he say that to? A To this gentleman.

Q This defendant? A Yes, sir.

Q He said "Now you have got your pay"? A Yes, sir, and "Now, I am in a hole" or some remark, something like that.

Q What else happened? A Then they asked did she pay her board to the woman, and I said she did.

Q Then what? A Then at that time there was a lady coming

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downstairs and he walked out of the door and said "Good afternoon."

Q Where did this conversation take place? A In the front hall 364 West 23rd street.

Q What time on the 9th day of September, 1902? A It was in the afternoon getting towards four or five o'clock, somewhere along there.

Q Was that the last time you ever saw the defendant? A That was the last time I ever saw him.

Q Were you on duty or off duty Sunday night the 7th of September, 1902? A I was off duty.

Q You were not in the house Sunday night? A Not in the house.

Q After seven o'clock? A No, I was not.

CROSS EXAMINATION BY MR. CHANLER:

Q In the conversation you have just given us, about this defendant saying to his brother "You have got your money?"

MR. ELY: That is not it.

BY MR. CHANLER:

Q Or the brother said to him "You have got your money", do you remember that distinctly? A Do I remember that distinctly?

Q Yes. A I do.

Q As matter of fact is not what he said, is not this

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what the defendant said-- what the defendant said to his brother on that occasion? A The defendant?

Q Do you know who the defendant is? A Yes, sir, that man.

Q I ask you if those are not the words the defendant used to his brother on that occasion, Tuesday, when he came to the house and you opened the door "I am left now", when he found they had gone away, didn't he say to his brother that? A The other brother said to this defendant.

BY THE COURT:

Q Did the other brother say that to this defendant?

A To this defendant.

BY THE COURT:

Q He said that to this defendant? A Yes, sir.

BY MR. CHANLER:

Q Who was it asked if Miss Ransom in, when they came Tuesday morning, which one of them asked that? A Which one of them asked was Miss Ransom in?

Q Yes, on Tuesday morning-- do not make a mistake about it-- at the time they talked about the fee, which one was it asked that? A I disremember which one asked.

Q Don't you also disremember which one said "You are left now, or words to that effect? A No, I know that the one you brought in just now said to this one.

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BY THE COURT:

Q said to this defendant? A Yes, sir.

BY MR. CHAMLER:

Q You testified before the coroners upstairs? A I did.

Q sometime in September, shortly after this thing happened, you testified before the coroner? A I did.

Q A few weeks after this time? A Yes, sir.

Q Do you remember being asked, "What did he say if anything about his fee? A He turned to his brother and said "I am left now," or some thing like that, and when they called there he said to his brother "I am left now". Do you remember giving that answer to the question as to what he said, "I am left now"?

MR. ELY: I object. It is not any contradiction.

THE WITNESS: Do I remember saying?

Q When you were asked, "What did he say", did you make that answer which I have just read to you? A I do not understand you-- do I remember what he meant by giving the answer why he said-- I suppose he meant--

Q I ask if you remember those words in the coroner's court, using those words in the coroner's court two or three weeks after this occurrence-- did you say one word in the

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Coroner's Court about "You have got your pay and I have not got mine?"

Objected to. Objection sustained.

Q I put it in this form. When this question was asked you in the Coroner's Court, "What did he say if anything about his fee", did you in reply to that question say one word that you told us today about "You have got your pay and I haven't got mine?"

Objected to. Objection sustained.

Exception.

THE COURT: As I understand the rule, Mr. Chan-  
ler, it is immaterial and irrelevant to ask this  
witness what she testified to in the Coroner's Court  
unless it be for the purpose of showing that she tes-  
tified to something there which was contrary to what  
she testified to here.

MR. CHANLER: I am not going to repeat what I  
wanted to get out--- supposing I can show by this  
witness that she said it was the 27th of January--  
suppose I say to her "Did you say that" and she said  
"No", and then on this trial I show she said it was  
the 8th of February, and then I show in the Coroner's  
Court it was the 27th of January, and not one  
word about February, wouldn't it be competent to show

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she said January and also that she said February for the first time on this trial.

THE COURT: You can ask her that question.

BY MR. CHANLER:

Q When you were asked in the Coroner's Court, as you stated "What did he say if anything about his fee", did you say in the Coroner's Court in answer to that question "What did he say about his fee", anything you have told us today, did you say those words "You have got your fee, I have got mine"?

Objected to.

THE WITNESS: Did I say that.

MR. ELY: "You have got your money and I am left."

BY MR. CHANLER:

Q Did you use those words in the Coroner's Court?

BY THE COURT:

Q Do you remember saying that in the Coroner's Court?

A I remember I did.

BY MR. CHANLER:

Q Quite sure of it? A Yes, sir.

Q Now, you remember this defendant called with his brother, Henry C. Hibbe, for the first time on Friday?

A On Friday.

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



Q Think, and be positive as to the date, are you sure it was Friday and not Saturday they call it for the first time?

A Friday.

Q Now will you bring your mind back once more to the Coroner's Court-- in answer to the question "Will you kindly state to the jury what you remember what happened there", did you answer "Well, on Saturday she came from rehearsal--- I leave out part-- she fainted; Thursday was the first time she was at the door, she fainted at the rehearsal and came home and she did not have any doctor until Saturday"--- did you make that statement in the Coroner's Court? A I did not.

Q I ask you if this question was asked you "What date <sup>Monday</sup> was that? A I don't know but it was Thursday her sister came."

MR. ELY: I object. Thursday was the time she came home sick.

MR. CHANLER: That is right. That is what she means.

MR. ELY: Under the questions and answers we can never tell what the question refers to.

BY MR. CHANLER:

Q I ask you again, did you say in the Coroner's Court, in answer to the question "What happened and so forth? A She did not have any doctor until Saturday? did you say that?

A No, I did not.

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

Q Now, when the doctor or doctors came on Saturday, were they together or alone? A When they came on Saturday?

Q Did the two doctors come or one doctor come? A Do you mean the first time they came?

Q On Saturday? A On Saturday?

Q When they came on Saturday, that is my question?

A I think they both came as high as I can remember it.

Q You don't remember it very clearly. You are not sure about that? A I know they came so much together and then once or twice they did not come together and I disremember.

Q You disremember? A Whether it was-- whether they came together or not.

Q Don't you disremember whether it was Saturday or not?

A I know it was Saturday they were there. I know they were there on Saturday.

Q You told us just now that Henry C. Hibbs who came in the room, brought you the medicine; is that right, you are sure of that? A I am.

Q Positive? A I am.

Q On the last trial of Henry C. Hibbs, when you spoke of the defendant, you referred to Henry C. Hibbs, didn't you, when you said the defendant-- you testified in the trial of Henry

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C. Hibbe? A I did.

Q When you spoke of the defendant on that trial you meant Henry C. Hibbe, didn't you? A About the bottles you mean.

Q When you used the word defendant, when the word defendant was used, you meant Henry C. Hibbe just as now when the word defendant is used you mean this man-- you meant the man on trial, didn't you? A Yes, I did.

Q I want to ask you whether you testified to this, "When did you next see this defendant (meaning Henry C. Hibbe?) A That was on Saturday.

"Q This was on Saturday you have just told about?  
A I did not see him any more then until Monday. He was there I think on Sunday, but I did not see him." Do you remember making that answer on the trial of Henry C. Hibbe? A I do not, because I saw him Sunday morning.

Q You say you saw him and that he brought you the bottle? A That was what I say, he brought me the bottle.

Q Was not the very next question after you made that answer, "I did not see the defendant again until Monday-- was not the next question put to you, "On Sunday was anything delivered at the premises? A Yes, sir, two bottles."---

MR. ELY: I object as not contradictory.

THE COURT: Do you remember answering that?

MR. CHANLER: My question is preliminary.

BY MR. CHANLER:

Q Then did you say subsequently in answer to this question "And the defendant, as I understand, was not present at the time the bottles were sent there and the bottles were received by Agnes Lynch? A No."-- Do you remember making that answer to that question on the trial of Henry C. Hibbe? A I cannot understand that.

Q "And the defendant, as I understand (meaning Henry C. Hibbe) was not present at the time the bottles were sent there and the bottles were received by Agnes Lynch? A No."

THE COURT: The words "meaning Henry C. Hibbe" are interpolated by you in the question?

MR. CHANLER: Yes, the witness having stated that when she used the word defendant she meant Henry C. Hibbe.

BY MR. CHANLER:

Q Did you make that answer to that question on the trial of Henry C. Hibbe? A I have not understood it yet.

Q (Question repeated). A I did not, because he brought the bottle.

Q What? A I don't remember saying that at all, because he brought the bottle-- that is the one you talk about-- which is Henry C. Hibbe. I don't know them apart.

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Q He is the man that was brought in here? A He is the man that brought me the bottle.

Q He was the one that was the defendant on the other trial? A Yes, sir.

Q I ask you again if you understand this question, "And the defendant (meaning Henry G. Hibbs) I understand was not present at the time the bottles were sent there and the bottles were received by Agnes Lynch?" And did you make this answer at the last trial, "No," A No.

Q You swear you did not? A Yes, sir.

Q Sure of it? A Yes, sir.

OLIVIA C. LYNCH, called as a witness in behalf of the People, being duly sworn, and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Where do you live? A 300 West 52nd street.

Q Where did you reside on the 7th day of September, 1902? A 300 West 52nd.

Q That is in the City and County of New York? A Yes, sir.

Q Did you know one Agnes Lynch otherwise Fay Hansen? A Yes, sir.

Q In her lifetime? A Yes, sir.



Q What if any relation or connection was she to you?

A My sister.

Q Where, if you know, did Fay Ransom reside from the 1st of September, we will say, until the 9th of September, 1902? A 364 West 23rd street.

Q In New York County? A Yes, sir.

Q Now, before the 7th of September, 1902, when had you last seen your sister Agnes Lynch otherwise known as Fay Ransom? A Two weeks before that.

Q Two weeks before the 7th? A About two weeks before the 7th.

Q Where had you been two weeks before the 7th of September, 1902? A At Long Branch.

Q You had been off on your vacation? A Yes, sir.

Q You returned on the 7th of September, 1902? A I returned on the 7th of September, 1902.

Q When, after you returned on the 7th of September, 1902, did you see your sister? A On the 8th I saw her, Monday morning.

Q Where did you see her on Monday morning, the 8th of September, 1902? A 364 West 23rd.

Q New York County, whereabouts in 364 West 23rd? A In her bed room, in bed.

Q What? A In her room, in bed.

Q Was she dressed or undressed? A Undressed.

Q Did you observe her condition? A Yes, sir.

Q What did you see? A I noticed she was in great fever and pain.

Q Go on? A I noticed she was suffering great pain and that she was in a great fever.

Q Did you see her night clothes? A Yes, sir.

Q And did you see her stomach? A Yes, sir.

Q What if anything was there on her stomach? A There was bandages.

Q It was bandaged? A Yes, sir.

Q What time in the day of the 8th of September, 1902, did you see your sister at the premises in question 364 West 23rd street, New York County? A Between 8 and half past 8.

Q Who, if anybody, went with you there? A Miss Lulu Clark.

Q Who, if anybody, did you find in your sister's room? A I found my sister there Florence Mackey.

Q You found your sister Florence Mackey and your sister Agnes Lynch, in Agnes Lynch's room on the occasion of your call on the 8th of September, 1902; is that right? A Yes, sir.

Q How long did you remain there on that day? A I remained about--

Q I talk about this first time when you went at 8 o'clock? A Yes, sir-- about twenty minutes.

Q When next if at all did you see your sister Agnes Lynch on the 8th of September, 1890, at the premises 364 West 23rd? A I returned at one o'clock that day.

Q Who, if anybody, did you return with? A Miss Lulu Clark.

Q Miss Lulu Clark-- talk loud? A Miss Lulu Clark.

Q Who did you see there at 364 West 23rd street during the time that you returned at about one o'clock to those premises with Miss Lulu Clark? A My sister Mrs. Florence Mackey.

Q Who else? A And I think Willie, I am not sure.

Q Who if anybody went in at the same time or just before you and Lulu Clark when you went there at one o'clock, there being 364 West 23rd street, New York County? A At one o'clock that day when I got there---

Q Yes. A I think there was Willie and Miss Clark and myself and my sister, Mrs. Florence Mackey.

Q Did you have any conversation with anybody else?

A Yes, sir, I had a conversation with my sister Agnes.

Q Anybody else? A With my sister Florence Mackey.

Q Anybody else? A And with Lulu Clark.

Q Anybody else? A Willie.

Q Anybody else? A And Agnes Lynch.

Q Didn't you see Henry C. Hibbe, didn't he come go in there before you did? A Yes, sir, that day.

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Q At one o'clock? A Yes, sir.

Q You had a certain conversation with Henry C. Hibbe?

A Yes, sir.

Q Do not give that conversation-- where did this conversation take place? A In my sister's room, Agnes Lynch, at 364 West 23rd street.

Q Who was there when this conversation took place?

A Henry C. Hibbe and Lulu Clark-- I am just a little excited-- Henry C. Hibbe and my sister Florence Mackey and myself.

Q Who else? A Lulu Clark.

Q And your sister Agnes Lynch was in bed? A Yes, sir.

Q Florence Mackey your sister was there? A Yes, sir.

Q In the room? A In the room.

Q In which your sister, Agnes Lynch, was lying in bed?

A Yes, sir.

Q You were there? A Yes, sir.

Q And Henry C. Hibbe was there? A Yes, sir.

Q You had a conversation did you, between you and your sister and Henry C. Hibbe? A Yes, sir.

Q How long did you remain there conversing with Henry C. Hibbe at noon on the 8th day of September, 1902, in your sister's bedroom? A I remained there until he left which was about half an hour.

Q And then after that on the 8th day of September, 1902, did you see the defendant, that day? A Between 5 and 6, the same day.

Q On the afternoon of the 8th of September, 1902, you saw this defendant? A Yes, sir.

Q Where did you see this defendant? A In my sister's, Agnes Lynch's room, at 364 West 23rd street.

Q State what happened when you saw this defendant in there, in your sister's bedroom at 364 West 23rd street between 5 and 6 o'clock on the afternoon of the 8th of September, 1902? A I saw the defendant in my sister's room on September 8 and I said to him "Why, you are not the man that was here this morning", and he said "No, I am the brother of Henry Hibbe, and I have come to see your sister". I said "But I don't want you, I want the brother that was here this morning". I said I have learned during his absence what operation he has performed upon my sister and I am not at all satisfied with what I have learned, and the defendant then said to me "Well, if you are not satisfied with what my brother has done, I will take the case because I have had 20 year's experience, and he is only my assistant". He wanted to know about his fee.

Q What if anything did he say about any operation?

A He said "I know that my brother has performed an operation

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on your sister, and if you are not satisfied, I will take the case". And then he wanted to know about his fee, and I said that would be settled, but I wanted my sister relieved of her pain, and then he wanted her removed to his sanitarium, which I objected to.

Q Give the conversation?

BY THE COURT:

Q As nearly as you can recollect, what were the words?

A He said he thought she would require nursing and nourishment and for me to remove her to his sanitarium, which I objected to.

BY MR. ELY:

Q What did you say? A I said "No, that if there was anything to be that she would have to be left here at 364 West 25rd street or removed to my home, where I lived."

Q Go on, and state the whole conversation? A And then he left the question with me whether I was to call him again and have her removed.

Q What did he say? A He said "You can telephone me if you want me again, and I can know positively about my fee."

Q Did he say where his sanitarium was? A Yes, sir.

Q What did he say? A 31 Stuyvesant street.

BY MR. ELY:

Q Did you ever see People's Exhibit B for identification?

A Yes, sir, I know this writing.

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Q Where did you see that People's Exhibit 5 for identification first? A I saw this on my sister's dresser in her room.

Q When was it that you saw this paper on your sister's dresser in her room? A On Monday, September 8th.

Q And did you say anything to the defendant with respect to this writing? A No, sir.

Q Did he give you his telephone number? A No, sir, he did not give it to me.

MR. ELY: I offer People's Exhibit 5 for identification, in evidence, it appearing from the testimony of Mr. Carvalho---

THE COURT: I know the testimony.

MR. ELY: I offer it in evidence.

MR. CHAMBER: I object to it as irrelevant.

BY THE COURT:

Q What time was this when you saw this slip of paper in your sister's room?

BY MR. ELY:

Q What time of the day? A It was after Henry Hibbe had left, about two o'clock, I should think, about that time, I am not positive.

BY THE COURT:

Q Was this on Saturday or Friday? A This was on Monday.

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September 8th.

Objection overruled.

MR. CHANLER: I do not think it is worth an exception.

BY MR. ELY:

Q Now, Miss Lynch, I show you people's Exhibits 3 and 4 for identification, and I ask you if you have ever seen these articles before? A Yes, sir, I have.

Q I ask you where you saw these articles before? A At my sister's room 364 West 23rd street.

Q I ask you when you saw these articles? A I saw those Monday, September 8th, Monday morning.

Q Where were they?

MR. CHANLER: There is no question but that they were there. Put the question.

BY MR. ELY:

Q Whereabouts were they? A On the dresser in her room.

Q Did you have any conversation with the defendant touching these bottles? A Yes, sir.

Q Give the conversation that you had with the defendant touching these bottles, if any?

MR. CHANLER: This defendant?

THE WITNESS: Yes. I told him that my sister

had been taking his medicine, and that it made her very ill, and that I refused to let her take any more of it, that it had thrown her into a convulsion, and the defendant then said "Well, if that medicine does not help your sister any, when I take her case I will prescribe for her."

BY MR. ELY:

Q Was this said touching these bottles? A Yes, sir.

Q By this defendant? A Yes, sir.

MR. ELY: I offer People's Exhibits 3 and 4 for identification in evidence.

Received.

MR. CHANLER: Does that include the contents of the bottles?

MR. ELY: I do not make any statements about the contents.

THE COURT: Only the bottles.

MR. CHANLER: You introduce into evidence the bottle and you cannot very well eliminate the contents.

THE COURT: I will make the ruling without regard to the contents that may be in the bottle.

MR. CHANLER: I object to the offering of the bottles unless the district Attorney offers the contents as well.

Objection overruled.

MR. CHAMLER: I except on the ground that the contents of the bottle are not offered.

THE COURT: Let me see the bottle-- as far as I can observe the large bottle, it is apparent from an inspection that it is empty, and the bottle known as Exhibit 4 has apparently a small quantity of fluid in it.

MR. CHAMLER: Will your Honor add "of a dark color."

THE COURT: I may be mistaken as to the color.

BY MR. ELY:

Q Have you stated now the whole of the conversation with this defendant as far as you can recollect it that occurred on the 8th of September, 1902, at 364 West 23rd street in your sister's room? A Yes, sir.

Q There was present at that conversation the defendant and your sister Agnes Lynch who was in bed? A Yes, sir.

Q No one else was there? A No, sir, just myself.

Q Then did you see the defendant in this case again, after?

MR. CHAMLER: It will save cross examination-- do I understand her to say that her sister was present when this conversation was had?

MR. ELY: Agnes Lynch.

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MR. CHANLER: She was present when this conversation was had with the defendant?

THE WITNESS: Yes.

BY MR. ELY:

Q When next if at all did you see this defendant? A Never saw him again.

Q Until the Coroner's Court? A Until the Coroner's court.

Q You have seen him since? A Yes, sir.

Q But you never saw him again until after your sister's death; is that what you mean? A Yes, sir.

THE COURT: This was on Monday?

MR. ELY: Monday the 8th of September, 1902,  
at 364 West 23rd street, New York County.

THE WITNESS: Yes.

BY MR. ELY:

Q Now, after the 8th of September, 1902, where, if anywhere, was your sister taken and if anywhere to what place?

A To my home 300 West 52nd street.

Q The sister I am speaking of is the deceased Agnes Lynch otherwise known as Fay Ransom? A Yes, sir.

Q When did you take your sister Agnes Lynch, otherwise known as Fay Ransom to the premises 300 West 52nd street?

A On September 9th, about three o'clock.

Q In the afternoon? A In the afternoon.

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Q Who, if anybody, accompanied her, did you? A Yes.

Q Did you observe her condition? A I did.

Q What was it, what did you see? A Do you wish me to speak of her gown?

Q I want you to speak of her condition, tell me?

MR. CHAMBER: Is it necessary to go into this with this witness. The doctor has testified, as to this. It is rather harrowing for the sister.

BY MR. ELY:

Q Who, if anybody was at the premises 300 West 52nd street when your sister Agnes Lynch was brought there? A My sister Florence Mackey and Lulu Clark.

Q Miss Lulu Clark? A Yes, sir.

Q Where was Dr. McKee? A Dr. McKee came later.

Q When? A On September 9th, to 300 West 52nd.

Q Do you remember about what time of the day? A She got there about 4 o'clock, I should judge. I think between 3:30 and 4.

The court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until two o'clock.

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After recess.

OLIVIA B. LYNCH, resumes the stand:

DIRECT EXAMINATION CONTINUED BY MR. ELY:

Q Did you see Dr. McKee after that, on the 10th of September? A No, sir, I did not see him after that.

Q We are talking about Dr. McKee, and I have just been speaking of the 9th of September-- that was Tuesday? A Yes, sir, that is right.

Q The place I have been speaking of is your home there at 300 West 52nd street? A Yes, sir.

Q I ask you if you remember seeing Dr. McKee on Tuesday the 10th? A Wednesday was the 10th.

Q I beg pardon; you are right and I am wrong. It is my mistake. Tuesday the 9th, did you see him on Wednesday the 10th? A Yes, sir.

Q Where did you see him? A At 300 West 52nd.

Q That was on the morning that your sister died? A Yes, sir.

Q Agnes Lynch? A Yes, sir.

Q Who was there when Dr. McKee came? A I was there, Lulu Clark and Florence Mackey.

Q And did you see the Rev. Mr. McCue on that day? A Yes, sir.

Q Was Dr. McKee there when the Rev. Mr. McGue came to 300 West 52nd street in New York County? A Yes, sir.

Q Were you there when your sister died, Agnes Lynch?

A I was there when my sister died, yes.

Q You have subsequently identified the body of your sister as to the Coroner's physician? A Yes, sir.

MR. CHANLER: There is no question about that.

CROSS EXAMINATION BY MR. CHANLER:

Q Did Mr. McKee perform an operation upon your sister upon Tuesday? A Not that I know of.

Q Do you remember testifying in the Coroner's Court?

A Yes, sir.

Q Do you remember being asked, "Q Who was that?" And saying "This Dr. Hibbe (indicating)."

"Q This doctor? A Yes, sir.

"Q With the eye glasses? A Yes, sir-- and then, do you remember going on and stating that he "told me he would take her case because he had been practicing 21 years and his brother was an assistant. So my sister became very ill during the night and in the morning I called Dr. McKee. Dr. McKee came and saw how she was suffering, and said she would have to have more room and light. So I removed my sister to my home 300 West 52nd street"-- this is what I want to call your

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attention to--- "Then Dr. McKee called and did everything, this operation, and then he told me that he had very little hope, that peritonitis had set in?" A No, sir, I do not ever remember saying he had performed an operation, Dr. McKee-- I simply said he had done everything that he could to save my sister's life, and he had told her on Tuesday the 9th, when he entered the room for the first time about 8, between 8 and 9 that---

Q I do not want that-- you do not remember giving this answer in the Coroner's Court? A Not the word "operation", no, sir.



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L U L U     C L A R K , called as a witness in behalf of  
the People, being duly sworn and examined, testified as  
follows:

DIRECT EXAMINATION BY MR. HLY:

Q Where do you reside? A 300 West 52nd.

Q In the County of New York? A Yes, sir.

Q How long have you lived there? A In the neighbor-  
hood of ten years.

Q Do you know Olivia C. Lynch? A Very well.

Q Where does she live? A 300 West 52nd Street.

Q In the same apartments with you? A Yes, sir, boards  
with my mother.

Q Did you know Agnes Lynch, otherwise Fay Ransom in her  
life time? A Yes, sir.

Q For how long a time have you known Fay Ransom, pre-  
vious to her death -- Agnes Lynch, otherwise Fay Ransom?  
A I had known her very nearly ten years.

Q Did you see her on the 7th of September, 1902?  
A Yes, sir.

Q What part of the day, evening or morning, or when?  
A It was on Sunday night.

Q In response to a certain communication you entered the  
premises 364 West 23rd street? A Yes, sir, in response to  
a telegram.

Q When you got to the premises 364 West 23rd Street in the County of New York, who did you see there? A Miss Nora Donnelly

Q Where was Miss Donnelly -- where did you go? A I went to Agnes Lynch--

Q Agnes Lynch's room? A Yes, sir.

Q That was on the first floor above the parlor?

A Yes, sir.

Q Front? A Yes, sir.

Q Hall bed room? A Yes, sir, hall bed room.

Q When you got there you found Nora Donnelly there with her? A Yes, sir.

Q With Agnes Lynch, otherwise Fay Ransom?

A Yes, sir.

Q Was there anybody else in the room? A No.

Q I show you People's Exhibits 3 and 4 in evidence and I ask you if you saw these two bottles? A Yes, sir, I saw both of them.

Q On the night of the 7th of September, 1902, when you went to Agnes Lynch's room, you saw them? A I saw both of them. This one I picked up (indicating).

Q You saw them both in Agnes Lynch's room? A Yes, sir, on the dresser.

Q Did you examine these bottles? A I examined this one (small one, Exhibit 4).

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Q Did you notice the condition of the label of Exhibit 4?

A Yes, sir, I picked it up and examined it.

Q At the time that you picked up that bottle and examined that bottle, People's Exhibit 4, tell me in what condition the label then was, if you please? A As I say it was the same as it is now, only I didn't notice the date -- I noticed the name, the doctor's name in different writing, that is all.

Q What time did you examine that? A I should say it was around half past 11 at night.

BY MR. CHANLER:

Q What time?

MR. RLY: Sunday night around half after 11.

BY MR. RLY:

Q And before the examination made by you, had you seen this defendant there? A Yes, sir.

Q About what time did this defendant come to premises 364 West 23rd Street in the City and County of New York on the evening of the 7th of September, 1902, about what time?

A It was very nearly -- it was very close to half past 11, I think. I am not sure of the exact time.

Q You are not sure exactly of the specific time?

A No, sir.

Q Who, if anybody, accompanied this defendant, if you know? A Another man.

Q Where were you when the defendant accompanied by this

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other man came to premises 364 West 23rd Street in the County of New York? A In the lower hall.

Q Who if anybody let him in if you know? A I believe it was the daughter of the lady who kept the house.

Q And what if any conversation -- you were in the lower hall? A Yes, sir.

Q What were you doing there? A I was having a hot water bag filled.

Q For Agnes Lynch? A Yes, sir.

In response to the District Attorney's call for Henry C. Hibbe, a man is brought into the room, and stood at the rail.

BY MR. ELY:

Q Look upon this man who has just been brought into the room and stands there by the rail; state whether or not he is the person you have referred to as accompanying the defendant on the evening of the 7th of September, 1902, to premises 364 West 23rd Street, in New York County? A Yes, sir, that is the man.

Q State what conversation occurred at the door that you heard engaged in by this defendant? A I did not hear him in conversation at the door. It was outside of Agnes Lynch's room I spoke to him.

Q I speak about when this defendant and Henry Hibbe came into premises 364 West 23rd Street; when they were admitted



by the daughter of the landlady; did you hear any conversation then? A No, sir.

Q Did you see what the defendant and Henry Hibbe who accompanied him did, when they entered the premises 364 West 23rd Street? A Both went directly up stairs and right into the room.

Q Right into what room? A Into Agnes Lynch's room.

Q What did you do? A I came up stairs directly after them and stepped into the room.

Q When this defendant got into Agnes Lynch's room as you state what if any conversation occurred? A I did not hear any conversation with that gentleman.

Q Was he there? A He was in the room, yes.

Q What conversation occurred in the room when the defendant and Henry Hibbe entered the room? A Miss Donnelly said she had telephoned for him, and that she was very much frightened and that everybody thought she was going to die, and not that gentleman, but the other one answered, "I guess you won't die Miss Ransom". Then Miss Donnelly said she would leave the room and the other man answered and said it might be just as well and we both stepped out of the room and in a few minutes after we did, that gentleman stepped outside.

Q This defendant? A Yes, sir, this defendant.

Q When the defendant accompanied by Henry Hibbe came to the premises 364 West 23rd Street as you have stated, did

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you notice whether he or his companion had anything in his hand? A One of them carried a physician's bag.

MR. HLY: I will strike out the words physician's bag.

THE COURT: Yes.

BY MR. HLY:

Q One of them carried a small hand bag and what were the dimensions of it about, can you tell, just show me; hold your hands? A I should judge about that long (indicating).

MR. HLY: Is that about 15 inches?

MR. CHANLER: Yes.

BY MR. HLY:

Q About 15 inches long and about how wide? A About that wide (indicating).

MR. HLY: Is that about six or eight inches wide?

THE COURT: About six inches.

MR. CHANLER: The Jury saw it.

THE COURT: Then twelve or fifteen inches long by six inches wide.

MR. HLY: Yes.

MR. CHANLER: Yes.

BY MR. HLY:

Q Did you see where the defendant or his companion took

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that bag? A The bag went into the room but I don't know which one carried it.

Q Then you say that you all except Henry Kibbie and the deceased Agnes Lynch, left Agnes Lynch's room after Nora Donnelly had said she would go out? A Yes, sir, Miss Donnelly and I stepped out first and we were out there probably three to five minutes when the defendant came out.

Q This defendant? A Yes, sir.

Q Did you have any conversation with the defendant and if so state what it was, then and there? A Miss Donnelly spoke to him first.

Q State the whole conversation that occurred? A Miss Donnelly said to him "We telephoned for you, we were so frightened and he answered and said "Yes, I got your message word for word and this man rung me up and I came up here all prepared to operate" and I spoke and said "Operate on what--" Miss Donnelly said "What makes her finger nails so black", and he said "That is nothing, that is natural", and then he said he came up here all prepared to operate, and I said "Operate on what", and, I am not positive whether he said operate on the bowels or stomach, but he said either one or the other.

Q What else, if anything, was said then? A That is all the conversation I had with him.

Q Is that all the conversation that you heard him engage

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in, as he was out there in the hall? A As near as I can remember, yes. I believe someone said something, but I don't know what or who.

Q Who were out in the hall? A There was Nora Donnelly, Mrs. Rechter, the landlady, and the defendant and myself.

Q Do you recollect anything being said about the labels on the bottles? A Not within my hearing. I believe Mrs. Rechter said something to somebody, but I don't know to whom.

Q You are sure Mrs. Rechter was there with you and Nora Donnelly when this defendant was having the conversation that you mentioned? A Yes, sir, Mrs. Rechter either was coming-- I am not sure whether she was coming down stairs or going up-- yes, I believe she came up with the bag. I went down to have the bag filled.

Q What bag? A The hot water bag and she said she would take it and fill it and that was what she came up with and she stood in the hall.

Q She brought the hot water bag up? A Yes, sir.

Q And she stood there? A She came up stairs and when she saw us in the hall she stopped. It was she who spoke when we heard a peculiar laugh coming from the room and it was she commented upon the laugh.

Q Coming from what room? A From Agnes Lynch's room.

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Q How long did the defendant remain in premises 364 West 23rd Street on this night, Sunday night September 7th? A Well, as near as I can remember it was close on to half an hour.

Q Did the defendant at any time, after the defendant came out from Agnes Lynch's room, go back into it on that evening? A Not that I saw.

Q Who, if anybody, did the defendant go away with?

A The man he came in with.

Q Henry Hibbie? A Yes, sir.

Q And they left the house in company together?

A Both together.

Q Did you notice the condition of Agnes Lynch on the night of the 7th of September, 1902, did you observe it?

A Yes, sir.

Q State what you saw-- A Do you mean when I first went to see her?

Q Yes. A When I first went there I found her with the clothes away up to her chin and she was perspiring very profusely and she seemed to be in very dreadful-- in fact she was burning up with heat.

Q Did you see her night clothes? A Not that night.

Q Did you see her on the morning of the 8th of September, that Monday morning? A Yes, sir.

Q Did you observe her condition then? A Yes, sir.

Q What was it? A She appeared to be in exactly the

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same state as she was the night before, when I left her and she was covered up in just the same way. When I spoke to her she just waived her hand for me not to talk to her.

Q Did you see her later on in the same day? A Yes, sir, I saw her again.

Q Did you assist in changing her night gown or anything?

A In the morning when I went back at half past 10.

Q What did you find with respect to any bandages?

A When I changed her night dress I noticed that her night dress was spotted.

Q Did you see any bandages? A Yes, sir, she was bandaged from here down.

Q Her stomach and abdomen? A Yes, sir.

Q Did you see the defendant after the 7th of September, 1902? A I never saw that defendant, no. I saw the other man.

Q But, from that time you never saw this defendant again until after Agnes Lynch departed this life?

A I never saw him but once.

Q After this time you never saw him again until after Agnes Lynch died? A No, sir.

Q Did you see Agnes Lynch on the 9th of September, 1902, that is Tuesday? A Yes, sir.

Q Where did you see her? A On Tuesday I saw her--



let us see -- her sister telephoned to me that they were going to move her to my house, and I came over, and as near as I can remember it was around 10 or 11 o'clock in the morning. I am not positive about the time.

Q Subsequently she was removed to your house? A Yes, sir, about four o'clock in the afternoon.

Q You saw Dr. McKee there in the afternoon?  
A Yes, sir.

Q Were you present at your house on the 10th of September, 1902? A Yes, sir.

Q Did you see Dr. McKee there? A Yes, sir.

Q Did you see the Reverend Mr. McGuire there? A Yes, sir.

Q Were you there when Agnes Lynch died? A Yes, sir.

Q About 10 o'clock? A Ten minutes to 10.

Q You have said that on the morning of the 8th of September when you changed the deceased's night robe, you saw spots, what color were they? A Red.

CROSS EXAMINATION BY MR. CHANLER:

Q Only one question, Miss Clark -- as I understand you to say there was so much noise in the room, I did not hear you-- did I understand you to say that when this defendant came to the house with Henry C. Hibbie he entered the room and remained there two or three minutes? A Yes, sir.

Q And then came out and remained in the hall about half

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an hour while Henry C. Hibbie was inside? A Yes, sir.

Q Talking to you? A Yes, sir.

Q And then they went away together? A Yes, sir, both went away together.

MARY FUCHTER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Where did you reside on the 7th of September, 1902?

A 364 West 23rd street.

Q New York County? A Yes, sir.

Q Did you know one Agnes Lynch, otherwise called Fay Ransom? A Yes, sir.

Q How long had you known Fay Ransom before the 7th of September, 1902; how long had she been in your house before that? A Since May.

Q Do you remember Sunday night the 7th of September, 1902, when you were taking a hot water bag up to Miss Agnes Lynch's room? A Yes, sir.

Q Do you remember seeing Lulu Clark and Miss Nora Donnelly there in the hall? A Yes, sir.

Q Were they talking to some man? A Yes, sir.

Q Did you have some conversation with that man? A Yes,

sir.

Q Do you see that man in court at present? A That is the man there (indicating the defendant).

Q That defendant? A Yes, sir.

Q What if any conversation did you have with the defendant? A I told the doctor about there was no name on the medicine bottle.

Q What bottle? A The medicine bottle.

Q I show you People's Exhibits 3 and 4, and I ask you if you ever saw these bottles before the time you had the conversation with the defendant that you now refer to; had you seen them before? A I could not swear to them. I know I saw bottles, but don't know they are the same.

Q Look at those bottles, take them in your hands and tell me whether after an examination of those bottles they are in all respects similar as far as you can recollect to the bottles that you saw in Agnes Lynch's room before the conversation that I am about to ask you for which you had with this defendant on the night of the 7th of September, 1902?

A I think it is the same bottles.

Q You think they are the same bottles? A And those dirty jerks were in the yard and rain and everything.

MR. CHANLER: We have not made any objection.

There is no question but what those are the bottles that were there.

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BY MR. ELY:

Q What, if any conversation did you have with this defendant relative to these bottles? A That is all I told the doctor.

Q Tell me? A I told him it was no name, that I thought it was kind of strange that there was no name on the bottles, no doctor's name on the bottles.

Q What did the defendant do, if anything? A He turned right around and went in the room.

Q This defendant turned around and went in the room?

A Yes, sir, went into the room and both came out. They came out again, both doctors, and this doctor here--

Q This defendant? A Yes, sir, told me the name was on the bottle, the doctor's name was on the bottle.

Q Who told you "Now the name is on the bottle"?

A The gentleman there.

Q That defendant? A Yes, sir.

Q Did you look at the bottles? A I went inside and looked at them after.

Q Look at these bottles now, can you see them?

A Yes, sir.

Q In what respect, if any, do the labels on these bottles--

MR. CHANLER: She said the names are on them now and then there were not names.

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MR. RLY: If you admit it--

BY MR. RLY:

Q The doctor's name was not on the bottle before, and after he came out and made this communication to you, you went in and saw that the name Hibbs M. D., was on the bottles? A Yes, sir.

BY MR. RLY:

Q Did you observe the condition of the clothes on the bed of the deceased? A Yes, sir.

Q When did you observe that, about when? A I can say right from the beginning, from Thursday -- Friday.

Q Friday the 5th of September? A Yes, sir.

Q What was the condition of the bed clothes-- do not say what if anything you thought was on the bed clothes, but say what the condition of the bed clothes was and if anything was on them state the color? A It was all stained.

Q Stained with what? A Like blood.

Q Stained with what color? A Red.

CROSS EXAMINATION BY MR. CHANLER:

Q The occasion you have been referring to was the same evening upon which the defendant and Henry C. Libbe called on Mrs. Lynch, and the defendant left Henry C. Hibbs, left the room with Miss Lynch -- that is the same evening you are referring to now, when Miss Clark was there? A I don't

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understand what you say.

Q You and Miss Clark were talking in the hall with the defendant? A Yes, sir.

Q He was out there for about a half an hour in the hall? A Not so long.

Q Miss Clark puts it at half an hour? A I don't put it at that. I don't know exactly how long it was.

Q Then do not say it was not, because you don't know-- you say a half an hour or some other time.

MR. ELY: She said she does not know how long. She has not stated any hour.

BY MR. CHANLER:

Q Miss Clark testified -- I merely do this to call your attention, to find out if it is the same time or the same day -- Miss Clark testifies that Dr. Hibbe and Henry C. Hibbe called at the house together on Sunday evening? A Yes, sir.

Q This was Sunday evening? A Yes, sir, Sunday evening.

Q And they both went into the room together; she was in the room herself at the time, Miss Clark, or shortly before, and then this defendant Dr. Hibbe went out of the room leaving Henry C. Hibbe in the room, is that right?

A When I came up stairs it was only this one gentleman out in the hall.

Q Do I understand you to say that this gentleman again

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entered the room? A Yes, sir, he went in again, in the room, after I told him it was no name on the bottle.

Q You are sure of that? A Certainly I am sure of that. I am positive.

Q You are quite sure? A Yes, sir, he went right in there.

Q You are quite sure the name was not on the bottle when Miss Clark was in the room shortly before this defendant arrived, are you? A No, there was no name on the bottle.

Q You are sure of that? A Yes, sir, sure, positive.

Q To make it perfectly clear, you are quite sure that there were no bottles in that room with the name of Dr. Hibbe upon them, before the doctor came that afternoon?

MR. RIX: I object. She has already testified on the subject.

Objection overruled.

Q You saw no other bottles there with Dr. Hibbe's name on them that afternoon? A It was no name on the bottles before I talk ed to the doctor.

Q You saw no bottles there which had Dr. Hibbe's name upon them? A No.

Q Before Dr. Hibbe had left the room in which this girl was, is that so? A Yes, sir.

Objected to.

MR. CHANTLER: The question is answered.

ANNIE POTTER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. RAY:

Q Where did you live on the 7th of September, 1902?

A 364 West 23rd Street, New York City.

Q How long had you been living there? A Been living there almost two years -- a year and a half at that time.

Q Did you know Agnes Lynch, otherwise known as Fay Ransom? A I knew her as a boarder in the house.

Q How long had you known her? A She came there in the summer, I think in the month of July.

Q Had you seen her from the time she came until about the 9th of September, 1902 pretty regularly or frequently?

A Yes, sir.

Q At meals? A Yes, sir, I saw her each day at meal times.

Q Did you see her between the 4th of September, 1902, and the 7th of September, 1902? A Yes, sir.

Q Where was she between those times? A In bed.

Q Did her room adjoin yours? A Right next to it.

Q With a door between? A Door between.

Q That was kept closed? A That was closed.

Q I show you People's Exhibit 5, and ask you to look at it? A That was found by--

Q Did you ever see that before? A Yes, sir.

Q Where did you see that? A I saw that in her room.

Q Whose room, Agnes Lynch's, otherwise known as Fay Ransom's room? A Yes, sir.

Q When did you see that? A The Sunday evening preceding her death.

Q Sunday the 7th of September, 1902? A Yes, sir.

Q Who was there when you saw that if you recollect?

A Mrs. Hull and Miss Dannelly and myself.

Q Did you ever see the defendant here? A Which man?

Q That man with his arms crossed? A No, sir.

Q Now, prior to the 4th of September, before the 4th of September, 1902, as far as you know, or, as appearances went, Agnes Lynch was in good health? A Yes, sir, she appeared to be so.

No cross examination.

B E T T Y H U L L , called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Where did you live on the 7th day of September, 1902?

A 22nd street, New York, 362.

Q 362 West 22nd? A Yes, sir.



Q In the county of New York? A Yes, sir.

Q Did you know Agnes Lynch in her life time?

A Yes, sir.

Q Otherwise known as Fay Ransom -- and for how long a time had you known Agnes Lynch? A Well, about two months.

Q Only two months? A I met her about 18 months before that, once.

Q Did you see Agnes Lynch, otherwise known as Fay Ransom on Sunday September 7th, 1902? A Yes, sir.

Q In the evening? A Yes, sir.

Q Who were there when you were there? A Nora.

Q Nora Donnelly? A Yes, sir.

Q Nora Donnelly is your grand daughter? A Yes, sir.

Q And is Nora Donnelly in New York County now?

A No, sir.

Q Where is she? A She is in Pennsylvania.

Q And you saw Nora there at 364 West 23rd street?

A Yes, sir.

Q On Sunday night? A Yes.

Q In whose room? A Fay Ransom's.

Q Agnes Lynch's, otherwise known as Fay Ransom?

A Yes, sir.

Q I show you this paper, have you got your reading glasses with you this time? A No, sir.

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Q Did you bring them? A I have them.

Q Put them on? (Witness complies).

Q Did you ever see that paper before? A Yes, sir.

Q Where did you see it? A In the room of Fay Ransom.

Q On what occasion? A When we were looking for a telephone, or somewhere to speak of the medicine she had taken. We were frightened.

Q What medicine, if any, had Agnes Lynch taken just prior to your finding this People's Exhibit 5? A It was a little -- small bottle of dark medicine. I don't know what it was.

Q I show you People's Exhibit 4? A That is the size of the bottle.

Q Now look at that bottle and see whether or not you can identify that as being the bottle from which medicine was given on the night in question? A This is the bottle and all but the signature there was on it only.

Q All but the directions--the directions were on it, but the signature was not? A Yes, sir, there was not a thing on that bottle but the directions.

Q Who, if anybody, gave any medicine from this bottle to anybody in your presence? A Nora Donnelly.

Q Nora Donnelly gave some medicine from this bottle, People's Exhibit 4 to whom? A This sick girl, Agnes Lynch.

Q Otherwise known as Fay Ransom? A Yes, sir.

Q Did you observe immediately after Nora Donnelly, your granddaughter, had given a dose of that medicine to Agnes Lynch otherwise known as Fay Ransom? A Yes, sir.

Q What did you observe? A She was spasmodic, had spasms.

Q Who had spasms? A The sick girl, Agnes.

Q After the giving of this medicine by Nora Donnelly to Agnes Lynch otherwise known as Fay Ransom, it was after that you found and saw this People's Exhibit 5 in Agnes Lynch's, otherwise known as Fay Ransom's room? A Yes, sir, in a drawer.

Q Subsequent to finding this People's Exhibit 5, you went away from the -- A Nora was telephoning when I left.

Q Subsequent to finding that you went away?

A Yes, sir.

Q Eventually you returned to the house and spent the night there? A Yes, sir.

Q The house being 364 West 23rd street and there being in Agnes Lynch's room? A Yes, sir.

Q Now Mrs. Hull, on Monday night, September 8th, 1902, at 364 West 23rd street, did you see the defendant here?

A Monday, yes.

Q Did you see Olivia G. Lynch? A Yes, sir.

Q About what time should you say according to the best

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of your recollection, about five or six o'clock? A Yes, sir, I presume it was.

Q And you saw Olivia C. Lynch with this defendant?

A Yes, sir.

Q What, if any, conversation did you hear between Olivia C. Lynch and this defendant on Monday afternoon at five or six o'clock at 364 west 23rd street?

MR. CHANLER: I would like to know -- I do not know what is coming out, of course-- but I would like to be sure this is the defendant -- that the defendant is the person whom this witness saw in the room and not Henry C. Hibbe.

MR. ELY: There is no testimony about Henry C. Hibbe at this time, on the 8th of September.

MR. CHANLER: She may confuse the word defendant.

BY MR. ELY:

Q Is that the man you saw there (pointing to the defendant)? A Yes, sir, that is the man.

Q That is the man, this defendant is the man whom you saw on the afternoon of the 8th of September, 1902?

A On Monday night.

Q Talking with Olivia C. Lynch? A Yes, sir.

Q Tell what conversation you heard between Olivia C. Lynch and this defendant? A I left the room. I was asked to

leave the room and step in the hall. I was there a few minutes and this person came out and said "Go in, go in lady," and I went in and he spoke to Olivia Lynch.

Q This defendant came out to you, did he, and said "go in"? A And said "Go in".

Q Go in lady, and he spoke to Olivia--what did he say?

A He said that he would take the case and have her up in four days and she said "Well, what will your brother say?" And he said that is all right. He said "Well now, what about the pay?"

Q He, is this defendant? A Yes, sir, and she said "Well, I will see that you are paid", and he remarked "Tomorrow, if that is settled, I will take the case". That is all.

No cross examination.

THOMAS F. WALSH, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. JURY:

Q You are an officer connected with the Municipal Police Force of the City of New York? A Yes, sir.

Q And you were so connected on the 10th of September, 1902? A Yes, sir.

Q And attached where, on that day? A To the 17th

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precinct.

Q On the 10th of September, 1902, did you see the defendant? A Yes, sir.

Q Where did you see him? A 31 Stuyvesant street.

Q Did you have any conversation with him?

BY THE COURT:

Q Is that in the City and County of New York?

A Yes, sir.

BY MR. HLY:

Q And did you have any conversation with the defendant at that time? A I did.

Q In reference to what was it? A In reference to the death of a girl by the name of Agnes Lynch at 364 West 23rd street.

Q Agnes was known as Fay Ransom? A Yes, sir, Fay Ransom.

Q Who died at 300 West 52nd Street in the City and County of New York? A Yes, sir.

Q What did the defendant say to you at that time? A I asked him if he had visited this Agnes Lynch at 364 West 23rd Street and he said yes. I asked him how many times he had visited her there, and he said he had visited on the 7th of September and on the 8th, and when he went there on the 9th the girl had been removed.

Q What did he say he did on either of the occasions he



went there? A He said on September 7th when he went there, he found the girl in a very weak condition and he prepared her, and went he went there on the 8th he found the uterus in a very bloody condition and he cleaned it out.

Q Who did the defendant say was present with him at any time, if anybody, when he visited Agnes Lynch? A I asked him if there was not another Dr. Hibbe, and he said yes, that was his brother Henry, but he says he is not a licensed physician, he acts as my assistant. I asked him if he acted as his assistant in this case and he said yes.

CROSS EXAMINATION BY MR. CHANLER:

Q Did you make a note of this conversation at the time? A Yes, sir.

Q Have you got your note with you? A No, sir.

Q Where is it? A I have lost it.

Q You kept the memory green? A Yes, sir.

Q Do you mean to tell us you are giving the exact words of this conversation? A Yes, sir.

Q Are you in the habit of memorizing?

Objected to. Overruled.

A No, sir.

Q How long ago was this? A The 10th of September.

Q How did you happen to lose the note you took of this conversation? A I don't know.

Q Didn't you think it a matter of some importance?

A Yes, sir.

Q Take any care of those notes? A Yes, sir.

Q When did you last look for them? A About ten days ago or two weeks. I may have lost them in my -- I have been transferred around three or four different precincts and shifting of papers and one thing or another, I may have lost them.

Q What was the first word you said to this man? A I asked him if he was Mr. Hibbe.

Q What was the first word you said to him, give us the words, just as if you were talking to him, as you are now talking to me, give me the words you gave him? A The words I said to him --

Q Yes, and do not repeat them, give them to us, you ought to have no hesitation in telling me what the first words were -- what were they?

MR. KELY: I object to the statement of counsel that he ought to have no hesitation. There is no apparent hesitation.

THE COURT: give us the words.

MR. CHANLER: Have you had time to think?

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MR. ELY: I object as improper.

THE COURT: Give the words.

A The questions I ask him?

Q The first words that were said? A I said to him "Are you Dr. Hibbe", and he said yes. I said "There is another Dr. Hibbe, isn't there?" And he said "yes, that is my brother Henry". I asked him what his name was and he said Leopold. I asked him was his brother Henry about now, and he said "No, he believed his brother Henry was home in 13th street.

BY MR. CHANLER:

Q Go on? A Then I asked him if he had attended a girl by the name of Agnes Lynch or known as Fay Ransom at 354 West 23rd street, and he said he did.

Q What did he say-- he did not say he did -- what were his words? A He said he did.

Q What did he say. You have got this thing by heart, what were his words?

MR. ELY: I object to counsel interjecting these remarks.

MR. CHANLER: You do not object to it as much as I object to the officer bringing it in.

MR. ELY: I object, that is improper for counsel.

BY THE COURT:

Q Give us the words? A I asked him how many times he had visited these premises 364 West 23rd Street or visited that girl and he said he had visited there three times.

BY MR. CHAMBER:

Q Did he say "I have visited there three times", or say "three times"? A He said he had visited there.

Q What did he say, give us his words? A I visited there three times.

Q Those were his words? A Yes, sir.

Q Quite sure? A Yes, sir.

Q No mistake? A No, sir.

Q This was last September? A Yes, sir.

Q Go ahead, Officer? A He said the first visit was on September 7th.

Q Did he say it like that, "I visited there three times and my first visit was on September 7th"-- did he talk like that? A He did not talk as fast as that.

Q I ask for the conversation, not what your conclusion of the conversation is, but for the words? A He said he had visited there three times.

Q He said "I visited there three times"? A Yes.

Q What were the next words? A I asked him when he had visited there.

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Q I said, "When did you visit there?"-- those the words you used? A Yes, sir.

Q What were the words you used? A He said he visited there on September 1st, was his first visit.

Q Will you give me the words? A That is just what I say.

Q That is the best you can do? A Yes, sir.

Q Those were the words he used? A Just what I say is what he said.

Q He said "How many times did you go over there", and his reply was he visited there three times, is that right-- that is all? (No answer.)

THOMAS J. BUTLER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. NELX:

Q What is your name? A Thomas J. Butler.

Q You are connected with the Municipal Police Force and were so connected on the 10th of September, 1902?

A Yes, sir.

Q Attached to what precinct? A The 17th then.

Q Did you see the defendant on the 10th of September, 1902? A Yes, sir.

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Q Where? A In the station house.

Q Where? A 230 West 20th.

Q Did you go with him anywhere? A I brought him up to Coroner Scholer's office.

Q Did you hear any conversation between Coroner Scholer and this defendant? A Yes, sir.

Q Was it all in English or partly in English and partly in German? A Partly in English and partly in German.

Q Do you understand German? A No, sir.

Q Give the conversation you heard between this defendant and Coroner Scholer that was in English?

MR. CHAMBER: I object upon the ground that if he is going to bring out part of a conversation we are entitled to have the whole of it. Coroner Scholer is alive, and in New York, and we want the whole conversation.

THE COURT: I think it is better that the conversation, if it can be testified to by the person who understood all the language used in that conversation, should be given in its entirety.

MR. REX: Very well, sir, I am willing. I will withdraw the witness.

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GUSTAV SCHOLER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HILY:

Q What is your name? A Gustave Scholer.

Q What if any position have you, official position?

A I am one of the Coroners of the City at the present time.

Q Were you such Coroner on the 10th day of September, 1902? A Yes, sir.

Q Did you see the defendant here, Leopold Hibbs on the 10th day of September, 1902? A If the 10th day of September was the night he called at my house, I say yes, I saw him.

Q He was in company with Officer Butler, with the officer? A With the officer, yes.

Q Did you have any conversation with the defendant Leopold Hibbs when he called at your house on the 10th of September, 1902? A Yes, sir.

Q What conversation did you have with him? A The officer brought the defendant to my house about two o'clock in the morning and stated that the police had investigated this case.

Q What case? A Of Agnes Lynch, and that they had reason to believe --

Q This was in the presence of the defendant? A This was in the presence of the defendant, and they had reason to believe that Dr. Hibbe was implicated in the -- meaning the defendant.

Q Was implicated? A They had reason to believe that Dr. Hibbe was implicated in the criminal operation which had apparently been performed upon this deceased, Agnes Lynch.

Q What conversation did you have with the defendant?

A I asked the doctor--

Q The defendant? A The defendant. I asked the defendant what he had to say in this matter, and he stated that as far as he was concerned --

MR. CHANLER: I want to know where this was.

MR. ELY: This was in the Coroner's house about two o'clock in the morning.

MR. CHANLER: Was the defendant warned of his rights -- may I ask that?

THE COURT: I cannot answer that.

MR. CHANLER: This defendant has stated he is one of the Coroners. This defendant was brought to him by an officer. May I have permission to cross examine him to find out if he went before him in his official capacity as Coroner, as prisoner, and if so was he warned of his rights.

THE COURT: I will permit the examination to

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go on.

MR. CHAMBER: I except.

THE WITNESS: (Continuing) He stated that as far as he was concerned he does not know anything about any abortion which had been committed on this girl; that she came to his house or to his office once and that he made an examination and it appeared to him that she was about either to have a miscarriage or an abortion or that she had passed one.

BY MR. HAY:

Q Passed what? A A fetus -- that he was not sure -- that he did not--

Q Did he say whether or not he had -- did the defendant say whether or not he had ever visited the deceased at her house? A I asked him whether he treated the girl and he said he only saw her once at 23rd Street.

Q That is, once at his office and once at 23rd Street?

A Once at his office and once at 23rd Street.

A 364 West 23rd? A I couldn't remember whether he stated the number, but he said at her house. That is as far as I can remember.

Q Do you remember whether the defendant testified where his, the defendant's, office was, at which he had seen this deceased; did he give his office address? A He gave his



office address prior to --

Q Where was that, 31 Stuyvesant street? A In Stuyvesant street -- I don't remember the number exactly.

CROSS EXAMINATION BY MR. CHAMBERLAIN:

Q In this conversation you give, before the defendant made this statement to you, did you give him any warning as to his rights?

Objected to. Objection overruled.

A I don't remember. It was a mere statement, more of a voluntary statement made upon his part than any official statement. I simply asked him how he was implicated in this matter.

Q Was he arraigned before you in your capacity as a Coroner? A That night?

Q Yes. A Yes.

Q The officer brought him to you as Coroner?

A The officer brought him to me, but I didn't know at that time whether he was the man who was to be -- who was supposed to be the guilty party or whether he was a witness.

Q He was in the custody of an officer? A He was brought to my office, yes, in the custody of the officer.

Q Under arrest? A That I did not know.



Q Did not the officer say? A He told me afterwards that this man --

THE COURT: Not afterwards; counsel is not asking you what he said afterwards. Just what was said at that time.

BY MR. CHANLER:

Q The officer told you that the police had reason to believe that this defendant who was brought before you was implicated in the abortion upon this Miss Lynch? A Agnes Lynch, exactly.

Q Did you ask him any question thereupon? A Who any question?

Q The defendant? A I simply asked him in what way he was implicated.

MR. CHANLER: I ask that the statement made by the defendant to the Coroner be stricken out on the ground that it was the Coroner's duty to warn the defendant of his rights before permitting him to make any statement or before he interrogated him.

THE COURT: What have you to say to that, Mr. District Attorney?

MR. KELY: It appears from the testimony of the witness that this was in the nature more of a volun-

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tary statement made by the defendant, than anything else and furthermore that the Coroner did not know at the time that he made the statement that he, the defendant made the statement, that the defendant was under arrest or was there as a witness, and as it was a voluntary statement made by the witness--

THE COURT: The Coroner asked the question, how was he implicated in this matter.

MR. ELY: As a matter of fact it does not appear he was not warned. The Coroner says he does not recollect whether he was warned or not.

THE COURT: Is it not true that it should affirmatively appear that he was warned?

MR. ELY: I think, if your Honor please, that it may be made competent, for undoubtedly this defendant was arraigned before the sergeant and informed of his rights before he was taken to the Coroner, but I do not think that would cure any defect before the Coroner.

THE COURT: That would not reach the Coroner.

MR. ELY: Furthermore it does not appear that the defendant was sworn.

THE COURT: That is not necessary.

THE WITNESS: May I make a statement?

THE COURT: Certainly.

THE WITNESS: I never considered the doctor a prisoner until after his statement.

MR. CHANLER: In other words you sat in judgment upon his case?

THE WITNESS: In judgment upon what he stated. He had to make that statement before I could consider.

BY THE COURT:

Q There was no deposition before you? A No, sir, there was no deposition.

Q No formal charge against the defendant charging him with any crime except such as may be either inferred or construed from the conversation with the officer? A That was all. The officer said he thought he was implicated. He thought.

BY MR. CHANLER:

Q I understand, after getting the statement from the defendant, you held him and admitted him to bail? A Then, when I heard that he really --

Q I do not want your conclusion, but after you heard his statement to you, you held him under bail? A On his statement I considered him implicated in the case.

Q That statement which he gave you? A And, on that statement I admitted him to bail.

THE COURT: Is that all, gentlemen?

MR. NIX: Yes.

MR. CHAMBER: Yes.

THE COURT: I will hold the ruling upon your motion for the present.

MORRIS F. SCHLESINGER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WHELAN:

Q Where do you live? A 203 East 111.

Q What is your occupation? A Druggist.

Q How long have you been in that business? A 21 years.

Q Do you know the defendant at the bar, Leopold

Hibbe? A I do.

Q How long have you known him? A Well, I have known him about five years, but have not known him to speak to since 1900-- the end of 1899.

Q Have you ever seen the defendant write? A I have.

Q Often? A Not very often for we have not had an

extensive business -- occasionally.

Q Three years ago did you see him write? A Three years ago, yes.

Q You saw him write a number of times? A Occasionally.

Q In your business as druggist do you have occasion to examine handwriting frequently? A Very much so.

Q In what way? A In the effort to decipher illegible prescriptions.

Q You have seen a number of the defendant's prescriptions? A I have, three years ago.

Q Are you familiar with the handwriting of the defendant? A Yes, sir.

Q I show you a piece of paper and ask you (Exhibit 5) -- and ask you if you can state -- have you seen that piece of paper before? A I saw this last Saturday in your office.

Q You have examined that piece of paper? A I did.

Q Now, from seeing that piece of paper, I ask you, from your knowledge of the defendant's handwriting, if you can state your opinion as to who wrote that piece of paper, who wrote the handwriting upon that piece of paper? A I can only repeat as I told you Saturday, that I infer it was his writing.

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

THE COURT: That will not do, infer.

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BY MR. THORNE:

Q Did you examine it and compare it with any other handwriting? A We went over it carefully.

MR. CHANLER: I object. He is not an expert.

THE COURT: The question is, from his knowledge of the defendant's handwriting, because, he has to testify from his knowledge, if, in his opinion, from his knowledge of the defendant's handwriting, is he prepared to say whether or not in his opinion the writing in question is that of the defendant.

MR. CHANLER: From that alone?

THE COURT: Certainly.

BY MR. THORNE:

Q From your knowledge of the defendant's handwriting, are you prepared to state whether or not in your opinion that is the defendant's handwriting? A In my opinion, I express it as such.

Q It is the defendant's handwriting? A Yes, sir.

MR. ELY: That is, People's Exhibit 5, about which the witness is now testifying.

No cross examination.

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THOMAS W. OSBORNE, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A One of the official stenographers of this court.

Q Where were you so attached as stenographer on the 17th day of April, 1903? A In this Part.

Q Who, if you know, acted as official stenographer in the case of the People against Henry C. Hibbe? A I did.

Q Can you state from your own recollection or from the minutes that you took in your official capacity whether or not Leopold Hibbe was called as a witness in that case on the part of the defendant, called by the defendant? A I can state from recollection that he was called.

Q Can you state whether or not this question was propounded to the defendant, to the said Leopold Hibbe, on the 17th day of April, 1903, by Mr. Hadden, of counsel for Henry C. Hibbe --

MR. CHANLER: I make the same objection as to the questions put to the Coroner, unless it appears in this case that the defendant was warned that he need not answer any questions which might tend to incriminate him.

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BY THE COURT:

Q By whom was the defendant called as a witness?

A Called by the defense.

Objection overruled. Exception.

BY MR. RLY:

Q And appeared as a witness in that case, called for the defense? A Yes, sir.

BY MR. RLY:

Q "Q Did you treat Miss Fay Ransom on that afternoon in question and if so, for what did you treat her?" A I remember that question.

Q Do you remember this answer "A I treated her for alcoholism and gastric catarrh". Do you remember that answer being made by Leopold Hibbe? A Yes, sir.

Q Do you remember this question being asked --

MR. CHANTLER: I will admit that the stenographer's minutes are correct. You need not go through the form.

BY MR. RLY:

Q Do you remember this question being asked, "You treated Miss Fay Ransom for alcoholism? A I made the diagnosis, rather. Q You made the diagnosis for acute alcoholism? A And gastric catarrh". Do you remember those questions and answers being made in that action of the People against Henry

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C. Hibbe on the 17th of April, 1903, by Leopold Hibbe, a witness called by the defense, for the defense? A Yes, sir.

MR. CHANLER: All this is received under the same objection and exception.

BY MR. RIX:

Q And Mr. Osborne, on this same day, the 17th of April, 1903, do you remember this question being propounded to Leopold Hibbe by counsel for the defendant, "Who if anybody was with you on the afternoon of September 6th, 1902, when you called at the house 364 West 23rd street to see Miss Fay Ransom", and this answer being given by Leopold Hibbe under oath, "No one"? A Yes, sir.

Q Do you remember, Mr. Osborne, on the day in question, in the proceedings that I have referred to, namely the People of the State of New York against Henry C. Hibbe, that this question was asked by counsel for the defense, of the witness Leopold Hibbe, "Q I pass you two bottles. Now where did you see these bottles first? A In my own office-" do you remember that answer being made to that question by Leopold Hibbe? A Yes, sir.

Q Do you remember this question and answer being propounded by the defendant's counsel to Leopold Hibbe, witness called by the defendant, "Taking the smaller bottle first, what, if anything did you place in that bottle?"

MR. CHANLER: I admit these minutes are cor-

MR. REX: (Continuing) \*A I placed a medicine for the bowels in that bottle. Q Can you recall who wrote the directions on that label? A Yes, sir. Q Who did. A Myself. Q You signed that? A I signed everything that is upon that label. Q Take the larger bottle, did you ever see that bottle before? A yes, sir. Q Where if any place did you see it? A In my office. Q Do you recall whether or not you saw that bottle in your office on September last? A I seen it there. Q When you saw that bottle in your office what day was it? A Sunday. Q When you saw that bottle on the 7th of September, what, if anything did you do with that bottle? A Placed some medicine in it. Q What, if anything, did you do with those two bottles on the 7th of September, 1902? A I sent them to the patient. Q By whom? A By my brother. Q The defendant? A Yes. Cross Examined by Mr. Ely. Q Did Agnes Lynch, the deceased, known as Fay Ransom, ever come to your house? A Never. Q did you ever say to anybody that Agnes Lynch, otherwise known as Fay Ransom, the deceased, ever went to your house? A No, sir, never. Q Do you know Gustave Scholer, who is Coroner here? A Yes, sir.

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Q Did you ever say that you made a diagnosis of the case of Agnes Lynch and that she had a threatened miscarriage or had had a miscarriage? A Never.

Q Didn't you tell that to Coroner Scholer?

A No, sir. Q To Gustave Scholer? A I am telling you no, sir.

Do you recollect these questions and answers being propounded?

A Yes, sir.

CROSS EXAMINATION BY MR. CHANLER:

Q "Q When you saw that bottle on the 7th of September, what, if anything did you do with that bottle? A Placed some medicine in it. Q What was the name of the drug you placed in it? A Lacto peptine. Is that right? A Yes, sir.

MR. HLY: The People rest with the exception of calling the witness Miss Townsend. She is professional nurse and is now engaged upon a case. It has been impossible to get her here to-day. I have sent out for her and I shall either get her here and put her on the stand in the morning-- her examination will not take more than ten or fifteen minutes -- or, if I find that I cannot get her by the morning, I will close my case."

The Court admonishes the jury in accordance  
with Section 415 of the Code of Criminal Procedure  
and takes an adjournment until to-morrow morning,  
April 28th, 1903, at 10:30 A. M.

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New York, April 28th, 1903.

TRIAL RESUMED.

GUSTAV SCHOLER, recalled by the People.

BY MR. RIX:

Q Since giving your testimony on the stand yesterday with respect to the warning, if any, that you gave to the defendant prior to any statement that the defendant may have made to you on the 10th of September, 1902, have you examined the papers with reference to this case? A I have, this morning.

Q Have you refreshed your recollection in any way with respect to this case as to who issued the warrant and so forth?

A I have.

Q Are you able to state whether or not before interrogating the defendant that you warned the defendant of his rights? A I am ready to --

MR. CHANLER: When and where?

MR. RIX: On the 10th of September, 1902.

Q (Question repeated).

THE COURT: When?

MR. RIX: On the 10th day of September, 1902, when the defendant was brought to his house at two o'clock in the morning -- on the morning of the 11th at two o'clock, when, as has been testified to, this defendant was brought to the Coroner in company

with an officer?

Q (Question repeated).

Objected to.

Objection sustained.

BY MR. HLY:

Q I offer you these papers to refresh your recollection as to anything that you testified to yesterday and direct your attention to the question that counsel asked of you as to whether or not, before receiving the statement of the defendant which you testified to yesterday as having been made to you on the 11th of September, 1902, at two o'clock in the morning, you advised the defendant of his rights?

Objected to.

BY THE COURT:

Q When did you issue a warrant in this case? A I issued a warrant on the 10th of September, on the strength of this testimony (indicating).

MR. CHANLER: If the witness is reading from a paper I object to his reading.

THE WITNESS: I am not reading the paper.

BY MR. HLY:

Q You issued a warrant on the 10th? A On the 10th I issued a warrant, on the strength of a deposition made by the sister of the deceased, and that warrant was issued in the



name of Dr. Hibbe, there being two Dr. Hibbes, and not knowing which one was the one that we wanted, I made it only to Dr. Hibbe, leaving it optional with the police to find the right man.

Q You had issued a warrant for Dr. Hibbe before you saw the defendant? A Yes, sir.

Q At your house? A Yes, sir, at my office, in this building.

Q But, the defendant, as I understand, was brought to your house about two o'clock in the morning? A On the 11th.

Q Had you issued a warrant before that? A Before that, yes.

Q For the arrest of Dr. Hibbe? A For the arrest of one Dr. Hibbe.

Q When did you institute the investigation? A On the 10th of September.

Q Before the defendant was brought to your house?

A Before the defendant was brought to my house.

Q When the defendant was brought to your house did you conduct any investigation there at your house? A I did.

Q Had you a jury present at your house? A No, sir.

Q When did you conduct the investigation before a jury?

A At the time of the inquest, when the inquest was held.



Q How long after? A The 29th.

Q Was the defendant interrogated there? A Yes, sir--  
if I may be permitted to offer an explanation--

THE COURT: Yes.

THE WITNESS: Two Dr. Hibbes being in this case, and I not knowing which one was wanted, gave a warrant which is attached here to the police simply writing out Dr. Hibbe. When the man was brought to my office at 2 o'clock in the morning by the police, I did not know whether this was the Dr. Hibbe that was wanted or whether it was the other Dr. Hibbe that was wanted and consequently I had to ask him in what way he was implicated in this matter. After I found he had made a statement, that he made an examination of the woman, then I warned him of his right not to say any more hereafter.

BY THE COURT:

Q At your house? A At my house-- unless it might be construed against him, in the usual form stated. It was an extraordinary case, there being two Dr. Hibbes implicated in this matter, and not knowing the initials of either one of them, or the first name, and not knowing which one was charged with committing a crime.

BY THE COURT:

Q After he said what you have narrated yesterday, you warned him then? A I warned him then.

BY MR. ELY:

Q After you warned the defendant of his rights--

THE COURT: The question here is, the Coroner asked the defendant a question. The defendant answered that question. The Coroner has testified to the answer and it was then the Coroner warned him not to say anything further, so that whatever defect, if any, exists with regard to the question, the warning was not given to the defendant until after the question was asked and answered.

BY MR. ELY:

Q After you had warned the defendant, did the defendant say anything to you? A He might have said something.

Q Did he. I do not ask you what he might have done-- do you recollect? A Yes, sir, he passed some remark such as how an innocent man can be brought into trouble like this.

+ No cross examination.

DANIEL ROONEY, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

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Q What is your business? A County detective.

Q Connected with the District Attorney's office?

A Yes, sir.

Q As such is it your business to serve subpoenas?

A Yes, sir.

Q Did you attempt at my direction to serve a subpoena upon Alpha Townsend, the nurse? A I did.

Q What did you ascertain? A I was unable to effect a service; I ascertained she was with a contagious diseased person.

Q she is with a contagious diseased person, quarantined?

A Yes, sir.

MR. CHANLER: There is no question about that. I do not object.

THE PEOPLE REST.

MR. CHANLER: I ask your Honor to advise the jury to acquit upon the ground that the evidence is insufficient to justify a conviction.

Motion denied. Exception.

THE COURT: There is a motion pending, Mr. Chanler.

MR. CHANLER: I renew my motion in regard to the evidence given by the Coroner yesterday as to the statement made to him by the defendant.

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THE COURT: I am and have been in doubt about the competency of this testimony. If it be regarded as a confession, it is clearly incompetent, but I do not regard it as a confession. I think that the element of a confession are wholly wanting, because the defendant does not admit or confess to the commission of any crime in his talk with Coroner Scheler. He simply states that the girl had been to his house. If it be regarded as anything, I think it must be regarded in the nature of an admission, but, taking into consideration the Coroner's statements this morning that the warrant had been issued, and that the defendant was brought before him in his magisterial capacity, and that he warned him not to talk, but only after he asked him this question which the defendant answered, and as the authorities are somewhat in conflict upon that point, and the question is not by any means cleared or settled as to the distinction between an admission and a confession, I am inclined to think that the weight of authority is in favor of the view that I will now take, and that is to decide the testimony as incompetent, and to give to the defendant the benefit of the doubt in my mind upon a question

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that is very close. I therefore direct that the question and the answer to that question, as testified to by Coroner Scholer, when the defendant was taken to his house on the morning of the 11th of September, 1902, to be stricken from the record and the jury are directed to disregard the answer that the defendant is said to have given to Coroner Scholer's question, and to consider the case absolutely without the defendant's answer, as if it never had been given.

THE DEFENSE RESTS.

Mr. Chanler sums up in behalf of the defendant.