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CASE # 1614

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York, Part V.

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :Before:

-against-

JOSEPH MURPHY.

: HON. OTTO A. ROSALSKY, J.,

: and a jury.
-----X

New York, October 14th, 1912.

Indicted for murder in the first degree.

Indictment filed August 9, 1912.

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

For People: CHARLES C. FOTT and JAMES O'MALLEY, Esqrs.,
Assistants to the District Attorney.

For Defendant: PHILIP F. SCHICK, ESQ.

The talesmen are examined on the voir dire.

THE CLERK: Joseph Murphy, if you desire to challenge
an individual juror, you must do so when he appears and
before he is sworn. Do you waive the further giving
of this notice?

MR. SCHICK: Yes.

A jury is duly empanelled and sworn.

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MR. NOTT'S OPENING ADDRESS TO THE JURY IN BEHALF
OF THE PEOPLE:

MR. NOTT: If the Court please, Mr. Foreman, and each of you gentlemen of the jury: This defendant has been indicted for the highest crime known to the law, namely, murder in the first degree, and the duty which falls upon you gentlemen here in sitting in this jury box is certainly one of the most important that can be performed by any citizen. Of the importance of it, as related to the defendant, I need hardly speak; as to the importance of it, as related to your fellow citizens, the People of this State, who are plaintiffs in this action, I need hardly speak. If there is any more important duty to the public than the trial of cases where human life is taken by means of such a dangerous weapon as a revolver, and where the defendant is an able bodied man, and the deceased is a woman, I know of no such duty.

I think that you gentlemen already appreciate from what you have heard in this case that it is a case of great gravity and importance, and that we will bring before you, if the facts are proved as stated to your satisfaction, beyond a reasonable doubt, not only the question of the defendant's guilt, but the consideration of his guilt of murder in the first degree, and this is a case in which the people will earnestly contend, if the facts are borne out by the evidence

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that not only would it be a great miscarriage of justice should this defendant be acquitted, but it would be almost equally so if he were not convicted of the crime which the people contend he has committed, namely, murder in the first degree, and in no lesser degree.

This case is grave in the first place because it involves the taking of a human life. It is grave, second, because the human life taken was that of a woman -- taken by a man. And grave in the third place because there were no less than four wounds inflicted by this defendant upon this deceased. And those wounds were inflicted by two different weapons, namely, two revolver wounds and two stab wounds, showing conclusively, as the People contend, under the rulings of the Court of Appeals, that deliberation and premeditation were involved. Because the learned Court will undoubtedly charge under the language of the Court of Appeals that the infliction of more than one wound, the firing of more than one shot, the discarding of one weapon, and the taking of another weapon, and the infliction of more than one wound with the second weapon, as well as the first, may be considered by the jury on the question as to whether this defendant intended to kill this woman, and did so with premeditation and deliberation.

This defendant at the time in question was working as a bartender in a saloon, over which he lived, namely, 640 Eighth

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avenue, in this county, and for some five months he had been living in that flat with the deceased, - a woman by the name of Nora Forrester; the defendant at that time being married to another woman.

The flat was on the fourth floor, being one of two flats, one on each side of the hall, and the plan will be put in evidence showing the arrangement of the rooms there. It consisted of a parlor, two bed rooms next to the parlor, and a dining room and a kitchen.

The deceased and the defendant slept in this front bed room next to the parlor, and in the next bed room slept an elderly woman who had been engaged by them as a domestic for some time before this shooting, and those three were the occupants of this flat.

We will show you that this woman, Mrs. Brennan, the domestic, had come there some weeks before in answer to an advertisement, that had been inserted by this defendant, under the name of Spencer, to apply to Mr. Spencer at these premises, and had gone there and lived as a domestic -- cooking and so on.

Apparently the relations between the defendant and the deceased were amicable and continued up to a few days before this shooting, when the deceased announced her intention of leaving this defendant and returning to her sister's, saying that she and her sister were going to set up in some sort of work --- running a boarding house or a rooming house, - I

forget which. Apparently the defendant became ^{disturbed} over this, and you will hear the testimony on that subject. The night before the shooting Mrs. Brennan and the deceased retired at night, and Mrs. Brennan in the next room heard nothing unusual to attract her attention. In the morning the defendant came into the

kitchen where Mrs. Brennan was, and asked for a cup of tea.

Mrs. Brennan told him she couldn't make him any tea because as the deceased was going to leave she had not ordered any ice and the milk turned sour, and the defendant said he did not feel very well, he felt badly. And then after that colloquy about the tea, and the deceased leaving, he turned and went back into his bed room. He had been there but a short while when Mrs. Brennan heard two revolver shots in close succession, accompanied by a loud scream from Nora Forrester, and she thereupon at once ran out of the kitchen door and downstairs to the saloon where another bartender was on duty. And this other bartender came upstairs --- and he will be a witness for the people, -- and he came into the flat and as he went along the hall he met this defendant just before he, the second bartender had come to the front bed room. That is, as I understand it he had met him in the second bed room and adjoining the front bed room. At this time, just as he got into that room, he met the defendant coming from the front bed room, where

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he and the deceased lived, and the defendant had in his hand this revolver, and the witness seized hold of the defendant and they had a struggle for the possession of this revolver, in the course of which he ran back into the back bed room, and into a closet which was there and there succeeded in getting away from him this revolver. He then noticed that the woman Nora Torrester was lying apparently dead and bleeding upon the floor in close proximity to the bed, her attire, as I understand it, being a nightgown, or some light attire of that sort.

He thereupon left for the purpose of getting an officer, and then they returned the deceased was still lying there and the defendant was sitting on the bed, and had stabbed himself, as they noticed then, in several places, with a large bread knife that was in the place. At that time the officer questioned the defendant as to what he had done, and the defendant had told the officer that he had killed this woman. He made no further statement at that time as to how it had happened.

The deceased was found to have two bullet wounds; one directly through the breast, causing death, another which did not cause death, the bullet not being lodged in the body, but in a proximity to the breast, and these two stab wounds on the chest.

Later the defendant made a statement to the officer, and subsequently made another statement to one of the men of the

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District Attorney's staff, having been warned of his rights in advance. And the second statement which he made was taken down by a stenographer just as given. In the course of the statement he said that the deceased had accused him of being crooked to her; that is, of consorting with other women. And that he had accused the deceased of the same thing --- of consorting of other men --- and they had had a quarrel during this night.

He said that the deceased had gotten this revolver from the closet where kept and had attacked him with it. On being questioned more closely, however, you will see when the statement goes in, it contains very serious contradictions. He stated that one time that he shot --- tried to shoot himself twice. Then he stated that in the first struggle with the deceased, while she had the revolver, the revolver had been discharged and it killed her. He then said that after she had dropped on the floor he shot her twice. And at another time he said he shot her before she dropped on the floor. But he said at either one time or the other he admitted having shot her first after he had gotten the revolver into his hands.

He then stated that he had shot himself twice. But that statement, you see, if accepted literally, would involve five shots, namely, one which went off in the struggle,

two shots he inflicted upon the deceased, and two upon himself. As a matter of fact there were three empty and two loaded bullets found in the revolver.

He then was asked further about stabbing her and at first denied stabbing her. Then he said he didn't remember stabbing her, but that he might have stabbed her, and he couldn't explain how it was that she had received the stab wounds in the course of this occurrence.

Now, it is for you gentlemen, therefore, to take all the facts of the case, with the relations existing between these parties, their situation, the sex of the deceased, her physical strength, the fact that she had two stab wounds and two bullet wounds, the fact that she had announced her intention of leaving this defendant, and his declarations, and make up your mind what those facts prove. If you believe that this defendant out of jealousy and dislike of her going to leave him, or his belief that she was consorting with other men, took her life, and that he did so with premeditation and deliberation, as evidenced by the number of wounds inflicted upon her, and by the fact that immediately before the shooting he was cool and collected and in his right mind, why, then undoubtedly he is guilty of murder in the first degree, and it is for you gentlemen to say whether at the close of this case there will be any doubt whatever upon that proposition.

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I trust that you will find during the case that the prosecuting officers, Mr. O'Malley and myself, have every disposition to try this defendant fairly, give him every chance to explain what he has done, and to interpose no obstacle to his so explaining, but to try him fairly and bring out all the evidence that is in our possession against him, so that you gentlemen may know just as much about this case as we do before it is over; and if, as a result of such knowledge you come to the conclusion that this man has committed murder, I shall ask you gentlemen then to remember that in accepting you I took your statement as to what you would do under given circumstances of facts, and relied on them in taking you as jurors.

If you have any doubt as to the defendant's guilt --- a reasonable doubt, that is, at the end of the case, of course you will acquit him. But it is for you to say whether in view of the facts in the case I have detailed there can be any doubt at all that he is the man that killed this woman, and that he killed her under circumstances amounting to a brutal and a cowardly murder.

MR. O'MALLEY: The people call as the first witness Dr. Lehane.

T I M O T H Y D. L E H A N E, called as a witness in behalf of the People, being first duly sworn, testifies as follows

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DIRECT EXAMINATION BY MR. O'MALLEY:

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Q How long have you been a Coroner's Physician? A In the neighborhood of ten years.

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

Q And during that time have you performed numerous autopsies for the purpose of ascertaining the causes of death? A I have.

Q About how many times would you say, Doctor, during the time you have been connected with the Coroner's Office, approximately? A I never kept account.

Q Well, several hundred a year? A Yes, sir.

Q Did you perform an autopsy upon the body of Nora Forrester, in this case, on May 23rd in the present year? A I did.

Q Where did you perform that autopsy, Doctor? A At the Morgue, at the foot of East 26th street, in the City and County of New York, and the Borough of Manhattan.

Q And that date is correct, is it? A Yes, sir.

The 23rd day of May? A May 23rd, 1912, at 10 a. m.

Q Will you please describe to the jury the body of the deceased, so far as size is concerned? A Twenty-three years old; five feet four inches in height; muscular and well nourished and built; she weighed about one hundred and fifty pounds; bluish grey eyes; long black hair; and a good set of teeth. Rigor mortis was absent.

Q Now, Doctor, are you able to tell the jury who iden-

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tified the ~~jury~~ ^{body} to you? A Yes, sir. Robert Graham, 914

Second avenue; and Officer C. J. Brown of the 22nd Precinct.

Q That is, Graham and Brown identified the body to you as the body of one Nora Forrester; is that right? A Yes, sir.

Q And you then performed an autopsy, did you? A I did.

Q Will you please describe to the jury exactly what you did? A I made an incision right from beneath the chin, down through the anterior and median surface of the body, to the vagina or private parts; I moved back my flap on both sides, but cutting down through the ribs, which I disarticulated, and I exposed the various organs of the body and gave them a careful examination. In the meantime, before doing that, I looked over my body and I found I had four wounds; two stab wounds and two bullet wounds. Stab wound No. 1, three inches in length, running obliquely, running two inches to the left of the median line.

Q Please stand up and indicate to the jury where it was?

A About that spot (indicating) severing the lower portion of the third rib and penetrating the right ventricle, which is one of the chambers of the heart.

Stab wound No. 2, was three quarters inch in length, five inches below the left nipple, running horizontal and through the sixth interspace, which is the space between the fifth and sixth rib, penetrating the inner border of the left lung.

The bullet wounds on the body were two: Bullet wound No. 1, one inch below and two inches below, to the left of the left nipple (indicating). It went through the left ventricle, and was found in the left pleural cavity which is a box or sac containing the lung.

Bullet wound No. 2 was on the left mid-axillary line, a flesh wound --- a glancing wound, -- just offended the skin.

The heart was normal; the pericardium, the sac lining the heart --- or the covering over the heart --- was filled with blood; the spleen was normal; lungs normal; left pleural cavity was filled with blood; the kidneys had chronic diffused nephritis; uterus, normal; intestines, normal; and the brain was normal.

I found one bullet, which was removed from the left pleural cavity.

Q Have you that bullet with you? A I have.

Q You show me a piece of lead, and you say you found that in the body of the deceased? A I did.

Q In the left pleural cavity? A Yes, sir.

Q On the day you performed the autopsy? A I did.

Q After finding it did you take possession of it? A I did.

Q And is it in the same condition to-day as when you extracted it from the body of the deceased? A It is, with my mark on it.

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Q You put a mark of identification on it? A Yes, and placed it in a separate envelope and hermetically sealed it, with the date and my initials on it.

Q And it has not left your possession since? A No, sir.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: No objection.

THE COURT: Received without objection.

(Received in evidence and marked People's Exhibit 1.)

Q From your examination, as you have given it here to the jury were you able to reach an opinion as to the cause of death of the deceased? A I was.

Q Will you please state to the jury what that cause was?
A Pistol shot wound of heart.

Q Did I understand you to say that one of the stab wounds penetrated the heart too? A I believe so, yes, sir; the right ventricle.

Q Can you state to the jury why in your opinion you think the shot wound was the cause of death rather than the stab wound? A Because there was more of an area involved, and there was more hemorrhage, and it was in the more serious part of the heart and the left ventricle is far more important to the human anatomy than the right ventricle.

Q Would the stab wound, the nature of it --- was that sufficient in itself to cause death, having penetrated the heart? A It might, yes, sir.

Q I don't know as you indicated the course of the bullet

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that you extracted, to the jury? A It went straight, directly
backwards. 14

Q Straight and backwards? A Yes, sir.

MR. O'MALLEY: You may examine.

MR. SCHICK: No questions.

J O H N A. V I E T O R, called as a witness in behalf of
the People, being first duly sworn, testifies as
follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that he resides at New York Hospital.)

Q You are a practicing physician and surgeon, are you?

A Yes, sir.

Q And in May of the present year you were connected with
what hospital? A New York Hospital.

Q Are you still associated with that hospital? A Yes.

Q What is your official position there at the time? A At
the time?

Q No at the present time? A At the present time,
senior in the surgical division.

Q And you were the ambulance surgeon that visited the
premises 640 Eighth avenue? A I was.

Q On May 22th of this year? A Yes, sir.

Q Do you recall having seen the body of Nora Forrester
there in the room? A I do.

Q And were there some officers there at the time you

arrived? A Yes, sir.

Q Do you recall their names? A I didn't know their names, no, sir.

Q Please tell the jury what you observed in regard to the body of the deceased when you arrived there? A The body of the deceased was lying on the ground with her feet towards the bed and her head away from the bed, and she had some clothes on her, but for the most part they were night clothes, above the waist line. They had evidently been taken off, or taken off by one of the officers when I came there.

Q Louder. The clothes were practically stripped from the waist up, and she was lying there, and you could see the bullet mark and the stab wounds distinctly. When I came in I saw that she was either probably dead or very close to it, in a very serious condition, and I made a hasty examination of her and saw that she was dead. I satisfied myself that she was dead, and at the time I did not make a very careful examination of the deceased as to the course of the bullet.

Q After you discover that a person has died you don't take charge of the body in that case? A No, sir.

Q You only take cases to the hospital where there is a chance of --- where there is life? A Yes, sir.

Q Did you see the defendant there at that time? A I did.

Q And did you subsequently take the defendant to your hospital? A I did.

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Q Now please describe to the jury what you observed in regard to the appearance of the defendant? A Why, the defendant was sitting on the bed when I arrived, and he had numerous --- he was in his night clothes, and he had numerous stab wounds of his chest wall --- of his chest, around the left nipple. He was bleeding quite freely from those and there was quite a good deal of blood around the bed, and he had a towel, or one of the officers had a towel that he had been wiping it up with and trying to stop the bleeding from his chest. He was rather excited and talking a great deal. I didn't wait very long because he was pretty sick himself, in very bad condition, and I wanted to get him to the hospital as soon as I could.

Q When you say sick, you mean how? A Well, I mean from loss of blood, and I didn't really stop to examine how he was at the time. I took him right to the hospital.

Q How long did he remain there? A He remained there one day.

Q And then was released? A No, at the request of the police he was taken over to Bellevue Hospital from New York Hospital.

Q In addition to the stab wounds did you notice anything in regard to his appearance? A He had a glancing bullet wound on his head with some marks of powder. Just where that was I cannot definitely say, and I have forgotten.

Q Now, as to the kind of the stab wounds: did any of them

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do you recollect, penetrate the chest wall, or were they superficial? A In some of them --- I would not say which ones or how many --- had penetrated the chest wall, because there was signs of air in the pleural cavity.

Q There was air in the pleural cavity? A Yes, sir.

MR. O'MALLEY: You may cross examine.

MR. SCHICK: No questions.

MR. O'MALLEY: I offer here, subject to any correction that the defense or the People may see fit to offer, a diagram showing the fourth floor, three flights up, 640 Eighth avenue, City, County and State of New York, in People vs. Joseph Murphy, measured May 23rd, 1912, Walter H. Volckening, architect.

MR. SCHICK: No objection.

THE COURT: Upon consent it will be received and marked in evidence.

(Received in evidence and marked People's Exhibit 2.)

MR. O'MALLEY: (Holding up diagram for the jury to see) These are premises located on the easterly side of Eighth avenue. This part of the building is toward the front --- faces Eighth avenue --- and as you enter you go from the street, passing through this hallway, and coming from the rear of the building and going up these stairs, and then there is this hallway and you go in this door here, or here, or here. This gray, shaded part is the portion occupied by the deceased. This is

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the kitchen entering here and going through the dining room, into a bed room next, and the bed room that it will be shown the deceased occupied, and this is the part in the front (handing diagram to the jury).

I also offer in evidence two photographs, one taken May 23rd, 1912, --- one showing the front bed room of the apartment in question, looking towards the rear from the parlor.

MR. SCHICK: No objection.

THE COURT: On consent the photograph will be received in evidence.

(Received in evidence and marked People's Exhibit 3.)

MR. O'MALLEY: The other taken the same day, showing the rear bed room of the apartment, occupied by the defendant and the deceased, taken from the front bed room and looking toward the kitchen in the rear. The time at which these photographs were taken was two to three o'clock in the afternoon of that day.

THE COURT: On consent received in evidence.

(Received in evidence and marked People's Exhibit 4.)

SARAH BRENNAN, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that she resides at 236 West 15th street.)

Q I understand you are a little hard of hearing, aren't

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you? A Yes, sir.

Q Well, I will try to speak loudly and you speak as loudly as you can so this gentleman away over there can hear you. On May 22nd of this year were you living with the defendant Joseph Murphy and Nora Forrester? A Yes, sir.

Q About what time did you go to work for the defendant and the deceased? A In the morning?

Q No; how long before that? A Three weeks.

Q How did you come to go there? A I seen it in the paper?

Q An advertisement in the paper? A Yes, sir, in the World.

Q And you answered that? A Yes, sir.

Q And went to these premises? A Yes, sir.

Q Now, under what name did you answer that -- what was the name you saw in the paper? A I thought it was Spence -- I couldn't pronounce it right.

Q Spence, you think it was? A Yes, sir.

Q When you went there whom did you see first? A I didn't see anybody first. She was out.

Q Well, when was the first time you saw the defendant Murphy? A The first time? The night he come for me.

Q What day in April was that? A I couldn't tell.

Q Well, it was about three weeks before you went to work, before the deceased died, was it? A Oh, yes.

Q What did the defendant say to you when he came to see you? A He said for me to come up in the morning, and I says,

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"What time might I come?" Well, he says "Around ten o'clock, or there." So I went and rung the bell and couldn't get no answer.

Q You rang the bell of whose apartment? A Of Spence.

Q Spencer's apartment. Now, what name was on the door?

A It was on their door.

Q What name was? A I didn't see any name on the door. This was downstairs.

Q What name did you see on that apartment box? A It was Spence.

Q What floor was this apartment on --- how many flights up?

A I think it was on the third.

Q Was it three flights up or two? A It was a long stair and four broken stairs.

Q Then you went upstairs and rang the bell? A Yes.

Q And got no answer? A I got no answer.

Q After doing that where did you go? A I came downstairs and the side door of the saloon, you know, was on the entrance, so I rang the bell and he came out.

Q Who did? A Spence -- Mr. Spence.

Q Who do you mean by Mr. Spence? Do you see him in court? A Yes.

Q Point him out? A There he is in the middle.

Q Indicating the defendant? A Yes.

Q He came out of the saloon? A Yes, and I told him that I was up and I couldn't get in, and then he rung the bell and

he says "My wife has gone to market." And then he told me to come back the next morning.

Q And you did come back? A I did come back.

Q And when you came back the next morning where did you go --- to the apartment? A Yes, I brung another lady with me.

Q And whom did you see there? A I seen Mrs. Spence.

Q Who do you mean by Mrs. Spence? A Why, Joe's wife.

Q What name did you know her by later? What did you call her? A I don't know her name. I couldn't remember Spence, and she said "Just call me Nora, and call him Joe."

Q Then you went to work for them, did you? A Yes, on Saturday morning it was.

Q Do you recall that that was about April the 26th or 27th? A It was in April, but I couldn't tell the date, I couldn't tell.

Q Well, you worked for them up until the day that Nora died didn't you? A yes, sir.

Q Now then I am going to show you this diagram which is People's Exhibit 2 in evidence, and you have seen this before, haven't you? A Yes, I have seen it.

Q Now, this is the kitchen, isn't it? A Yes, sir.

Q And this is the dining room? A The dining room.

Q And this is a bed room? A A bed room.

Q And this is another bed room? A Yes, sir.

Q And this is the parlor? A Yes.

Q In which bed room did you sleep? A I slept in the

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one next to him.

Q Was this next to the dining room? A Next to the dining room.

Q In other words, you slept in this bed room right next to the dining room? A Yes, next to the dining room I slept.

Q Where did the defendant sleep? A He slept next to the parlor.

Q Who stayed in that room with him? A Him and his wife.

Q In other words, Nora? A Yes; he always called her his wife, you know, to me.

Q Well, you didn't know whether or not they were married?

A No.

Q You thought they were married? A Yes. She told me she was married.

Q Now, then do you recall the Friday before Nora died?

A Yes, sir.

Q You remember the Friday? A Yes, sir.

Q Well, what happened that day? A Nothing. She told me she was going to have company that afternoon ---

THE COURT: Does counsel object?

MR. SCHICK: I object to that, to any hearsay evidence.

THE COURT: Strike out the last answer and the jury will disregard it. Make your objection. Because counsel makes no objection to clearly incompetent testimony and in so doing may have some pertinent object in view.

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I do not want it to appear in a case of this character that evidence that was hearsay was admitted without the Court appreciating the fact that the evidence was incompetent, unless counsel makes no objection to it.

Q Well, now, I was asking you about the Friday before Nora died, and did she go away on that day?

MR. SCHICK: I object to the form of the question. It does not specify the date. Friday might have been any Friday.

THE COURT: The question said the Friday before the woman died.

Q Do you remember her going away on that day? A Yes, she told me she was going ---

THE COURT: No, strike out the answer and the jury will disregard it.

Q But you did have a talk with her? A She told me ---
BY THE COURT:

Did you have a talk with Nora, and if so answer that question yes or no.

BY MR. O'MALLEY:

You did have a talk with her, didn't you? A No, I had no talk with her. She told me she was going to the hospital.

THE COURT: Strike it out.

BY THE COURT:

Q Did Nora say something to you on the Friday preceding

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the day that she died? A Not that I am aware of.

BY MR. O'MALLEY:

Q Well, you had a talk in which the hospital was mentioned?

Objected to. Objection sustained. Exception.

Q Did Nora go away on Friday before she died? A Yes, sir.

Q And before she went you had a talk with her, did you?

MR. SCHICK: Objected to, as the question has already been asked and the witness answered no.

THE COURT: I overrule the objection. Would you mind having the record show the age of this lady?

Q How old are you? A I was sixty years of age last month.

Q (Question repeated by stenographer as follows:) And before she went you had a talk with her, did you? A No, sir, I had no talk with her. I was in the kitchen doing my work.

Q Well, did she talk to you? A When she was going out she told me ---

Q Then she did speak to you? A Yes, sir, oh, yes, sir.

After she spoke to you did she go away? A Yes, sir.

Q And how long was it before you saw her again? A Sunday night.

Now, between the time she went away and the time she came back did you talk with the defendant Murphy? A No, sir.

Now, just thing: did you have any talk with the defendant Murphy on Friday or Saturday or --- A No, sir, I had no talk.

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Q Well, did he talk with you? A No. He told me that she was not in the hospital, that she was in her sister's.

Q The defendant told you that she was not at the hospital but at her sister's? A Yes, sir.

Q Did he tell you how he knew that, that she was not at the hospital? A I think he called up on the 'phone.

Q Did he say that? A Yes.

Q Do you know what day that was, - Friday, Saturday or Sunday? A That was on Sunday night.

Q You say you saw Nora again on Sunday night, did you?
A Yes.

Q Was she there again on Monday? A Yes.

Q And Tuesday? A Tuesday.

Q Now, did you see the defendant during those times? A Yes, he come up every day for his lunch.

Q Did he stay there nights? A Yes.

Q Now, did you see the defendant and Nora the night before Nora died? A Yes, sir.

Q Where did you see them? A I seen them in the house in the kitchen, after he came up from work.

Q Did you hear any conversation between them that night at all? A No, I did not, not a word.

Q What time did you go to bed that night? A I went to bed at a quarter to eight.

Q Where were the defendant and Nora when you went to bed?

A In the apartment.

Q You went into the bed room where you told us you slept and did you close or leave your door open? A Well, my door--- his door was always shut, you know, and I couldn't tell whether there was a door in my room or not. But his door was always shut at night.

Q That is, the door leading from his bed room to your bed room was closed.

Q And it was closed this night? A It was closed.

Q Now, you say you went to bed at a quarter to eight?

A At a quarter to eight.

Q During that night did you hear anything at all? A I never heard a move.

Q The next morning what time did you get up? A I got up around five o'clock.

Q And after getting up what did you do? A I washed my clothes. I was going to leave that day because she told me the day before ---

THE COURT: No, do not state what she said. Strike it out.

THE WITNESS: Well, excuse me, I am doing the best I can.

Q I know you are doing the best you can. Now you say you went out and washed your clothes? A Yes, sir.

Q In the kitchen? A Yes, sir.

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Q Now, after you went out and washed your clothes in the kitchen what did you do? A I done nothing. I was washing my clothes until I went and rapped at the door. I always rapped at his door at about half past six in the morning, and I rapped that morning the same as usual, and he says, "All right, Mom."

Q You knocked on the defendant's door about halfpast six?

A yes, sir.

Q And you say he responded? A Yes.

Q Saying "All right"? A He said, "I am all right, Mom."

Q What did the defendant call you? A "Mom."

Q After you called him and knocked on the door what did you do? A I went back to the kitchen again to my wash.

Q After you went back there did you see the defendant again?

A Yes, he came out.

Q In about how long a time? A Oh, I guess it might be ten minutes --- it might not be quite that time.

Q And how was he dressed at that time? A He was dressed all ready to go down to his work, only his coat.

Q He had on his shoes and trousers, did he? A Yes, sir, and collar and necktie.

Q Shirt? A Shirt.

Q But with no coat on? A No.

Q When he came out of the kitchen did he say anything to you? A I always bid him good morning, and I asked him how he felt, and that morning I asked him how he felt, and he said,

"Mom, I don't feel good."

Q Then what took place? if anything? A He says, "Nora is going to leave", and I said, "So I believe."

Q Did he say anything else? A That was all. Then he said --- talked about the tea, he says "I will go and take a drink of tea. Did you make any tea, Mom?" I said, "Yes, but the milk has turned, for she stopped the ice on Monday, and the milk is a little turned." He said, "The milk turned?" I said, "Yes." Well, he said, "I will take a drink anyway and get down on the job."

Q Well, after saying that did he have some tea? A I never looked around. He went into the dining room, I didn't look.

Q Did you give him any tea? A No, he would take it himself, you know. He just took a drink of tea.

Q You saw him take a drink of tea? A No, I didn't see him taking it, but he said to me he would take it, when I was at my wash.

Q After he left the kitchen and went into the dining room what did you hear, if anything? A I didn't hear nothing till I heard the two shots in succession.

Q Now, this morning, was there anybody else in the apartment except you and the defendant and Nora? A Not that I know of nor seen.

Q Now, you say you heard two shots? A Two shots.

Q About how long was that after the defendant went back to his room? A It might be about a couple of minutes.

BY THE COURT:

Q Did you hear any voices prior to the discharge of the two shots?

BY MR. O'MALLEY:

Q Did you hear any one talking before you heard the two shots? A No, sir, I did not.

Q Now, will you indicate to the jury with your hands, by clapping them, how quickly one shot followed the other? (Witness clapping hands twice with about a second of time between the two claps). And then the scream.

Q Who screamed, if you know? A It was Nora, I would suppose.

Q Well, don't you know whether it was a man's or a woman's voice? A Oh, it was Nora's voice, yes.

Q Now, after you heard Nora scream did you look in any place? A I run out of the kitchen. I opened the door and run downstairs to the bartender.

Q Well, before running downstairs did you look through the dining room? A No.

Q You didn't? A No, I didn't. I run, and I seen the bed room door was shut and I run out of the kitchen.

Q What bed room door was shut? A Mr. Murphy's.

Q The door leading into the defendant's bedroom was closed? A Yes, sir.

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Q You saw that after you went down? A Yes, sir, before I went downstairs.

Q When you went downstairs where did you go? A I went into the saloon.

Q And whom did you see there? A I seen the night bartender.

Q What is his name, if you know? A Arthur McGlade, I think.

Q Did you say anything to Arthur, yes or no? A I said--

Q You did speak to him, did you? A After speaking to Arthur, what did Arthur do, if anything? A He took off his apron and run upstairs.

Q And what did you do? A I sat in the saloon.

Q How long did you stay in the saloon? A Till the constable come.

Q The officer came? A Yes.

Q And did you go upstairs again? A Yes, sir, I went upstairs again.

Q When you got upstairs who was up there? A There was some --- I couldn't tell who was up there, there was quite a crowd, some officers and some of the people from the flat next door --- a young couple.

Q When you got back upstairs did you see Murphy? A I did.

Q Where was he when you got up there? A He was sitting up in his own bed bleeding.

Q Did he say anything to you? A He said, "Mom, you know

all about this"; that was the word he said, and I never made
him an answer.

Q Did you see the body of Nora at that time? A Yes, sir.

Q Where was it? A On the floor. Her back was towards me
where I was standing. I didn't go in.

Q Well, in what room? A I was standing in my own room,
but I could see from where I was standing --- lying on the
floor.

Q On the floor of what bed room? A Her own bed room.

Q And Murphy was on the bed in the same room, was he?

A Yes, sir.

Q Now, then, I show you that and ask you if you have
seen it before (a knife)? A Yes.

Q And where had you seen it before? A In Joseph Murphy's.

Q Where was it the last time you saw it? A I couldn't
tell whether I used it that morning cutting a piece of bread
or not, or whether it was in the spoon drawer, or on the
dining room table --- I couldn't tell.

Q Any how it was in the apartment that morning? A Yes.

MR. SCHICK: I object to the form of the question,
"Any how it was in that apartment", on the ground she
already answered ---

THE COURT: Sustained, and the jury will disregard
the answer.

Q Do you remember where it was the last time you saw it?

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MR. SCHICK: Objected to. She just said that she
couldn't say.

THE COURT: Objection overruled.

A No, I do not.

Q Did you see this at any time after the defendant
talked with you about having tea that morning? A No.

Q That is, after you went down to the saloon and came
up to the apartment?

MR. SCHICK: Objected to. She already answered
no, sir.

Objection overruled. Exception.

Q After going down to the saloon and coming back up,
when you saw the defendant, you didn't see this knife at that
time? A No, not to my knowledge.

MR. O'MALLEY: I will have it marked for identifi-
cation.

(The knife is marked for identification People's
Exhibit 5.)

CROSS EXAMINATION BY MR. SCHICK:

Q You were employed by the defendant as a housekeeper
in his apartment, were you not? A Yes, sir.

Q And you came there three weeks before Nora Forrester
died? A Yes, sir.

Q You were there every day during those three weeks?
A Every day.

Q And you slept in the apartment? A Yes, sir.

Q And the defendant, you knew at the time he came upstairs to retire, or the time when he left the apartment, did you not? A I did.

Q During those three weeks? A I was three weeks there.

Q Well, you saw the defendant come up to his apartment in the evening? A Yes, sir.

Q And you saw him leave in the morning? A Yes, sir.

Q And you were with Nora Forrester, the deceased, were you not, during the day time while he was employed downstairs in the saloon? A Yes, sir.

Q And did she receive any company? A No, sir.

Q Nor men, while he was employed in the saloon? A No, sir, only --- can I talk?

MR. O'MALLEY: Please finish your answer.

A (Witness continuing) Well, one night she was out all night and she come in intoxicated and I didn't know she was out, and I was in the kitchen and I looked at her. "In the name of God," I said, "were you not in all night?" So I took her into her own bed room. Now, I am doing the best I can. I took her into her own bed room, and Mr. Murphy was sitting on the side of the bed, with his drawers and shirt on, and I stood by with the door in my hands and he said, "Mom, shut the door." I went into the kitchen again, and when he came out to go down to work he said "Now, don't disturb her, don't waken her, and

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if anybody comes up don't let them in." Well, during the morning the bell rung and I met a man in the hallway, and he says, "Is Nora in?", and I says, "No, she is not in". I says, "Are you wanting her?" Well, he said, "Yes, about some things about her sister being in the hospital." Well, I said, "She is not in." So when Nora got up then she sent me downstairs for a kettle of beer. I went for the beer and he come and waited on me, and he asked me whether anybody came up and I told him that there was ---

Q She was in the habit of drinking beer and whiskey was she not? A Yes.

Q And she would send you out to get the beer? A Send me down to the saloon. I didn't need to go on the street.

Q And you occasionally used to go out and get her whiskey?
A No, I never did. I never went out and bought her a glass of whiskey for Nora.

Q She had whiskey in the apartment, did she not? A Yes, she would have it in there.

Q And she frequently drank whiskey? A Yes, sir, she took a little of it.

Q Now, this night you say that she was out all night, did she come home drunk? Was she drunk when she came home?
A Yes.

Q In bad condition. How many times while you were in their employ did Nora come home drunk? A I just seen her

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once the worse of drink.

Q Did you see her smoke opium? A No, sir, I never did.

Q Did she drink with other men in the apartment? A There was never no other man in the apartment, only Mr. Murphy, never in my three weeks that ever I seen.

Q How did Mr. Murphy treat Nora during the time that you were there? A He treated her well, as far as I could see; embraced her every time he came in.

Q You mean the time she came in drunk he would brace her up?

Objected to. Question withdrawn.

THE COURT: She said he embraced her.

Q Did you ever hear the defendant use any harsh words to the deceased? A No, I never did.

Q Or any indecent word? A I never did.

Q He always treated her like a gentleman, did he not?
A He treated her like a gentleman.

Q Did you at any time while you were in their employ advise the defendant to leave Nora, that she was --- A No, I never did. The man never told me nothing of his business or how he was living. That never passed between him and me.

Q Did you tell the defendant just a day or two prior to her death, regarding leaving her --- that he should leave her, or that she was no a fit woman to live with? A I never said it.

Q What did you say, if you said anything at all to the defendant on that day? What did you say to him? A On what

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day?

Q The day before she died? A Tuesday?

Q Yes. A I said nothing to him.

Q Did you say anything to him in the morning when he asked you to make some tea and he said he was sick? A When he told me Nora was going away, I said, "Let her go; don't bother about her", that's what I said.

Q Did Nora ever threaten to commit suicide? A No.

MR. O'MALLEY: Objected to as this time.

Q To kill herself? A No, she never did.

THE COURT: I think the evidence is competent. It was so held in People against Conklin, 175 N. Y. He is entitled to prove that the woman threatened to commit suicide.

MR. O'MALLEY: The only question is whether it is competent now or not.

Q You testified on your direct examination that when you heard two shots you went downstairs in the saloon? A Yes.

Q Did you make any attempt to look around in the apartment? A Upstairs there?

Q Yes. A No. I looked around and as I remember the door was shut. I told you so, but I never want to be ---

Q Isn't it a fact that the door was a little bit open, partly open? A No, it was not, as far as I could see from the kitchen; it was not open, it was shut.

Q How far were you standing from the bed room door? A

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Well, there was my bed room and then the dining room and the kitchen --- I was at the tubs washing my clothes.

Q How far distant? A I couldn't tell you.

Q Now, this is the kitchen, is it not (indicating on diagram)? You were standing at the kitchen at that time?

A I was standing at the kitchen.

Q Where is the defendant's bed room? A Well, this is the parlor, that would be his bed room.

Q And there is a dining room between the bed room and the kitchen.

MR. O'MALLEY: Wait, she was going to correct it.

Q Where is the defendant's bed room? A (Witness continuing) That was next to the parlor.

Q This is the parlor? A Yes.

Q Now, where is the defendant's bed room? A Well, next to the parlor.

Q Then this was the defendant's bed room, is that right, next to the parlor? A Yes.

Q Then there is another bed room after the defendant's bed room? A That is the room I slept in.

Q And then there was a dining room after your bed room? A Yes.

Q And then the kitchen? A Yes.

Q And you were standing in the kitchen when you heard those shots, is that right? A That's right.

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Q And there were two rooms between the bed room and the kitchen? A Yes, sir.

Q Now, is there a door leading from the kitchen into the dining room? A A door leading from the kitchen?

Q Into the dining room? How do you go into the dining room from the kitchen? Can you go from the kitchen into the dining room? A Yes, sir.

Q Then there is a door? A Yes, sir, there is a door on each.

Q That you can go from the kitchen into the dining room, and from the dining room into your bed room, there is another door, is that right? A I couldn't tell you whether there was a door on my room or not; only the one that was on his.

Q Can't you recall now? A No, I cannot. I have done the best I could, and the best I know how.

Q But you could not positively swear that there was no door on your bed room? A No, I wouldn't, for I couldn't.

Q Then after your bed room was the defendant's bed room, is that right? A Yes, sir.

Q Was there a door leading from your bed room into his bed room? A I couldn't tell you. I am telling you I couldn't tell you whether there was a door on my bed room or not, only the one that was on his.

Q There was a door on his? A Yes, sir.

Q Now, if the door of the defendant's room was open where did it lead into? Where could you go from his room?

Could you go into your room? A Yes.

Q And you could go from his room into the parlor? A
Yes, sir,

Q Then there were two doors on the bed room? A There was
a sliding door on the parlor.

Q Now, there was a stove in the kitchen, was there not?
A Yes, sir.

Q Now, will you show me on this chart, the diagram,
where the kitchen was in that? A No, I couldn't tell you, I
am not an educated woman.

Q What were you doing at the time you heard that shot?
A I was at the tubs I tell you.

Q Will you show me the tubs? A The tubs are on the side,
on that side.

Q You were standing at the tubs? A I was standing at
the tubs.

Q You were washing? A I was washing.

Q As soon as you heard the shots you went right down-
stairs? A I did.

Q You didn't look anywhere? A I looked around and his door
was shut.

Q Well, did you go into the dining room to look? A No,
I did not.

Q Then you want the court and the jury to understand
that you were standing in this kitchen at the tubs washing
clothes, - the tubs were located on the side of the room, and

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as soon as you heard the shots you simply gave one look into this room which indicated on this chart makes the fourth from the kitchen, and you could see at that distance that the door of the defendant's bed room was shut? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q I understood you to say that when you heard the shots you stepped over to the door and looked through, did you? A No, sir, I did not.

Q Well, you did look so you could see the bed room door?

A I looked and his bed room door was shut.

Q You could see his bed room door, could you? A Yes.

THE THIRD JUROR: As she stood at the tubs her back was to the other rooms, and she had to turn around to look in the other room. Did she turn around or didn't she?

THE WITNESS: I did turn around.

RE-CROSS EXAMINATION BY MR. SCHICK:

Q Your eye-sight is pretty good, is it? A No. I can't see with that eye (indicating right eye).

Q Can you read and write? A No, I can do neither.

Q Have you ever used glasses? A Yes, I have a pair of glasses.

Q Have you your glasses now? A No, I don't have them now.

Q Now, the kitchen, - can you tell us how large the kitchen was? A How can I tell you?

Q How far can you see without the aid of glasses? A Well, 41
I can see that far anyway.

Q Well, how far about? A Well, I was standing at the
tubs in the kitchen, and then the dining room, my bed room, and
then his door.

Q Well, is his the fourth room? A You see the size of
the rooms.

THE SECOND JUROR: Can the lady see the time?

Q Can you tell the time it is now? A Yes.

Q What is the time? A Well, it wants a couple of a minute
of a quarter after four.

(The time stated by the witness being the time
shown by the clock on the extreme east wall of the court
room.)

THE COURT: Do not discuss this case among your-
selves, nor permit any person to talk with you about it,
nor form nor express any opinion as to the guilt or the
innocence of the defendant until the case is finally
submitted to you. Be in your seats to-morrow at 10:30.

(ADJOURNED to Tuesday October 15th, 1912, at 10:30 a.m)

Last Exhibit:

People's 5.

New York, October 15th, 1912.

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TRIAL RESUMED

A R T H U R M c G L A D E, called as a witness in behalf of
the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that he resides at 584 Washington St.)

Q What is your business? A Bartender.

Q Where are you employed at the present time? A In
Washington Street.

Q By whom? A A man named Henry Drew.

Q On May 22nd of this year, where were you working? A
640 Eighth Avenue.

Q For whom? A Mr. Nash.

Q Working in Nash's saloon? A Yes, sir.

Q Do you know the defendant Joseph Murphy? A Yes, sir.

Q Was he working there at the same time? A Yes.

Q You both were bartenders, were you? A Yes.

Q You worked day times and he nights? A No, I nights
and he days.

Q How long had you worked there? A From November, last
year.

Q From November, 1911? A Yes.

Q When did Murphy come to work there, if you know? A
About February.

Q 1912? A Yes.

Q Had you known him before that time? A Yes.

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Q How long have you known him altogether? A From about the latter end of November 1911 or the beginning of December.

Q Did you know the deceased, Nora Forrester, or had you ever seen her? A Yes.

Q Had you ever been up to the apartment where she and the defendant lived? A Not before this happened.

Q Where did you used to see her when you did see her? A I used to see her coming out in the hall, and nights I used to let her in sometimes. Some nights the hall door would be closed at eleven o'clock and I would let her in after eleven o'clock if she came to the door.

Q That is the hall door leading up stairs? A Yes.

Q Now do you remember about five days before Nora died?

A Yes.

Q Did you have a talk with the defendant at that time?

A Yes.

Q Will you tell the jury what that talk was? A He told me that Nora, his wife had left -- she had gone away and he heard she was in the hospital but he telephoned to the hospital to find out was she there and she was not there.

Q He told you that, did he? A Yes.

Q Do you remember what day of the week that was? A I think that was on Friday.

Q Friday before? A Friday before this murder.

Q Was the defendant at work on Monday and Tuesday preceding the death of Nora? A Yes.

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Q And did you see him on Tuesday night, before the 22nd?

A Yes, I saw him on Tuesday night.

Q What time did he leave work that night? A Seven o'clock.

Q Was that the time he usually quit work? A Yes, every night at seven.

Q Did you see him again that night after he quit work? A Yes, I saw him about ten o'clock then.

Q Where did you see him then? A I saw him in the bar room about ten o'clock.

Q Did you have a talk with him at that time? A No, I had no conversation with him then.

Q Now, did you work all that night in the saloon? A Yes I worked that night and the next morning.

Q Now, do you recall the next morning having seen Mrs. Brennan in the saloon at any time? A Yes, about seven o'clock in the morning Mrs. Brennan came into the saloon.

Q Did she say something to you, yes or no? A Yes.

Q Now, after Mrs. Brennan talked to you, what did you do? A I went up stairs.

Q To what floor? A Three flights up, to the fourth floor.

Q When you got up there where did you go? A I went into Murphy's apartment.

Q Through what door? A Leading from the hallway into

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the kitchen.

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Q Have you seen this diagram before (People's Exhibit 2)?

A No.

Q Well, this (Indicating on Exhibit 2) represents the parlor, this is the bed-room next to the parlor and this is the bedroom next to the dining room, this is the dining room and this is the kitchen. A Yes.

Q Now you came up these stairs (Indicating), did you? A Yes, I came up them stairs.

Q And you went into the kitchen? A yes.

Q Then you went in this doorway? A Yes.

Q Was that door opened or closed, as you remember? A That door was opened.

THE COURT: What doorway do you refer to?

MR. O'MALLEY: The door leading from the hallway into the kitchen of the apartment.

Q When you got into the kitchen did you see anybody in that room? A No, there was nobody in the kitchen.

Q Now tell what you did see after you went in the apartment.

A Well, when I went into the kitchen there was no one in the kitchen, and I went through the rooms -- I don't know whether through the dining room or the first bedroom, I don't know which one I met Murphy in. I met him coming through, coming towards me.

Q Did I understand you to say you didn't know in which room he was? A I am not sure which room it was, whether the

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dining room or the next bed room.

Q Tell the jury what if anything you noticed about his appearance? A Well, he had his pants on and his two shirts and he had blood on his hands and face.

Q Did you see anything in his hands? A Yes, he had a gun.

Q He had what? A He had the gun in his hand. I don't know which hand he had it.

Q Well, what was the next thing that occurred after you saw him, as you have described? A Well I said "Joe, what is the matter?" And he said "Arthur, Arthur," and that is all he said. So I got hold of him at that time, or I pushed him back into the other room and I didn't see anybody in the other room when he handed me the gun in the closet, in the clothes closet.

Q In the clothes closet of what bedroom? A Where the deceased was.

Q That is next to the parlor? A Yes. So he said to me then, he said "Arthur, bring us up a drink of whiskey." "Yes, Joe, I will," I said; "Stay there and I will bring it up." I took the gun and went down stairs.

Q Before you went down stairs had you noticed any other person in the room? A Yes, when I was coming back from the closet door, the dead body on the floor.

Q Where was the body? A Laying on the floor.

Q Tell the jury about how it was lying? A It was lying with the feet towards the bed.

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Q Where was the head? A In the other direction.

Q That is, towards the parlor, or towards the closet?

A Towards the closet, yes, on the other side.

Q Then you say you went down stairs? A Yes, I went down stairs.

Q With the revolver? A With the revolver, yes.

Q I show you a revolver and ask you if that is the revolver? A I am not sure, I didn't look at the revolver, I just took it down in my hand.

Q Well, does it look like it? A It looks like it, yes.

MR. O'MALLEY: I will have it marked for identification.

(Marked for identification People's Exhibit 6.)

Q You took it down stairs with you, did you? A Yes, I went down and took the gun down.

Q What did you do with it when you got it down there? A I took it down to the bar and put it in underneath the bar.

Q Now after doing that, what did you do? A On my way down stairs I called the boss.

Q That is, Mr. Nash? A Yes. So then when I went down I telephoned to the station -- I looked outside to see if I could see an officer but I couldn't so I telephoned to the station and told them to send up a couple of policemen, that there was a shooting case on 41st Street and 8th Avenue, and to also send an ambulance. So then Officer Brown came there.

Q Do you see Officer Brown in Court? A No.

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Q Well, he came where -- to the saloon. A To the saloon, yes.

Q And you had a talk with him, did you? A I told him to go up stairs --

THE COURT: Yes or no, did you have a talk with him?

THE WITNESS: Yes.

Q After you talked with Officer Brown, what did Officer Brown do if anything? A He went up stairs.

Q And what did you do? A I went up about five minutes after.

Q Now then when you got up there, who if anybody did you see? A I saw Officer Brown and another officer there and myself.

Q Where was Officer Brown? A In the bed room.

Q Of Murphy's apartment? A Yes.

Q Which bedroom? A Where Murphy slept.

Q Do you know who the other officer was that you saw there?

A Yes, Officer Freeman.

Q Did you see another officer there that morning -- Brady?

A I don't remember. I think Brady was there. I don't remember if he was.

Q When you got into the bedroom who else did you see besides Brown and Freeman? A And Murphy. That is all I saw then, that I remember seeing.

Q Where was Murphy? A Sitting on the bed.

Q In the bedroom where you took the revolver from him?

A Yee.

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Q What was he doing, if anything? A He was sitting on the bed and the policemen had hold of him.

Q Did you notice his condition at that time? A Yes, he was bleeding.

Q And where did you notice him bleeding? A Well, I saw blood on his face. I don't know where the blood came from.

Q Now then you stayed around there a while, did you? A No, I went out of that room then, I went into the next room.

Q Did you leave the apartment and go down stairs? A Not at that time.

Q Did you at any time leave the apartment and go down stairs? A No, not until after the doctor left.

Q Until after the doctor arrived? A Yes.

Q You mean the ambulance doctor, Dr. Viteor? A Yes.

Q Before going down stairs did you talk with any officer?
A No, I didn't talk with any officer.

Q But you did go down stairs? A Yes.

Q What did you do when you went down? A I didn't go up stairs any more then. I went down stairs at the time that the doctor took Murphy away in the ambulance.

Q Did you at any time do anything with this revolver after you put it in the saloon under the bar? A No, I didn't do anything with it.

Q Did you give it to anybody? A No, I didn't give it

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to anybody. I took it down stairs and when Officer Brown asked me for it I took it up to him again .

Q Well, you talked with Officer Brown? A He asked me for the gun.

Q Well, you talked with him, did you, about the revolver?
A yes.

Q And after you talked with him what did you do? A
I went down and brought the gun up to him.

Q Where did you deliver it to him? A In the bedroom.

Q And was it in the same condition when you delivered it to Officer Brown as when you took it from Murphy? A yes.

Objected to as leading; objection overruled; exception.

MR. SCHICK: I move that the answer be stricken out.

Motion denied; exception.

Q At any time while in the bedroom did you hear any conversation between any officer and the defendant? A Yes, an officer.

Q Did the defendant reply to any questions that were asked him by the officer? A Yes, he replied.

Q Now will you tell the jury what you heard Officer Brown say to the defendant and the defendant say to the officer?

THE COURT: Talk loudly and slowly.

A Well, Officer Brown asked him what he had done, so he said he shot his wife and he tried to shoot himself.

Q Did he say how many shots he fired? A Yes, he said he fired two shots at her and two at himself.

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Q How many shots at her? A Two.

Q Did you hear any conversation about the knife at that time? A No. Officer Brown showed the knife but there was no conversation about it.

Q But you heard no conversation between Officer Brown and the defendant about it? A No, sir.

Q Have you told us all the conversation you heard between Officer Brown and the defendant? A That is all I heard at that time between the defendant and Officer Brown.

Q Did you yourself have any conversation with the defendant beside what you have told us? A Yes, he asked me to take his watch that was hanging in his clothes; he said; so I went to take his watch and the officer stopped me. He said I wouldn't be allowed to touch anything. So I also remember his saying something about money, so I didn't mind about the money until afterwards he sent me a note from the hospital saying to give \$20. to his mother that he gave to me. So I didn't receive the \$20. at all. I was not allowed to take either the watch or the money.

Q I show you People's Exhibit 5 for identification and ask you if you have seen that before? A Yes, sir.

Q Where did you see it for the first time? A The first time I saw it was with Officer Brown.

Q Up in the apartment? A Yes.

Q Did you notice the condition at that time? A No, I didn't notice the condition.

Q Is that all the conversation that you recollect that

you have told us? A That is all I remember.

Q Do you remember the defendant's say anything about being sorry? A Yes, he said he was sorry he failed, that is all.

CROSS EXAMINATION BY MR. SCHICK:

Q How old are you? A Twenty three.

Q Where were you born? A In Ireland.

Q What part of Ireland? A County Armath.

Q When did you come to this country? A 13 months.

Q What was your business before you became a bartender?

A A grocer's clerk, a grocer's assistant on the other side.

Q How long did you work as a grocer's assistant? A Eight years.

Q Whom did you work for? A A man by the name of John Savage.

Q Did you work eight years in the same place? A Yes, sir.

Q Did you work for anybody else? A No, I never worked for anybody else.

Q Did you go to school in Ireland? A Yes.

Q What school -- a public school? A National school.

Q Did you go to any high school? A No, I never went to high school.

Q Whom do you live with in this country? A I am boarding. I don't know who the lady is.

Q Are your father and mother alive? A No, my father is dead.

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Q Are your father and mother alive? A No, my father is dead.

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Q Do you live with any relations here? A No.

Q Whom did you work for the first time you landed here?

A Mr. Nash.

Q How long did you work for Mr. Nash? A I worked from the 6th of November 1911 until July this year.

Q When did you for the first time meet the defendant? A Joseph Murphy?

Q yes, sir. A I met him in the latter end of November or the beginning of December, 1911.

Q Were you friends? A Yes, we were always good friends.

Q Did you go out together? A We never were out together but we were always good friends together, to work together in the saloon.

Q Did you speak to Brown about this case since it happened -- Brown, the officer? A No, I was not talking to Brown since this accident.

Q Didn't Brown call on you at the place where you are working? A Yes, he called on me once.

Q How many times did he call on you? A He served me with two subpoenas.

Q And the first time he served you with a subpoena, what did he say to you? A He told me that I had to go down to the District Attorney's officer

Q What else did he say? A He never said anything to me then.

Q Didn't he ask you anything about the case -- didn't he

discuss it with you at that time? A No, he never discussed the matter with me.

Q Did Brown ask you what you were going to testify to?

A No, he never asked me what I was going to testify.

Q Did he ask you what you testified to in the District Attorney's office? A No. He was in the District Attorney's office with me.

Q And who examined you in the District Attorney's office?

A Mr. McDonald.

Q And did he examine you first, or did he examine Brown first? A I don't know. Brown was there before me.

Q As you came to the District Attorney's office you met Brown out in the hall, did you not? A No. The first time I went to the District Attorney's office was at the inquest at the morgue.

Q Did you meet Brown there? A Yes, sir, and that was the first time I met Brown, the next day after.

Q And you talked to Brown before you went to the District Attorney's office to give your testimony? A Yes, sir, he told me --

Q What did you say to Brown at that time? A I didn't say anything to Brown.

Q What did Brown say to you? A He told me that I had to go to the District Attorney's office, that the District Attorney wanted me to see me.

Q Well, you finally arrived at the District Attorney's

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A Yes.

Q And you met Brown outside of the corridor, did you not, before you went in the room? A Not that day.

Q Did you meet him that day at all? A No, not that day.

Q What day did you meet him then? A The next day.

Q Where did you meet him the next day? A The next day that I was at the District Attorney's office.

Q And then you met him up stairs here in this building?

A Yes.

Q You met him outside in the corridor before you went to the District Attorney to give your testimony, is that right?

A No, I don't remember.

Q Didn't you meet him at all? A I remember he was in the District Attorney's office but I don't remember speaking to him. I remember speaking to him up in the District Attorney's office.

Q You spoke to him on that day? A Yes.

Q What did you say to Brown on that day and what did Brown say to you with regard to the case? A He only told me where I had to go and that I had to give testimony against the defendant.

Q Didn't he ask you what you were going to say in the District Attorney's office? A No, he never asked me what I was going to say.

Q Not a word? A No.

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Q Did you tell him what you were going to testify to? A
No, I never told him what I was going to testify to.

Q Where did you meet Brown next? You met him at the
inquest, did you not? A I was not at the inquest and I met
him when I went to the morgue that morning.

Q When did you meet him next? A In Mr. Nash's when
he served me with a subpoena.

Q EXH Do you remember the date? A I don't remember the
date.

Q Did he serve you in the saloon? A Yes.

Q Did you discuss the case with him at that time? A No,
I didn't discuss the case with him at all.

Q Didn't tell him anything about the case? A No.

Q Didn't he ask you anything about the case? A He did
not ask me anything about the case at that time.

Q When did you see him next? A The next time I saw him
then was the same night when Mrs. Bowman came to me for the \$20.
Mrs. Bowman is Mr. Murphy's mother in law.

Q On the same night? A Yes. So she had a note from
the defendant to give the \$20. to her, so she came to me for
the \$20. I told her I never received the money, and I said
"It is a pity you were not in a few minutes sooner for Mr.
Brown was here." So Brown came back in just a few minutes.
I told her to wait so I telephoned the station to see if Brown
was there and they said he was not in, they said he had gone
out. So about ten minutes afterwards Brown came in. So I

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called him into the back room and asked him did he know anything about the money. He said he did not. I said "You know I did not receive any money in the room that morning." He said "No, you did not receive any money." And that is all the conversation.

Q Did you get the \$20. from the defendant? A No, I did not.

Q Did Brown get it? A I don't know anything about it. I know the defendant had \$20. three or four days before it.

Q Do you know whether he had the \$20. the day the crime was committed? A I don't know whether he had it that day. I know he had it three days before.

Q You didn't take the \$20.? A No.

Q Did Brown speak to you about the case that night when Mrs. Bowman was there? A No, he did not.

Q Did he ask you anything about the woman? A No, he did not.

Q Did you say anything to him about the case? A No, I did not.

Q What time did you get to work the morning of May 22, when the crime is supposed to have been committed? A Well, I opened up the place at six o'clock.

Q Six o'clock in the morning? A Yes.

Q Were you the day bartender? A I was the night bartender.

Q How does it happen that on that day you were in the morning to open up the place? A Well, I stayed there. I

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closed up at one o'clock at night and cleaned up and opened up in the morning.

Q And did Murphy take charge of the place? A Yes, at seven o'clock in the morning Murphy always took charge of the place.

Q How long was he on duty? A From seven in the morning until seven p. m.

Q And at seven o'clock you relieved him? A Yes.

Q What happened after seven o'clock? A When.

Q That night, May 22, 1912.

MR. O'MALLEY: May 22nd or 21st? The 22nd was the day the deceased was killed.

Q On that same night when the crime is supposed to have been committed you were on duty all night, were you not? A Yes.

Q You relieved the defendant at seven o'clock in the evening? A Yes.

Q You took charge of the place? A Yes.

Q Was there anybody else there besides you? A The boss was there I think.

Q Mr. Nash? A Yes.

Q Anybody else? A I don't remember if there was anybody else there.

Q Anything occur after seven o'clock? A No. Murphy went up stairs and I saw him again at ten p. m. --

Q Who went up stairs? A The defendant.

Q The defendant went up stairs at what time? A After

seven o'clock.

Q Did Mr. Nash remain in the place? A I don't know if Mr. Nash remained in the place or not, I don't remember.

Q What time did Mr. Nash leave the place? A I don't know. Some nights he would be there until twelve.

Q But that particular night what time did Mr. Nash leave the place? A I don't remember.

Q What happened then after Mr. Nash left? A I don't know anything to happen that night.

Q Did you see Murphy after that? A yes, I saw him about ten o'clock.

Q Did he say anything to you? A No, he had no conversation with me at all.

Q Did you say anything to him? A No, I did not.

Q Did you see the deceased that night? A I don't remember seeing her that night. I saw her a couple of nights before that.

Q What condition was she in a couple of nights before when you saw her? A Well, on Sunday night I saw her, she came to the door after he went up on Sunday night and asked for him.

Q Asked for what? A She asked for the defendant on Sunday night. That was after -- there was a friend telephoned to the hospital to find was she there on Sunday night.

Q What condition was she in? A Well, I don't know. She just came to the door and asked for Joseph Murphy and I told her he had gone up stairs. I don't know what condition she was in. That is all the conversation I had with her.

Q How soon after that did Mrs. Brennan come down to the saloon? A Well, that was in the morning, seven o'clock.

Q What did she say to you? A She came to the door leading to the bar from the hall way and she said "Arthur, come up stairs, I heerd a shot up stairs." So I took off my apron and I went up stairs.

Q What floor? A Three flights up, to the fourth floor.

Q How many tenants are there on the fourth floor? A I don't know.

Q Was there anybody else living on the fourth floor besides the defendant? A Oh yes, there was.

Q Who else was living on the fourth floor? A A man named Brady lived on the opposite side of the hall.

BY MR. O'MALLEY:

Q Officer Brady? A Yes.

BY MR. SCHICK:

Q How many rooms did he occupy on that floor? A I don't know.

Q There are two flats on that floor? A I don't know. I think there are some in the back also.

Q How many tenants on a floor? A I don't know how many.

Q Did you know anybody else living on that floor besides the defendant and Officer Brady? A No, I didn't know anyone living on that floor.

Q Did Officer Brady live with anybody in those rooms? A Yes, he was living with his wife.

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Q You knew his wife? A Yes, I knew her.

Q Was she home that morning when the crime was committed?

A I don't know.

Q Did you see Officer Brady that morning? A Yes, sir, I saw officer Brady that morning.

Q Now, when you went up stairs, was Officer Brady home? A I think he was, I am not sure. Yes, I think I remember seeing Officer Brady.

Q Did you see Officer Brady that morning? A I think I did, I am not sure.

Q Couldn't I in any way refresh your memory so as to make it definite whether Brady was there or not when you were there?

A I know I saw Brady after --

Q Was it possible you could recall by some incident? A I know I remember seeing Brady before the defendant was taken out in the chair. I remember seeing him in the hall.

Q That same morning? A Yes.

Q Did you see Mrs. Brady? A Yes, I saw Mrs. Brady.

Q That morning when you got up on the third floor what did you do? A I went into the Murphy's apartment.

Q Which room did you go into? A I went into the kitchen first.

Q Was Mrs. Brennan there in the kitchen? A No, Mrs. Brennan was down stairs in the saloon.

Q What did you do? A I went into the kitchen and then went into the room.

Q What room? A I don't know whether it was into the -- whether I went to the dining room and into the first bedroom or whether it was in the dining room. I am not sure which of the two rooms.

Q Now, the stairs are up here this way, you come in here in the hall and then you enter the kitchen (Indicating on diagram People's Exhibit 2.) A Yes.

Q When you got in the kitchen what did you do? A I went in towards the bed-room.

Q You could not go into the bed-room direct from the kitchen could you? A Well, I don't know whether it was in the bedroom next to the dining room or the dining room I was in.

Q Well you testified on direct examination that when you come up you were in the hall -- immediately into the kitchen? A Yes, I went in the kitchen.

Q When you were in the kitchen, what did you do? A I went in towards the bed room.

Q Then you went into the dining room, did you not? AA Yes.

Q Was there anybody in the dining room? A I don't know whether it was in the dining room or the next bedroom that I met the defendant.

Q Then it is possible that you met the defendant in the dining room? A Either the dining room or the next bedroom.

Q Isn't it possible?

MR. O'MALLEY: He has answered it, I object to it.

THE COURT: Objection overruled.

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Q How many minutes did you remain in the kitchen? A 65

I didn't remain any minutes.

Q Did you look around? A Yes, I looked around.

Q In what direction did you look? A Well, I looked right around the kitchen as soon as I went in the kitchen door.

Q You looked towards the dining room? A Yes.

Q There is an entrance from the kitchen to the dining room?

A Yes.

Q And as you looked to the dining room you met the defendant

A I don't know whether it was in the dining room or the next bedroom, I am not sure.

Q Was he facing you, coming towards you? A Yes, he was facing me.

Q And did you speak to him first? A Yes, I said --

Q What did you say to him? A I said "Joe, what is the matter?"

Q And what did Joe say? A He said "Arthur, Arthur," that is all he said at the time.

Q He didn't have anything in his hands at that time? A Yes, he had a gun in his hand.

Q Are you sure about that? A Yes, I am sure.

Q Wasn't there a gun lying on the floor? A I don't know.

Q What did you say to him then? A I didn't say anything only I said "Joe, what is the matter?" All he said was "Arthur, Arthur" and the next thing he said to me was to bring

him a drink of whiskey.

Q And you went down stairs and brought him up a drink of whiskey? A No, I didn't bring him up any whiskey.

Q What did you do? A I went down stairs and called the boss and I sent for the police.

Q Did the boss come? A No, the boss didn't go up.

Q Did the police come? A yes, the police came in about fifteen or twenty minutes.

Q Fifteen or twenty? A Well, about fifteen.

Q Where were you during the fifteen minutes? A I remained in the saloon.

Q Where was the defendant? A The defendant was up stairs

Q Anybody else up stairs besides him at that time? A I don't know. There was no one there when I left.

Q The police arrived in about twenty minutes?

MR. O'MALLEY: He said fifteen.

A As near as I could say, about fifteen.

Q It might have been twenty minutes. A Well, I don't know.

Q How do you know it was fifteen? A Well, as near as I could say it was about fifteen while I was going up and coming down and going around.

Q You didn't look at any clock? A No.

MR. O'MALLEY: I object, let him answer.

THE COURT: Well, I shall not restrict counsel on cross examination.

Q well, when you came down stairs did you look at any clock?

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A No, I didn't look at any clock.

Q Did you look at your watch? A No, I did not.

Q You went out and gave a general alarm for the police to come, is that right? A Yes, I telephoned to the police station.

Q Did you look at the clock? A No, I didn't look at any clock.

Q Did you look at your watch at that time? A No.

Q You are not positive just how long a time it took for the police to come, but it was fifteen or twenty minutes? A I am not positive, it may be fifteen, it may be twenty.

Q Who arrived? A Officer Brown.

Q Any other officer? A The other officer didn't come through the saloon -- I don't know what way he went up.

Q Did you go up stairs with Brown? A Yes, Brown said for me to go up and I didn't go up for a couple of minutes after

Q And when you did go up you met Brown up stairs? A Brown was in the apartment when I went up stairs.

Q What room? A He was in the defendant's bedroom.

Q Any other officer there? A Yes, there was another officer.

Q What was the officer's name? A Freeman.

Q Was Officer Brady there? A I don't remember if Officer Brady was there.

Q But you are positive that Brown and Freeman were there?

A Yes, I am positive Brown and Freeman was there.

Q Were they doing anything? A Yes, they had hold of the

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defendant on the bed.

Q And how long did you remain up stairs with the officers?

A I remained there -- the doctor just came in right after me then.

Q How many minutes did you remain there? A I don't know how many minutes.

Q It might have been fifteen or twenty? A It may have been fifteen minutes and it may not.

Q You waited until the doctor came? A Yes, the doctor was right up after me.

Q And then the doctor examined the defendant? A Yes.

Q Did you see the defendant? A No. I didn't see him. I left the room when the doctor came in.

Q But before the doctor came in did you see the defendant?

A I saw him sitting on the bed.

Q Did you see in what condition he was? A No, I didn't see what condition he was in, only there was blood on his face.

Q Did you see any wounds on his body? A I didn't see wounds on his body, no.

Q Was he bleeding? A He was bleeding. There was blood on his face and hands and on his shirt.

Q Who was in charge of the saloon while you were up stairs the second time? A Mr. Nash was in charge of the saloon then.

Q You cannot positively swear that this is the gun (indicating the revolver)? A I cannot positively swear.

Q You could not positively swear that you ever saw this knife before, could you? A I couldn't swear. It is like the knife Brown showed me but I couldn't swear it is.

Q You never saw that knife in the possession of the defendant? A No.

Q You never saw this knife in the premises of the defendant? A Only when Brown had it in his possession.

Q All you know about it is what Brown told you? A All I know is Brown showed me the knife.

Q You knew Nora Forrester for about the length of time you were working for Nash, did you not? A No, I didn't know her that long.

Q For how long a time did you know her? A I knew her when she came to live up stairs.

Q How long a time was that? A That was after -- I don't know what month they came to live up stairs -- after Murphy came to work for the firm.

Q How long was Murphy working there? A I think it was in February 1912 he came there.

Q Was Nora Forrester a drinking woman? A Yes, I understood she drank .

Q A heavy drinker? A I don't know if it was heavy, but I saw her drunk.

Q Did you see her occasionally drunk? A I saw her drunk nights I let her in on the door.

Q How many nights did you see her drunk? A I often let her in and I often saw her drunk nights after eleven or twelve

o'clock.

Q This happened many times? A I don't know how many times.

Q You knew she was an opium smoker? A No, I didn't know it.

Q Did you know, of your own knowledge? A No, I didn't know of my own knowledge.

Q At what hour of the night did you used to leave her in?
A From eleven o'clock up -- I couldn't say.

Q Sometimes at one? A Maybe from one.

Q Two in the morning? A Sometimes two.

Q Three in the morning? A I don't know, it may have been three, I couldn't exactly say.

Q Three weeks prior to the death of Nora Forrester she attempted to commit suicide on the street, do you know that?

MR. O'MALLEY: Objected to unless ~~she~~ he knows.

BY THE COURT:

Q Do you know that?

BY MR. SCHICK:

Q I ask you, of your own knowledge? A Not to my knowledge only what Murphy told me.

THE COURT: Strike it out and the Jury will disregard it.

Q Did she in your presence threaten to commit suicide at different times? A Not in my presence.

Q Was she arrested at any time prior to this crime?

MR. O'MALLEY: Objected to.

A I don't know.

Q For trying to commit suicide?

MR. O'MALLEY: Objected to, unless you know.

A I didn't know.

Q If you know, of course -- do you know of your own knowledge? A I don't know.

Q You didn't speak to anybody about this case? A No, I don't remember speaking to anybody about it, only to the District Attorney.

Q Outside of the District Attorney you never spoke to Officer Freeman, Brady or Brown about this case, did you? A I don't remember ever having any conversation with them about it.

Q You don't remember? A No, I don't remember every having any conversation. I don't believe I had.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q The revolver that you gave to Officer Brown, was that the same revolver that you took from the defendant? A Yes, the same revolver.

Q Mrs. Bowman was the mother of the defendant's wife, is that right? A Yes.

RE CROSS EXAMINATION BY MR. SCHICK:

Q How do you know that the revolver that you gave to Brown was the same? A Well, I got it in the same place as I left it when I brought it down stairs.

Q You were twice away from the place down stairs, were you not? A I was once away from it.

Q You went up stairs, you were gone for quite a long time;

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can you positively swear that that was the same revolver that
you placed there that you gave to Brown? A I can't swear.
I got it in the same place I left it.

BY THE COURT:

Q Was there any other revolver in the place? A No.

Q Did you keep a revolver there? A No.

Q Did Mr. Nash? A No, he had no revolver, to my own
knowledge.

BY MR. O'MALLEY:

Q And there was no other revolver in the place where you
put this in the saloon but this one? A No.

BY MR. S CHICK:

Q You have some weapon behind the bar there in Nash's
place, have you not? A There is a club in it, that is all.

Q A what? A There is a policeman's club in it.

Q Aren't there several revolvers there behind the bar?
In the drawer near the cash register? A No.

Q Will you positively swear there was not a revolver there
at the time you were employed there, in a drawer near the cash
register? A No, not in my time.

Q Did you ever look into that drawer? A Yes, I looked
into all of the drawers.

A N G E L O Z I T O , called as a witness in behalf of the
People, being first duly sworn, testifies as follows:
(Through Official Interpreter DeVilla).

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(The witness states that he resides at 437 West 39th Street.)

(Witness withdrawn temporarily.)

A R T H U R M C G L A D E , recalled, testifies as follows:
BY JUROR NO. 2:

Q You claim that you closed up at one a. m. A One a. m., yes.

Q Well, how did you let in this Nora Forrester at one, two and three o'clock? A Well, I remained there and cleaned up the bar room and had it ready for the morning.

Q You remained there? A Yes.

Q Until what time? A Until next morning, until I would open up at six o'clock.

Q And you remained there all night? A All night, yes.

Q Cleaning up and getting ready? A Yes, sir, and also to let the people in if any party come after closing time. The hall door was closed at eleven or twelve o'clock, I am not sure which. There was no key for the outside hall door.

Q What time do you open up in the morning? A At six o'clock.

Q And you remain there until the defendant comes and relieves you? A Yes.

BY MR. SCHICK:

Q You are the night bartender and are there all night?

A Yes.

Q You went on duty at seven o'clock in the evening? A

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Yes.

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Q And until what hour did you remain on duty tending bar? A Until seven o'clock in the morning.

Q And you kept open all night? A No we did not keep open all night I closed up at one o'clock.

Q What did you do between the hours of one a. m. and seven a. m. -- six hours? A I cleaned up the bar and had it ready for the next morning.

Q Do you want this court and jury to believe that it took you six hours to clean up? A No, it didn't take six hours but I had to remain to let in any tenants that would come in after hours.

Q You kept the place open and selling liquor and after hours, did you not? A No, I didn't keep open selling liquor, I closed it at one.

Q Then do you want this Jury to believe that you were cleaning up for six hours, from one o'clock until seven o'clock in the morning, is that right? A No, I was not cleaning up all the time.

Q What did you do during those six hours? What did you do? A There were times I was doing nothing.

Q Oh, you just looked around? A Yes.

Q Waiting for customers to come in and sell them liquor after one o'clock, isn't that right? A No, I was not waiting for any customers to come in.

Q Did you play card? A No, I did not.

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Q You were watching for the sunrise, were you not? A

Well, I guess I would be.

MR. SCHICK: I guess so. That's all.

BY MR. O'MALLEY:

Q I understood you to say you were in charge of the building, were you? A Yes.

Q Between one and six o'clock in the morning when you opened the saloon? A Between one and seven o'clock in the morning

ANGELO ZITO, recalled, testifies as follows. (Through Official Interpreter DeVille).

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Do you speak English without an interpreter? A No.

Q Where do you live? A 447 West 39th Street.

Q And where do you work? A At Mr. Nash's place.

Q That is Mr. Nash's saloon at 640 Eighth Avenue? A Yes, on Eighth Avenue.

Q How long have you worked there? A Altogether about fifteen or sixteen months I worked for Mr. Nash, then I went to Italy and came back and I reentered his employment.

Q You were working for him on May 22nd of this year, were you? A Yes.

Q Now, do you know the defendant here, Murphy? A Yes, certainly I do know him.

Q You worked there in the same saloon where he tended bar? A No.

(Question repeated) A Certainly.

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Q Now, do you remember the day that Nora Forrester died up there in her apartment on the fourth floor? A It was on a Wednesday.

Q Now, were you in the saloon that morning? A Certainly.

Q Do you remember a woman coming in there and saying something to Mr. McGlade? A I saw an old woman come down stairs, call him and talk to him and he went up stairs with her.

Q Did you go up the stairs at that time or not? A No.

Q How long after McGlade went up did you go out of the saloon, if you did go out? A I couldn't tell you. I didn't have a watch and even if I had a watch I probably wouldn't be able to tell the time.

Q Well, you did go out, did you? Did you go up stairs? A Yes.

Q Now as you were going up the stairs did you meet anybody? A The bar tender.

Q Whom do you mean by the bartender? What is his name? A I always called him "Mike", that is all I know him by.

Q Is he the same person who was just on the stand here? A yes, sir.

Q Arthur McGlade. Was he going up or coming down when you met him? A He was coming down and I was going up.

Q Did you go up to the apartment? A Yes.

Q When you got up there tell the jury what you did? A

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I first went to the front door, I found it locked and then I went to the kitchen door, I found it open, I pushed it in and walked in. I saw Murphy with a knife in his hand.

Q Where was he when you saw him with a knife in his hand? A He was in the bed in which he had slept during the night.

Q What was he doing with the knife -- did you notice? A He had the knife in his hand and he was full of blood on this side (Indicating left side of the chest.)

Q Did you say anything to him? A No.

Q Did he say anything to you? A No.

Q And what did you do, if anything? A As soon as I saw the defendant with a knife in his hand I immediately ran away down the stairs.

Q Did you see any other person in the room where you saw the defendant at that time? A No.

Q Did you go into the room where he was? A No.

Q Do you remember what room you did go into when you saw him on the bed? A I was standing in the kitchen.

Q And what did you do? A I went down stairs.

Q How long did you stay down stairs? A I remained a very short while.

Q Did you see any officer after you went down stairs? A No. The boss telephoned told --

THE COURT: No, don't state that.

Q When you went down did you talk to the boss, Mr. Nash?

A Yes.

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Q After you talked with Mr. Nash did you go any place?

A Yes, I went to 40th Street to get the police.

Q Did you see any officer there? A I found one officer and I brought him back with me.

Q Do you see that officer in Court? A Yes.

Q Is this the officer you saw (Indicating Officer Brown of the 22nd Precinct)? A Yes.

Q Did you come back to the saloon with him? A Yes.

Q After you got back to the saloon where did you go? A I went up stairs with the police officer.

Q When you got up stairs did you go with Officer Brown into the apartment? A Yes, sir.

Q Now tell the jury exactly what you saw after you went into the apartment there the second time? A I saw several people in there. Murphy was discoursing or talking to the people that were present. Then I saw his wife on the floor, laying down in her nightshirt. And the officer said "What is the matter?" and he appeared to be addressing me and I said --

MR. SCHICK: We object to that.

THE COURT: Objection sustained.

Q Did you see anything in Murphy's hands?

MR. SCHICK: I object to the form of the question, it is leading. What did he see would be more proper.

Objection overruled; exception.

A The knife.

Q And what was he doing with the knife, if anything?

A He held it in his hands and it was all covered with blood.

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Q Did you notice Murphy's breast?

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

Objection overruled; exception.

A I saw blood on the left hand side of his clothes (Pointing to breast.)

Q Did you notice anything about the body that you saw on the floor? A Yes, it was laying down.

Q I mean did you notice anything about the body -- was there anything on it? A No.

CROSS EXAMINATION BY MR. SCHICK:

Q How long have you been working for Nash? A Fourteen or fifteen months, I am not sure.

Q How old are you? A Thirty four years of age.

Q Married? A Yes.

Q How long have you been in this country? A Two or three years.

Q What was your occupation before you came to this country?

A I was a laborer on the other side.

Q Ever been arrested? A No.

THE COURT: You cannot ask that question. You may ask the witness whether he was ever convicted, but not arrested.

MR. SCHICK: Question withdrawn.

Q Were you ever convicted of any crime in Italy? A No.
No.

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Q Ever convicted of any crime in this country? A No.
No.

Q Did you ever work for anybody else besides Nash? A No.

Q What time was it at the time you went up to the defendant's apartment? On May 22nd, 1912, in the morning? A I don't know what time it was because I can't read the face of a clock.

Q Did the bartender go up first or did you go up first?
A The bartender.

Q And after the bartender came down to the saloon you went up stairs? A Yes.

Q And you went right into the kitchen when you got up stairs, on the third floor, is that right? A Yes, I opened the door myself and entered the kitchen.

Q In the kitchen you saw the defendant sitting on the bed and holding a bloody knife in his hand? A Yes.

Q And then you went down stairs? A Yes.

Q And then Mr. Nash told you to call the police? A Yes.

Q And the police came? A yes.

Q And you went up stairs again? A yes.

Q And you went into the kitchen? A Yes.

Q And you saw the defendant still sitting on the bed and holding the bloody knife in his hand? A Not when I went there the second time. He was talking with the people present.

Q Did not you testify on direct examination that when you came back the second time the defendant was holding the knife in his

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in his hand? A No, I said the first time he was sitting there, not the second.

Q Did you not testify five minutes ago on direct examination that the second time you went up stairs the defendant was sitting on the bed and holding a knife in his hand? A No.

Q Do you wish to change your testimony now, if you did testify that way?

MR. O'MALLEY: I object to that.

THE COURT: Objection sustained. He says he did not.

THE THIRD JUROR: He did testify -- I understood him to testify that on his return the second time the defendant was holding the knife in his hand, therefore, I would like to have the testimony read.

THE COURT: He does not dispute that. The question is whether he held the knife while seated on the bed; that is the point Counsel raises.

MR. SCHICK: That is just exactly the way he testified.

THE COURT: My notes show -- but you are not to be controlled by them, you are to be controlled by your own recollection of the evidence, and if you are in doubt as to the evidence, the stenographer will read it -- that he said that the second time when I went there Murphy was talking to the people, Nora was on the floor, the defendant held a knife, it was all covered with blood. The question counsel now asks the witness is whether or not the defendant

was seated on the bed and held the knife in his hand. You may read the testimony, Mr. Stenographer.

THE STENOGRAPHER: (Reading) "Q Now tell the jury exactly what you saw after you went into the apartment there the second time? A I saw several people in there. Murphy was discoursing or talking to the people that were present. Then I saw his wife on the floor, laying down in her night shirt. Q Did you see anything in Murphy's hand? A The knife. Q And what was he doing with the knife, if anything? A He held it in his hand and it was all covered with blood. Q Did you ~~know~~ notice Murphy's breast? A I saw blood on the left side of his clothes. Q Did you notice anything about the body that you saw on the floor? A Yes, it was laying down. Q I mean did you notice anything about the body -- was there anything on it? A No."

BY MR. SCHICK:

Q The second time you went up stairs, who else besides Murphy was in the room? A There were people there, I didn't know them.

Q Do you know Officer Brady who lived in the house? A Yes.

THE COURT: (Addressing Interpreter) Tell the witness to describe the persons who were there, if he can.

A There were women and men in that room. I was scared, very much scared and I went out quick -- I didn't count how many there were.

Q Can you remember anybody that you knew? A The Police

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Officer.

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Q Brady? A The officer who resided in the front apartment of that house.

Q Anybody else? A None of the others were known to me.

Q Was Murphy standing and talking to these people? A Yes

Q What did you do? A As soon as the police entered I went out and went down stairs again.

Q Did you see Officer Brown in the room? A Yes, sir, I brought him up there myself.

Q Did you see him do anything? A I saw him enter with me, I saw him join the crowd, talk to them and then I ~~went~~ withdrew ~~through~~ and down stairs.

Q Did you speak to Brown since? A In regard to these people?

Q In regard to the case? A No, I never spoke to anyone about it.

Q Did you speak to anybody? A No.

Q Until today when you were questioned in Court? A No.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q You were up to the District Attorney's office, weren't you at one time? A Yes.

Q And you made a statement there? A Yes, sir.

Q When you talked about the case at that time, didn't you?

A I didn't talk to anyone, I stated it.

RE CROSS EXAMINATION BY MR. SCHICK:

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MISSING PAGES

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C O R N E L I U S J. B R O W N (16th Precinct) called as
a witness in behalf of the People, being first duly
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are a member of the Municipal Police force, are
you, Officer? A Yes.

Q Attached to what precinct? A The 16th Precinct.

Q Where were you attached on May 22nd of this year?
A 22nd Precinct.

Q Where is that located? A West 37th St, between Ninth
and Tenth Avenues; No. 434.

Q Do you recall the morning of May 22nd of this year?
A Yes sir.

, Q And where were you that morning? A In the station-
house.

Q Did you leave the stationhouse at any time? A Yes sir

Q Where did you go? A I went to Eighth Avenue and 41st
Street,, 640 Eighth Avenue.

Q Did you see the last witness on the stand that morn-
ing? A Yes sir.

Q Where? A Between 40th and 41st Street,, on Eighth
Avenue, on the east side.

Q After seeing him what did he do? A He led me up to
Nash's saloon.

Q At 640 Eighth Avenue? A Yes sir.

Q In Nash's saloon did you see anybody besides this wit-

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Q. What did you see? A. All I can recollect seeing was Mrs. Brennan sitting at a table in the front of the saloon.

Q. Did you speak to her, yes or no? A. No sir.

Q. Did you speak to anybody in the saloon that you remember? A. No sir.

Q. And what did you do? A. I went upstairs with Zito to the fourth floor front.

Q. And going up did you meet anybody? A. No sir.

Q. In the hallway did you meet anybody? A. Yes sir.

Q. Whom did you meet? A. Officer Brady.

Q. At that time did you know Officer Brady? A. Slightly. I didn't know him very well.

Q. Well, I mean did you know he was a police officer?

A. No sir.

Q. Where was he -- in the hall outside the apartment?

A. Yes sir.

Q. Did you speak to him before going in? A. I didn't speak to him, no sir.

Q. Did he speak to you? A. Yes sir.

Q. After speaking to Officer Brady what did you do? A. I entered the apartment.

Q. Through what door? A. Through the kitchen door.

Q. Now go ahead and tell the jury exactly what you did after you entered the apartment? Where was Zito at that time?

A. Zito was behind me.

Q. Now, tell what you did? A. I went in the kitchen

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through a dining room, then through a bedroom then into ~~the~~
the front bedroom, where I seen the defendant Murphy reclining
on the bed with a knife in his hand.

Q What was he doing with the knife? A Stabbing himself
like that (indicating by striking breast).

Q I show you Peoples Exhibit 5 for Identification, and
ask you, did you see that before? A Yes sir.

Q Where? A That was a knife Murphy had in his hand.

Q That you have just described? A Yes sir.

Q And did you put any mark on that knife? A Yes sir --
I didn't put a mark on it, no sir. There was a mark on it.
I tied a tag onto it.

Q And that is the same knife you saw in his hand?
A Yes sir.

Q What did you do with it? A I took it with me to the
stationhouse.

Q Well, before taking it to the stationhouse, after
you saw it in his hand, did you take it away from him? A Yes
sir.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: Objected to, no proper foundation laid.

THE COURT: You may claim the witness. The officer
says that the knife had a mark thereon, that he took it
and placed a tag thereon and that it was the knife used
by the defendant in stabbing himself and that the officer
witnessed the scene.

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BY MR. SCHICK (Examining on offer in evidence):

Q You say there was a mark on this knife at the time you took it to the stationhouse. What kind of a mark, if any, was there? A There was a mark right near the handle.

Q Describe the mark? A The mark runs along ~~right~~ like that right near the handle, right near the blade of the knife. It is a long mark about an inch and a quarter long.

Q On the side of the handle? A On the flat of the handle.

Q Describe the handle? A It is a wooden handle.

Q Describe it? A About three and a half inches long, sort of curled on the end.

Q And where is this particular mark? A Right near the blade of the knife, on the handle, on the side of the handle.

Q Is it on the knife or on the handle? A On the handle.

Q And who made that mark? A The mark was there.

Q What did you do with the knife? A After taking it off Murphy I kept it in my possession.

Q How long did you keep it in your possession? A Till I reached the West 37th Street stationhouse.

Q What did you do with it then? A I showed it to the lieutenant.

Q What then? What became of the knife after that? A Then I put it in an envelope and kept it at the desk.

Q Who kept it at the desk? A I did.

Q You mean that you put it in an envelope and gave it to

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the lieutenant and it remained there? A I gave it to no lieutenant; I kept it myself.

Q Where did you keep it? A On the desk.

Q You carried the knife with you when you go out on duty? A I didn't go out on duty after that. I remained in the West 37th Street stationhouse.

Q What did you do? Did you ever go out patrolling?
A Yes sir. My tour expired at eight o'clock that morning and I was detained by this case until away late in the morning, until I was summoned to the District Attorney's office.

Q That happened May 22nd, 1912? A Yes sir.

Q And where did you keep the knife between May 22nd, 1912 and October 14, 1912? A In the District Attorney's property clerk's office.

Q When did you deliver this to the District Attorney's property clerk, what date? A Well, the same day, I believe.

Q And you didn't see the knife since? A I may have; I won't swear I didn't see it since.

Q Now, you will positively swear that this is the knife, you will positively swear that you took this knife, marked Peoples Exhibit for Identification from the person of this defendant? Look at the jury, don't be afraid? A I want to watch what you are doing, too.

Q Will you positively swear -- I repeat the question -- you have time to change your testimony.

MR. O'MALLEY: I object to that statement.

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THE COURT: Objection sustained.

MR. O'MALLEY: I ask the Court to direct the jury to disregard it.

THE COURT: The jury will disregard it.

Q Do you remember if you commit perjury, if you didn't take this knife from the defendant's person. I will give you all the chance in the world. You face the jury and you now positively swear that you took this knife from the person of this defendant -- what is your answer? A Yes.

MR. SCHICK: That's all. I have no objection to its going in.

Marked in evidence as Peoples Exhibit 5.

BY THE COURT:

Q Where is the tag that you put on it? A I don't know what became of the tag, your Honor.

BY MR. O'MALLEY (resuming direct examination):

Q This mark here is the mark you are referring to? A Yes.

BY THE SECOND JUROR: Q Is that the mark you made, Officer? A That is the mark, about an inch and a quarter long.

BY MR. O'MALLEY:

Q Did you have any conversation with the defendant at that particular time? A No sir.

Q Did you make any other observation in the room -- did you see any other person in the room? A I seen the body of the woman on the floor.

Q Describe how that body was lying? A The head was

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towards the closet and the head feet towards the bed, lying
on her back.

Q How was the body dressed? A Scantily clad; it had on
a kimono and a shirt.

Q Any shoes or stockings? A No shoes or stockings.

Q Now, what did you do at that time, if anything? A I
went downstairs then and summoned a hurry call for an ambulance
from the New York Hospital.

Q And after doing that what did you do? A I went up-
stairs again.

Q Now, who was in the apartment besides you and Zito
that you remember? A Officer Brady, Officer Freeman and I
think there were one or two -- one or two women come in.

Q Arthur McClade, did you see him there? A Not when I
first entered .

Q But you did see him there that morning? A I see him
there later that morning, yes sir

Q After coming upstairs, where was the defendant, if you
remember? A Sitting on the bed.

Q Did you have any conversation with him at that time?
A No sir.

Q After coming back, Officer, I mean? A Not until after
the doctor had dressed his wounds.

Q Dr. Vieter did dress his wounds, did he? A Yes sir.

Q And made an examination of the body of the deceased?
A Yes sir.

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Q Now then, after that did you have any conversation with the defendant? A Yes sir.

Q Will you please tell the jury exactly what was said to the defendant by you and what replies he made? A I asked him who killed the woman. He replied --

MR. SCHICK: I object, if this is in the nature of a confession and this witness on the stand did not warn the defendant of his rights.

THE WITNESS: Your Honor, I did warn the defendant.

THE COURT: Just a moment. Make your objection.

MR. SCHICK: I object on the ground that it is improper, immaterial, irrevelant and incompetent, as this defendant being in the custody of an officer he had no right to question him regarding the crime, and if he did it was his duty to inform him that whatever he may say may be used against him.

THE COURT: That is not the law. I overrule your objection on the grounds urged by you. You may claim the witness with a view to learning whether or not the admission or confession was induced by him through fraud or promise or produced by fear.

BY MR. SCHICK:

Q At the time that you inquired regarding this crime did you say anything to the defendant? A I told him that anything that he said would be used against him, he must be careful about what he says.

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Q What else did you say besides that? A Then I went on to question him.

Q Did you tell him anything else in the way of that it will be better that he tells you how it happened, that it is for his own good and that you will see that he will be all right? A No sir.

Q Well, what did you say? Just give us the exact words, what you did say to the defendant? A I told him that any statement that he made could be used against him and to be careful of what he had to say.

Q And who were present when you said this to the defendant? A Arthur McGlade and the two police officers.

Q Officer Brady and Officer Freeman, is that right?

A Yes sir.

BY MR. O'MALLEY:

Q Now, proceed, Officer, and tell what the conversation was? A I asked him, "Who did this?" He replied, "I did". I said, "What caused you to do this?" And he says, "I don't know." I says, "Was it another man in the case?" He replied, "Yes." I says, "Who was it?" He says, "I won't tell you." And then I asked him, "Was there any fight?" He says, "Yes, we fought the previous evening up until twelve o'clock, and went to bed. At five o'clock in the morning we started fighting again, and I got a gun", he says, "and I shot her."

Q Did he say why he shot her? A No.

Q Did he say how many shots he fired? A No sir.

Q Did he say how many shots he fired altogether? A He says, "I fired two into her and one after myself." He said "I tried to kill myself and I am sorry I failed."

Q Is that all that you recall that he said? A That's all that I recall.

Q Did he say anything at that time about the deceased having a revolver at any time? A No sir.

Q Then did you observe the body of the deceased? A Yes.

Q And you have told us how she was dressed? A Yes sir.

Q You said she had on a shirt and a kimono? A Yes sir.

Q Did you remove the clothing? A Yes sir.

Q How did you remove the shirt? A By slitting it in the back.

Q On each side? A On the back.

Q Now, do you recall how this kimono was -- whether or not the breast of the body was exposed? A The kimono was laying sort of flat towards the floor.

Q That is, open? A Yes sir.

Q Now I show you a garment here and I ask you if you have seen that before? A Yes sir.

Q Where? A In the apartment, 640 Eight Avenue, on the fourth floor.

Q Is that the shirt you speak of that was on the deceased? A Yes.

Q And you took it off, you say, by slitting it up the

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back? A Slitting it, yes sir.

Q What did you do with it? A I put it in a bundle with the kimono and the knife and the revolver.

Q And when you took it off of the body was it in the condition it is now in, so far as the discoloration is concerned? A Yes sir.

Q What did you do with it after you took it off? A I took it to the West 37th Street station after taking it off and wrapping it up.

Q And afterwards did you bring it to the District Attorney's office? A Yes sir.

Q And you got it from the property clerk of the District Attorney's office to-day and you brought it down here? A Yes.

Q Is it in the same appearance, so far as outside appearance is concerned, as when you took it from the body of the deceased? A Yes.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: No objection.

THE COURT: Received.

Received in evidence and marked Peoples Exhibit 7.

Q And this is the kimono you speak of? A Yes sir.

Q And you did with that the same as you did with the shirt that you have described? A Yes sir.

MR. O'MALLEY: I also offer that in evidence.

THE COURT: Received.

Received in evidence and marked Peoples Exhibit 8.

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Q Did you at any time that morning have any conversation with McGlade, the bartender? A Yes.

Q After you had that conversation what did McGlade do? Where did he go, if any place? A I sent him downstairs.

Q Did he afterwards come back? A Yes sir.

Q And when he came back what did he have, if anything?

A A revolver.

Q I show you Peoples Exhibit 6 for Identification and ask you if that is the revolver that McGlade had? A Yes sir.

Q Did he hand it over to you? A Yes sir.

Q Did you at that time put any mark on it? A Yes sir.

Q And what was the condition of the revolver when it was handed to you? A It had three empty shells and two loaded shells and one chamber empty.

MR. O'MALLEY: I offer the revolver in evidence.

MR. SCHICK: Objected to, the proper foundation has not been laid, not properly proved.

Objection overruled. Exception.

(Marked in evidence Peoples Exhibit 6.)

Q I understood you to say that you found three empty shells in the revolver? A Yes sir.

Q I show you some shells and ask you if those are the shells that you found? A Yes sir.

Q Did you put your mark on them? A Yes sir.

Q Do you now recognize your mark? A Yes sir.

MR. O'MALLEY: I offer them in evidence.

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MR. SCHICK: Objected to, no proper foundation laid for the offer.

Objection overruled. Exception.

Received in evidence and marked Peoples Exhibit 9.

Q Now I show you two loaded shells and ask you if those are the two loaded shells that you say you found in that revolver? A Yes sir.

Q At the time you found them in the revolver did they have this dent on the end? A Yes sir.

Q Each one? A Yes sir.

MR. O'MALLEY: I offer them in evidence.

MR. SCHICK: Objected to, no proper foundation has been laid for them.

Objection overruled. Exception.

Received in evidence and marked Peoples Exhibit 10.

Q Officer, I show you another piece of metal and ask you if you have seen that before? A Yes sir.

Q When and where? A I found it in the shirt of the deceased.

Q When? A After taking it off of her -- the shirt off of her.

Q Will you tell the jury about where you found it? A I found it in one of the holes that is all gunpowder, black.

Q In this little shirt, Peoples Exhibit 7 in evidence?
A Yes.

MR. O'MALLEY: I ask to have that marked in evidence.

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MR. SCHICK: Objected, no proper foundation laid.

Objection overruled. Exception.

Received in evidence and marked Peoples Exhibit 11.

Q Do you know what caliber revolver this is, Peoples Exhibit 6 in evidence? A .32.

Q What make -- "H. & A"? A Hopkins & Allen, I think it is.

Q I show you Peoples Exhibit 1 in evidence and ask you if you can see what caliber that bullet is? A I couldn't swear to the caliber.

Q (Handing one of the shells from Exhibit 9 to the witness to fit the bullet, Peoples Exhibit 1 into) A I couldn't swear, but it looks like .32. It may have been flattened out when it came out.

Q Did you at any time after this day go to the apartment of the defendant? A Yes sir.

Q And there did you find any garment? A I found an overcoat in the closet.

Q Did you take the overcoat? A Yes sir.

Q And at any time after that did you ever speak to the defendant about this overcoat? A Yes sir.

Q Where? A Bellevue Hospital.

Q About how many days was that after you took the overcoat from the apartment where you saw the defendant that morning? A About one week later.

Q Did you have any talk with him with regard to anything

15 that you found in that overcoat? A I told him I got an over- 97
coat there and he told me it was his, and I told him there
were six loaded bullets there, and he says he knew it was in
the overcoat pocket.

Q In this overcoat? A Yes sir.

Q And that is the coat that you had the conversation
with him about, did you? A Yes sir.

Q Where did you find those bullets, in what pocket? A In
the outside pocket.

MR. SCHICK: Objected to as incompetent, immaterial
and irrelevant, no proper foundation laid. It would be
preposterous to try to prove that they found bullets in
some garment and bring it home to this defendant.

THE COURT: Is there any evidence that the property
was the defendant's?

MR. O'MALLEY: He had a conversation with the de-
fendant about the overcoat and told him he found it in
his room.

THE COURT: When was the overcoat found?

Q What day? A The day after.

Q The day after you saw the defendant there? A Yes sir.
I went there with the men that took the photographs and the
drawings.

Q And then you took possession of the overcoat, did you?
A Yes sir.

Q And then you afterwards, you say, about a week after-

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wards, in regard to it? A With the defendant, at Bellevue
Hospital.

Q And spoke about this overcoat? A Yes sir.

BY THE COURT:

Q Who had charge of the apartment after the defendant was
taken into custody? A We had a policeman in there for
awhile, but just how long I don't know.

Q Was the policeman there at the time that you found the
overcoat? A No sir.

THE COURT: There are two cases in the Court of Ap-
peals that make it rather difficult to determine whether
or not the evidence should be admitted. The Court of Ap-
peals held in People v. Frank Kinney that where a defend-
ant was seen going to the lavatory of a public saloon and
after he left there were found keys which fitted the door
of the apartment where the deceased was found -- the Court
of Appeals in that case held that the evidence was pre-
judicial and incompetent and reversed it upon that ground.
In the case of the People vs. Ginsta, in 205 N.Y., the
Court of Appeals admitted in evidence the fruits of a
crime, and there was some proof that in the room where the
goods were found there had been no goods there before the
defendant's entry. Now, if you can account for the con-
dition of this coat after the defendant was arrested, I
shall admit it in evidence.

MR. NOTT: The defendant here admitted that it was
his coat.

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MR. O'MALLEY: And that the bullets in it were his

THE COURT: Yes, but the coat was recovered, as I understand, a day after.

MR. NOTT: But the point is to show that he knew that the bullets were in the coat and he admitted that he knew they were in the coat.

BY THE COURT:

Q Did you have a talk with him about the coat? A He told me in Bellevue Hospital -- I told him I found those bullets.

MR. O'MALLEY: He has already testified to the conversation with the defendant about them, your Honor. Will the stenographer read that?

The stenographer (reading) "I told him I got an overcoat there and he told me it was his, and I told him there were six loaded bullets there, and he says he knew it was in the overcoat pocket."

THE COURT: Oh, I beg your pardon. Objection overruled. That is a different proposition entirely.

MR. SCHICK: Exception.

BY MR. O'MALLEY:

Q I show you an envelope and ask you if that is your writing on it? A Not the top, but the bottom is my name.

Q Did you seal it up? A Yes sir.

Q Will you open it, please? A (Witness opens envelope).

Q Those are the six bullets that you found in this over-

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coat? A Yes sir.

Q And about which you talked to the defendant? A Yes sir. I chipped each one off at the lead.

MR. O'MALLEY: I offer them in evidence.

THE COURT: Received.

Received in evidence and marked People's Exhibit 12.

BY THE SECOND JUROR:

Q Were both sides chipped off? A Some of them. I don't know whether I chipped both sides on all, but I know I remember taking the knife and chipping them off.

Q This one has both sides chipped? A Yes.

BY MR. O'MALLEY:

Q Now, after you removed the clothing from the deceased did you notice the condition of her body? A Yes.

Q Generally. Well, describe what you noticed if you can remember? A I remember two bullet wounds and two stab wounds.

Q Give the location of those? A The bullet wounds were around here, around the nipple of the left breast; and the stab wounds were right near.

Q You subsequently had a talk with the defendant, did you not, in the hospital? A Yes sir.

Q And when was that? A That was about a week later in the hospital. I went there at the request of his mother-in-law

Q Now, by his mother-in-law you mean Mrs. Bowman? A Yes.

Q Now, tell all the conversation that you had with him at

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19 that time, if you can recall? A I says to him, "Well, Murphy, why did you do that?" He says, "I don't know. I must have been mad." He says, "I remember her with the gun and she rastled with the gun and the gun went off in the excitement." I said, "Well, Murphy, how do you account for the stab wounds that was on her body?" He says, "I don't know. I must have been mad."

MR. SCHICK: I object to any further conversation excepting if they prove that he made him no sort of promise prior to getting this conversation.

THE COURT: You may claim the witness.

BY MR. SCHICK:

Q What did you tell him before asking him about the crime again the second time? A I asked him did he want to see me.

Q And what did you tell him about the District Attorney? A I told him nothing at all about the District Attorney, because I had no power to tell him anything about the District Attorney.

Q Did you advise him to go down to the District Attorney's office with you and that if he will make a confession they will be easy with him? A No sir, I had no power at all to do that.

Q Didn't you make promises to this defendant before that conversation -- look at the jury, don't look at me -- now tell me, did you make any promises to him at Bellevue Hospital about

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this further conversation? A No sir, I made no promises whatsoever.

BY MR. O'MALLEY:

Q You were proceeding to tell the conversation; had you told it all, Officer? A All I can remember of it. That conversation about the overcoat, that was in it.

Q Now then, do you recall the number of shots that the defendant stated was fired? A He told me one shot was fired and when he seen her fall that he now -- he fired another one and then he fired another one at himself. That was at the hospital he told me that.

Q Did he say anything about what caused the shooting?

A No, not that time.

CROSS-EXAMINATION BY MR. SCHICK:

Q How old are you? A I am thirty years old.

Q Married? A Yes sir.

Q Where do you live? A 563 Tenth Avenue; 41st and 42nd Streets.

Q Where were you born? A I was born in New York City.

Q Father and mother alive? A Yes sir.

Q Did you go to public school? A Yes sir.

Q Did you graduate from public school? A No sir, I went to the next to the highest in the grammar, that was as far as I could go at that time.

Q What age did you leave school? A Twelve years of age when I left school.

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Q Will you please face the jury when answering my questions. At what age did you leave school? A Twelve years old.

Q What did you do after that? A I worked as a wagon boy up in McPartland & O'Flaherty's.

Q How long did you work there? A Possibly a year.

Q What did you do after that? A I worked in the printing business.

Q Whom did you work for? A William Davy, 19th Street and Eighth Avenue.

Q How long did you work for Davy? A I served my time there, five years.

Q Why did you leave Davy? A On account of my health.

Q Were you discharged? A No sir, I never was discharged in my life.

Q Where did you work next? A I worked for the New York Central Railroad.

Q How long did you work for the New York Central Railroad? A Possibly six years.

Q Don't you know? A Well, I won't give you a stated time. I said possibly six years.

Q When did you go to work for the New York Central Railroad? A I can't remember the year.

Q What time did you leave the employ of the New York Central? A The day before I went on the police force.

Q What year was that? A That was 1907.

Q Do you remember the month? A Very well -- January.

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Q 19077 A Yes sir.

Q And you have been on the police force ever since?

A Yes sir.

Q What are your duties as a policeman? A To protect life, property and limb.

Q And what precinct were you attached to at the time the supposed crime was committed? A 22nd Precinct.

Q Where is that located? A 434 West 37th Street.

Q Were you on patrol duty on that day? A On that morning.

Q That morning? A Yes sir.

Q What time? A From twelve until eight; we were doing a late tour.

Q And when they made a call for police at the station were you in the station? A Yes sir. I had what was called a stationhouse post.

Q And who called for you? A The lieutenant.

Q What did he tell you? A He told me there was a shooting match at Eight Avenue and 41st Street, to rush up there.

Q Did you go up there? A Immediately.

Q Did you go with anybody? A I went alone.

Q Did you see Angelo in the stationhouse? A I don't know Angelo.

MR. O'MALLEY: Zito, he means.

A (Witness continuing) Zito comes to the stationhouse at no time.

Q Did you go back with Zito to Nash's house? A When I

met him between 40th and 41st Street on Eighth Avenue.

Q You and Zito went up to the house, did you not? A Yes.

Q And Zito remained in the apartment for some time with you? A That I don't know.

Q But he was in the apartment with you? A He accompanied me to the apartment, yes.

Q Before you went into the apartment you met Officer Brady in the hall? A Yes sir.

Q You had a conversation with Officer Brady? A Yes sir.

Q And he handed you something in the hall, did he not?

A He handed me something?

Q Yes. A Not as I know of.

Q He handed you some instrument, a weapon? A No sir.

Q He handed you a knife? A No sir.

Q You are sure? A Positive.

Q Did you have any conversation regarding a knife with Officer Brady prior to your entering the apartment? A No sir.

Q Did you have a conversation with Officer Brady after that, after you left the apartment? A I may have, I don't remember.

Q Now what room did you enter in when you first came in from the hall? A In through the kitchen.

Q What did you do next? A Went into the diningroom.

Q And what did you do then? A I went through a bedroom.

Q And then? A Then into the defendant's bedroom.

Q That was the fourth room? A Yes sir.

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Q Let me understand you. You go in the hallway and go into the kitchen? A Right.

Q Went into the dining room? A Yes.

Q First bedroom? A Yes sir.

Q And the second bedroom, which was the fourth room?

A Yes sir.

Q Now, when you got into the fourth room, was anybody in the room besides the defendant? A And the deceased.

Q Anybody else in the room besides the deceased and the defendant? A Not that I seen.

Q Nobody else. Now, what did you do? A I took the knife away from the defendant the first thing.

Q Where was the defendant? A Lying at the head of the bed.

Q Sitting on the bed? A Yes sir.

Q And holding the knife in his hand? A Yes sir.

Q And what did you do? A I took the knife away from him.

Q What did you say to him? A I said to him, "What is the matter with you? Are you crazy?"

Q Did you say anything else? A No sir.

Q What happened next? A And went down and got the ambulance, rang for an ambulance from the New York Hospital.

Q What did you do after that? A Proceeded back upstairs.

Q Did anybody remain upstairs while you were gone for the ambulance? A Yes sir.

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Q Isn't it a fact that Brady called the ambulance? A No.

Q And when you went downstairs the ambulance was coming, already arrived? A No sir, I called the ambulance.

Q Did you leave any officer upstairs while you were gone? A Officer Brady and Officer Freeman.

Q Then when you went downstairs to call the ambulance you left Officer Freeman and Officer Brady in the apartment, is that right? A That's right.

Q While you were in the apartment prior to your going for the ambulance where was Officer Brady and Freeman? A They were up there in the apartment.

Q In what room? A In the bedroom.

Q What bedroom? A In the front bedroom.

Q Did they ever come into the same room where you were?

A They were in the same room with me all the time.

Q Then Officer Brady and Officer Freeman were present when you took the knife from the defendant? A I did not say that. Officer Brady was present but Officer Freeman was not.

Q Then let me understand you. See if I understand you. Officer Brady was in the bedroom, in the same room that you were and the defendant and the deceased, and Brady saw you take the knife from the defendant; is that right? A Yes sir, that's right.

Q Where was Officer Freeman? A Officer Freeman ^{come} about a minute later, a minute and a half possibly, maybe two minutes.

Q And did Officer Brady say anything to the defendant?

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A Not that I can recollect.

Q Did Officer Freeman say anything to the defendant,

A Not that I can recollect.

Q And you went down for the ambulance? A Yes sir.

Q And you got back to the apartment about five or ten minutes after that? A Possibly five or ten.

Q Did you say anything to the defendant? A Not at that time.

Q What did you do? A I waited for the doctor to come. The doctor come about five minutes possibly after I got up there.

Q What did you do then? A Well, after the doctor dressed the wounds I asked the doctor if I could ask him some questions.

Q You didn't know whether you could ask him some questions before you inquired of the doctor? A Certainly not -- The man -- I did not know the state of the man's condition at the time.

Q You didn't make any attempt to have any conversation with the defendant at all prior to the doctor coming up, is that right? A That's right.

Q You first wanted to consult a physician, if the defendant was in any condition to answer your questions, is that right? A That's right.

Q Then when the doctor informed you that he was sane and

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in fit condition, that you could go ahead and ask him questions you proceeded with your examination? A Yes sir.

Q And what did you say to him? A I warned him of his rights.

Q Now, what did you say? Just let us have the exact words? A I told him, "Murphy, I am going to ask you some questions. Now, you don't have to answer these, for anything you say can be used against you".

Q Are those the exact words you said to Murphy? A Well now, that happened four or five months ago, Counsellor, and I couldn't answer.

Q Well, let us try to get it out, if we can, right. Try to give us the exact words? A I am giving you as near as possible, as I can remember it.

Q Well, repeat it. A I told him, "Murphy, I am going to ask you some questions." I says, "Anything you say now can be used against you, so you had better be careful."

Q What did Murphy say? A Murphy made no reply.

Q What did you then say? A I asked him "Who did this?"

Q Who did what? A Did the shooting.

Q Well, give us the words, just the exact question you put to Murphy? A Counsellor, I am giving you as near as I can possibly remember it.

Q Well, go ahead? A I asked him, "Who done this?" And he replied, "I did." I said, "What was the cause of it?" and he says -- I says, "Was it another man?" and he replied "Yes."

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I says, "Who is the man?" He says, "I ain't going to tell you. Well", I says, "have you been fighting long?" He says, "We fought all evening till twelve o'clock the previous night. At five o'clock in the morning we got up again and starting fighting again", he says, "and I went and got the gun and shot her".

Q And did he say anything else? A He says, "I put two shots into her and I fired one at myself and I am sorry I didn't fail to kill myself " -- "sorry to failed to kill myself."

Q What else did he say? A That's all I can remember now.

Q And Brady and Freeman were present during this conversation, were they not? A Yes sir.

Q And who else heard the conversation? A That I don't know. I was too busy at that time with the defendant to take notice of who was there.

Q Were there any women in the room? A There may have been. I won't swear that there was not.

Q Was Zito there? A I won't swear whether he was or not. McGlade was there, though, I will swear to that.

Q Where did McGlade hand you this revolver? A In the bedroom off the defendant's bedroom. I had sent him down to get it. I had asked him who had the revolver and he said "I did," and I said, "You had better go down and bring that revolver up to me."

Q You testified on direct examination that this gun, mark-

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ed People's Exhibit 6, was handed to you by Arthur McGlade?

A Yes sir.

Q This is the same gun he handed to you? A The same gun 1640.

Q Where, what place? A Upstairs in the bedroom off of the defendant's bedroom.

Q Did he have it in his hand? A When he handed it?

Q Yes. A Yes sir.

Q Did he take it out of his pocket? A No sir. He brought it up in his hand to me.

Q Brought it from where? A I don't know. I couldn't swear from where he brought it. I know he came in the apartment with it and gave it to me.

Q I hold these two bullets in my hand, marked People's Exhibit 10, and I look at them; where did you get those? A In the revolver.

Q I show you three empty shells, marked People's Exhibit 9. You testified on direct examination that you took these empty shells from this gun? A Yes sir.

Q You also testified that the defendant said that he shot twice at the deceased and twice at himself? A No sir, I said once at himself.

Q That would make three? A Yes sir.

Q How many cartridges can you put in this gun marked People's Exhibit 6? A Six.

Q Then you testified on direct examination that you found

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six bullets in the overcoat belonging to the defendant? A Yes.

Q The day after the crime had been committed? A Yes sir.

Q You could not positively swear that these cartridges or bullets were placed in that pocket by the defendant, or belonged to the defendant? A Only what he told me.

Q Who had charge of the apartment during the twenty-four hours after you found the --

THE COURT: Is it necessary to inquire along that line? The defendant stated to him that he knew that the cartridges were in his overcoat. You may question him on any legitimate subject. I am not restricting you.

Q Isn't it a fact that right after the crime was committed that those apartments were in your own charge? A No sir, they couldn't be in my charge because I had to go to the stationhouse.

Q Were they in charge of Officer Brady? A No sir.

Q Officer Freeman? A No sir.

Q Well, who remained at the apartment at the time prior to your going there for the overcoat, if you know? A There was an officer till the body was removed, I believe, and then I believe that the door was locked.

Q Who locked the door? A I don't know.

Q You cannot positively swear that the apartments were locked? A I can positively swear that they were locked, yes.

Q Who locked the apartment? A I don't know.

Q Well, how can you swear then that they were locked?

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A Because when I went back there they had to take the nails out of the door to let me in.

Q Do you know who nailed the door? A I don't know.

Q Did you have any conversation regarding this case with Officer Brady? A No sir.

Q Will you positively swear now that Officer Brady did not give you this knife which is marked People's Exhibit 52

A I will positively swear he did not.

Q Will you positively swear now that you took that knife from the person of the defendant? A Yes sir.

REDIRECT EXAMINATION BY MR. O'MALLEY:

Q You were at the Morgue the day the autopsy was performed, were you not, by Dr. Lehane? A Yes sir.

Q Did you identify the body of the deceased to Dr Lehane? A Yes sir.

Q And was the body that you identified the same body that you saw in the apartment, in the defendant's bedroom in the apartment that we have been talking about in this case? A Yes.

Q And this apartment where you saw the body of the deceased and you found the defendant that morning was in the County of New York? A Yes sir.

RECROSS EXAMINATION BY MR. SCHICK:

Q Your post is near Nash's saloon, is it not? A No sir.

Q Around Nash's saloon? A No sir.

Q You knew this defendant for how long? A I never knew

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him until the morning.

Q You never met him? A I may have met him but wouldn't remember him.

Q Do you know Mr. Nash that runs a liquor place, a cafe, at the corner of Eighth Avenue and 41st Street? A I know him by sight.

Q How long have you known him by sight? A Oh, I have seen him around there -- I couldn't tell you.

Q How many years? A Possibly a year, possibly six months.

Q Did you ever go in his cafe? A No sir.

J A M E S T. B R A D Y (1st Precinct), a witness called in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Were you attached to the First Precinct on May 22nd of this year? A I was.

Q Where were you residing on that day? A 640 Eighth Avenue.

Q What floor? A Fourth floor; three flights up.

Q How long had you lived there at that time? A Well, about two months.

Q Did you know the defendant at that time, who lived across the hall from you in an apartment? A I did not.

Q Had you ever seen him, to your knowledge? A No sir.

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Q Or the woman known as Nora Forrester, who lived with him? A Never knew her.

Q Were you on duty on the morning of May 22nd, 1912?

A I was not.

Q Where were you about seven o'clock in the morning?

A I was in my apartment, in bed.

Q What, if anything, attracted your attention? Don't tell us any conversation. Did you leave your apartment that morning? A I did leave my apartment, yes.

Q Before doing so did you have a talk with your wife?

A My wife?

Q Did she speak to you? A My wife spoke to me and told me that the people --

Q Your wife spoke to you? A Yes.

Q Were you in bed at that time? A Yes sir.

Q Both of you? A Yes sir.

Q After your wife spoke to you what did you do? A She told me there was some trouble --

THE COURT: Strike it out.

Q What did you do? A I told her it was only a family quarrel --

THE COURT: Strike it out.

A (Witness continuing) I went back to bed again, I turned over and went to sleep again.

Q About what time was that? A Around 6.30 or 6.40, I believe.

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Q Did you afterwards get up? A Well, I did, when she came in and woke me up again.

Q About what time did you get up, do you remember? A It was about twenty minutes afterwards.

Q When you got up did you go out of your apartment?
A I did.

Q Whom did you see when you went out? A Well, the first man I met was Officer Brown.

Q Was he then on the floor? A He was already going into the apartment.

Q Through what door? A Through the kitchen door.

Q Your apartment is right across the hall, is it? A Yes

Q You have a front apartment, which fronts on Eighth Avenue? A Yes sir.

Q Yours is the downtown apartment and Murphy's apartment is the uptown apartment? A Yes sir.

Q Did you go into that apartment with Officer Brown?
A I did.

Q Tell the jury exactly what you did after you went in there? By the way, did you know Officer Brown at that time?
A Well, by seeing him on patrol around there.

Q You had no personal acquaintance with him? A No.

Q And he didn't know you? A No.

Q All right, go ahead? A After my wife had woke me up --

Q Don't tell us of that, just tell us what you did after you got into the apartment? A Well, I was kind of long about

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getting up, I was between half asleep and half awake --

Q Don't tell us anything about that --

BY THE COURT:

Q How long have you been a member of the Police Department? A Three years and a half.

BY MR. O'MALLEY:

Q I am speaking now, after you got into Murphy's apartment with Brown -- A Officer Brown asked me was I a policeman and I told him yes. He said, "If you are a policeman you can assist me." And we went inside and the defendant was laying on the bed and he had stab wounds on his chest here, and the knife was in his hand and the hands resting on the bed. Officer Brown and took the knife off the defendant and then he went downstairs and he called an ambulance. And I stood up there with Officer Freeman and took charge of the apartment until he come back.

Q During the time that Officer Brown was gone did you have any conversation with the defendant -- yes or no? A Yes.

Q Did you ask the defendant any question -- yes or no? A Yes sir.

Q Did he reply to you? A He did.

Q Will you please tell the jury what question or questions you asked the defendant and what reply he made?

MR. SCHICK: Objected to, on the ground that he might have made some promise or threat.

THE COURT: You may claim the witness.

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BY MR. SCHICK:

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Q If you asked the defendant any questions what did you say to him? A What did I ask him?

Q Yes. A I asked him who killed this woman.

Q Did you make any promises to him? A No, sir.

Q Or any threats? A No sir.

BY THE COURT: Q Did you tell him at that time that you were a police officer? A No sir, I did not.

Q Did you exhibit your shield to him? A No sir.

BY MR. SCHICK:

Q At the time that you put this question to him was Officer Brown present? A Officer Brown had went downstairs.

Q Was Officer Freeman present? A Well, he may have been outside. You see, there was a couple of reporters there trying to get in, wanted to work their way in, to come in --

MR. SCHICK: Well, that's all.

THE COURT: Do not discuss this case among yourselves nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Two o'clock, gentlemen.

(Recess till 2 P.M.)

After recess trial resumed.

J A M E S T. B R A D Y resumes the stand and further testifies:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Will you please tell the jury what question or questions
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you asked the defendant, and what replies the defendant made, after Officer Brown had gone downstairs? A I asked the defendant, "Who killed this woman?" He said, "I did". I said "Why did you kill her?" He said, "It was a little love affair." Then I asked him, I said, "Is this your wife?" He said, "No, it is not."

Q Were you there when the defendant was taken away? A I was.

Q Was the deceased removed while you were there, or afterward? A She was not.

Q How long were you there altogether that morning? A I was there until the defendant was taken out of the house.

Q Then where did you go? A I went in my apartment and got ready for work.

Q And went on duty that morning? A I went on duty at four o'clock that afternoon.

CROSS-EXAMINATION BY MR. SCHICK:

Q How long have you been a policeman? A About three years and a half.

Q What was your occupation before that? A Conductor.

Q On the surface cars in the City of New York? A Well, it was in Brooklyn -- the Brooklyn Rapid Transit, the surface and elevated.

Q How long were you a conductor? A Close onto nine years. I was, well, between switch boy to conductor, about

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nine years.

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Q How old are you? A Twenty-eight.

Q How long did you live in the Nash house? A I lived there about -- well, I was married on the 12th of May -- I lived there about two weeks -- not quite two weeks.

Q Your wife lived there prior to your marriage? A I believe she did.

Q Do you know any other tenants in the house? A No sir.

Q Did you live with your wife before you married her?
A No sir.

Q Did she live with anybody else at Nash's house? A Not that I know of.

Q Do you know now that she lived with another man before you married her? A I do not.

Q How long did you know your wife before you married her? A About a year.

Q What was her occupation?

MR. O'MALLEY: I object to this, I do not see how it is competent. I did not object to one or two questions.

THE COURT: Do you think that these questions are pertinent, Counsellor?

MR. SCHICK: I do, cross-examination.

THE COURT: Of course, if the defendant wants to prove any immoral act committed by this man, he is entitled to do so under the decisions.

MR. SCHICK: Question withdrawn.

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Q Did you know any of the other tenants in the house?

THE COURT: I am not restricting you.

MR. SCHICK: I withdraw the last question and I repeat the question put before to the witness -- you said

Q You said you were acquainted with your wife for a period of one year prior to May 12th, 1912? A Yes sir.

Q And what was her occupation during that time?

MR. O'MALLEY: I cannot see how the occupation of the wife can be proved by this witness. If the wife were on the stand she might be asked.

THE COURT: If he knows.

Q Do you know of your own knowledge whether she was employed anywhere, in any legitimate business? A No sir.

Q Do you know that your wife was a common prostitute, a night walker? A No sir, I do not.

Q And that she took men up in the Nash house, into her apartments, and stayed with them there? A No sir, I do not.

Q Well, face the jury. Will you positively swear that you did not know that your wife was a common prostitute? A I do certainly swear that I did not know anything about it, and if I did she would never be my wife.

Q And you swear that you don't know? A I don't know now, no.

Q How often did you use to call on your wife before you married her? A Sometimes twice a week.

Q Did you ever take her out? A I did, to the theatre.

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Q How often?

MR. O'MALLEY: I again object to this line of testimony from this witness.

THE COURT: I sustain the objection as to the last question.

MR. O'MALLEY: We will have Mrs. Brady on the stand here this afternoon and he can question her.

Q Well, won't you positively swear you did not stay with your wife prior to March and live with her in Nash's house?

A No sir, I never did.

Q And slept there different nights? A No sir.

Q Do you ever go into Nash's saloon? A No sir.

Q In Nash's cafe? A Never did.

Q Did you know at the time you lived in Nash's house that was a place where prostitutes, crooks and thieves congregated in the house? A No sir, I did not.

Q White and colored people? A No sir, I didn't know nothing about the house.

Q Do you know of your own knowledge of any colored people living in the house and known as common prostitutes in the neighborhood? A No sir.

Q Do you know now? A No sir, there was nobody living in that house up to the time I was living there.

Q Did you know the character of the people who frequented the place downstairs? A No sir, I didn't know the people downstairs -- didn't know anybody in the house at all.

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Q And you testified on your direct examination that you didn't know Officer Brown prior to the commission of this crime is that true? A I said that I knew him by sight.

Q For how long did you know him by sight? A Well, I was in West 37th Street Precinct when Officer Brown was transferred there and I was just after being transferred from that precinct.

Q So you knew that he was a police officer? A I knew that he was a police officer.

Q And the night he came in Nash's house you knew him as a police officer?

MR. O'MALLEY: That was in the morning?

A In the morning.

Q How often did you meet Officer Brown prior to May 22nd, 1912? A Twice.

Q And did he ever patrol in front of Nash's house, on that corner? A Not as I know of.

Q Did you ever meet him there? A No sir.

Q Did you ever meet him in Nash's cafe? A No sir.

Q What time was it when you went into the defendant's room on the morning of May 22nd? A About five minutes to seven, I believe.

Q You went in there with your wife? A No, I went in there with Officer Brown.

Q Didn't you go in there before you went in there with Officer Brown? A No sir.

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Q Was your wife in there at the time that you and Officer Brown were in the room? A She might have come as far as the kitchen. She was not in the room where the defendant was, and his wife.

Q You arrived in the room together with Officer Brown,

A Yes sir.

Q Did you hear Officer Brown question the defendant?

A Well, I ain't exact to what conversation he held with him, because there were people there trying to -- reporters and stuff trying to get in there, to get information, and I was keeping them out.

Q You were in the bedroom where the defendant was, where the body of the deceased lay on the floor, and Brown was there, wasn't he? A Brown was in the room where the deceased was laying on the floor, and the reporters had got as far as the next bedroom, and I was ordering them out through the dining room, out through the other bedroom.

Q Did they go out? A They did, yes sir.

Q Did you come back into the bedroom? A I did, yes sir.

Q Did you hear then Brown question the defendant? A No, I did not. He was all done asking the questions then.

Q What did you do? A Well, I stood there and assisted the best way I could.

Q What did you do? A I stood there and was taking the names of witnesses.

Q Who was in the room? A There was Officer Brown, I and

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I believe Officer Freeman was there, too.

Q Now, you took the name of some witnesses? A That was in the hallway, I took that name.

Q But you didn't take the name of anybody in the bedroom? A No, not in the bedroom.

Q Did you leave the bedroom alone? A I went out with Officer Brown, I believe.

Q Where did you go? A As far as the kitchen door.

Q Where did you go then? A Then when I saw the place was properly policed -- there was another policeman there to take charge -- and the defendant went downstairs, they took the defendant downstairs in the ambulance, why, I saw there was nothing else left for me to do, so I went in my own apartment.

Q When you came in the bedroom with Officer Brown where did you find the defendant? A He was laying on the bed.

Q Describe the position? A Well, he was in a sitting position at the head of the bed, towards Eighth Avenue side.

Q What was he doing? A He was sitting there at the bed and he had the knife in his hand, gripped and his hand laying on the bed -- on the mattress.

Q Did he have the hand spread out, holding the knife?
A No, he had it just in that position (indicating with left hand stretched out to the left).

Q And the hand exactly on that space? A Yes sir.

Q How close at any time did you get to the defendant?
A Well, there was one time there I came close enough to ask

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him who killed this woman; that was at the bed.

Q Was he drunk? A Well, I couldn't say whether he was drunk or sober, I guess I ain't no physician, I couldn't say.

Q Did you make any attempt to take the knife from his hand? A No sir, Officer Brown had already taken the knife from his hand.

H E N R Y E. F R E E M A N (22nd Precinct), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are an officer of the Municipal Police force?

A Yes.

Q How long have you been on the force? A Fifteen or sixteen months.

Q On May 22nd of this year to what precinct were you attached? A Attached to the 22nd.

Q Did you go to the premises 640 Eighth Avenue that morning? A Yes sir.

Q What time did you arrive there? A About five minutes past seven.

Q Did you go there alone? A Yes sir.

Q From where? A I was patrolling my post from 36th to 42nd Street on Eighth Avenue when some unknown person came up to me and said --

Q Said something to you? A Said something to me.

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Q After that was said to you what did you do? A I hastened, went with the person to the premises 640 Eighth Avenue, on the fourth floor.

Q When you got up there did you see Officer Brown?

A Yes sir.

Q Where was he? A He was in the room on the fourth floor of the said premises, 640 Eighth Avenue.

Q At 640 Eighth Avenue. Did you see Officer Brady there too? A Yes sir.

Q Anybody else that you recall now? A Well, there was Arthur McGlade and there was Mrs. Brenna, I seen in the room.

Q Did you go into the bedroom? Whom did you see in the bedroom next to the parlor? A Why, I saw a woman lying on the floor, and saw Joseph Murphy, the defendant, lying on the bed in a very weak condition.

Q At any time that morning after you entered the apartment, did you hear any conversation between the defendant and anyone? A I heard Officer Brown say --

Q Say yes or no to that? A Yes sir.

Q Now, will you please tell the jury what conversation you heard between Officer Brown and the defendant? A Officer Brown says to the defendant, he says, "Who did this?" And the defendant says, "I did." He says, "What did you do it for?" He said, "We had some quarrel the night previous, and it ceased until the early part of the morning, and around halfpast five or quarter to six it resumed again," he says, and he says, she

tried, to, she tried to -- I just can't recall now just what the other conversation was, but just only that I says I heard him -- he says he did it -- present in the room, see?

Q Did he say anything about any shots being fired?

A Yes sir.

Q Tell the jury what he said on that? A He said he fired two shots at her and three at himself and he is very sorry that he failed to end it all.

Q Were you there when the ambulance surgeon came?

A Yes sir.

Q Now, did you go with the defendant from the apartment?

A I did, sir.

Q Where did you go with him? A I escorted him to the New York Hospital.

Q After you got there did you have any conversation with the defendant? A I did.

Q Tell the jury what that conversation was? A I asked the defendant, I said, "What did you do it for?" He says he had a quarrel with her and she went to the closet to get the gun and in the struggle he tried to wrench it from her hand, and two shots were fired, and that was all, and he was badly under the influence of liquor, he says, and he didn't know what he was doing. That was at the hospital.

Q When you first talked with him in the apartment did he say anything in regard to the deceased having the revolver? When you talked with him that morning in the apartment did he

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say anything about the deceased -- A No sir.

CROSS-EXAMINATION BY MR. SCHICK:

Q ~~When~~ You went into the apartments of the defendant with Officer Brown, did you not? A No sir, Officer Brown was there when I was coming up.

Q Did you see Officer Brown downstairs? A No sir.

Q When you got into the room what did you see? A I seen an unknown woman lying on the floor with her head towards the closet and her feet towards the bed, and I saw the defendant laying on the bed and half-cladded, with the bed full of blood.

Q What else did you see? A I saw Officer Brady, Arthur McGlade and Officer Brown up there, and Mrs. Brennan.

Q They were all in the room when you came up? A When I came up, yes sir.

Q And then you heard a conversation between the defendant and Officer Brown? A I heard a conversation, yes sir.

Q Could you give that conversation, try to give it as exactly as you remember it? A As I can recall I heard Officer Brown say, "Who did this?" He said, "I did."

Q That is all that was said? A That is all that I heard.

Q You remained in the room all the time? A No sir.

Q You were the one that took the defendant to the hospital? A Yes sir.

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Q How long a time did you remain in the room? A Well, about fifteen minutes.

Q And you heard no other conversation besides that which you just now related? A That is all I heard.

Q And then you had a conversation with the defendant at the hospital? A Yes sir.

Q What did you say to the defendant and what did the defendant say to you? A I said to the defendant, I says, "What did you do it for Mr. Murphy?" "Well," he says, "We have been quarrelling for some time." He says, and ~~we~~ ^{they} stopped the quarrel until the early part of the morning and they resumed it around six o'clock, and he says that the quarrel got so warm that she went to the closet to take a gun and to try to shoot him, and he tried to wrench the gun from her hand and in the struggle, why she was shot.

Q You had a conversation with the defendant at the inquest, did you not? A Not as I can recall.

Q Did you say something to the defendant regarding Officer Brown's testimony? A Not that I can recall, but you may tell me something of the incident and I may be able to recall it.

Q Didn't you say to the defendant, "Mercy, as I am not going to testify about a knife, because I didn't see any" --
A I did not.

Q Well, what did you say regarding the knife at the inquest? A I didn't say anything regarding to that.

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Q Well, what did you say, if anything, to the defendant at that time? A I don't recall anything that I said to him.

Q Well, will you positively swear you did not have a conversation with the defendant at the inquest regarding Officer Brown? A Well, I will not, sir, because I cannot recall it. sick?

Q Have you been ~~sick~~ since the inquest took place? A Have I been sick?

Q Yes? A No sir.

Q You can remember things that happened two or three years ago? A I have a very distinct recollection.

Q Do you remember the time that you graduated from school? A I do.

Q What was the date? A 1904.

Q What date did you pass your Civil Service examination?

THE COURT: How material is that?

MR. SCHICK: I want to show that his memory is sound, but yet he fails to remember this incident that took place several months back.

THE COURT: There are ways of testing the memory of a witness.

MR. SCHICK: He may have some reason for concealing this testimony or holding it back.

MR. O'MALLEY: I object to that remark.

THE COURT: The remarks of counsel will be disregarded by the jury.

MR. SCHICK: That is all.

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HERMANN W. FABER, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

BY MR. O'MALLEY:

Q (The witness states that he resides at 144 West 111th Street.)

Q What is your business? A Salesman.

Q By whom are you employed? A James H. Fuld, 447 Broadway.

Q Do you know this defendant? A Yes sir, I do, sir.

Q How long have you known him? A About three years, pretty near.

Q And you were friendly with him? A Sir?

Q You are a friend of his, aren't you? A Yes sir.

Q Do you recall having had a conversation with the defendant on Sunday night, May 19th, of this year? A I do, sir.

Q Where was that conversation had? A Downstairs in the barroom of Mr. I. Nash's place.

Q In Nash's saloon? A Yes sir.

Q Will you tell the jury what the defendant said to you at that time, if anything? A He said she had been gone for about three or four days and he don't know what to make of it, but heard that she was in the New York Hospital, and at seven o'clock when he got off duty and Mr. McGlade took his place I went upstairs to his apartment with him and while sitting upstairs he says to me that if I would not mind going downstairs

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and telephoning to the New York Hospital to see whether she was there or not.

Q Whom do you mean by "she"? A The deceased.

Q Nora Forrester? A Nora what?

Q Nora Forrester? A All right. And I called up the phone, whatever it may be, whatever it is, and I called and the remark was that there was no Nora Lane, which I called for, not there.

Q You knew her by Nora Lane, did you? A Nora Lane.

Q Was the deceased known by that name? A At one time, yes sir.

Q Did you afterwards see the defendant? Did you see Murphy again after you telephoned? A The same evening, yes sir.

Q And did you tell him what you had learned at the hospital? A I did, sir.

Q Did he say anything that you remember? A He couldn't quite understand it.

Q Can you give us his language, what he said? A Well, I can't quite recall, but I will try to give it as near as I possibly can. He went to work and said he cannot understand where she can be, unless she is on a "stew;" that meant a drunk, you know.

Q You were not there at all the day the deceased died, were you? A No sir.

CROSS-EXAMINATION BY MR. SCHICK:

Q How long did you know the deceased? A I knew her about

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six months prior to her death.

Q You called often at the apartment of the defendant?

A I was there, yes sir.

Q How often? A Where do you mean?

Q How often did you call on the defendant? A I was down there about three times.

Q And the deceased? A Three times.

Q Three times a week? A No, no, all told.

Q Did you ever hear her say that she would commit suicide, or threaten to commit suicide -- kill herself? A No sir.

Q Do you know of your own knowledge if she was addicted to the use of opium or morphine? A No sir.

Q Was she a drinking woman? A Yes sir.

Q A heavy drinker? A Well, about fair -- I can't just judge.

Q Did you ever see her drunk? A I did.

Q What you would term to be in a "stewed" condition?
A Yes sir.

Q When did you visit this defendant last? A I don't understand.

Q When were you at the defendant's apartment last?
A The Sunda, before the accident happened.

Q Was that in the nighttime? A Yes sir.

Q Was anybody else in the apartment besides the deceased and the defendant? A The deceased was not there when I was upstairs.

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Q Did you live in Nash's house? A No sir.

Q Did you live in Nash's house at that time? A No sir.

Q Do you know any of the tenants in Nash's house?

A A few.

Q Do you know that it is a place where common prostitutes live and bring men there?

MR. O'MALLEY: I object to that.

THE COURT: How is that material? How is it material?

MR. SCHICK: Well, it may be material.

THE COURT: Well, if you are trying a disorderly house you could prove the reputation of the house. If you intend to attack the credibility of any particular witness, or to attack this witness's reputation on the ground that he consorted with dissolute women --

MR. SCHICK: That's all.

Q Did you ever buy any drinks in Nash's place between the hours of one A.M. and seven?

THE COURT: How can you impeach a witness on a collateral matter? On the authority of People v. Stokes, 53 N.Y., I sustain the District Attorney's objection. Suppose this witness will testify that he did procure liquor there, you cannot ~~impeach~~ contradict him on a collateral matter.

MR. SCHICK: Question withdrawn.

Q Do you know of your own knowledge whether liquors were

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sold in Nash's place between the hours of one and seven in the morning?

MR. O'MALLEY: Objected to.

THE COURT: Is it for the purpose of contradicting --

MR. SCHICK: The testimony of the bartender McGlade, who testified --

THE COURT: This question is specifically put to the witness for the purpose of attempting to impeach or contradict the witness McGlade, is that your purpose?

MR. SCHICK: Yes sir.

THE COURT: And you have no other purpose in view?

MR. SCHICK: No other purpose.

THE COURT: On the authority of the People vs. Stokes 53 N.Y., I sustain the objection.

MR. SCHICK: I withdraw the question.

J A M E S H A M I L L, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are an employee of the District Attorney's office?

A Yes sir.

Q What are your official duties? A Stenographer, attached to the Homicide Bureau.

Q How long have you held that position? A Seven years.

Q And during those seven years, as I understand it, it has been your duty to take the statements in all the homicide

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cases? of witnesses? A Yes, and the defendants.

Q And you have been a stenographer how long? A Nineteen years.

Q Do you recall the 22nd day of May of the present year, having seen this defendant Joseph Murphy? A Yes, sir.

Q Where did you see him? A In the New York Hospital.

Q And about what time of day, do you remember? A Some-time in the morning, I forget.

Q That was the morning after he was brought there? A Yes, sir.

Q Who went to the hospital with you? A Mr. Minton, the Assistant District Attorney.

Q Where did you see the defendant for the first time after you got to the hospital? A In one of the wards of the hospital, where he was in bed.

Q And did you hear any conversation between the defendant and any one? A I did; a conversation between Mr. Minton and the defendant.

Q And were you present with your note book? A I was.

Q And did you take down all that was said? A I did.

Q Did you hear Mr. Minton say anything to the defendant preliminary to questioning him? A Yes, sir.

Q Will you please say what that was? A He said "Murphy, I am going to question you relative to the shooting of Nora Lane. I want to warn you that you do not have to answer any

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of my questions, unless you want to do so voluntarily or of your own free will, and anything that you say to me will be used against you.

Q And then he proceeded to ask him questions, did he?

A Yes, sir.

Q And did the defendant reply? A He did.

Q And did you take down in shorthand all that was said there, either by Mr. Minton, or by the defendant? A I did.

Q And did you take correct notes of the conversation?

A I did.

Q And did you correctly transcribe those notes? A Yes, sir.

Q And have you compared the transcript copy with your original notes? A Yes, sir.

Q And are they correct? A They are.

Have you a copy of your transcript? A Yes, sir.

MR. O'MALLEY: I offer in evidence the entire examination.

MR. SCHICK: Objected to as incompetent, immaterial and irrelevant, nothing to prove that the witness is not able to give the conversation,--He heard it, he was present -- without referring to this examination or a written document.

THE COURT: Considerable time will be taken up. Why don't you follow the practice that was adopted in the Governall case, and in the Freedman case, in 193 and 205

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New York?

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Q Can you independent of your notes tell what was said there that morning? A I have a general recollection of it, but I cannot give the questions and answers as they were asked.

MR. O'MALLEY: Now I offer the statement in evidence.

MR. SCHICK: Objected to on the same grounds.

THE COURT: Is that the original that you are offering?

MR. O'MALLEY: The original, yes.

It is a copy which you have compared with your notes?

Yes, sir.

MR. O'MALLEY: Why, I will introduce his notes in evidence and ask that he read them.

Same objection. Objection overruled. Exception.

Will you please read the notes? A (Reading)

" . . . I will well enough to talk, Murphy?

" . . . COURT: Yes.

" . . . I came up here to ask you about this stabbing and shooting, Murphy. Are you too weak to talk?

" . . . A: No.

" . . . I am from the District Attorney's office. Before I ask you any questions I want to tell you that you don't have to answer any questions unless you want to. If you want to tell me voluntarily how this thing happened, of your own free will ---

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"THE DEFENDANT: (Interrupting) Yes, sir.

"MR. MINTON: I want to warn you that anything you say which might be detrimental to you will be used against you. If you want to tell me how this happened I would be very glad to hear about it.

"THE DEFENDANT: We had a little scrap last night. She accused me of being crooked. I accused her of being the same thing. She jumped out of the bed and grabbed the gun out of the closet and I tried to take the gun from her hand and a shot went off and she fell. Then I fired two more myself and I fired one at my head and another at my heart.

"BY MR. MINTON:

"Q How long had you been living with Nora Lane? A Five months.

"Q Are you married? A No, not married.

"Q Is she married to anybody? A No.

"Q How many altercations have you had with her in the last five months? A This is the first one.

"Q What was that about? A Her sister told her she seen me down the back room with other women. She accused me of being crooked and I accused her of being crooked.

"Q You accused her of being crooked too? A Yes.

"Q What was your ground for complaint against her -- why did you think she was crooked? A Because she used to go out and stay out at night to two or three o'clock in the

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morning.

"Q. Had you been drinking last night? A. No, perfectly sober when I left for work.

"Q. Where were you working last night? A. Nash's, 640 Eighth avenue.

"Q. And you live in the same house? A. Yes.

"Q. In a furnished room with Nora Lane? A. No, a furnished flat. She used to pay one-half and I used to pay one-half.

"Q. Now, where was this revolver kept? A. Up in a closet.

"Q. Was it loaded? A. Yes.

"Q. And you say she jumped up and grabbed the revolver? A. Yes.

"Q. Did she shoot the revolver? A. I tried to twist it out of her hand and the shot went off and hit her in the breast.

"Q. The first shot hit her in the breast? A. Yes.

"Q. How did she get those stab wounds? A. Stab wounds—I don't know.

"Q. Was there any carving knife around? A. I stabbed and shot myself both.

"Q. She had three or more stab wounds in her body. Can you tell me how she got them? A. No.

"Q. Did you stab her with the carving knife? A. I might have done it in the excitement.

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"Q Don't you remember whether you stabbed her with the carving knife? A No, I don't. I remember stabbing myself.

"Q How many times did you shoot her after the first time? A Two. I seen she was dead and then I didn't think there was any use of me living any more and I tried to kill myself.

"Q Why did you shoot her after you had taken the gun off her? A She dropped to the floor dead.

"Q After the first shot did you shoot her twice again? A Yes.

"Q Why did you fire two more bullets after that first shot? A I suppose I was crazy.

"Q You suppose you were crazy? A Yes.

"Q Do you remember whether you stabbed her or not, Murphy? A No.

"Q You might have stabbed her? A I might; I can't say.

"Q Where was this knife lying? A Laying out in the kitchen.

"Q How near the bed room? A Three or four rooms away.

"Q And where did this shooting take place? A In the bed room.

"Q And were you both in bed when this altercation started? A No, I was ready to go to work.

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"Q Tell me how this thing happened to start. You say she accused you of being crooked? A Yes.

"Q What did she say? A She said I was going behind her back with other girls -- that her sister told her about it.

"Q Who is her sister? A Mrs. Graham.

"Q Where does Mrs. Graham live? A I think 914 Second avenue.

"Q Well, then, what did you say to that? A I denied it.

"Q And did she keep on accusing you of it? A Yes. I told her I had been true to her ever since I had been with her.

"Q And then did she keep on accusing you? A Yes.

"Q What else did she say after that? A That was all.

"Q Was she in bed at the time? A She jumped out of bed after the revolver.

"Q How far did she have to go to get the revolver? A Just jump right out of bed and reach for it.

"Q Where was the revolver kept, in the closet? A Yes.

"Q How near the bed was the closet? A About a yard and a half, I guess.

"Q Didn't you see her jumping for the revolver? A Yes, but I was in the other room.

"Q Couldn't you see her from where you were? A No, my back was kind of turned, and when I saw her with the

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gun in her hand I grabbed the gun.

"Q Where was she standing with the gun in her hand?

A In the bed room, standing by the bed.

"Q And how far away from the front room is the bedroom? A Right by the bed room. This isn't the first time I hid the revolver. I hid it once before.

"Q Why did you hide it before? A Because she threatened to shoot me before.

"Q How long ago was that? A The old lady in the house told me. I put it in a pitcher in the closet. That was a couple of weeks ago. I thought there wasn't any danger any more. The girl, I thought, was a little out of her head.

"Q How old was the girl? A Twenty-three.

"Q And you had known her five months? A Known her two years, but been living together for five months.

"Q What do you work at? A I was bartender downstairs in the saloon.

"Q Did she drink? A Yes. She didn't know what she was talking about. She was a maniac, drinking every night.

"Q Did you ever get drunk at all? A Yes. Never been too full that I didn't know what I was doing.

"Q You weren't drunk last night? A No.

"Q Weren't drunk this morning? A No.

"Q When you grabbed this gun what did she have on, a night-gown? A A night-gown, that's all.

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"Q And in the struggle the first shot hit her? A In the breast, yes.

"Q Now, then, you got the gun away from her? A Yes, and fired two shots at her.

"Q Where was she when you fired the two shots? A She was standing up -- she fell down.

"Q When did she fall, after the first shot? A After the first shot.

"Q And you fired two more shots after that? A Yes.

"Q Was she lying on the floor then? A Yes.

"Q And you pointed the revolver at her? A Yes.

"Q What did you do that for? A I pointed it at myself because I seen she was dead.

"Q Didn't you see she was dead before you fired the two shots? A Yes.

"Q Then why did you fire the two more shots? A Because I wanted to kill myself.

"Q Well, you fired two shots at her, didn't you? A Yes.

"Q Where did you get the carving knife from? A Went out in the kitchen because the gun was empty and I went to the kitchen to get more cartridges. The cartridges was in a closet, in my overcoat, and I couldn't get them out of the revolver to kill myself. There was only two -- the last two that was left -- and I went out and took the carving knife and stabbed myself.

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"Q Where did you stab yourself, in the breast? A

Yes, in the breast.

"Q Well, now, did you go back and stab Nora? A No.

"Q How did she get the stab wounds in her? She
had three stab wounds in her breast. A I don't know.

"Q Did you stab her before you shot her? A No.

"Q You don't know how she got the stab wounds? A No.

"Q You shot yourself how many times? A Twice.

"Q Once in the head? A Yes, and once in the breast.

"Q And how many times did you stab yourself? A I
don't know. About half a dozen times, I guess.

"Q Is there anything else you want to tell me about
this, Murphy, that I haven't asked you about? A That's
all."

BY MR. O'MALLEY:

Q Now, that was adjourned at what time? A About eleven
thirty-five, I think. It started at eleven twenty-two.

That is the 22nd? A Of May.

CROSS EXAMINATION BY MR. SCHICK:

Who notified the District Attorney of this occurrence?

A The Police Department notified me.

At what hour in the morning? A I don't remember.

Q Did you hear the Assistant District Attorney tell the
defendant or ask the defendant if he had any counsel, or if
he desired any attorney? A He didn't ask him that.

Q Did you hear him ask if he desired to consult any attorney? A No.

Q The District Attorney asked if he had any friends whom he would like to see or consult with before he put any questions to him, did he? A He did not.

Q Did the District Attorney inform him he was entitled to see an attorney and consult with him before he asked him any questions?

MR. O'MALLEY: Objected to. It was not necessary.

THE COURT: Under the case of the People against Hill, it is not necessary. The District Attorney is not even obliged to inform a defendant as to his rights in the premises. The Court of Appeals held that a confession obtained, even though a defendant was not advised as to his rights, was competent to be received in evidence. But the Court, if I recollect, expressed an opinion that it might be well to advise a defendant as to his rights. According to Mr. O'Malley, I believe that Mr. Minton, who examined the defendant, advised him as to his rights.

Q Did the defendant express any desire to see anybody?

A No, not while I was present.

Q Did he express a desire to see an attorney before he made a statement to the Assistant District Attorney? A No, not while I was present.

Q Was anybody else present outside of you and the Assistant District Attorney? A Yes.

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Q Who? A A police officer on duty at the hospital.

Q What is his name? A I think it is Strang. I can make sure --- William H. Strang, of the 18th Precinct.

Q Was he present all the time while this testimony was taken by you? A He was.

Q What did the Assistant District Attorney say, when he approached the bed of Murphy, the defendant? What was his first statement? A I have already read it.

Q Well, tell us again? A He said, "I am a representative of the District Attorney's office. I came here to question you about the shooting and stabbing of Nora Lane."

BY MR. O'NEALLEY:

Q You are giving your best recollection of it now? A Yes, sir, that is the substance.

Q But you have already read everything that was said? A Yes, sir.

BY MR. SCHICK:

Q What was the condition of the defendant? A I don't know. He was in bed, with the blankets over him.

Q How near to the bed were you? A Right beside.

Q How far? A I was probably touching it.

Q Couldn't you see or judge his condition? A I would have judged at the time that he was in pretty bad condition physically.

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WALTER H. VOLCKENING, called as a witness
in behalf of the People, being first duly sworn, testi-
fied as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that he resides at 116 Decatur street, Brook-
lyn.)

Q What is your business? A Architect.

Q And you frequently do work for the District Attorney's
office, in making diagrams of premises, do you? A I do.

Q Did you make the diagram in this case, People's Exhibit
2 in evidence? A I did.

Q On what date was that? A 23rd day of May, 1912.

Q Were you in all the rooms shown upon that diagram?

A Yes, sir.

Q While you were in the bed room next to the parlor did
you or did you not pick up anything from the floor? A I did.

Q And who was present at that time? A Mr. Brown, the
Officer; and Mr. Coe, the photographer.

Q I show you a piece of metal, and ask you if you have
seen that before? A Yes, sir.

Q And where did you see it? A You mean where did I
pick it up from the floor?

Q Yes. Will you hold the diagram so that the jurors
can see it and indicate? A Well, the exact spot I cannot tell
you, but it was right in here (indicating on diagram (People's
Exhibit 2)).

Q That is in the bed room next to the parlor? A Right
in here.

Q Just mark there, will you, where you picked it up?
A Right down there.

Q Was it lying there on the floor? A It was lying on
the floor, yes, sir.

Q When you picked it up what did you do with it? A I
handed it to Officer Brown and told him to ---

Q Don't tell us what you said; you handed it to Officer
Brown? A Yes, sir.

Q. O'BALLEY: I ask to have it marked for identifi-
cation.

(Marked for identification People's Exhibit 13.)

CROSS EXAMINATION BY MR. SCHICK:

Q When did you go over to the Nash house to make this
plan? A 23rd day of May.

Q That was the day after the crime was supposed to have
been committed? A I guess so, yes, sir.

Q You went through all the rooms? A I went into each
room.

Q What hour of the day were you there? A I am not sure
whether it was just before or just after noon.

Q About two o'clock in the afternoon? A I wouldn't want
to say exactly.

Q One o'clock? A It may have been right after lunch, or

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it may have been just before lunch, I am not sure.

Q It was a bright day, wasn't it? A A clear day.

Q A pretty day? A A clear day.

Q Was the kitchen dark? A Not particularly dark.

Q Do you know the number of the windows in the kitchen?

A The number of windows in the kitchen?

Q Yes. A One window.

Q Next to the kitchen is a dining room? A Yes, sir.

Q And you go from the kitchen into the dining room. Any windows in the dining room? One window on a court.

Q Was it dark in the dining room? A Darker than the kitchen.

Q Much darker than the kitchen? Well, I wouldn't say much darker, but darker.

Q Then you went from the diningroom into the first bed room? Yes, sir.

Q Any windows in that bed room? One window.

Q How large a window? Well, I can't tell you ---

Q. OF ALLEY: No, look at the diagram.

Q (Witness continuing) Two feet nine in width.

Q Dark in the bed room? It was lighter than the dining room.

Q Much lighter? A little bit lighter.

Q But you wouldn't call it a light room? A It was not as light as this.

Q You would call it a dark room? A I wouldn't call it

a dark room, no.

Q The next room is another bed room? A Yes, sir.

Q How many windows in that? A One window.

Q Was it dark in there? A Not particularly dark, no.

Q Now, suppose if you stood in the kitchen and looked into the last bed room, the fourth room? A Through the door opening?

Through the door openings; do you think you could see everything in the fourth room?

MR. O'NEALEY: That is a hypothetical question, "see everything". I will object.

You cannot see everything in the room.

Q Did you try, - I mean while you were there did you make any observations? A I looked from the kitchen, opposite the door leading from the kitchen to the dining room, and could see the bed in the bed room.

BY MR. O'NEALEY:

You are speaking of the bed room next to the parlor? A I am speaking of the bed room next to the parlor.

CORDELL L. BROWN, recalled, testifies as follows:

DIRECT EXAMINATION BY MR. O'NEALEY:

I show you People's Exhibit 13 for identification, and ask you if you have seen that before? A Yes, sir.

Q Were you present in that bed room there when Mr. Volok-

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ening picked that up? A Yes, sir.

Q Did he hand it to you? A Yes, sir.

Q Did you put any mark on it? A Yes, sir.

Q Do you identify it now as the same piece of lead that Mr. Volckening showed to you? A Yes, sir, there is two little scratches on that.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: Objected to, not the proper foundation-- found twenty-four hours after the crime was committed.

THE COURT: On the authority of People against Barnes, 202 New York I shall allow it in evidence. The Court there permitted the admission of bullets found some weeks after. And I allowed it in the case of the People Governalli, 193 N. Y.

MR. SCHICK: Exception.

(Received in evidence and marked People's Exhibit 13.)

MR. O'MALLEY: With the exception of one witness, Mrs. Brady, the People will rest, if you will give us the privilege of calling her when she comes later on, sometime during the case. Her testimony is not very material. One minute, - I will call Officer Brown again.

CORNELIUS J. BROWN, recalled.

DIRECT EXAMINATION BY MR. O'MALLEY:

You testified that you saw Mr. Volckening pick that up (Exhibit 13)? A Yes, sir.

Q Did he immediately hand it to you? A Yes, sir.

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Q Is it in the same condition now as it was when Mr. Volckening picked it up and handed it to you? A Exactly the same.

Q What marks did you put on it for identification? A Two little lines, these two little lines here.

Q Those two little crosses? A Yes, sir.

Q Those are the only change in the condition, those two little scratches that you put on there for identification?

A Yes, sir.

MR. O'MALLEY: People rest, with that exception.

MR. SCHICK: Defendant moves to dismiss the indictment on the ground that the People have failed to prove a case. The indictment charges this defendant, Joseph Murphy, at the Bar, on the 22nd day of May, in the year of our Lord 1912, at the Borough and County aforesaid, with force and arms, upon one Nora Forrester, in the peace (Defendant's counsel now reading the remainder of the indictment.)

Now, the People attempt to prove that the defendant killed the said Nora Forrester with a weapon called a carving knife, thereby inflicting various wounds upon her body. He is not charged with that crime, not so charged in the indictment. If it is true it is an independent crime in itself, and before the People could offer such proof here and testimony he ought to be so charged in the indictment. Being not held for that crime

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and being not charged with killing this deceased, Nora Forrester, with such a weapon, I contend that we are entitled to a dismissal and that the defendant be discharged.

THE COURT: Let me have the copy of your indictment.

(Copy indictment handed to the Court.)

THE COURT: Motion denied.

MR. SCHICK: I respectfully except. The defendant waives opening up to the jury.

MR. WOTT: It seems to me that not only the jury but the Court and the District Attorney are entitled to know what the defense is going to be, and not sit back and put in proof as it suits them, without in any way indicating what the defense is. It is of course in the discretion of the Court, I take it, but it seems to me that the Court and jury are entitled to have some inkling of what the defense is going to be, before they begin calling witnesses.

MR. SCHICK: I think the Code of Criminal Procedure provides that after the District Attorney has opened the case and offered the testimony on behalf of the People, and he rests, that the defendant, or his attorney, may --

THE COURT: It is not compulsory to open the case to the jury.

MR. SCHICK: The defendant elects now to waive an address to the jury.

THE COURT: I cannot compel him to open.

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MARY BOWMAN, called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. SCHICK:

Q Where do you reside? A 457 West 37th Street.

Q Are you related to the defendant, Joseph Murphy? A Well, his first wife is my daughter.

Q He married your daughter -- what year? A Well, about fifteen years ago.

Q How long did he live with your daughter? A She is dead eight years.

Q Did they have any children? A Yes, sir, two children both living -- one twelve and one eight, both girls.

Q And those children have been living with you? A Since the mother's death, and the father most of the time.

Q How many years? A Eight years next December.

Q Did the defendant contribute to their support? A Yes sir, a good father and a good provider.

MR. NOTT: Objected to.

THE COURT: Do you want to prove the good reputation of this defendant?

MR. SCHICK: Why, --

THE COURT: You cannot do it by specific acts. You may have the witness testify as to the general reputation of the defendant.

MR. SCHICK: I have a perfect right to prove that he is a married man and the father of children, where those

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children are now or what their condition is.

MR. NOTT: I do not concede that he has that right. I do not see how it is pertinent to this case where those children are. He is not living with them.

THE COURT: Justice Bartlett of the Court of Appeals in 192 N. Y., has said that the defendant may be permitted to give a brief history of his life. This evidence is not in the nature of character evidence, as I understand it, and I will allow it.

Q And he has been supporting these children for the past seven years? A Yes, sir, always.

Q And how often did he visit the children?

MR. NOTT: I object to that.

THE COURT: Objection sustained. You may briefly --

Q He has been a good father to his children?

MR. NOTT: I object to that as calling for a conclusion, and in the second place as incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

Q How did the defendant conduct himself at any time that he visited your house?

Objected to; objection sustained.

CROSS EXAMINATION BY MR. NOTT:

Q After your daughter's death this defendant married a second time, did he not? A Yes, about three years ago or four years ago, I believe.

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Q And have you heard as to his conduct with that wife as to whether or not he used to beat her? A No, I never heard he beat her.

Q Do you know the lady, the second wife? A I met her once.

Q She never told you anything about that? A She had told me, I had met her, yes, she had come to my house.

Q Did she tell you why she left him? A Well, they had words. She came to my house and I said I don't know what he does outside, that is his own business.

Q Did she tell you why she left him?

MR. SCHICK: Objected to, no testimony that this ever defendant/left his second wife.

THE COURT: Did you offer this last evidence as good character evidence?

MR. SCHICK: No, I offered it just as Your Honor suggested, as to the history of his past life.

THE COURT: Then you should object to the evidence that the District Attorney is now endeavoring to elicit from the witness.

MR. SCHICK: I also thought if he is trying to attack the character of the defendant --

THE COURT: Under the law if a defendant puts his character in issue the District Attorney has a right to attack it.

MR. SCHICK: The character of the defendant is not at

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issue.

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THE COURT: Then if you object I shall sustain the objection.

Q Did you know Nora Lane or Nora Forrester? A I have met her once.

Q Did the defendant bring her to your house? A Yes, sir.

Q And tell you that he was living with her? A Yes, sir.

Q He told you that he was living with this woman? A That they had a flat.

Q And you knew that they were not married? A Well, I had told her --

Q Is that correct? A Yes, she told me.

Q And you knew at that time that he was married to another woman? A Well he was separated three or four years from her.

Q Well, they had never been divorced, had they? A I don't know. I never asked him any of his private business as long as he took care of the children.

J O S E P H M U R P H Y , the x defendant herein, called in his own behalf, being first duly sworn, testifies as follows
DIRECT EXAMINATION BY MR. SCHICK:

(The witness gives his address as 640 Eighth Avenue.)

Q How old are you? A 32 years.

Q Where were you born? A County Louth, Ireland.

Q When did you come to this country? A In 1895.

Q You may tell the Court and the Jury anything from the time that you left Ireland up to the time that this supposed crime

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is supposed to be committed.

MR. NOTT: Objected to as too broad; that calls for anything he wants to say.

THE COURT: Why don't you want to question the witness? It is preferable that you should do that.

Q How old were you when you came to this country? A
Going on 15 years old.

Q Was your father alive at that time? A No, sir.

Q Was your mother alive? A No, sir.

Q Any brothers, sisters? A I have got one sister living at Manchester, New Hampshire.

Q When did your father die? A He died when I was two years old.

Q When did your mother die? A When I was three years old.

Q And who took care of you after that? A Two aunts.

Q And how long did you live with your aunts? A Until I came to this country.

Q You were fifteen years of age? A Yes, sir.

Q Did you go to school in Ireland? A Yes, sir.

Q How many years did you go to school? A Well until I was fourteen years old.

Q And what did you do then? A After I came to this country?

Q Why, I went to my sister, direct to my sister in Manchester New Hampshire and stayed there about one month.

Q What did you do after that? A I came here to New York

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and obtained a position as a grocery clerk.

Q You were working as a grocery clerk in what year? A
1905.

Q Whom were you working for? A J. C. --

BY MR. NOTT: (Interposing)

Q Or, do you mean 1895? A 1895.

BY MR. SCHICK:

Q (Repeated) A J. C. Offinanger.

Q How long did you work there? A About eighteen months.

Q Whom did you work for after? A I went from there to
Charles Hess, 69th Street then and 3rd Avenue.

Q What business? A Same business.

Q How long did you work for him? A About nine months;
nine or ten months.

Q And what did you do after that? A I went from there
to 129th St. and 5th Avenue.

Q And whom did you work for there? A I worked for John
F. Bloom, Jr.

Q How long did you work for them? A Well, about two
years. I got married from there.

Q You got married? A To my first wife.

Q What year was that? A 1899.

Q How long did you live with your first wife? A Until
she died.

Q What year did she die in? A 1904.

Q Did you have any children by your first wife? A Yes,

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sir; three.

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Q Are they alive? A Two of them.

Q Girls or boys? A Yes, sir .

Q What are they, girls? A Three girls.

Q How old are they? A One is eight and one will be twelve the 11th of the next month.

Q Where are they now? A With my mother in law.

Q Do you support them? A Always done the best I could for them, yes, sir.

Q Where did you work after that, after you left 63rd St.?

A Why, I went to work with James Butler for a while and I was taken sick with rheumatism so I went to the country, to Suffern, New York, and I obtained a position there in the grocery with Glory and Inmode, and I stayed there about a year and I came back here and I went to work for Park & Tilfords at 39th St. and Boradway; now it is on 41st Street -- the same store has moved to 41st Street.

Q How long did you work for Park & Tilford's? A About three years.

Q Where did you go from there? A Well, from there I opened a saloon of my own down in No. 5 Jones Street.

Q How long did you keep this saloon? A I guess about nine or ten months -- I failed.

Q What did you do after that? A Why, the Congress Brewing Company of Brooklyn took me and put me in 91st St. and 1st Ave.

Q How long did you saty there? A About a year. I guess.

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Q What did you do after that? A Why, I went bartending¹⁶³ then. I got a position as bartender at 41st Street & Ninth Avenue for Bernard Shevlin.

Q How long did you work for him? A I worked for him three times -- about five years altogether.

Q Did you go from there to Nash? A No, I went from there -- I was taken sick again with rheumatism and I went to Bellevue Hospital., I was laid up with rheumatism about a month. I came out and Mr. Shevlin obtained a position for me on 37th St. and Broadway.

Q Whom were you working for at 37th St. and Broadway? A It was David Wainwright.

Q How long did you work for him? A Until the place closed.

Q When was that? A That was in May the 1st -- I think it was 1905.

Q Where did you go to work from there? A Well, I went to work for Mr. Nash.

Q And were you working for Mr. Nash ever since? A No, not ever since. I left Mr. Nash and I went back to them about two or three times. This last time he put me to work in January some time in January, when we took the apartment up stairs.

Q You have heard the District Attorney refer to your second wife, about her leaving you; did you get married a second time?

A Yes, sir, I did.

Q When did you get married the second time? A In December 1905.

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Q Whom did you marry? A I married Ambrosine Rogers.

Q Where did you marry her? A Broome & Elizabeth Sts.,
in the Episcopalian Church.

Q Do you see her in Court here? A Yes, sir.

Q How long did you live with her? A About two years,
I believe.

Q You don't live with her now? A No, sir.

Q Did you abandon her? A I did, yes, sir.

Q You had some trouble with her, didn't you? A I did,
yes, sir.

Q You can tell us how this trouble arose between yourself
and your second wife.

THE COURT: Is it necessary to open the door on that
proposition?

MR. SCHICK: No, I will withdraw the question. If
they prove it I will put him back afterwards on the stand.

Q And you said you were working for Nash? A Yes, sir.

Q At the place 41st St. and 8th Avenue? A Yes, sir.

Q And there you met the deceased Nora Forrester, known as
Nora Lane? A Yes, sir, known as Nora Lane.

Q How long did you live with her in Nash's house? A
About five months, I believe.

Q When did you first get acquainted with her? A About
two years ago.

Q And you went to live with her about five months before
May 22nd, 1912? A Yes, sir.

Q Now just tell us what occurred on the 22nd of May, 1912,

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anything between you and Nora Lane or Forrester -- just exactly what happened, and how it occurred. A Yes, sir.

Q Tell this Court and Jury. A On the morning of May 22nd Mrs. Brennan, the housekeeper, came and knocked on the bedroom door and I said "all right Mom", and I got up and I slipped on my shoes and pants and my shirt and I went from the bedroom into the bathroom, leaving Nora Lane in bed, and as I went in -- as I passed in the kitchen I said "Good morning Mom" to Mrs. Brennan, the housekeeper, and I went in the bathroom as I was sick to my stomach. I generally used to drink quite a little, you know at night and my stomach was in pretty bad condition so I had to vomit and I went in and I probably was five minutes in the bathroom when I came out, and Mrs. Brennan asked me how I felt and I said "Not very well, Mom" so I says "Mom, haven you got any tea?" She says "Yes, but there is no milk." So I says "That's all right, pour me out a cup of tea, I am in a hurry to go down stairs." This was about ten minutes to seven. I drank the cup of tea without any milk in it, because I generally used to send up a bottle of milk after I went down stairs, with the porter. And Mrs. Brennan told me how that Nora had stopped the milk and the ice on Monday. So I drank the cup of tea and returned into the bedroom where Nora Lane was in, and as I passed into the bedroom Nora Lane was standing up at the dresser and as I passed her I turned around for to get my collar and tie, and she -- with that she raised her left hand and fired a shot at me, inflicting a scalp wound

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here on the side of my head and before I could catch her hand again she fired right close to my breast and the bullet went into my breast. And with that she had a carving knife in her hand and she tried to stab me, which she did and I tried in the struggle to get the gun and the knife away from her when the gun discharged and hit the girl in the left breast, and with that I fell over on the bed in a faint and when I came to the knife was laying alongside of me on the bed and the gun on the floor. I have picked up the gun on the floor, and I met Arthur McGlade coming in and he asked me what had happened. I don't know really what I said to him after that, but I asked him to bring me in a drink of whiskey, to bring me a whiskey, a whiskey right away. Well, he went down stairs and after he went down stairs I guess he was gone probably five minutes, when in comes the Italian porter to me, and I felt so weak from the loss of blood -- it was pouring from my wound in the breast -- that I thought I was going to die then and I asked the Italian porter to take \$20. I had in the pocketbook down to give to Walter McGlade. So he went out and I guess he was gone sometime, I couldn't tell how long it was, when Officer Brady and his wife came in. I was laying on the bed and the knife still at the end of the bed, and they called to me and I laid there on the bed -- himself and his wife, nobody else. This was before any officers arrived at all, because I didn't have a drink that morning and I knew perfectly well what happened up to the doctor came. So both him and his wife called to me and I got up in a sitting position on the side of the bed and

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Mr. Brady took the knife off the bed, Officer Brady, and he said to his wife "You stay here with him while I go down and ring for the ambulance." And as Mr. Brady went out he took the knife along with him. Mrs. Brady says to me "Joe" -- she knows me very well for the last three years -- she says "Joe, look what you have done, you have killed your wife" like that to me and I never answered her. I was sitting crying on the side of the bed and I got down and I kissed the face of the dead girl and I threw myself back on the bed and I said "I wish God would take me too."

So after Mr. Brady going down stairs I don't know whether she went out or not, but Officer Brown and Officer Freeman came in together. Remember, gentlemen of the Jury, that there was no knife in the room at the time Officer Brown arrived in the house and Officer Freeman, both there together. And Brown asked me my name and my age and I gave it to him, and he also asked me the name of the dead girl, which I gave him. But remember saying anything else, I don't remember, until the doctor came; and Brown left Officer Freeman with me while he went down stairs to see if the ambulance was coming but Mr. Brady xcalled up. So Officer Freeman was with me and up comes officer Brown and the doctor from the New York Hospital, and May -- or Mrs. Brady was there and I asked -- the first thing I asked the doctor for was a drink of whiskey, and the doctor opened his grip and handed me a two ounce bottle of whiskey, which I taken, and I asked for more and they brought up a half pint of whiskey from down stairs

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and I finished the half pint of whiskey and after that I don't know what I have said or done. But that is the occurrence of what occurred in reality, and as far as Officer Brown is concerned I am here, gentlemen of the jury, for my life --

MR. NOTT: I object to making a speech; I don'tm
object to his telling what happened.

THE WITNESS: I am on trial for my life, Mr. Nott --

MR. SCHICK: Just a minute.

THE COURT: The defendant may continue to tell his story to the Jury.

MR. SCHICK: Why, certainly.

MR. NOTT: I do not object to his telling the story, but I do object to his making the speech.

MR. SCHICK: Why not?

THE COURT: Proceed.

A (Witness continuing) Well, that is all I remember until I went to the New York Hospital.

Q Anything that you may remember that occurred with Officer Brown prior to your going to the hospital you may now state to the Court and Jury irrespective of the objection of the District Attorney, and don't be afraid.

THE COURT: There is no cause to admonish the District Attorney Mr. Schick.

MR. SCHICK: I withdraw that part of my remark and I apologize.

A Well, the only thing I have got to say is that Mr. Brady was

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14 the one to discover the knife and took ~~it~~ ¹⁶⁹ it out of the room, and that both him and Officer Brown are not telling the truth. Officer Freeman is telling the truth but the other two are not.

Q You heard the witness Arthur McGlade testify that he took the gun out of your hand, is that true? A yes, sir.

Q Did he take the gun out of your hand? A Yes, sir, he took the gun out of my hand.

Q Did he go up with Officer Brown together at any time? A No, sir.

Q Now will you tell us if you can remember what occurred at the hospital? A Well, I couldn't tell you Mr. Schick, because I was in very bad condition. Mr. Brown came to me at the hospital, at Bellevue Hospital, about a week afterwards and he asked me about the shooting and I said well, I said "You know I didn't do the shooting" I said "She shot me twice and shot herself in the struggle" and he said -- I said "How is it that you come to put down that I shot her and shot myself?" Well he says "I will have to go down and make out a different statement at the District Attorney's office." And he also told me that he found I guess three bullets in the revolver, at Bellevue Hospital. And that was all I had to say to Officer Brown that I remember.

Q You never at any time admitted to Officer Brown that ~~h~~ you did the shooting? A No, sir.

Q Did you ever say anything about your shooting the deceased to Officer Freeman? A No, sir.

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Q Or Officer Brady? A No, sir.

Q Do you recall about making a statement to the Assistant District Attorney and to the stenographer McDonald (Hammill), that you shot the deceased? A I never made any statement, Mr. Schick.

Q Did you ever have any trouble with Nora, before, before this shooting? A Never.

Q Did you quarrel that night or that morning? A No.

Q Did Nora make any attempt to take her own life before this?

MR. NOTT: Objected to as incompetent, immaterial and irrelevant. They do not claim now that it is suicide, they claim that it is a struggle in which she shot him and then shot herself.

THE COURT: I think the point is well taken. If the defense was that the deceased sought to destroy her own life then this evidence would be competent and it would have some legitimate bearing on the issue. As I understand the theory of your defense it is that through accident or the result of a wrangle between the deceased and this defendant, the defendant endeavoring to take from the deceased a revolver, that it exploded, and a bullet from it penetrated the body of the deceased.

MR. SCHICK: I content now that it is proper for me to show the thought (frame) of mind of the deceased, that she threatened many times prior to this to take her own

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life, and that would be proper to show by this witness on the
stand. I cannot show it by any outsiders.

THE COURT: It would be proper, there is no doubt,
under certain circumstances. Under certain circumstances
that defense is a proper one, and it is also legitimate to
interpose as many defenses as one desires. Now, the only
question is, what is the theory of your defense here? Was
it suicide?

MR. SCHICK: Well, certainly, there is no question
about that.

MR. NOTT: You haven't so stated, there is no testi-
mony to that effect.

THE COURT: In other words, you say she committed
suicide?

MR. SCHICK: Not that she committed suicide but that
in the struggle she killed herself.

THE COURT: I know, but that was due to a struggle for
the revolver; it is what is termed "accidental" shooting?

MR. SCHICK: I will withdraw that question.

THE COURT: I want to help you. This man is on trial
for a very serious crime, but tell me -- your theory
evidently is that while this defendant was struggling with
the deceased for the possession of the revolver it was
exploded during that struggle.

MR. SCHICK: Correct.

THE COURT: That is, that this defendant did not
from a deliberate and premeditated design to take the life

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of the deceased shoot her; isn't that your theory?

MR. SCHICK: That is right, correct. I withdraw the last question. That is all, your witness.

THE COURT: Of course, both accidental shooting and self defense --

MR. SCHICK: The Jury has the full story now, they can take it.

CROSS EXAMINATION BY MR. NOTT:

Q How long have you possessed a revolver? A I guess it is a year ago last August, Mr. Nott.

Q Sure about that? A Yes, sir.

Q Didn't you possess a revolver when you lived with your second wife? A Never had a revolver before in my life.

Q Didn't you threaten her with a revolver on several occasions? A Never had a revolver.

Q Didn't you have a black revolver when you lived with her? A No, sir.

Q You are sure of that? A I am positive.

Q It is a fact that you lived at 37th St. and 8th Ave. with her, did you not? A Not at 37th Street. I lived between 7th and 8th Avenues, 214 West 37th Street with my second wife, yes, sir.

Q And on occasions you threatened to kill her, did you not? A No, sir, never at any time.

MR. NOTT: Will Mrs. Murphy stand up?

(A lady arises in the Court room.)

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Q That is your second wife, isn't it? A Yes, sir.

Q Didn't you on many occasions threaten to kill her? A
Never.

Q Didn't you draw a gun on her on several occasions? A
Never.

Q That is true? A That is as true as I am on the stand.

Q Didn't she leave you because you beat her? A No, sir,
I left her.

Q Didn't you on one occasion after you left her break into
the flat where she lived and destroy all her clothes? A No,
sir, I did not.

Q Did you ever break into the flat after you had left it?
A I broke into the flat before I left her at all, because I
went out to the bathroom one night and she wouldn't let me in the
door and I had to break it in. She bolted the door when I went
out in my stocking feet.

Q Did you afterwards break in and destroy some of her
clothes? A No, sir.

Q You are sure about that. A No, sir.

Q Yes. Did you on one occasion after you left her come
to the door and when she opened the door for you then beat her?

A No, sir.

Q You didn't do that? A No, sir.

Q Do you know a lady by the name of Catherine Milano?

A Yes, sir.

Q Is she in court? A Yes, sir.

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Q Didn't you break open a door in her presence, of your ¹⁷⁴ flat, after you had separated from your wife? A No, sir.

Q Didn't you leave your finger marks on the throat of your wife, Mrs. Murphy? A Never.

Q Never? A Never.

Q Didn't Mrs. Milano see you coming out of the flat that time that you broke into it? A She couldn't have seen me come out because I never went in. I was only too glad to get away from her.

Q You are sure of that? A I am sure of that, positive.

Q Where did you get this gun that you did buy? A Why, 43rd St. and 8th Ave., the pawn shop next door to where Mr. Hash's place is.

Q How did you come to buy it? A Because I was going to the country and I thought I would take it along with me.

Q You bought it when? A August 29th, I believe.

Q 1911? A 1911.

Q And where were you going to the country? A Smithtown, Long Island.

Q On a vacation or what? A To work.

Q You didn't mention that place before? Who did you go there to work for? A I worked for the Riverside Inn.

Q You thought you would take a revolver with you? A Yes, sir.

Q And did you at that time ~~have~~ buy ammunition for it?

A No, the ammunition was given to me.

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Q How many cartridges? A Oh, I guess ~~in~~ the whole box of cartridges was given to me.

Q Where did you keep the ammunition for this revolver after you got back to New York? A Why, both the revolver and the ammunition was in a suit case with my clothes.

Q And after you moved to these premises on 8th Avenue, No. 640, where did you keep them? A Why, I went down to the mother in laws and I took the gun as I was going in that flat. It was a furnished apartment though and I thought I would have it for safe keeping, for safety in the house.

Q What house? A 640 - 8th Ave.

Q Oh, you took the gun along for safe keeping, you thought it would be safer ~~than~~ in that house, is that it? A No, for safety for myself.

Q Did you think you were in danger in that house? A Why, yes.

Q From whom? A Well, because it was a furnished flat house and everybody was in that house.

Q Did you know anybody from whom you were in danger in that house? A Well no. Because there was perfect strangers coming in and out there all the time.

Q Why did you go to live in a house in which you thought your life would be in danger from the tenants? A Because it was convenient to my work and the man I worked for was the boss of it.

Q You thought therefore that you would take a gun along

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to protect your life from the tenants? A No, not from the tenants, but from the people coming in and out.

Q Did you carry the gun around with you? A Never.

Q Then how could it protect you from the people coming in and out? A Because I left the kitchen door open while Nora Forrester was out at night.

Q How could the gun protect you if you did not carry it?

Well, it was in the bed room.

Q Where did you keep the ammunition? A The ammunition, well, I got it the night I went down to my mother-in-law's to bring the gun up to the house. That was when I took the furnished flat five months previous.

I know. Where did you keep the ammunition for the gun?

A I took a handful of bullets for the gun from the ammunition box and put them in my overcoat pocket.

Q What month was it that you moved there? A January or February, - I wouldn't be sure.

Q Do you mean to tell the jury you kept that same handful of cartridges in the overcoat pocket for five months?

A Yes, sir.

Q Never carried the gun with you? A No, sir.

Q And you want the jury to believe that you went around with a handful of bullets in your overcoat pocket and didn't have the gun? A It was not a handful.

Well, half a dozen. You want the jury to believe you carried the bullets there, but never carried the revolver?

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A Well, I carried it from my mother-in-law's up to the apartment.

Q In that suit case? A No.

Q You say after that you still continued carrying loose bullets in an overcoat pocket? A Yes, sir.

Q But never your gun in your overcoat pocket? A No, sir.

Q Why did you carry loose bullets around in an overcoat pocket, if you didn't have any gun? A Because I never wore my overcoat --- hardly ever.

Q Do you remember last January and February? A Yes.

Q It was a mighty cold winter, wasn't it? A Yes, sir.

Q And you tell the jury you never wore the overcoat out?

A Only when I went down to my mother-in-law's once a week.

Q Is that the only time you went out? A That's all. Only to go from the bar room upstairs, and from upstairs to go to work again.

Q You never left except that? A Well, I don't know where I ever went to.

Q You never went anywhere except to go to your mother-in-law's once a week.

Q And that is perfectly true? A Yes, sir.

Q And when you went to your mother-in-law's, then you would wear an overcoat in which were these six loose cartridges, - is that correct? A Yes, sir.

Q Now, you say you had known this Nora Forrester for

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about two years before you went to live with her; is that correct? A Yes, sir.

Q At the time you went to live with her you were a married man? A Yes, sir.

Q And it was after you went to live with her that you picked out just this apartment over where you worked; is that correct? A Yes, sir.

Q To go back a minute: didn't you at the time you lived with your second wife, on one occasion beat her, and kick her in the eye? A No, sir; I will explain all about that to you if you will give me a chance.

Q Didn't she go to the German dispensary and be treated for the injuries thus inflicted? A I don't know where she was.

THE COURT: While it is true that you have a right to question this defendant as to any vicious or criminal act, at the same time you are now examining him on a collateral matter and any answer given by the witness negative to your question is binding upon the People, and under one of the latest authorities by the Court of Appeals you cannot contradict or impeach him.

H. COTT: Oh, I appreciate that, if the Court pleases. I cannot try out a dozen assault cases here in this case. I mean that if he denies it I am not at liberty to call witnesses to contradict him.

THE COURT: You have a right to question him.

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MR. NOTT: That is all I can do, as I understand the rule of law. Otherwise, of course we would be trying half a dozen assault cases in one.

Q You said a minute ago you could explain how she came to go to the German dispensary for an injury to the eye: how did she? A When we lived in 214 West 37th street we separated in 54th street Court room, the Judge ordered me to pay her \$4 a week, and I told Judge Cornell I was willing to pay her \$4 a week, providing I knew where she lived, and who with. She claimed she was going to work. So she finally got down off of the stand and made an agreement with me to let me go my own way and she would go hers. So she should go. So I went to work. Two weeks after losing my position on Broadway and 37th street Mr. Wainright, 37th street and seventh avenue, gave me a position at \$18 a week, and when she heard that I was working there she wanted to make up with me again, so she met me on the corner of 37th street and Eighth avenue, about half past one in the morning, after me getting through with work, and she had two bottles of beer in her arm, and she come up to speak to me, and I pushed her and she fell, and the --- I don't know how she got her eye cut, or what happened to her. I know I was arrested that night for it, and taken to the 54th street Court the next morning. I was held in \$500 bail.

To keep the peace? A Well, until the case would come up.

Oh, the assault on your wife? A Yes, sir.

Did it come up? A Why, it came up, yes.

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Q Were you convicted? A I went back to live with her again.

Q Were you convicted? A No, sir.

Q Where did it come up? A It came up ten months later.

Q Whereabouts? A In the Criminal Court, in Special Sessions.

Q And were you convicted or acquitted, or what, or pleaded guilty? A No, we were living together again at that time, and we both made up.

Q Then you say that you punched her when she was walking on the street? A I didn't say that.

Q Well, you pushed her; was that what you said? A Yes.

Q And she fell down; is that the way she hurt her eye? A Yes, sir.

Q What did she hit her eye on? A She had two bottles of beer under her arm. I don't know what she hit her eye on.

Q Have you lived under the name of Spencer? A Yes, sir.

Q Have you ever been convicted? A No, sir.

Q Sure about that? A Yes, sir.

Q Under the name of Spencer? A Not under any name.

Q When did you take the name of Spencer? A I have always had it --- it is my middle name.

Q When did you live under that name? A 640 Eighth avenue.

Q Anywhere else? A Never.

Q Did you tell your second wife that you lived under the name of Spencer previous to knowing her? A No, sir.

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Q You say you knew Nora Lane about two years previous;
is that correct? A Yes, sir.

Q You knew she lived with a man named Lane? A Yes, sir.

Q And then did she ask to come and live with you, or did
you ask her to come and live with you? A Why, we used to go
to hotels together, occasionally, before we went to live to-
gether, and then she suggested that we should get a furnished
apartment together, and I said yes, as soon as I got to work.
So herself and her sister came over to me two or three days
afterwards, and her sister had some fight with one Henry ---

Q Oh, I don't ask all about that. I asked you who sug-
gested it, you or she, that she should come and live with you?

A She suggested it.

Q She did everything in this case? A No, I don't want to
say that about the girl, no.

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Q She suggested coming to live with you? A Yes.

Q Did she pay half the rent? A She did.

Q How did she make the money with which to pay it? A I don't know.

Q Didn't you know she was making it from men and paying your rent with it? A I don't know.

Q Well, what did you think? A Well, I never inquired.

Q You knew she was going out nights? A It was none of my business.

Q You were living with her and she was paying half the rent? A Yes, sir, she said she had some friend named Charlie, a bookmaker or racetrack man.

Q And Charlie was putting up the money for your flat?

A No, he was not. I was putting up half.

Q Well, you needed all the money to pay the rent. He half was putting up money for the rent for your flat? A He was not.

Q Well, she was, and that came from Charlie? A I don't know where it came from.

Q When she went out late at night did you think she was going to Sunday School? A I don't know.

Q What did you think she was doing?

Objected to. Objection overruled. Exception.

A I don't know.

Q Did you ever give a guess what she was doing? A Well, yes.

Q What did you think she was doing? A Well, ---

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Q Speak up, please. We are waiting to hear? A I really couldn't tell.

Q What did you think? You know what she thought she was doing? Now, what did you think she was doing? A I couldn't really say.

MR. SCHICK: Objected to on the ground ---

A (Witness continuing) That is unfair, Mr. Nott.

Objection overruled. Exception.

Q What did you think she was doing when she was staying out late nights and coming in at two or three o'clock in the morning and bringing in money to pay half your rent? What did you think she was doing? How did you think she was earning it?

A Well, I don't know how she was earning it.

Q Well, I ask you how you thought she was earning it?

A Well, my candid opinion was, I thought she was making it off the streets, or something else.

Q Were you fond of this girl, or weren't you? A Very fond of her.

Q And were you jealous of her? A Never.

Q Never a bit jealous, but very fond of her? A Yes, sir.

Q Did you want her to leave you? A Why, she suggested that many times.

Q Did you want her to leave you? A No.

Q And you wanted her to stay with you, didn't you? A Yes.

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Q Did she tell you the week previous that she was going to leave you? A She told me that about one hundred times in all that she was going to leave me.

Q And she did tell you that the week before this happened?

A She told me the night before that it happened.

Q I ask you now, about the week before. Did she tell you it the week before? A Yes, she might have told me the week, the night, or the month before.

Q Did she go away several days telling you she was going to the hospital? A Yes, sir.

Q Did you get your friends --- A Mr. Wilson?

Q To call up the hospital? A Yes, sir.

Q You took enough interest for that? A Yes, sir.

Q Did he tell you she was not there? A Yes, sir.

Did that make you angry? A No, sir.

Not a bit? A Not a bit.

Q You found out when she told you she was going to the hospital, and had been away several days, was not there, and had lied to you, but that did not make you angry? A No, sir, not at all.

Q Perfectly pleasant about it? A Perfectly pleasant about it.

Then that Sunday did she come back? A She came back on Sunday about half past seven.

Q Did she tell you that she was going back to live with her sister? A No, she didn't say that.

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4 Q Where did she say she was going? A Why she had told me so often --- she never said she was going to live with her sister. She told me one night she was going to get married, and I should lend her ten dollars, which I did the next morning.

Q Did she tell you then that she was going back to live with her sister that week? A No, sir.

Q Now, the night before this shooting, Tuesday night, did you have any quarrel with her? A No, sir.

Q You had no quarrel at all? A Not a quarrel.

Q Do you remember telling this jury that Officer Freeman told the truth? A I remember him telling the truth about the apartment.

Q Did you tell this jury that Officer Freeman told the truth? A (No answer).

Q Didn't you or didn't you tell the jury that? That is a plain question? A Yes, I believe I did.

Q Did you hear Officer Freeman say how you made the statement that you had quarrelled all the night till midnight; that you then stopped quarrelling, and that you resumed the quarrel about five o'clock in the morning? A No.

Q Is that true, or not? A No, that is not true.

Q You never told him that? A No.

Q Have you ever had any trouble with Officer Freeman? A No.

Q Did you ever lay eyes on him before he arrested you?

A No, sir.

Q Do you know any reason why he should testify falsely

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against you? A I do not.

Q Have you ever had any trouble with Officer Brown? A No.

Q Do you know any reason why he should testify falsely against you? A I do not.

Q Have you ever had any trouble with that Italian, Zito?

A No, I never did.

Q He is a friend of yours, isn't he? He worked in the same place? A Well, he is so much of a friend that he has got twenty dollars belonging to me.

Q Have you ever had any trouble with him? A Never.

Q Do you know any reason why he should testify falsely against you? A Well, he has testified ---

Q Do you know any reason why he should? A No, I do not.

Q He has testified that he saw the knife in your hand, as you sat on the bed? A Yes.

Q Now you tell this jury whether you quarrel with that woman that night? A No, sir.

Q What time did she get in? A She never left the house from Sunday night until this accident happened.

Q From Sunday night until the time of the shooting she never left the house? A No, sir.

Q Did you bring her up any drink? A Why, yes.

Q You used to bring her drink, is that it? A No, the old lady used to get it for her.

Q Did you bring her up any? A Yes, we had a pint of beer that night and a bottle of whiskey before we went to bed.

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Q On Tuesday night? A On Tuesday night, yes, sir.

Q You had a bottle of beer? A No, sir, I had a can of beer and a bottle of whiskey.

Q What size bottle? A Half a pint.

Q What time did you and she go to bed? A I guess around ten o'clock.

Q And you never had any quarrel at all? A No, sir.

Q So all the people that have here testified that you told them that you had a quarrel during that night, have testified falsely --- you never told anybody that? A The only thing was that the girl went to bed a little under the weather -- a little intoxicated -- and she was noisy when she was drunk; she was always swearing and cursing, you know -- it was a habit of hers -- but there was no quarrel between the two of us whatever.

Q Did you finish all the whiskey that night? A No, sir.

Q Sure about that? A I just had a glass of beer and I went to bed at ten o'clock.

Q You say you brought up half a pint of whiskey; did you finish it that night? A No, sir.

Q There was some left in the morning? A No, sir, there was not.

Q Well, then, you did finish it that night? A No, sir.

Q Was the whiskey finished that night in the flat? A Well, it must have been.

Q Well, the next morning you asked your friend Arthur

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7 to go down and get you more whiskey? A Yes, sir.

Q Then it was finished, wasn't it? A Yes, sir.

Q I suppose she drank it all, didn't she? A Well, I don't know who drank it; I know I didn't drink it.

Q You didn't drink any of the whiskey? A Yes, I had one drink the night before I went to bed, and one glass of beer.

Q What time did you go to bed? A Ten o'clock.

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

Q And she finished it all before that? A No, sir.

Q Had you? A No, sir.

Q Then how had it been finished if neither of you finished it? A Because the girl was in and out of bed all night long.

Q I see; and you kept awake? A No, I didn't keep awake.

Q Now, in the morning you say you got up and started the day by going into the bathroom and vomiting, is that it? A Yes.

Q Were you sober? A Perfectly sober; as sober as I am at present.

Q Perfectly sober? A Yes.

Q So at the time that the People claim you shot this girl, you were not intoxicated, were you? A No, sir.

Q Were you perfectly sober? A I didn't shoot the girl.

Q I know, that is what we are coming to, - but you were not intoxicated? A No, sir.

Q Did you tell the officer that you were sober the night before? A I don't remember what I told the officer.

Q Now, you say that after going to the bath room and

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vomiting, you went back again through into the kitchen, is that correct? A Yes, sir.

Q The bath room is right back of the kitchen? A Yes, sir.

Q So you went through from the bed room into the bath room, there you vomited, and then came back to the kitchen, and asked the old lady for tea? A Yes, sir.

Q And at that time the old lady told you that Nora Forrester had stopped the milk and the ice because she was going away? A Yes, sir.

Q Did that make you angry? A Not at all.

Q Did the old lady tell you she was going too? A No, the old lady told me on Saturday morning; when I gave her three dollars, which she was getting, three dollars a week and her meals and her bed, that I told her Nora wasn't home Saturday, I said, "I guess Nora is gone", so I says, "Mom, I can't afford to pay you all alone", to her, and ---

Q Was the girl Nora paying half of the old lady's wages too, - is that it? A No, I was paying the old lady's wages, and the old lady asked me if she could stop there until she got a position, and I said certainly.

What I asked you was, did the old lady on this Wednesday morning tell you that she, the old lady, was going? A No, sir.

Q She did not? A No, sir.

Q So she is not truthful when she said that? A Well, I would not say she was not truthful.

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Q Did she tell you Nora had stopped the ice and milk, and that Nora was going? A Yes, sir.

Q That did not disturb you a bit? A Not a bit.

Q You were glad to see Nora go? A Well, in one way I didn't care.

Q You didn't mind a bit having the girl who was paying half the rent going and leaving you with all the rent to pay, didn't you? A No, sir.

Q Not a bit? A I didn't intend to keep the flat myself.

Q Well, you didn't mind giving it up? A Well, I had a party that Sunday came up to me and wanted to pay me \$5 a week, a friend of mine, a plasterer who wanted to go half the rent with me -- he was going to give me five dollars a week.

Q I thought you just said you were going to give it up? A No, sir.

Q The knowledge that she was going didn't bother you in any way or make you angry? A No, sir.

Q You didn't want her to go as soon as she could go as not? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Now, let me see if we get this straight. Then as you walked back from the kitchen into the --- you walked through the dining room in the first bed room, and then you saw her standing by the bed, is that correct? A No, sir, by the dresser.

Q In the bed room? A Yes, sir.

Q She was standing there? A Yes, sir.

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Q With a revolver in one hand and a knife in the other, is that it? A Yes, sir.

Q How many people did you tell that you saw her jump out of the bed and get the pistol out of the closet? A I never told anybody that.

Q Never told anybody that? A No, sir.

Q Everybody else is lying that says that, except you?

MR. SCHICK: Objected to.

COURT: Objection sustained on the ground that a witness cannot characterize the testimony of another.

Q You never told a living soul that you saw this girl jump out of the bed, run over to the closet and get the revolver out of the closet?

MR. SCHICK: Objected to on the same grounds.

Objection overruled. Exception.

MR. SCHICK: Also objected to on the ground that he already answered it no.

Objection overruled. Exception.

Did you ever have any trouble with Arthur McGlade?

A No, sir.

Q Did you hear McGlade on this very chair this morning testify that you you said went over and got it out of the closet, jumping out of the bed? A No.

Q You didn't hear that? A No, sir.

Q Did you hear McGlade this morning? A I heard everything McGlade said, yes.

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Q Well, I think I am in error about McGlade mentioning the closet. Did you hear McGlade on that chair testify that you said you shot your wife twice and shot yourself once?

A No, sir.

Q Or twice --- did you hear him testify to that? A I heard him testify to that, yes.

Q Have you ever had any trouble with him? A Never.

Q Do you know any reason why he should testify falsely against you? A No, sir.

Q Did you say that in his presence? A No, sir, I did not.

Q Where was this knife kept? A The knife was always kept out in the drawer in the kitchen.

Q And you had just been in the kitchen? A Yes, sir.

Q And when you got back from the kitchen she was standing up here in the bed room with that knife in her hand, is that correct? A That is correct, yes, sir.

Q That is where she was standing with that knife in her hand? A Yes, sir.

Q Do you know how that knife got in there? A Yes, sir, the knife was in the front room from the night before, because I had the knife myself --- both me and her.

Q What were you doing with it in there? A We had some sandwiches in there with a pint of beer and it was the only sharp knife that was in the house.

Q And you brought the knife? A Yes, sir, I brought the

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Q It happened to be in there? A Yes, sir.

Q And when you came back she was standing with the knife in one hand, and the revolver in the other? A Yes, sir.

Q Which hand did she have the revolver in? A With her left hand.

Q And the knife in her right hand? A Yes, sir.

Q Now, I want you to be sure about that, and I don't want any mistake about it, I will give you all the time you want about it to think it over, but I don't want you to change your answer. Now, think it over, just as long as you like. Which hand did she have the revolver in? A Left hand.

Q Sure about that? A Yes, sir.

Q And you cannot be mistaken? A No.

Q And she had the knife in her right hand? A Yes.

Q And this is the way she shot herself in her left breast with her left hand (indicating)? A I don't know how she shot herself. I grabbed both her wrists and tried to get both away from her.

Q Was she a left-handed woman? A I can't tell you.

Q You lived with her five months. Was she right-handed or left-handed? A I can't say.

Q Did she cut the bread with her right or left hand? A I couldn't say. We never sat down to meals together.

Q Did you cut the sandwiches? A No, sir.

Q Did she? A Yes, sir, she did.

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Q Do you know whether she was right-handed or left-¹⁹⁴
handed? A I couldn't say.

Q You came into this room and there was this woman standing with a knife in one hand and with a revolver in the other?
A Yes, sir.

Q When did you first make up your mind to tell that story to anybody? A I never made up my mind to tell the story.

Q When did you first tell that story to anybody? A I have never told the story to anybody, only to my counsel.

Q You never told that in the hospital? A No, sir.

Q You never told it to the police officers, did you? A No, sir.

Q When you were put under arrest, when the officers asked you how it happened, didn't you think it would be important for you to tell them that a woman attacked you with a knife and a revolver? A I don't know what I said to the officers.

Q Didn't you tell this jury a minute ago that you were perfectly sober on that morning and knew just as well what happened then as now? A I knew what happened then.

Q Didn't you think it would be important for you to tell the officers that this woman attacked you with a knife and a revolver when you were put under arrest? A Why, I should think so.

Q Why didn't you do it? A I don't know what I said to the officers.

Q Did you tell them that? A I don't know.

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Q Didn't you tell the jury a minute ago that you knew what happened that morning just as well as you knew what happened now? A Previous to the officers coming in.

Q And then you, all of a sudden forgot? A No, I did not.

Q Did you tell them that, or didn't you? A Did I tell them what?

Q That this woman attacked you with a knife and a revolver? A I don't know what I told the policemen.

Q Did you tell Mr. Minton that in the hospital? A I don't know. I never made any statement to Mr. Minton in the hospital.

Q So Mr. Jamill, when he read those notes to the jury made all that up out of his head? A I don't know anything about the gentleman.

Q This woman rushed at you, did she? A Yes, sir.

Q Did you run away? A Well, I couldn't run away very well.

Q Well, what did you do? A She raised her hand and fired a shot which caught me here in the left side (indicating on left side of head), and the blood come streaming down my face.

Q Did she say anything to you before she did this? A Well, she did say, "God damn you, you won't get rid of me so quick." That was all the conversation the girl ever said.

Q Were you trying to get rid of her? A No.

Q Had you asked her to go? A Me and the old lady had a conversation.

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Q Had you asked her to go? A No.

Q You were not trying to get rid of her? A No.

Q Can you give this jury any reason why she attacked you?

A I cannot.

Q She was a girl twenty-three years old? A Yes.

Q And you are a man of thirty-two? A Yes, sir.

Q And then as she came rushing towards you, saying "God damn you, you won't get rid of me so quick", then she fired this revolver shot from her left hand, - is that correct?

A Yes, sir.

How far away was she from you? A Right close to me.

Q And firing with the left-hand that bullet struck you where? A Right here.

Q And you never tried to shoot yourself at all? A No, sir.

Q And you never told a living soul that you tried to shoot yourself? A No, sir.

THE COURT: Let the record show which side he indicated.

THE COURT: The right side.

Q Did Mr. Earl McClade say that he heard you say that you tried to shoot yourself and were sorry you failed? A I heard him say that, yes.

Q That you tried to shoot yourself, and was sorry that you failed? A I heard him say that, yes, sir.

Q That is, you never said that? A Well, I never said

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that, not to my memory, no.

Q Then how soon together did these shots come? A Right one after another.

Q Right away, two, - like that (indicating with two quick slaps of the hand)? A Yes, sir.

And the second one hit you where? A Right in this breast. (Indicating left side).

Then what did she do? She raised her right hand with the carving knife in it.

Q And how many times did the lady succeed in stabbing you with the carving knife? A Several times.

Q Here you are a man of thirty-two years of age, and this woman succeeded in stabbing you six or seven times with a carving knife and you could not defend yourself, is that correct? A Well, I tried to the best I could.

Q Did you get the revolver away from her? A No, sir.

Q Never got it away from her? A Not until I came to. She was laying on the floor.

You never disarmed her and never had that revolver in your hand, even? A I had it in my hand when I gave it to Arthur McGlade, and he took it off of me.

Then you picked it up off the floor? A Yes, sir.

Q But during this struggle you never had it in your hand? A No, sir.

Now, let me put that straight so there is no dispute about it. During the struggle you never had your hand on this

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revolver and you cannot be mistaken about that? A Well, I twisted her hand with the revolver in it.

Q Did you have your hand on the revolver? A Well, I couldn't say that I did. I know she had a tight grip on it.

Q Did you have your hand on the carving knife? A No, sir, not to my memory.

Q So you could not get either hand on either the revolver or the carving knife? A Well, I had hold of both of her wrists.

Q And this woman succeeded in stabbing you six or eight times and inflicting two shots on you with a revolver, and you were defenseless in her hands? A Until I fell over on the bed. I couldn't do any more.

Q Is this the shirt with a sore that night or morning? A Yes, sir.

Q And these wounds were inflicted during this struggle, you say? A Yes, sir.

Q Is that correct? A Yes, sir.

Q And you were not sitting there and stabbing yourself at all --- you never sat in the bed stabbing yourself? A No.

Q Well, will you tell the jury why it is that all the cuts are just in that one place on that shirt if they came through the struggle, and you were not sitting on the bed? A I don't know.

Q You can't explain that, can you? A No, sir.

Q You haven't any explanation to offer of it? A (No answer).

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MR. NOTT: I offer this in evidence now.

THE COURT: Received.

(Received in evidence and marked People's Exhibit 14.)

THE COURT: Can you agree among yourselves upon how many cuts appear in the shirt, Mr. Schick.

MR. NOTT: I think the jury can count them themselves. They are all there in that place, not a single one on the right side.

MR. SCHICK: Oh, you couldn't do that very well, your Honor.

Q Now, that is a bullet wound there (in shirt) isn't it?

A Yes, sir.

Q And you tell the jury with her left hand this woman put the bullet wound into the same location exactly over where those stab wounds came, and she did one with her right hand and one with her left-hand; is that correct? A Yes, sir.

THE COURT: On what side of the shirt?

MR. NOTT: The left side, sir.

Now, please sit up, now pretend that you are the woman, and that I am you --- no, I am the woman and you grab me in the same way you were trying to defend yourself from the woman? A I grabbed hold of her wrist like that and said, "My God, Lord, what the matter with you?"

Q Will you tell the jury how it was when you had the wrist like that that she was stabbing you? A She had the knife like this.

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Q In her right-hand? A Yes, sir, and the gun in her left.

Q And she was stabbing you and you were holding her wrist like that? A Yes, sir.

Q And in spite of all your resistance she stabbed you right there? A Yes, sir.

Q The same place where she had previously shot you? A Yes, sir.

Q How did she get stabbed? A I couldn't tell you, except in the struggle.

Q Did she use the knife both ways, first one way and then the other? A Well, we had a struggle there. She might have been stabbed in the struggle.

Q You told the jury that you remember exactly what happened up to the time the officer came. Now, tell this jury how this woman got two stab wounds one penetrating right through to the heart? A I don't know.

Q Can you give any explanation? A I cannot.

Q Can you tell the jury how she got shot through the heart, through the breast? A No, sir.

Q You were holding her hands? A Yes, sir.

Q Do you know how she got shot? A No, sir.

Q You cannot give them any explanation? A I cannot.

Have you got any of those stab wounds left on you now?

A I have.

Q Are the marks on you now? A Yes, sir.

Q Do they show? A Yes, sir.

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Q Just open your shirt and show them to the jury and let us see what a woman can do, her hands being held by the wrist?

A (Witness exposing his breast to the jury).

Q Those are the stab wounds, are they, right close around the nipple? A Yes.

MR. NOTT: May it appear on the record that there are twelve stab wounds around the left nipple, the bullet wound being two and one half inches from the nipple and the stab wounds being within an inch and a half to two inches on either side of the nipple.

Q Now, Murphy, do you mean to tell this jury that that woman inflicted those on you all in that one place? A Yes, sir.

Q And you didn't sit there stabbing yourself, just as the Italian and all the rest of them have said? A I did not, no, sir.

Q Did Mr. Minton come to see you in the hospital? A I didn't see Mr. Minton.

Q Did anybody from the District Attorney's office come to see you in the hospital? A No, sir.

Q Did Mr. Hamill, the witness, come to see you in the hospital? A Not that I know of.

Q Didn't Mr. Minton ask you if you felt well enough to talk and you said yes? A I don't remember.

Q Did you say to Mr. Minton, "We had a little scrap last night. She accused me of being crooked"? A No, sir, I

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don't remember.

Q What? A I don't remember it.

Q You don't know whether you said it or not? A No, sir.

Q Do you think Hamill made it up? A He might have for that.

Q I see. Did you say "I accused her of being the same thing"? A No, sir.

Q "She jumped out of bed and grabbed the gun out of the closet?" A No, sir.

Q "And I tried to take the gun from her hand, and a shot went off and she fell"? A No, sir.

Q Did you say that? A No, sir.

Q "Then I fired two more myself, and I fired one at my head and another at my heart"; did you say that? A No, sir.

Q You never fired any shots at yourself? A I never made any such statement.

Q And you never fired a shot at yourself and you never stabbed yourself? A No, sir.

BY THE COURT:

Q You inflicted none of the wounds that you have exhibited to the jury? A Not that I can recall, your Honor.

Q Did you attempt to take your own life? A Not that I can recall.

BY MR. NOTT:

Q How long had you been living with Nora Lane?

A About five months, I think.

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Q Now, was this question asked you and did you make this answer "How long had you been living with Nora Lane? A Five months?" Now did Hamill know that if you didn't say it? A I don't know.

Q Was this question asked you, "What was that about?" (Referring to an altercation) "A Her sister told her she seen me down the back room with other women. She accused me of being crooked, and I accused her of being crooked." Did you say that? A I don't remember.

Q Did she tell you that her sister had said she had seen you in the back room with other women? A Well, she told me that about three weeks previous to this occurrence.

Q How did Hamill know that if you didn't tell him? A I don't know.

Q "O What was your ground for complaint against her? A Because she used to go out and stay out at night till two or three o'clock in the morning." Did you say that? A I have got no complaint to make against the girl.

Q Did you say that? A I didn't say anything that I can remember.

Q Did you say that? A No, sir.

Q Were you asked this question: "Had you been drinking that night?" And did you answer "No, perfectly sober when I left for work"? A No, sir.

Q Did you make that answer? A I don't remember.

Q As a matter of fact you say now you had been drinking? A Yes, I had been drinking.

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Q Did you say in answer to a question: "No a furnished flat. She used to pay one-half and I used to pay one-half". Did you say that? A I don't remember.

Q Well, how did Hamill know she paid half the rent unless you told him? A I don't know.

Q Were you asked, "Where was the revolver kept?" And did you say "Up in a closet"? A I don't know anything about this.

Q Did you say this? A I don't know; I don't remember.

Q Were you asked this question: "How did she get these stab wounds?" And did you say "Stab wounds --- I don't know." Did you say that? A I don't remember.

Q Were you asked this question, and did you make this answer: "Was there any carving knife around?", and did you answer "I stabbed and shot myself, both? A I don't remember.

Q Were you asked this question: "Don't you remember whether you stabbed her with the carving knife? And did you say, no, I don't. I remember stabbing myself? A I don't remember.

Q Did you make this answer to this question: "How many times did you shoot her after the first time?" And did you say "Two"? A I don't remember ever saying such a thing.

Q Did you say "Two. I seen she was dead, and then I didn't think there was any use of me living any more, and I tried to kill myself?" A No, sir.

Q You never said that? A No, sir.

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Q. Were you asked this question and did you make this answer: "After the first shot did you shoot her twice again?"

A. Yes". A. No, sir.

Q. What? A. I don't remember.

Q. Did you make this answer to this question: "Why did you fire two more bullets after that first shot? A. I suppose I was crazy"? A. I did not.

Q. Were you asked this question? "Where was this knife lying? A. Laying out in the kitchen." Did you say that?

A. No, sir.

Q. Were you asked this question, and did you make these answers: "Was she in bed at the time? She jumped out of bed after the revolver"? A. No, sir.

Q. How far did she have to go to get the revolver? A. Just jump right out of bed and reach for it"? A. Did you say that? A. I don't remember.

Q. Where was the revolver kept, in the closet? A. A. Yes." Did you say that? A. I don't remember.

Q. Now, did you make this answer to this question: "Now then, you shot her many times, is that right? A. Yes, and fired two shots at her." Did you say that? A. No, sir.

Q. Did you say she fired the two shots? A. She was standing up - fell down." Did you say that? A. No, sir.

Q. Did you make these answers to these questions: "Q. When did she fall, after the first shot? A. After the first shot.

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Q And you fired two more shots after that? A Yes." Did you say that? A No, sir.

Q "Q Was she lying on the floor then? A Yes." Did you say that? A No, sir.

Q "Q And you pointed the revolver at her? A Yes."
A No, sir.

Q Did you make this answer to this question: "Well, you fired two shots at her, didn't you? A Yes."? A No, sir.

Q Were you asked this question and did you make this answer: "Where did you get the carving knife from? A Went out in the kitchen because the gun was empty and I went to the kitchen to get more cartridges."? A I couldn't have said such a thing.

Q "Q The cartridges was in a closet in my overcoat, and I couldn't get them out of the revolver to kill myself." Did you say that? A No, sir.

Q How did Hamill know that you had the cartridges in that overcoat? A I don't know.

Q "Q And I went out and took the carving knife and stabbed myself"; did you say that? A No, sir.

Q "Q Where did you stab yourself, in the breast? A Yes, in the breast." Did you say that? A No, sir.

Q "Q You shot yourself how many times? A Twice." Did you say that? A No, sir.

Q "Q Once in the head? A Yes, and once in the breast." Did you say that? A I never remember saying anything.

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Q "Q And how many times did you stab yourself? A I don't know. About half a dozen times, I guess." Did you say that?

A No, sir, I did not."

Q And now before this jury you put this all onto this woman and say she shot you, she stabbed you, and that you didn't do a thing; is that correct? A That is correct.

Q And this is the first time that you have ever made that statement in any public place or to any official, is that correct? A What statement?

Q The statement that she attacked you in the way you have said? A Why, yes, that is the first statement I have ever made.

Q You were in the Coroner's Court when the inquest was held? A Yes.

You didn't tell us then? A I didn't say a word.

I know, you just sat tight and brought this defense here in court? A I had nobody to represent me in the Coroner's Inquest.

Q Now, let us see if this was not the way it was, when you made the first statement to Officer Brown in the flat and Officer Brady, when you said it was because of a little love affair, or because of another man, you had not had time to think it over then, had you? A No, sir.

Q Later in the hospital when you made the statement ---

A I don't remember anything that I said to any of the officers.

Q Did you say to Officer Brady that it was because of a

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little love affair? A No, sir.

Q You didn't say that? A I never spoke to Officer brady before the morning he came in and took the knife off of the bed.

Then in the hospital you had had time to think it over a little more, and you put in there that she did have the revolver in her hand, but that you shot her and then shot yourself, is that correct? A No, sir.

Q And now here, after you have had still more time, you come in with the story that you never had the revolver and the knife at all? A I didn't come in with any story, Mr. Wott. I am telling you the story of the happenings of May 22nd.

RE-DIRECT EXAMINATION BY MR. SCHICK:

Q You heard the stenographer Hamill read from a note book various questions and answers supposed to have been put to you in the New York Hospital on the day this accident occurred --- you heard him read them? A Yes, sir.

Q Do you recall making such a statement, or being questioned by an assistant District Attorney and Mr. Hamill on that date? A I don't recall.

Q I say, you don't recall anybody asking you any questions?

A No, sir, I don't.

Q Do you recall in the morning before you left your apartment, Arthur McBlade, who testified in behalf of the People, brought you up half a pint of whiskey, is that right?

A Yes, sir.

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Q And then the doctor who removed you from your apartment to the New York Hospital, he gave you a two ounce bottle of whiskey? A Yes, sir.

Q And you drank that? A Yes, sir.

Q And you were under the influence of liquor nearly all that day? A Yes, sir.

Q Do you know if anybody asked you any questions? A I don't know.

Q Or what you said to anybody? A No, sir.

RE-CROSS EXAMINATION BY MR. SCHICK:

Q You say this doctor gave you two ounces of whiskey?
A A two ounce bottle.

Q You drank it all? A Yes, sir.

Q And was this doctor sent when you drank all this other whiskey and got that dose up? A He was, and so was the police officers.

Q How much was the second dose this doctor let you drink?
A Why, it was half a pint of whiskey came up from downstairs, and they poured it out in a cup for me.

Q And you say the doctor let you drink half a pint of whiskey? A Yes, sir; and he got it out of his own suit case.

Q Well, I am asking you again the second dose? A Yes, sir, the doctor let me drink it.

BY MR. SCHICK:

Q And at the time you were removed from the apartment

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Q And at the time you were removed from the apartment you were bleeding? A Yes.

Q You had a wound in your head? A Yes.

Q And in your chest? A Yes.

Q And wounds? A Yes.

And suffering from loss of blood? A Yes.

You couldn't know who was around you or what you said?

O jected to. O jection sustained.

THE COURT: Do not discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Be in your seats at 10:30 to-morrow.

(ADJOURNED to Wednesday, October 16, 1912, at 10:30 a.m.)

Last Exhibits:

People's 17.

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THE PEOPLE vs. MURPHY.

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New York, October 16th, 1912.

TRIAL RESUMED.

J O S E P H M U R P H Y, the defendant herein, resumes the stand and further testifies.

DIRECT EXAMINATION BY MR. SCHICK: :

Q What is the number of the street where this accident, this shooting, took place? A 640 Eighth avenue.

Q That is the corner of 41st street and Eighth avenue?

A Yes, sir.

Q Who owns that place? A Mr. Nash.

Q There is a liquor store downstairs where you were employed as bartender? A Yes, sir.

Q Is there a cafe there? A Yes, sir.

Q And back rooms to drink --- how many rooms are there on the ground floor besides the bar? A There is the back room and a toilet in the rear.

Q What kind of people were in the habit of coming in there?

MR. NOTT: Objected to as incompetent, immaterial and irrelevant, having no bearing whatever on the issues of this case.

THE COURT: How material is that? What is the materiality of the evidence?

MR. NOTT: Also objected to as calling for a conclusion.

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MR. SCHICK: Brady testified on direct examination that he resided in this Nash house upstairs for several months and he was supporting the woman he married the year prior to his marriage.

MR. NOTT: Objected to; he didn't testify to anything of the sort.

THE COURT: He said he did not visit the place. He said he lived there two weeks after he was married.

Q You know Officer Brady? A By sight.

Q How long did he live in the Nash house? A Well, he had been coming in and out of the Nash house ---

MR. NOTT: Objected to. He was asked how long he lived there.

Q How long had he lived there? A I don't know.

Q How long did you know, of your own personal knowledge that Officer Brady visited the Nash house --- for how long a period of time?

MR. NOTT: Objected to as irrelevant, immaterial and incompetent, going into a collateral matter.

Objection sustained. Exception.

Q What was upstairs, above the liquor place? A Furnished apartments.

Q Were they divided into rooms? A Four and five rooms and bath.

Q I mean at the time that this accident occurred? A Yes, sir.

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MR. NOTT: I object to that characterization of the occurrence.

THE COURT: Well, change your question. Objection sustained as to the form of the question.

Q Do you know any of the people that lived in that house above the saloon? A I do.

Q Are you acquainted with their business?

MR. NOTT: I object to that as incompetent, immaterial and irrelevant, having no bearing on the issue whatever.

THE COURT: I do not see the materiality of the evidence, Mr. Schick.

MR. SCHICK: I want to show the impossibility of this Officer Brady testifying on direct examination that he was not acquainted with the character of the people in this house or the people downstairs. I want to show the kind of place. I want to show that it is impossible for a police officer attached to the Metropolitan Police Force not to know, and I want to take his testimony.

THE COURT: But you cannot attack it. It is a collateral matter. Suppose you had asked Officer Brady whether or not he had stolen a man's watch? If he were not convicted you could not call a witness to contradict him or impeach him.

MR. NOTT: Your Honor applied the same rule against

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the People when I asked this witness now on the stand as to his relations with his second wife. We could not go in that.

THE COURT: You cannot contradict it. We are not to try out every issue that is raised.

MR. SCHICK: That's all.

BY THE THIRD JUROR:

Q In your testimony you said that you were on your return from the kitchen? A Yes, sir.

Q That the woman held in her hand a revolver? A Yes, sir.

Q And made this declaration? A Yes, sir.

Q (Continuing) "Now, God Damn you", and she shot you?

A Yes, sir.

Q Was she a profane woman? A She was, yes, sir.

Q Was it her ordinary language? A It was, when she was intoxicated.

Q Was she intoxicated that morning? A She was.

BY THE COURT:

Q Did you ever exhibit your revolver in the presence of the deceased? A No; not that I know of, your Honor.

Q Not that you know of? A No, sir.

Q And where did you keep your revolver? A The revolver stood in the closet, in the clothes closet where we used to keep our clothes and hats.

Q What part of the closet? A Right on the shelf, your Honor.

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MR. SCHICK: The defendant rests.

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D R. J O H N A. V I E T O R, recalled in rebuttal by
the People, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q On May 22nd, this year, when you were in the apartment
at 640 Eighth avenue, and saw the defendant, do you recall
having given him some liquor? A Yes, sir.

Q And where did you get that? A I had that in the bag
that I carry with me.

Q About how much did you give him? A I should imagine
about four ounces.

THE COURT: Illustrate to the jury about how much
four ounces of liquor is.

THE WITNESS: Well, I should say it would be about
a three finger drink.

Q You mean by a three finger drink, in the ordinary
whiskey glass? A Yes, sir.

Q Did you permit the defendant to drink there in the
apartment that morning a half pint of whiskey? A I didn't
see him do it.

Q Did you tell him that he could drink it? A No, sir,
not to my recollection.

Q Did you give him any whiskey except what you have al-
ready said you gave him? A No, sir.

Q Will you tell the jury what the condition of the
defendant was that morning from the time you first saw him

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until you took him to the hospital, respecting whether or not
he was intoxicated or not? A Why, I should say he was not
intoxicated.

Q Were you in the hospital after he was taken there,
doctor? A I took him there and then he was out of my charge
after he was admitted.

Q Did you talk with him any that you recall? A Nothing
in particular as I remember.

CROSS EXAMINATION BY MR. SCHICK:

Q The whiskey that you gave the defendant to drink was
brought up from downstairs, was it not, by McGlade? A The
whiskey I gave him to drink I had from my ambulance bag, from
the supply in the bag.

Q Did you pour out the whiskey into a tea cup? A I
believe I gave it to him out of the bottle.

Q And did you look at the bottle --- how much he consumed?
A Yes, he consumed about half a bottle.

RE-DIRECT EXAMINATION BY MR. O'MALLEY.

Q You mean the bottle you had? A Yes, the bottle
I had --- an eight ounce bottle.

J O H N M. M I N T O N, JR., called in rebuttal by the

People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are an Assistant District Attorney attached to the

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staff of Mr. Whitman? A Yes, sir.

Q And how long have you been in the office? A In the neighborhood of a year and a half.

Q To what Bureau in the office are you attached? A Homicide Bureau.

Q And in connection with your duties connected with that Bureau you go out and take statements of witnesses and of defendants in homicide cases, do you not? A I do.

Q And did you on the 22nd of May of the present year go to the New York Hospital and take the statement of this defendant, Joseph Murphy? A I did.

Q Were you accompanied there by Mr. Hamill, the stenographer? A Yes, sir.

Q Who was regularly attached to the Homicide Bureau?
A Yes, sir.

Q And do you recall now where you saw the defendant?
A I saw him in the ward, in the hospital.

Q At that time he was in bed? A Yes, sir.

Q Do you recall having asked him certain questions?
A I do.

Q And his having made answers thereto? A I do.

Q Did he answer all questions that you put to him?
A Yes, sir.

Q And did he do that readily? A Yes, sir.

Q How long were you with him altogether, if you recall, Mr. Minton? A About ten minutes.

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Q Now, during that time from your observation of him and your conversation with him and the answers he made to your questions, will you state whether or not the defendant in your opinion was intoxicated? A Not in my opinion, no, sir.

CROSS EXAMINATION BY MR. SCHICK:

Q What did you say to the defendant when you first spoke to him? A As well as I remember now I asked him whether he felt well enough to talk.

Q Did he have an attorney present? A He did not.

Q Did you tell him that he could send for an attorney or a friend before you asked him any questions?

MR. O'MALLEY: I object, your Honor, you ruled out that line of testimony yesterday.

THE COURT: The District Attorney is not called upon under the case of the People against Hill ---

MR. SCHICK: I put the question to him. The District Attorney can make his objection.

THE COURT: Is your question concluded?

MR. SCHICK: Yes.

Objection sustained. Exception.

Q At the time that you examined this defendant in the hospital did you know that he had two bullet wounds, - did you not, and he was stabbed in several places? A So I was told.

Q And he was lying in bed, was he not? A He was.

Q And he was under the treatment of a physician? A I

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presume s.o.

Q Did you ask any physician in the hospital, or the surgeon in charge of a ward, whether it was safe for you to put any questions to this defendant in the condition that he was at that time? A I asked some one at the door, I don't remember whether it was an orderly or a surgeon, or the officer, whether the man was well enough to talk.

Q Did you ask who was in charge of that ward, and particularly in charge of this defendant? A I don't remember whether I asked the surgeon or some one else.

Q Do you want me to refresh your memory? A If you can.

Q Where is this hospital? A New York Hospital is up on 17th street, as I remember.

Q 17th street and what? A Seventh avenue, I think.

Q What time of day did you go there? A About eleven o'clock.

Q How do you know it was eleven o'clock? A Because I have read over the statement and it is down on the statement, and I remember independently of the statement.

Q What statement did you read over? A The statement that was taken down in shorthand of the answers that he made to my questions.

Q Is that the first time you looked at the clock? A Did I look at the clock?

Q Yes. A I didn't look at the clock in the hospital.

Q Well, what time did you arrive at the hospital? A In

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the neighborhood of eleven o'clock.

Q How long did you stay there? A Ten minutes, with the defendant. I was in the hospital some time.

Q Who was the first person you met before entering the hospital? A Mr. Hamill.

Q That is the stenographer? A Yes, sir.

Q You arrived at the hospital, you rang the bell? A No, I didn't ring the bell.

Q Did you go into the office of the hospital? A I did.

Q Whom did you see? A I saw a clerk.

Q Do you know his name? A No.

Q Did you see anybody else? A I saw a number of people standing around.

Q I mean, did you speak to anybody else regarding this defendant? A No.

Q Whether you could examine him? A No.

Q Why, you think it was very funny?

MR. O'MALLEY: I object to that.

Q You know this man was in danger of his life at the time, he was lying in bed, that you had no right to examine him without consulting a physician first who was in charge, whether it was safe to examine him?

MR. O'MALLEY: I object to the question. It assumes a lot of facts that are not true.

THE COURT: Objection sustained as to the form of the question.

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MR. SCHICK: I respectfully except.

Q Did you speak to anybody else besides the clerk before you proceeded with the examination of the defendant? A I spoke to somebody at the entrance to the ward, I don't remember who.

Q Whom did you speak to? A I don't remember.

Q An orderly? A I think so.

Q But you spoke to no physician or surgeon, nor did you make any inquiries whether it was safe for you to proceed with this examination, did you?

THE COURT: He said that he did, that he inquired of some person; as to whether the person was a physician, superintendent, or orderly he does not know.

MR. SCHICK: An orderly is not competent ---

THE COURT: He said he did not know to whom he spoke.

MR. SCHICK: Well, I want to know what physician this man made inquiry of, asking at the hospital whether he was competent to judge of the condition of the defendant at that time.

MR. NOTT: An orderly stationed at the door for the purpose of preventing people from seeing patients that are not able to see ---

BY THE COURT:

Q Did you speak to some one there? A I spoke to some one at the door, I don't remember now, Judge, whether it was

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an orderly or doctor or an officer there, but I asked first whether the man was in a fit condition to talk, before I went to his bedside.

Q Then you were allowed to go in and talk to him? A Yes, sir.

BY MR. SCHICK:

Q Do you mean to say that those who spoke to you opened the door for you? A The door was opened. There are no doors to the wards.

Q But you cannot swear now that the man that you spoke to was a physician? A I cannot.

Q Or whether he was in charge of the ward where this defendant was lying in bed? A I cannot.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q The first question you asked him was whether or not he felt able to talk? A Yes, sir.

Q In taking the statements where you find a defendant or a witness in the hospital, you never go in without first getting permission? A No, sir.

BY THE COURT:

Q You have had experience in taking the statements of persons in hospitals? A Yes, sir, I have taken a number.

Q And you have been doing that for over a year and a half? A No, sir, I have been doing that in the neighborhood of a year.

BY MR. SCHICK: Q You have no knowledge of surgery or medicine?

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A No, sir.

Q When you approached the bed of this defendant, he was bandaged up and lying in bed? A He was, and he showed me the bandages.

M R S. M A Y B R A D Y, called by the People in rebuttal, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NOTT:

(The witness states that she resides at 321 West 42nd street.)

Q You are a married woman? A Yes, sir.

Q And married to Officer Brady, who was a witness here yesterday? A Yes, sir.

Q And you resided with him in the apartment 640 Eighth avenue? A Yes, sir.

Q And when were you married? A In May, 1912.

Q Where? A In 57th street church.

Q And how long had you been living in those premises before you married? A Well, about a year.

Q And is that your mother in court, sitting there, that lady with the blue handkerchief? A Yes, sir.

Q And had she lived there with you? A Yes, sir.

Q What is your mother's occupation? A Well, my mother goes out by the day's work.

Q And state during the summer before you married, who lived in the house there with you? A Well, when I had my sister and my brother-in-law there stopping with me and when they went away ---

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Q That was in the summer? A Yes, sir.

Q And then in the fall when they left who came to the house? A Right after my brother-in-law went away they took up keeping house for themselves, I rented out my two rooms to a gentleman and lady by the name of Mrs. Bell.

Q And then did your mother come back at times she was not working? A Yes, sir. My mother was there two or three times a week, and she had a house in Rockaway, and she went down there to attend to her business.

Q And she would come up and be in your apartment two or three times a week? A Yes, sir.

Q And in the meantime you rented out one of the rooms to Mr. and Mrs. Bell? A Two rooms.

Q And you were residing there at the time you met Officer Brady and married? A Yes, sir, I had just came there at the time I met my husband.

Q Now do you remember the early morning of May 22nd? A Yes, sir.

Q Did you know this man Murphy and the woman who lived with him? A Well, I know Mr. Murphy, but I didn't know the lady.

Q That morning shortly before in the neighborhood of six o'clock or so, were you in bed? A Yes, sir.

Q What room did you occupy of your flat as a bed room?

A Well, at that time I occupied the parlor. I had the bed in the parlor.

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Q That was in the summer? A Yes, sir.

Q And then in the fall when they left who came to the house? A Right after my brother-in-law went away they took up keeping house for themselves, I rented out my two rooms to a gentleman and lady by the name of Mrs. Bell.

Q And then did your mother come back at times she was not working? A Yes, sir. My mother was there two or three times a week, and she had a house in Rockaway, and she went down there to attend to her business.

Q And she would come up and be in your apartment two or three times a week? A Yes, sir.

Q And in the meantime you rented out one of the rooms to Mr. and Mrs. Bell? A Two rooms.

Q And you were residing there at the time you met Officer Brady and married? A Yes, sir, I had just came there at the time I met my husband.

Q Now do you remember the early morning of May 22nd? A Yes, sir.

Q Did you know this man Murphy and the woman who lived with him? A Well, I know Mr. Murphy, but I didn't know the lady.

Q That morning shortly before in the neighborhood of six o'clock or so, were you in bed? A Yes, sir.

Q What room did you occupy of your flat as a bed room? A Well, at that time I occupied the parlor. I had the bed in the parlor.

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Q So that was in the front? A Yes, sir.

Q Did any sound or noise in the next flat attract your attention at that time? A Yes, about 10 minutes to 7 I woke up, or something like that, and it seemed as if you took a pillow and knocked it --- it was like something heavy falling down.

Q Did you then wake up your husband? A No, sir, I got up and went to the door at that time, and when I went to the door I saw the bartender from downstairs coming out of the next apartment, and then I went back and woke my husband.

Q You mean when you saw the bartender coming out that is McGlade? A Yes, sir.

Q And then where were you when you saw McGlade coming out of the apartment? A I was standing at my parlor door.

Q And when you got up to go look out of the door did you put anything on? A Yes, I had my bathrobe on.

Q You put on a bathrobe, went through, and which door did you look out of? A Well, the parlor. There is no door to the parlor, but I looked out of the bedroom door and he was coming out of the kitchen door.

Q McGlade? A Yes, sir.

Q And went downstairs? A Yes, sir.

Q After you saw McGlade going downstairs again and you went back to your bedroom --- A Yes, sir.

Q Don't say what you said or your husband said, but at that time did you wake up your husband? A Yes, sir, I woke

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him up.

Q And at that time your husband was asleep? A He was asleep.

Q Did you and he exchange some remarks? A I told him---

THE COURT: Don't say what you said.

Q You and he said something to each other? A Yes.

Q Now, did he get up? A No, he didn't get up.

Q And did you go back to bed, or did you stay up? A No, I went back to bed again.

Q A few minutes after that, or some time after that, did anything else attract your attention? A Yes, I heard somebody knocking on the door, I heard loud knocking.

Q On your door? A Well, I couldn't tell. I thought it was on my door, but I got up again, so I put my bathrobe on and opened the door and the Italian janitor ---

Q You opened the door, - which door did you open then?
A The same door.

Q And looked down the hall toward the rear? A Yes, sir.

Q Whom did you see there? A I saw the janitor of the house there.

Q You mean this Italian? A Yes, the Italian man.

Q Zito. And what was he doing? A He was knocking on the front door there, another parlor door.

Q When you say the front door --- there isn't any door to the parlor? A Well, it leads right into the bed room and into the parlor.

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Q You have never been in the other flat? A Yes, I have
been in the other flat. They were all arranged the same.

Q Was he knocking on the door that went in the kitchen?
A No, on the door that went into where the trouble happened.

Q What did he do? A He didn't get any answer and then
he knocked on all the rest of the doors, and knocked on the
kitchen --- he knocked on all the doors.

Q First he knocked on this door here, on this door here,
(indicating on diagram)? A Yes, sir.

Q Then he went down the hall, knocking on the other
doors? A Yes, he knocked on them all.

Q When he came to the kitchen door what did he do? A
Called Mr. Murphy and didn't get any response and he stood
there a few minutes and pushed the kitchen door in then.

Q Broke it in? A Yes, sir.

Q And all the time you were standing at your door?
A Standing at my parlor door.

Q Did you see the Italian come out? A Yes, sir.

Q Did he say something to you? A He told me the man
killed his wife?

THE COURT: Strike that out.

Q He said something to you? A Yes, sir, he went down.

Q After he made this remark did you go back to your
husband again? A Yes, sir.

Q After that time did he get up? A Yes, sir, I called
him then, and he got up.

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Q State whether or not he put his clothes on? A Yes, sir, he put his clothes on.

Q Then did he go out? A Yes, sir.

Q Did you go out with him? A I went as far as the door with him.

Q As far as the door of your flat? A Yes, sir.

Q And when you looked out of the door what did you see?

A And there was an officer in the hall.

Q And do you know his name, or do you know him by sight? A I would know him if I see him --- I don't know his name.

Q Is that the officer (indicating Officer Brown)? A Yes, sir.

Q Did your husband say anything to that officer and did the officer say anything to your husband? A Yes.

Q What did you hear him say?

MR. NOTT: That was brought out by the defense. It is already in evidence, that Officer Brown asked Officer Brady if he was a police officer, and the officer said yes. And then he said, "Well, you can be of help to me." That is already in evidence, otherwise I should not ask the question. It was brought out on cross examination of these two officers by the defendant's counsel. However, I won't press it if your Honor thinks it is improper.

THE COURT: Unless upon consent --- do you object?

MR. SCHICK: I object.

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Objection sustained. Question withdrawn.

Q Did you hear your husband say anything to the officer and the officer say anything to your husband? A Yes, sir.

Q Now after that conversation between the officer and your husband where did your husband and this officer go? A They went into the apartment next door.

Q Now, was that the first time that your husband had left the flat that morning? A Yes, sir.

Q Did you go into the apartment? A At that time?

Q Yes. A No, sir.

Q Where did you go? A I started to go in, and my husband told me to go back into the house and stay there.

Q And did you go back? A Yes, sir.

Q What was the very first time that you went into the flat? A The first time I went in was after Mr. Murphy was taken to the hospital.

Q Was the body of the deceased still there? A Yes, sir.

Q Is it true that you and your husband went into this flat before anybody else did, and there found this defendant sitting on a bed with a knife near him? A Well, I didn't. I don't know what my husband did. I didn't go with him.

Q Well, did you go in there at all? A No, sir.

Q And did your husband go in there until the time that he went in with officer Brown? A No, sir.

Q That was the first time he got his clothes on and left

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the flat? A Yes, sir.

CROSS EXAMINATION BY MR. SCHICK:

Q How old are you? A I will be twenty-one next March.

Q How long did you live in the Nash house? A About a year and a half.

Q Before you were married to Officer Brady? A About a year.

Q Where were you born? A In Lawrence, Long Island.

Q How long have you lived in New York altogether? A Well, since I came to that apartment -- since I moved into Mr. Nash's.

Q Did you go to school in Lawrence, Long Island? A Yes.

Q Graduated from public school? A Yes, sir.

Q At what age? A Well, about when I was about seventeen.

Q Seventeen years old. Did you then move to the City?

A No, sir.

Q Did you go to work? A No, sir.

Q Did you stay at home? A Yes, sir.

Q When did you first come to the City? A About a year and a half ago.

Q Where did you live at the time you came to the City?

A I moved into Mr. Nash's.

Q That is the first house you lived in? A Yes. Well, I had been to the City but not to live.

Q You used to frequent Nash's house before you moved

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in there? A No, sir.

Q Whom did you live with in Nash's house? A I lived with my mother.

Q Did your mother move in with you, to Nash's house, when you came over from Lawrence, Long Island? A Yes,,sir.

Q Do you know Martin Graham? A No, sir, I do not.

Q You never met Martin Graham? A No, sir, I never did.

Q Did you live with anybody before you married Officer Brady? A No, sir, I did not.

Q Officer Brady called on you for some time before he married you in the Nash house, did he not? A He kept company with me, yes.

Q And he called at the Nash house? A Yes, he brought me home.

Q For how long a period? A I kept company with my husband a year before I married him.

Q Did you go downstairs into Nash's cafe? A No; occasionally I went down for a bottle of milk.

Q Did you ever go into the cafe back of the saloon?
A No, sir, I did not.

Q Back of the bar? A No, sir, I didn't. I don't drink.

Q Did any of the men that frequented Nash's place downstairs call at your apartment upstairs? A No, sir, I don't know anybody that frequents Nash's.

Q Do you know Morris Baker? A No, sir, I do not.

Q You say you rented two rooms in your flat to Mr. and

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Mrs. Bell? A Yes, sir.

Q Who is Mr. Bell? A Well, I couldn't tell you who those people were.

Q Do you know his business? A No, sir, I don't. I understood them to be theatrical people.

Q They are living now in your apartment? A No, they are not.

Q You positively swear now that you neither known Martin Graham nor Morris Baker? A Yes, sir, I do.

Q That you never met either one of these gentlemen?

A No, sir.

MR. NOTT: If they are in court let them stand up and see if she knows them.

MR. SCHICK: They were here in court all the time.

Q You recall the morning of May 22nd, 1912? A Yes, sir.

Q You say some noise attracted your attention and woke you up? A Yes, sir.

Q What was that noise? A Well, I don't know what it was. It was like something falling.

Q You heard something fall? A Yes, sir, like something falling down, yes.

Q Did you hear any shots? A No, sir, I did not.

Q Did you hear any human voice? A No, sir, I did not.

Q Quarreling? A No, sir.

Q Loud shouting? A No.

Q You heard something fall? A That's all.

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Q How often did that occur? A Only once.

Q And that was about seven o'clock in the morning?

A Yes, sir.

Q And then you got out of bed? A Yes, sir.

Q And you told your husband that you heard something fall? A No; I went to the door then.

- Q You went to the door? A Yes, sir.

Q What did you see? A I saw the bartender come out of there.

Q Did you know this bartender? A Well, I knew him by sight.

Q Did you ever speak to him before? A Yes, sir, he has let me in the door sometimes on account of the front door being locked at night.

Q Had he let you in from the door that leads into the barroom? A No, not into the barroom.

Q Now, let me understand. The entrance of that Nash house is on Eighth avenue, is it not? A Yes, sir.

Q And when you open that door there is a vestibule, you get into a vestibule? A Yes, sir.

Q And then there is a door on the right-hand side as you go in? A Yes, sir.

Q And that door leads into the bar room? A Why, certainly it leads into the barroom.

Q And he frequently let you into the house, did he not?

A Into the vestibule, on account of Mr. Nash made a new order

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to lock the outside door.

Q One minute? A Mr. Nash, he made a new rule. You see, we had the outside door. Where you go into the vestibule there are two doors, and he made a new rule, he locked the outside door on account of so many peddlers coming in at ten o'clock at night and nobody had a key to that door, and anybody that was out after ten o'clock you would have to knock on the barroom window, and the bartender would come and open the door for you. That was the night bartender and any time I was out with my husband or anything he would have to open the door and let me up.

Q You occasionally went down and got some whiskey and beer from the bartender? A No, sir, I don't drink either.

Q What was the latest hour he ever opened the door that leads from that side bar room for you? A About half past eleven.

Q You knew him well, didn't you? A No, I did not, only from seeing him there, that's all.

Q You know him to speak to? A Well, I have said how do you do to him as I came in, that's all.

Q And you greeted him occasionally, did you not? A Greeted him, yes. He said "How-do-you-do?".

Q When you saw him on this particular morning in the morning did you speak to him? A No, sir, I did not.

Q Not a word? A Not a word.

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Q What did you do? A I just stood there and I saw him come out and go downstairs, that's all.

Q Weren't you anxious to know what the noise was about that attracted your attention to go out in the hall from your own apartment? A I didn't go in the hall, I just opened the door.

Q When you were standing in your own door, looking into the hall and you met this bartender running up, did he say anything to you? A No, sir.

MR. NOTT: Objected to. She didn't meet him. She was at one end of the hall, looking out of the door, in a bath gown and she saw him.

MR. SCHICK: That is true.

Q What did you say to him? A Nothing.

Q Did he say anything to you? A No, sir, I wasn't near him.

Q Did he see you? A No, I don't think he even saw me.

Q Did you see him? A Yes, sir.

Q What happened after that? A I went back to bed again.

Q Husband fast asleep? A I woke him up at that time and he told me to come to bed.

Q What time did you the next time wake up? A Well, I don't know just how long it was.

Q Eight o'clock or nine o'clock? A Oh, no, it was just a few minutes afterwards, a little afterwards.

Q How many minutes? A About twenty minutes after.

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Q That would make it half past seven that you got up the second time? A No, it was not quite half past seven.

Q Twenty minytes after seven? A Yes, sir.

Q How is it that you have the time fixed in your mind?

A I haven't it fixed.

Q Did you have any clock or look at any watch? A Certainly I had a clock.

Q Did you look at it? A Yes, sir, I did.

Q What time was it? A About twenty minutes after seven.

Q The second time after you got out of bed was twenty minutes after seven --- what did you do then? A Well, I heard a knocking, and I thought it was on my door, so I got up, of course, and opened the door, and then I saw the Italian janitor who was knocking there.

Q You went out in the hall? A No, I did not.

Q Did you look out? A Yes, sir.

Q And you saw the Italian janitor --- he was knocking on all the doors? A Yes, sir.

Q Before he got to the kitchen door? A Yes, he knocked on the parlor door first, and the bed room door first.

Q He started and went along knocking until he came to the kitchen door; that's right, isn't it? A Yes, sir.

Q That's right, isn't it? A Yes, sir.

Q And then he went into the kitchen? A He burst the door in.

Q He busted the door in? A Yes, sir.

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Q Sure? A Oh, yes, sir.

Q Positive? A Positively.

Q Where did he bust the door in? A He put his shoulders against the door and pushed it in.

Q He shoved against the door and then he knocked at the door and in she went? A Yes, sir.

Q And he went after it? A Yes, sir.

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

Q Then what happened? A Well, he came out again, he didn't stay in there but a couple of minutes and then he came out there again.

Q All the time he stayed inside you waited outside, standing in your kitchen door? A I was not in my kitchen door, I was in the bed room door.

Q Oh, you were in your bedroom door and waiting for this Italian janitor to come out? A He didn't stay there just a minute --- he went right in and he came right out.

Q And did you speak to him? A Yes, sir.

Q Did he speak to you? A Yes, sir.

Q What happened after that? A Why, I went and called my husband then.

Q And was your husband in bed? A Yes, sir.

Q And did he come out of bed? A Yes, sir, yes.

Q And what did he do after that? A He got dressed.

Q And what happened then? A He was out in the hall then.

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Q With you together? A No, I didn't go out with him. I started to go and he told me to go back and stay inside.

Q You were not anxious to know what happened? A No, I was not. I might have been anxious, but he told me not to go in.

Q Now listen, face this jury: now do you want the jury and the court to believe that you in the company of your husband did not go in together into this defendant's room? A Yes, I do; I swear it.

Q You were not in that room with your husband together?
A No, I was not.

Q And that your husband removed the knife from the room?
A I don't know what my husband did. I was not in there with him.

Q I mean when you were with your husband, together in that room? A I was not in there with him.

Q You will positively swear? A Positively swear.

Q And that is as true as everything else you have said from this stand?

Objected to. Objection sustained.

Q And you will also positively swear that you did not have as many as five or six men call on you in that flat every day prior to your getting married to this police officer Brady? A I am not here to speak of my character.

Q Well, now, answer the question --- did you have men call on you? A No, I did not.

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Q As many as half a dozen a day in that flat? A No, I did not. Your Honor, I did not. I am here to tell you what I know about this case, not about my character.

Q Well, are you ashamed of your character? A No, but when my character case comes up and otherwise I refuse to answer you.

Q That's all, if you refuse.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Does your mother visit you still in your apartment?

A Yes, sir; I have my mother here if you wish to put her on the stand.

Q And she still comes to the apartment and has since you have been married? A Yes, sir.

Q And was there two or three times a week since you have been living there? A Yes, sir.

RE-CROSS EXAMINATION BY MR. SCHICK:

Q Your mother was only at your apartment two or three times a week? A Yes, sir, she was not living there all the time. My mother was there the biggest part of the time and had most of her furniture there.

Q But she was not living with you constantly there?

A I didn't say she was.

Q And you were sleeping in that apartment and you occupied those rooms yourself, did you not? A I had my brother and sister, my sister and brother-in-law there with me when my

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mother was not there with me.

Q Your brother and sister were not there all the time?

A Oh, yes, they were when my mother was not there. How do you know? You wasn't there.

BY THE TWELFTH JUROR:

Q Do you know Officer Brown? A No, sir.

Q Does your husband know Officer Brown? A Well, I don't know.

Q Was Officer Brown ever up in your house? A Well, once-- he served the first summons on me, yes.

Q Did you ever see him lately ---

BY MR. NOTT:

Q You mean for this case he served a subpoena on you?

A Yes.

BY THE TWELFTH JUROR:

Q Did you see him lately? A Only when I was kept here in court.

BY MR. SCHICK:

Q Officer Brown called at your house since this accident occurred?

MR. NOTT: I object to the form of the question.

THE COURT: Objection sustained.

Q Did Officer Brown call at your house since this accident happened?

MR. NOTT: Objected to.

THE COURT: Objection sustained as to the form.

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You are characterizing the happening here as an accident.

Q I mean since this supposed crime has been committed, did Officer Brown call at your house? A He called once to serve a summons on me.

Q And did you speak to him regarding this case? A No, sir, he just came to the door.

Q Did he say anything to you about this case? A No, sir; I didn't know that officer.

Q Did he instruct you what to say if you would be subpoenaed as a witness? A Why, no, I have not spoke to him about it.

Q Did he tell you what you should testify to? A Oh, no, sir.

Q He never mentioned a word about the case? A No, sir.

Q Not a syllable? A No, sir.

Q Neither to you or your husband in your presence? A No; not in my presence, he has not spoke to my husband concerning this case.

MR. NOTT: People rest.

C A S E C L O S E D.

MR. SCHICK: The defendant renews the motions to dismiss at the end of the entire case, on the ground that the People have failed to make out the case according to the facts charged in the indictment.

Motion denied. Exception.

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MR. SCHICK: The defense moves on the further ground
that illegal evidence has been admitted regarding another
supposed crime, or charge, that this defendant killed
Nora Forrester, the deceased, by a weapon known as a
carving knife, and as not charged in the indictment.

Motion denied. Exception.

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MR. SCHICK'S CLOSING ADDRESS TO THE JURY
IN BEHALF OF THE DEFENDANT.

MR. SCHICK: May it please the Court and Gentlemen of the Jury, under our jurisprudence, under our system of government, each man that constitutes a part of society or the State owes certain duties or obligations as a citizen. There are certain duties we must perform; certain rights and privileges we receive in return. The system of jurisprudence that we are under is the Anglo-Saxon jurisprudence. It is not like any other on the European continent, or anywhere else. The reason I mention this is because this happens to be a place, a country, a State we live in that the population, the people, are not of one kind; we are not all Anglo-Saxons, Russians or Aryans, or Semitic, or other members, but we constitute a heterogeneous mass, a population gathered from the four corners of the Earth. Therefore, people who come and live here and make this country their home, their abode, they may come here early in life and have all the great opportunities offered to them. They may be trained according to the dogmas and tenets announced by the great makers of this great republic. Those of you who come later in life and have lived in countries where the system of government is different, where you have been trained differently under the environment and the circumstances, you have become imbued, you have learned different,

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and it may be hard to adapt yourself to conditions and rules and regulations in a place where now you live.

The reason I mention these different things is I want to prepare your mind to be pure and clean and be divorced of everything else, to be divorced from prejudice, passion, favor or bias, that when you come down to the solid facts, to judge the evidence and the testimony in this case, that you should give this defendant at the Bar a fair deal, do justice to him. And as I say, as we live under the Anglo-Saxon system, the Anglo-Saxon system of jurisprudence, where this law, this jury system, was created, in England, after the Bill of Rights, the great Magna Charta, the charter of liberty, wrested from the Crown by the barons, by the people from the government. Because originally those who governed over people --- even now continental countries --- those who are in power, those who have the right to seize the person and bring him to a court and try him on a charge or the infraction or violation of a rule, are not the servants of the people; they are the masters of the people, and they are tyrannical; they disregard the rights and privileges and immunities of the individual. But in a country like ours where the people are the masters, where men whom we take and place in power are to serve the interests of the people, even there sometimes our servants who are supposed to serve us usurp the power and instead of being servants become our masters. That is where sometimes a defend-

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ant like the defendant at the Bar, who is being tried now for the crime of murder in the first degree, may be at a disadvantage. The great machinery of the State, with all its paraphernalia and all its servants ready to act at any moment, and here they seize upon the defendant and he is within the clutches of the law, in spite of all your beautiful phraseology and that his constitutional rights and his liberty shall not be violated, that he shall have a fair chance, that he shall be tried according to the law of the land with due process of law. And I tell you now that when the defendant is seized, and he is not properly informed of his rights and privileges, he is not getting a fair deal. Every man, no matter what the crime may be he is charged with, whether it is trivial or seriousness, he should know the gravity of the crime and the importance of it, he should be informed of his rights, that he may know how to act. If you do not do that you take something away from him which belongs to him as much as it is a right to live. I say that when you take an ordinary man from the ordinary walk of life and over-awe him with numbers, and when he has no opportunity to ask whether he must answer or not, you are taking something away which you cannot replace. And it is with you men in whose hands ultimately the power of government rests, the power of law --- not only that you are here to-day to be twelve men and to judge upon the fact whether a crime

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has been committed or not, but you can take the entire proceedings from the very first minute until the last and judge it from every angle, whether this defendant at the Bar received a fair chance.

In England, where the system was born, where they first adopted this jury system to try a man by twelve men, it is very simple. A man commits a crime in a small town of three or four thousand inhabitants or less, where Smith is acquainted with Brown, and Brown is acquainted with White and White is acquainted with the family of Roberts, and they all go to the same school, the same high school; they are acquainted with each other generation after generation; they know the father, the grandfather, the great grandfather of Brown or White; and a man is charged with any kind of crime and he comes into court and they know the blood of the family, every branch of it, direct or collateral; they are acquainted with the acts of all the witnesses, with their lives, their past lives, for generations, intimately. Every man who acts on a jury, his mind is like an open book --- it is almost impossible to judge wrongly, and it does not take long to make up your minds whether the defendant is guilty or not.

Take it in an American town, go to Massachusetts, go to Missouri, Idaho, or west of the Rockies, and a person is brought into court charged with a crime. Why, everybody knows everybody else. It doesn't take long. You don't have to worry

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after the trial is over, did I do right, did I do justice to my fellow man? Did I do justice to the defendant at the Bar? As I say, everybody in the community is known to everybody else. There is absolutely no doubt after, you have no nightmare to come up after you in your after life, in your mind, such as to cause you to say, "I hope God will forgive me, maybe I have made a mistake in that case, and maybe that man is innocent that we incarcerated, and who is serving a sentence of ten or twenty years or otherwise." Very seldom, if ever, you can make a mistake.

But there is, Gentlemen of the jury, when it comes to try a case in a great city like New York, where life is so complex, where you have people here from all over the world, of all nationalities, of all races, they all being brought up in different countries, different systems of government, different ideas, different environment, surroundings, that build up the character of the individual. Everything in your life, every act that you may commit, everything that you may do, there is something behind it, some reason why you do it.

Now, I say, in a great city like this where you have people from all parts of the world and everybody lives according to his own ideas, according to the way he was trained, -- he goes to a mosque and praises Allah because his father was born an Arabian, or in some part of the Ottoman Empire. You

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will go to a Catholic Church because your people for generations back worshipped in a Catholic Church, and you will go to, a synagogue or a Temple, because your training has been with people which goes back generations or centuries that way. You will go to a protestant chapel, a Methodist Church on account of your training. The early environment when your mother nestled you at her breast, when you were sucking at her breast for milk --- the blood of the family -- the training is not one generation, or two or three: the Bible says, "I will visit the sins upon the sons and their sons until the fifth generation". It is not one generation, it is not the present environment. It goes far back that makes finally the man that you are.

That is why you must be liberal, you must be tolerant, you must divorce your minds from anything that may create a prejudice or a favor in your mind either one way or the other. In order to properly judge the evidence in this case you must do it like true men, good men; you must make up your minds that this business may be the most solemn day in the history of your lives. You have the right to do it, and if it would not be out of place I would feel like offering a prayer to the Almighty that he might guide me to properly put this evidence before you. Because you have the day before you to judge a man, to grant him or take his life away.

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Now, let us come to the evidence. The first witness, Dr. Lehane, testified regarding the body of the deceased, what he found. He describes the wounds on the body of the deceased.

This defendant is charged with murder in the first degree, a crime that he committed with premeditation, with deliberation --- schemed --- some motive behind it.

It was brought out in the testimony of one of the witnesses that he was jealous, or there might be another man in this case. That the defendant was afraid of what? That this woman that he was living with is going to leave him. No positive evidence or direct evidence was ever offered in this case to show that this woman was going to leave the defendant because she was in love with another man, and that this defendant was jealous and that is why he killed the deceased. They had an opportunity to prove by the first witness, the doctor who performed the autopsy, the man who examined the body, who was here in court, and the People had a right and should have proved that the wounds that were inflicted on the body of the defendant could have been not self-inflicted --- were inflicted the way the defense claims. Having failed to do that, it is possible that it happened the way that was related by the defendant on the stand.

They had another doctor, the second witness, who followed the first, and they did not avail themselves of the opportunity

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to prove that.

Then came the third witness for the People, Mrs. Sarah Brennan, who testified that she was the housekeeper for the defendant and the deceased; that she lived with them for a period of three weeks; that during the time that she lived in those premises with the defendant and the deceased, that the defendant acted like a good man, like a gentleman --- they never had any altercations and never had any quarrels, never had any differences, and he always treated her like a man should a good woman.

Did the people bring out through this defendant --- remember perhaps this is the only disinterested witness --- while the witness on the People's side, Mrs. Brennan, she was subpoenaed by the People, and they had all the opportunity in the world to prove by her if there was any quarrel that morning or night preceding the accident. Mrs. Brennan, she was a witness for the people, she was brought into Court by the People, and what did Mrs. Brennan testify to?

She says that the defendant asked her for a cup of tea that morning, and he did not feel well, and she gave it to him; and when she heard shots in the other room --- and she didn't see anything else prior to that --- she went downstairs and got McGlade, the bartender, up.

There was the opportunity for the People to prove, if

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there was any premeditation, any scheming on the part of this defendant to take the life of the deceased, to prove it, because the other testimony which was inducted into this case by the police --- I will come to that, I will let you judge what the police said --- outside of that they have no evidence-- the three policemen, I will leave you to judge what their testimony amounts to --- but remember outside of the testimony of the police the most important witness for the State was Mrs. Brennan. She was the person that knew how this defendant and the decedent lived, and what if anything occurred during the time of her stay in those apartments, during the time prior to the murder, or immediately before it, or at that time. That was the witness, that was the person who could tell the truth, the entire truth, unvarnished, and that woman certainly told the truth. An old lady, over sixty, standing on the brink of the grave --- no reason to tell stories or to conceal testimony or to hold back. One who is ready at any moment to come before her maker and give an account of all her dealings, that was the witness, that is the only person that you can get anything out of. They failed, failed. They didn't get anything that would help the People or would substantiate their side of the case, or that would bear out the indictment of premeditated murder --- that he committed this crime, schemed it beforehand --- malice aforethought, prepared it --- oh, no.

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Then comes the bartender. He testified to going upstairs and received the gun from the defendant --- took it out of his hand. He didn't admit it to the bartender that he had killed the deceased. The bartender testified, taking the words out of his own mouth, he said, "I and the defendant were friends, on friendly terms, working for the same employer, the same line of business, meeting each other every day. If this defendant would have committed the crime, if this defendant would have killed Nora Forrester, wouldn't it have been natural for him, for the first person to confess to, or the first man to tell, was his friend and only friend? Is it possible that he would be looking for the entire police force of New York City, every policeman he would meet on his way from the apartment or hospital or afterwards and level out to them what he did or did not do? No evidence on that. The reason he did not confess to Arthur McGlade was because he did not commit the crime. That is the only answer.

All the evidence, all the exhibits produced here, -- the kimona, the shirtwaist of the deceased -- we admit all that. This plan here made by one of the witnesses, why, it is of no importance. We admit that the apartment is so many rooms on a floor and that this defendant occupied the fourth room from the kitchen. And as to how many bedrooms and that he lived and slept with this deceased, that the revolver and

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the knife were both used as described by the defendant and the deceased in a struggle that early morning --- that is admitted; no dispute about the bullet or the lead. All these exhibits, you need not go over them. You heard all the testimony regarding that. It is of no importance. I just want to come to the point direct, to the actual time, to the minute of the struggle between this defendant and the deceased.

Now, as far as the testimony of the bartender goes, he says he went there, got this gun, then went downstairs, gave the alarm, sent for the police, got the ambulance. Very well. What made the defendant confess to this man, the bartender?

Of course on another point the bartender was hazy. It was my duty to try to get out as much testimony from the witnesses that appear for the People as I possibly could, with the little skill that I do possess. When it came to a question, asking him "What did you do between the hours of eleven o'clock at night and seven o'clock in the morning" --- or "one o'clock and seven o'clock in the morning", you remember his answer; he said, "I cleaned up." Of course he would not incriminate himself, nor would he want his employer to suffer, to admit that he sold liquors, and that he admitted the deceased Nora Forrester at all hours, after twelve midnight into her apartment.

I feel sorry, because I am a human being. I am so

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constructed. I cannot help it. My adversary, who might be older than myself, maturer in mind, might be more cold-blooded than I. I may be more susceptible than he is. I feel sorry for this defendant. I feel sorry for the deceased, for Nora Forrester. I feel sorry for her brothers, for her sisters. If I in any way tried to attack the character of any woman in this case, or tried to bring out something against her character in order to make the position of this defendant stronger, and in order to impeach the testimony, I did it conscientiously. I did it because I was trying to do my best for the defendant.

Some of these women, like the woman that lost her life that morning, May 22nd, 1912, a girl of twenty-three years of age, and it appearing in the testimony the kind of life she led, brought out by my learned friend on the other side that she went out on the street to solicit men and make a living, she is not to blame for that. I am sorry from the bottom of my heart for any woman of that kind. As I recall a case I argued before Judge Dugro, in the Supreme Court, he said --- he said, "Those people cannot help it; they cannot work. Their environment, the pitfalls of a great City like this, lots of things", he says, "that happen here cannot be explained." And that is the way sometimes things can happen and do happen, and we lose sometimes our best friends, that they wander from

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the paths of righteousness and virtue, and sometimes we cannot understand. But they are not to be condemned for that. You must sympathize with them, you must try to bring them back to a better life. They are not to be condemned. That is why I am trying to take your minds away from that phase of the case. Don't think because, for instance, this defendant did live with a woman, not his wife,--you must consider that this defendant at the Bar lost his mother when he was three weeks old, lost his father when he was three years old, lost the guiding hand, perhaps, of a good father, the loving attention of a good mother --- brought up by strangers, shifted for himself, at the age of fifteen working for different people; marrying at an early age, living with his wife for seven years, being by habit gentle, living like a good citizen, a man of good moral character and suddenly losing his wife and remained with two children. Never knowing, perhaps, as I said, the loving caress of a mother and a kind father, being without blood relations, without father or mother or brother or sister or anybody in a City like New York, and had to guide himself; the surroundings, the environment --- being a bartender --- selling liquor to people, coming in contact with that class of people that are continually drinking and making --- not of a very high moral standard. As I said, not because the people want to be that way, not because they

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are malicious or vicious --- it might be circumstances that made them such --- that they are victims, perhaps, of this high and complex civilization, this artificial life that exists in a great city.

So we come to the testimony offered by the three police officers, Brady, Brown and Freeman. Taking the testimony of Mr. Brown, who testified first, who was so positive in all his testimony, who seemed to glory in the testimony that he was offering, and he was so certain and positive. You observed his demeanor on the stand, the way he shifted one way and the other. I asked him once and I asked him twice, I said, "Face the jury2. I meant by that if he was telling the truth, and if there was any manhood in his why he would face you twelve men who are here for the purpose of convicting this defendant or freeing him. That is all I meant. Now, it is up to you men, twelve men, good and true, to judge whether the testimony given by Brown should have any credence or not. Whether he told the truth. He said that he said to this defendant, "I am going to ask you now why you committed this crime, why you killed the deceased", "and I warned him that anything you may say will be used against you."

Brady testified to what Brown said, and was the testimony of Brady the same as Brown? No, it was not. Brady could not recall that Brown ever warned this defendant. Why?

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Because the chances are that Brown never warned him and Brown never questioned him and he never admitted to Brown that he killed the deceased, that is why. The stories of Brown and Brady did not agree.

And then Freeman, he was not very certain about his testimony as to what the defendant said. I leave it to you to say that it is possible whether this defendant did say to Freeman what Freeman testified.

Now, Gentlemen of the Jury, we come to the confession made by this defendant to the District Attorney and his stenographer Hamill. You must take into consideration the condition of this defendant at the time that the supposed confession was made. The testimony is that this defendant was taken to the hospital immediately after the accident --- after the shooting. While he was in the hospital suffering from two bullet wounds, and these stab wounds in his chest, suffering from a loss of blood, perhaps being in a delirium of fever, and it is admitted and not contradicted that a half a pint of whiskey was brought up by Arthur McGlade and he drank that.

MR. NOTT: I object. McGlade said he did not bring it up. He said he was asked to, and did not bring any.

THE COURT: Statements not borne out by the evidence will be disregarded by the jury.

MR. SCHICK: I will stand corrected and I will say

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that the defendant testified on the stand that he consumed a half a pint of whiskey, if you will have it that way, but I still can talk. If you can recall, if you can remember that Arthur McGlade brought up a half a pint of whiskey and it was consumed by the defendant, and the doctor testified on the stand, who was in charge of the ambulance, that he gave him four ounces of whiskey in addition to that, and you must consider the state of his mind. Men who are suffering from bullet wounds and in addition these stab wounds, besides having this whiskey --- I don't want to go into the effects now by making a speech of what effect the whiskey may have on the mind, how it mounts to the brain and clogs it and clouds it and steals your reason. You are men of sufficient intelligence to know what effect it may have on a person in the condition that the defendant was in that morning. I leave it to you whether it was fair or right, and whether the moral rights and the legal rights of this defendant were violated at that particular time.

This District Attorney who says in his first question,--- he says,---"I will be glad to hear what you have to say." You know with that preface he was not acting for the best interests of this defendant. Nor do I believe he was acting for the best interests of the People. We are the people, we are the taxpayers. The reason we are here to-day is to judge one of our fellow men for an infraction of the rules decided and laid

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down by our society, but we must judge him right, justly, properly and according to the law and the statutes that we enact in this State.

Do you mean to say that it was right to go into that hospital, rush in, the way that this defendant was lying in bed, without consulting the physician or surgeon in charge of the defendant in that particular ward, and fire perhaps hundreds of questions at him, and was the defendant in a condition to answer questions? If there would be nothing else in this case remember that this defendant is charged with the most heinous crime on the calendar, you who are the sole judges of the facts would have the moral right, the legal right to bring in a verdict of acquittal on that single point alone --- to disapprove of such practices in this county or any other county in this State, which are just as bad as the third degree, practiced up until recently by the police department of this town, and other big cities in this great country, where a man is seized in the clutches of the law, and I explained to you before that instead of these men who are supposed to exercise their rights properly and justly and give every one a fair and square deal, and that they are only our servants, they have become our tyrants, and become tyrannical. The very fact that they are part of the machinery of the law, they believe they can do everything.

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Recently the Legislature in this State passed a law to establish night courts. What is the purpose of night courts? So that when you or I are suddenly seized in the street, or anywhere, and charged with a crime, that instead of being taken to police Headquarters and put through a third degree, or some crook of a bondsman is allowed to make twenty-five dollars or thirty dollars in order to furnish you bond to bail you out during the night, in order that you may appear for examination next day, in order that the citizen should not be deprived of his life and liberty and of his constitutional rights, after he has been arrested, that he may be immediately taken before the proper tribunal, examined, and that he may be able to furnish a bond or bail --- he should not be deprived of the society of his wife, father and mother and children during that night, that he may be taken home immediately and having an opportunity of getting counsel properly to attend his case next day in court --- that is why the night courts were established, in order to protect the rights of the citizens.

Now, then, arguing from that point, where a man is charged with the great crime, with the crime of murder, he is to be protected, he ought to be given the same opportunity as a man who is charged with a misdemeanor. Instead of every Tom, Dick and Harry, every police officer being permitted to ask questions and threaten the defendant, there should be a way to tell the defendant, "You are charged with the crime of

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murder, you had better immediately consult your friends, your friends will immediately employ counsel." Possibly it may come in time that the state will assign counsel immediately, as soon as a man will be charged with murder, the very first minute he is arrested, why counsel will be assigned to him, perhaps temporarily, to tell him to be silent, because no man that is charged with a crime in this county is in condition to say anything in his own behalf or against himself.

It is true, it is true that the learned District Attorney, the District Attorney of this county, including all the members of his staff, are supposed to be just as much for the defendant as they are for the people. The question in my mind and maybe in your mind is whether they exercise that right.

Now, I want to also impress upon your minds --- you may disregard everything I say that I believe, or anything that I say should have been done, any omission or commission; I have tried simply to be fair and just and tried to put the facts in this case before you the best way I know how. Of course, there are many imperfections in our laws and there may be errors committed at this trial. On the law the Court will instruct you. I will not go into the explanation of the law applicable in this case or in a lower degree, or in manslaughter, or otherwise. The way I understand the case, and the way the evidence was presented here in Court there can be

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no other conclusion but that you must acquit this defendant. That the People have failed to make out a case against this defendant. The mere fact that the killing has occurred is no proof. No eye-witness to this supposed crime. After we have eliminated all the supposed confessions, all the confessions testified to by the officers of the Metropolitan Police Department, and after we have closely shown and proved to your satisfaction the way the last confession is alleged to have been obtained by a member of the staff of the District Attorney and his stenographer, that this defendant cannot be called to ever have made such a confession. Why, that is possible, that may be true, because the condition that he was in that morning, two hours after the crime was committed. You may disregard it if you believe that the defendant is telling the truth.

Now, then the defendant. As I must repeat again, you must consider his condition, his status in life, the society he lived in, the environment, the opportunity that he had; as I said, the way he was brought up, came to this country, the different occupations he was in, his surroundings up to the time of the crime; after his wife died he married again, he married a woman --- well, I should say perhaps not agreeable to him, they could not agree --- why, it does not appear. The defendant testified that her department --- that she was

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quarreling and that she could not conform to his wishes, and he and she had agreed, mutually agreed to separate and live apart. That happened, - it occurs every day in a great city, especially like this. It is nothing against the defendant.

Now, then, as I said, there were no influences in his early life, no father, no mother, no brothers and sisters; and the way he was thrown --- almost precipitated upon the world in life --- he wanted some one, some one he could love. That is within the province of every human being. No one wants to be isolated, you do not want to live alone. That is why he married, that is the desire in every human breast --- company, companionship. I cannot go into the reason why he should have picked out this woman whom he lived with, this Nora Forrester. The fact is, that the second time he married he made a mistake. He agreed with his wife to separate, and yet he could not live alone. He was in the saloon business, ten or twelve hours a day, steady, never out of employment, tried to do the best under the circumstances. He wanted to have some one with him, he wanted to live with some one. I know some of you may be against such a life. Se we are. It is against the law, but sometimes you do things you cannot tell will be inside the law.

A good father, his two children are waiting home, two children that he didn't see since this supposed crime was

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committed. Two children that are waiting for a loving word from their father, for a guilding hand.

I must refer once more back, that is, if there is any doubt into the entire case and you have weighed the evidence, and if there is a doubt in your minds, you should acquit this defendant --- for the sake of his children, that these two little girls should not be deprived of their father as he was deprived of his father and mother in childhood.

You must consider whether a man, a loving father like he was, would commit a crime the way that it is charged that he did. What was the motion? Did the State succeed in showing why he should have killed Nora Forrester? He was alone in a great city, as I said, with no friends, no relations; he loved Nora Forrester in spite of all her faults. She was a woman of the street, a common prostitute, but she might have had noble qualities, qualities that might have made her an angel, a good woman under proper guidance. She was a good woman to this man, he loved her with all his soul and with all his heart. Why, I ask you --- and you are here as the judges of the facts to decide --- why should he have killed this woman? And she was the only person in the world that he loved while she was living with him.

Some of you gentleman might be considering this to be maybe only sentiment. There is nothing without sentiment--

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everything in this man's life --- you have a right to judge him, every act of his to this very minute that is in his favor, that you must decide in his favor.

You recall on the stand, he said: "I loved her; why should I have killed her? When I saw her lying on the floor I got down on my knees and kissed the poor girl." Do you mean to say that the man that is guilty of murder, the man that commits a crime, and premeditated and schemed over it, would have dared to go on that stand and faced you jurymen and testify as he did? No, sir. The reason he went on the stand is he wanted to convince you that no crime was committed, that he was innocent and wholly so, and that the crime occurred the way he described it to you.

I thank you, Gentlemen.

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MR. NOTT'S CLOSING ADDRESS TO THE JURY

IN BEHALF OF THE PEOPLE.

MR. NOTT: If the Court please, Mr. Foreman, and Gentlemen of the Jury, I shall sum this case up to you gentlemen very briefly, because I consider it to be an insult to the intelligence of a jury, especially one drawn from the special panel of this court to take any great amount of their time on a case where the facts are so absolutely clear and convincing, and where the People's evidence depends entirely on that of absolutely disinterested witnesses, many of whom were friends and friendly to this defendant. I consider it to be an insult to your intelligence to go into the facts at any great length when they are so fresh in your mind and where the case made out is so clear. I regret perhaps that more members of the jury have not had greater experience in the trial of these cases, for if you had you would have seen here and appreciated the force of counsel's remarks in his trying to scare a jury into not doing its duty, trying to conjure up to a jury the fact that they might err in their duty, when every juryman of experience knows that the only duty they have to do is to decide the case on the evidence before them, and that if they render an honest verdict upon that evidence they can be no more blamed, or criticised, or held responsible, in any way, shape or manner than anybody else connected with the

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case who has done his or her duty.

Appeals have been made to your sympathy, as I feared they would be. Now, when I examined you gentlemen under oath here you said you were not going to be influenced by that, and either that was a direct form of words which meant nothing to you, and you had no intention of carrying it out, or else it meant what you said.

Defendant's counsel has appealed to your sympathies for this defendant and has called up to your mind the fact that he is a good father. I don't know that it is a sign of a good father to leave his children with their grandmother and go off and start to housekeeping with a prostitute. I don't know that anything that has occurred in this case, excepting the remarks of counsel shows anything to the credit of this defendant when you come to the facts of the case. But you gentlemen have said that you would decide this case simply on the evidence here, unswayed by sympathy, and it was relying on your statement to that effect that I took you as jurors in this case. Because if you had come out and said, "I am of a sympathetic nature, and my verdict might be affected by sympathy", why, I would not have taken you. Therefore I relied on your statement, and I think therefore it is not unfair to say that I have a right to rely on you, and to feel that you will live up to what you said.

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Gentlemen, you can easily see the effect of a false verdict. Suppose a police officer in this case, because he felt sorry for the defendant had not arrested him, but let him go. Would you commend his conduct? He would have been discharged from the police force if he had done that, and yet the police officer is just as responsible for this verdict, for the effect of any verdict on the defendant, as you are, because if he had not arrested him and held him he would never have been brought to trial.

The stenographer of this Court is under oath. Suppose because he was sorry for the defendant he took a false record of the case, thinking that if he were convicted it might help him on appeal, what would you say of such conduct?

The judge in this case, - suppose that he were to lay down the law which he knew was not the law because he felt sorry for the defendant. What would you say of that conduct?

And yet the stenographer and the judge are just as responsible for the effects of a verdict as you are, and when it comes to your function, your only function is to tell the court what happened that night, and that is done in the form of a verdict, and then the law --- which neither you nor I nor anybody else here is responsible for --- it has been in effect for hundreds of years --- takes its course. And if we all do our duty no one can ever say that we are to blame

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for anything.

Now, the people claim at the outset of this case --- and they claim now with added force, because they claim they have made good everything they said they were going to prove-- that this was a cowardly and brutal murder. And not only that, but we now claim that it was not only cowardly and brutal, but it was a sordid murder. That this defendant had this girl living in this place, and that this girl was, to use the phrase common among that class of people, "hustling" for him on the street to pay his rent, and that when he found she was going to leave him and stop "hustling" for him, and not pay his rent any more, that feeling of rage, combined with jealousy, he having thought she would go to some other man, produced this murder. And, unfortunately, it was neither an extraordinary or unusual case to have a man who had been living with a woman of this class, consumed with jealous rage when he finds that she is going to leave him and go to some one else.

MR. SCHICK: I object to the remark, saying that this defendant lived off the deceased. There is no such evidence, no such testimony.

MR. NOTT: I am going to read just what he said about that.

MR. SCHICK: Exactly --- that she paid half the rent of

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that flat but not lived off this woman.

MR. NOTT: (Continuing) Now, it is for you to say what his motive was, and in that connection, I will call your attention to this: we have proved a common, an ordinary and an adequate motive, but they say she shot him and they have not proved any motive at all. If she shot him, as they claim she did, there was absolutely no motive to it.

Now, the defendant has characterized everybody that has testified in this case as a liar in effect. He said that every witness, with the exception of Mrs. Brennan --- and I am going to read some of her testimony --- has testified falsely against him; and the counsel, following that cue, has made the same charges and has criticised everybody that had anything to do with the conduct of this case. So far as this criticism of the District Attorney's office and the members of the staff is concerned, I will simply say this, that neither Mr. Minton nor Mr. Hamill did a single thing in this case that has not received the sanction of the courts up to the Court of Appeals, which has said that it is proper and right and within the law to interrogate a defendant as to what he has done. And, Gentlemen, isn't it commonsense to do so? In your own business wouldn't you do so? The District Attorney is your lawyer. Isn't it commonsense to do so? And it never hurt an innocent man to ask him questions because it is only the guilty man

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that has anything to lose. If an innocent man, who is going to put in an honest defense when it comes the time of trial will always tell the same story, and it is for his benefit to get his story on record just as quickly as he can, and he will always do it and is glad to do it, because as soon as he can show that he told the same story immediately after the crime that he tells on the trial, the better it is for him, and it is only the man that is going to put in a perjured and a false defense that ever objects to being asked about what happened and puts up this holler that he ought not to have been made to speak at the time, when he had not had time to think up a defense?

Now, this case is a perfect illustration of that. When he was first asked about it he had not had time to think and he said, "Yes, I shot her", and he said it was because of another man, or a love affair. Then at the hospital he had had time to think it over a little more, and there for the first time he said --- well, he admitted he had shot her but said she had previously tried to shoot him, and he tried to take the weapon away from her and then shot, but when he was asked about the stab wounds and could not explain ---

MR. SCHICK: One minute. No such evidence. I ask the District Attorney to read that, what he said at the hospital.

MR. NOTT: I am going to.

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MR. SCHICK: I object to that statement of the District Attorney.

THE COURT: The statements made by counsel on either side, which are not sustained by the evidence will be disregarded by you, but statements made by counsel on either side which are sustained by the evidence, or arguments which legitimately flow from such statements, or comments made thereon, should be given consideration by the jury.

MR. NOTT: (Continuing) At the hospital he was then asked --- that statement has gone very well, but he was asked how about the stab wounds, and that he could not explain at the hospital, so he comes into court with a third story which absolutely differs from everything he said before. Absolutely. And you gentlemen know that as well as I do.

Now, who are the witnesses for the People? Is there a single one of them that has any hostility against this defendant? Counsel for the defendant, as usual, has attacked the police officers in the case. Now, Gentlemen of the Jury, I do not think any citizen of this county at this present time will accuse the District Attorney's office of any undue partiality to the police or of being unduly in their favor, or defending where they ought not to be defended. I do not think that that charge can be fairly made against the District Attorney's office. But I do believe in being fair. Because

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there are some crooked police officers, it doesn't say that they are all crooked --- there are plenty of them perfectly straight --- and unless counsel can show that a police officer is telling a lie I do not think it is fair just because he is a police officer to get up and accuse him of wanton and deliberate perjury against a man who never injured him, to send him to the chair.

Now, I ask you, if there any evidence in this case that shows any motive or bias or prejudice on the part of the three police officers against this defendant? Or, if there is any evidence that shows that they have not spoken the truth?

Besides the police officers there is McGlade, whom defendant's counsel has characterized as a truthful man. There is Mrs. Brennan; there is Faber, the man whom he sent to telephone to the hospital, and there is Mrs. Brady, against whom I consider a perfectly outrageous attack was made, based on nothing whatever; and there are the physicians and Mr. Minton and Mr. Hamill.

Now, if you can point out one of those witnesses whose character has been impeached, whose veracity has been impeached, who had anything disreputable shown against him, or who had any motive to testify falsely against this defendant --- if you can point to such a witness, I shall be glad to have

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you do it; I don't know him at all.

They have said that Mrs. Brennan is an honest woman. I fully believe it. The old lady went there on the stand and told what she had to tell the best she knew how, and they say that her testimony does not in any way support the People's case. Well, let us see. Remember now his defense is that this woman fired two shots at him, one of which inflicted a slight abrasion in the head, and the other went into his breast, and it was not until after those two shots had been fired that any injury of any sort beheld her. Just keep that in mind.

The People's claim is that he shot this woman, and that is supported by his own admissions. Mrs. Brennan said he talked about the tea and said, "Did you make any tea?" I said, "Yes, but the milk has turned for she stopped the ice on Monday, and the milk is a little turned." "She stopped the ice on Monday and the milk is a little turned."

She stopped the ice Monday and then he saw that she was going to leave. That she had stopped his supplies and that she was going to leave that day. And he had to make up his mind whether at seven o'clock he was going down to work and let her go, or whether he was going to kill her.

"He said, 'The milk turned?' I said 'Yes.' Well, he said 'I will take a drink anyway and get down on the job.'"

Then he left the kitchen and went to the dining room.

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Then she says, "I didn't hear nothing further till I heard the two shots in succession. Q Now, you say you heard two shots?

A Two shots." It was about two minutes after he went back before he heard the shots.

"Q Now, will you indicate to the jury with your hands by clapping them, how quickly one shot followed the other?" She clapped like that. "And then the scream."

Now, she heard two shots and then she heard the woman scream simultaneously with those two shots. If the woman fired the two shots at the defendant and the defendant did not fire the two shots at the woman, what did she scream for? She screamed because the two shots were fired at her, that is what brought out that scream at once. And it was after the scream that Mrs. Brennan went down stairs.

We have heard a great deal about the bad character of this deceased. Well, of course, she was an immoral character. We have heard a great deal about the frightful way she used to drink. Whom have we heard it from? Why, from the defendant, who has every interest and motive to prove everything bad of her, but what does Mrs. Brennan say about that?

"And did she receive any company? A No, sir. Q Nor men while he was employed in the saloon? A No, sir."

She (Mrs. Brennan) said that she went down for beer for her and this defendant usually furnished her with the beer. "Q And occasionally you used to go out and get her whiskey?

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A No, I never did. I never went out and bought her a glass of whiskey, for Nora. Q She had whiskey in the apartment, did she not? A Yes. Q And she frequently drank whiskey? A Yes, sir, she took a little of it."

She says that she saw her on one night come home under the influence of liquor. She said, "I just seen her the once the worse for drink."

Now, that is the testimony of a woman that they say themselves is honest. Therefore, you have this testimony from Mrs. Brennan that the defendant knew that this woman was going to leave him. That it was brought home to him that he was going to leave soon because she had stopped the supply of ice. That after learning that he went back into the room, that two shots were fired, there was a scream from the bed room, and the old woman then went downstairs and while this woman (the deceased) had drink there occasionally she (Mrs. Brennan) never saw her drunk but once. And if she had seen her drunk that night and the orgy that this defendant would have you believe was going on there that night, the old woman would have seen and heard that.

Now, the next witness was McGlade. McGlade is in the business of a bartender, but I think he is the most decent respectable young fellow in that line of business I have seen for a long time. Perhaps you might say he has not been here

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long enough to get contaminated by the business, and there is no attack on his character, and they admit that his character is good and that he is friendly to the defendant. And what does he say? He went up into the room and was there after he first met the defendant. The defendant said to him, "Oh, Arthur, Arthur", and asked him to get a drink. He went downstairs, and at once, instead of getting a drink, telephoned for the police. Then he came up and there was Officer Brown.

Officer Brown --- I am reading from page 50 --- "Officer Brown asked him what he had done, so he said he shot his wife, and he tried to shoot himself."

Now, did this McGlade hear that or didn't he? Is McGlade perjuring himself when he says he heard the defendant say that to the officer? Why, they just told you he is an honest fellow. Is he perjuring himself to send his friend who used to work at the same place with him away?

"He said he fired two shots at her and two at himself."

Q How many shots at her? A Two."

Then he said later he was sorry he failed.

"Q Do you remember the defendant saying anything about being sorry? A Yes, he said he was sorry he failed, that is all."

Now, if that is so it contradicts this whole defense absolutely and in toto, because the evidence is that every

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wound that was inflicted upon the defendant himself was inflicted by this woman. That he did not try to kill himself, and that he inflicted no wound or shot upon her. Therefore if he told officer Brown that he shot her twice and shot himself, his testimony on the stand is absolutely false.

Now, Zito, the Italian, also worked at the same place. He went up there. He said, "I first went to the front door, I found it locked and then I went to the kitchen door. I found it open, I pushed it in, and walked in. I saw Murphy with a knife in his hand.

Murphy says that the knife was a plant of Officer Brady, and there is this Italian who didn't know the significance of that testimony, who testified in a foreign language, and who didn't know there was any contradiction about it --- he says that when he came up there there was Murphy sitting there with a knife in his hand.

"He was in the bed in which he had slept during the night."

"Q What was he doing with the knife --- did you notice?

A He had the knife in his hand. Q And what did you do, if anything? A As soon as I saw the defendant with a knife in his hand I immediately ran away down the stairs."

Now, is that man perjuring himself against a man who never injured him, that he used to work with? Is that perjury?

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And Mr. Volckening testified that the bed could be seen from the kitchen, and if you have any doubt about it you can take the photograph in there and you can see right from the bed to the kitchen with the pots and pans on the shelf.

Then Officer Brown came up there. Now, I want to say a word about Officer Brown's testimony. If police officers go on the stand and their testimony absolutely coincides in every way, shape and manner, counsel always say they are perjuring themselves, because they agree so perfectly. On the other hand, if they go on the stand, and one remembers one thing and another remembers another, or one remembers more than another, as all honest witnesses do, then they say they are perjuring themselves because they do not agree. So no matter whether they agree or don't, they are always accused of perjury.

Officer Brown was first there, he had charge of the case, and it was he who put these questions and he would remember naturally more, where the others remember the substance. He says when he came in there he saw the defendant Murphy reclining on the bed with a knife in his hand ---

"Q. What was he doing with the knife? A. Stabbing himself like that (indicating by stabbing breast."

So he actually saw the man stabbing himself and the defendant says the woman stabbed him. But you have seen the witnesses and it is for you to say whether a woman in the course

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of a struggle, with a full-grown, strong athletic man, could plant ten or twelve ---

MR. SCHICK: Objected to. It is for the jury to say whether he is strong and athletic.

THE COURT: Well, it is for the jury to say from all the evidence.

MR. NOTT: (Continuing) If you believe that a woman with a revolver in her left-hand and a knife in her right hand could plant in the course of that struggle, twelve stab wounds and a bullet right at the heart, all I have to say is that you would believe anything. And here is a man who has absolutely no motive to lie, whose character is not attacked in any way, shape or manner, who came in and saw him stabbing himself. And not only that, but it is corroborated by the defendant's own statement to Mr. Minton --- that he went into the kitchen, got the knife and stabbed himself with it.

MR. SCHICK: No such testimony. He said the knife was brought there the night before --- he said they were cutting sandwiches.

MR. NOTT: I will read it, - and I do think counsel might cease interrupting.

"Q Where did you get the carving knife from? A Went out in the kitchen, because the gun was empty and I went to

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the kitchen to get more cartridges. The cartridges was in a closet, in my overcoat, and I couldn't get them out of the revolver to kill myself. There was only two -- the last two that was left, and I went out and took the carving knife and stabbed myself."

Now, why should you say Officer Brown is lying when he said he saw "him stabbing himself"? When there at the time in the hospital he made that statement himself?

"Q Now, proceed, Officer, and tell what the conversation was? A I asked him "Who did this? He replied "I did."

Did what? That is for you to say.

"What caused you to do this? A I don't know. Was it another man in the case? Yes. Who was it? I won't tell you. And then I asked him was there any fight? He says, Yes, we fought the previous evening up until twelve o'clock, and went to bed at five o'clock in the morning we started fighting again and I got a gun and I shot her."

Now, is that absolute perjury, when it is supported by his own statements where they were taken down stenographically, when it is supported by the testimony of Officer Brady and Officer Freeman? And he is also supported by the testimony of his friend mCGLade who heard him say he shot his wife twice and shot himself.

"Q Did he say how many shots he fired altogether? A

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He said 'I fired two shots into her and one after myself.' He said, 'I tried to kill myself and I am sorry I failed.'"

That is just what McGlade heard him say that he was sorry he failed.

"Q Did he say anything at that time about the deceased having a revolver at any time? A No, sir."

Now, Gentlemen, if you are going to carry the common sense that you possess in your business into this case, you will know that when an innocent man that has been fired at by another who has tried to kill him, the first thing he says is, "Why, that person had a revolver and tried to shoot me. I was acting in self-defense." Did he say that there? No, never a word of it, because he hadn't thought it out and hadn't had time.

Then on cross examination Officer Brown repeated the same conversation that he had before.

Now, Officer Brady took the stand. You have seen him --- a decent young officer. Is there a word breathed against him here? Is there anything against him? A stranger to this defendant! This crime did not take place even in his precinct where he was working at the time, and he was routed out of sleep by his wife and went in and met the other officer at the door. He said, "We went inside and the defendant was laying on the bed, and he had stab wounds on his chest here,

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and the knife was in his hand and the hands resting on the bed. Officer Brown went and took the knife off the defendant, and then he went downstairs and he called an ambulance. And while the officer was away I asked the defendant who killed this woman. He said, "I did."

Did he say a word about self-defense, that she tried to kill him?

"I said, 'Why did you kill her?' He said, 'It was a little love affair.' I asked him, I said, 'Is this your wife?' He said, 'No, it is not.'

When this defendant was on the stand he said Officer Freeman told the truth. I then asked him if he told the truth about the conversation and promptly he put him into the class of liars. I am now reading from Freeman's testimony:

"Officer Brown says to the defendant, he says, 'Who did this?' And the defendant says, 'I did.' He says, 'What did you do it for?' He said, 'We had some quarrel the night previous, and it ceased until the early part of the morning, and around half past five or quarter to six it resumed again.'"

Was the Officer telling lies? What did he (the defendant) say to Hamill later? He said he had had this altercation after she had accused him of being crooked, and he accused her of the same thing.

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"And it ceased until the early part of the morning and around half past five or quarter to six it resumed again," he said, and he said" ---

"Q Did he say anything about any shots being fired?

A Yes, sir. He said he fired two shots at her and three at himself and he is very sorry that he failed to end it all."

These witnesses disagreed as to the number of shots fired. One says he fired one, one says he fired two, and one says three. An honest witness cannot remember those things absolutely. They will give their best recollection, but the point of it is, what they all remember and all swear that he said that he fired two shots at his wife, that he fired some shots at himself, and that he was sorry that he failed to kill himself.

Now, he (Officer Freeman) had a conversation at the Hospital with the defendant: "I asked the defendant, I said, 'What did you do it for?' He said he had a quarrel with her and she went to the closet to get the gun and in the struggle he tried to wrench it from her hand and two shots were fired, and that was all, and he was badly under the influence of liquor, he says."

And now he says he is perfectly sober, and said so to Hamill.

(Continuing) "And he don't know what he was doing."

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So you see it was about at the time he first got to the hospital that he first had the idea of wresting the revolver out of her hand. He never said that at all before.

"Q When you first talked with him in the apartment did he say anything in regard to the deceased having the revolver? When you talked with him that morning in the apartment did he say anything about the deceased --- A No, sir."

Now, that is in brief what the People's witnesses have testified to as to what the defendant said went on in that room, and if the People's witnesses are to be believed it leaves absolutely no doubt in the mind of any sane man that this defendant, being angered by the fact that this woman was going to leave him, was going to stop paying half his rent, was going to some other man, got his revolver --- the shooting was admittedly done with his own revolver which he had in that house, and he said to the Court that he never exhibited the revolver to the deceased --- and he shot her for that reason.

Now, we come to the defense. What motive does the defense show that this woman should attack him? I asked him that specifically. Absolutely none. Before I come to that, though, I wish to read some extracts from what he said in the interview with Mr. Hamill. He was first asked if he felt well enough to talk. He said yes. He was then warned that he didn't have to answer any questions, and anything he said would be used against him. He then said: "We had a little

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scrap last night. She accused me of being crooked. I accused her of being the same thing. She jumped out of the bed and grabbed the gun out of the closet and I tried to take the gun from her hand and a shot went off and she fell."

Here he says that she jumped out of the bed with a revolver in one hand and a carving knife in the other.

"Q How many altercations have you had with her in the last five months? A This is the first one. Q Had you been drinking last night? A No, perfectly sober when I left for work."

So there isn't any defense of alcoholism in this case.

"Q How did she get those stab wounds? A Stab wounds -- I don't know. Q Was there any carving knife around? A I stabbed and shot myself both."

And here he comes and puts upon this poor dead woman -- he tries to put an attempted murder on a dead woman who cannot answer for herself, and there he is down in black and white as saying, "I stabbed and shot myself both."

"Q She had three or more stab wounds in her body. Can you tell me how she got them? A No.

"Q Did you stab her with the carving knife? A I might have done it in the excitement.

"Q Don't you remember whether you stabbed her with the carving knife? A No, I don't. I remember stabbing myself.

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"Q How many times did you shoot her after the first time? A Two. I seen she was dead and then I didn't think there was any use of me living any more and I tried to kill myself.

"Q And after the first shot did you shoot her twice again? A Yes."

Now, you remember that statement. The man that made that statement is guilty of murder in the first degree, if he made that statement.

"Why did you fire two more bullets after that first shot? A I suppose I was crazy.

"Q You might have stabbed her? A I might, I can't say.

"Q Where was this knife lying? A Laying out in the kitchen."

Now, there is evidence that she was stabbed through the heart. That the immediate cause of death was the bullet wound. And he says that the knife was lying out in the kitchen, and as bearing upon premeditation and deliberation you have a right to consider that he went from that bed room out to the kitchen, got a knife and brought it back into that bed room, and then attacked her with a knife to make sure he had finished the work that he had begun with that revolver.

"Q How near the bed room? A Three or four rooms away."

He went through that length of space to get that knife,

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came back with it, and the uncontradicted evidence is that she had a stab wound that went through one of the ventricles of the heart.

"Q You weren't drunk last night? A No.

"Q Weren't drunk this morning? A No.

"Q Now, then you got the gun away from her? A Yes, and fired two shots at her.

"Q Where was she when you fired the two shots? A She was standing up --- she fell down.

"Q When did she fall --- after the first shot? A After the first shot.

"Q And you fired two more shots after that? A Yes.

"Q Well, you fired two shots at her, didn't you? A Yes.

Q Where did you get the carving knife from? A Went out on the kitchen because the gun was empty, and I went to the kitchen to get more cartridges. The cartridges was in a closet, in my overcoat, and I couldn't get them out of the revolver to kill myself. There was only two --- the last two that was left --- and I went out and took the carving knife and stabbed myself.

"Q Where did you stab yourself, in the breast? A Yes, in the breast.

"Q You shot yourself how many times? A Twice.

"Q Once in the head? A Yes, and once in the breast.

"Q How many times did you stab yourself? A I don't know.

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About half a dozen times I guess."

And so the defense in this case is that the woman attacked him and inflicted every wound that was inflicted upon him with a revolver and a carving knife.

Now, the defense depends utterly and absolutely and entirely upon the word of this defendant. You have a right, and not only have you a right, but I suppose it is your duty in weighing this testimony to think of the motive he has to testify. He is the only interested witness in this case. Every other witness who has been called here in this case, except this defendant, is a disinterested witness; and the defense asks you to discredit all these disinterested witnesses and bring in a verdict which will brand them and stamp them as perjurers, and turn him out on his own evidence, which is the only interested evidence in the case.

It appears that this defendant, after his first wife's death, a year after, married again and that he then left his second wife. You can gather from his own answers the fact that he pushed her down in the street, he was held for an assault, and then she came back to him, as those poor women do when a man gets in court, they get soft-hearted and come back. She came back and lived with him again. That did not last long. He left her again, and then took up with this woman.

Now, let us see about this noble man:

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"Q Did she pay half the rent? A She did.

"Q How did she make the money with which to pay it?

A I don't know.

"Q Don't you know she was making it from men and paying your rent with it? A I don't know.

"Q Well, what did you think? A Well, I never inquired.

"Q You knew she was going out nights? A It was none of my business.

"Q You were living with her and she was paying half the rent? A Yes, sir, she said she had some friend named Charlie, a bookmaker or race track man."

Just think of a man coming before a jury and saying that he is the only truthful witness in the case and saying that the woman who had a friend named Charlie, a bookmaker, and whom she lived with, was paying half his rent.

"Q And Charlie was putting up the money for your flat?

A No, he was not. I was putting up half.

"Q Well, you needed all the money to pay the rent. He was putting up money for the half the rent for your flat?

A He was not.

"Q Well, she was, and that came from Charlie? A I don't know where it came from.

"Q When she went out late at night did you think she was going to Sunday school? A I don't know.

"Q What did you think she was doing? A I don't know."

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Then you saw how he hedged and tried to evade that question, and then when I asked further he finally said, "Well, my candid opinion was I thought she was making it off the streets, or something else."

He then describes and says they were in perfect peace and amity that night; he was absolutely satisfied to have her leave, didn't object at all, didn't mind her going away with another man and leaving him, didn't mind her stopping paying the rent, had no feeling about that whatever, and that she was perfectly peaceful and happy with him. He says that she was drinking all night and was acting like a maniac. Poor Mrs. Brennan saw nothing of it whatever. He says that in the morning he went out to get dressed and he came back, and there all of a sudden this woman who had been living friendly with him, and who had had no trouble of any sort confronted him in the doorway of that bedroom with a revolver in her left-hand and a carving knife in her right-hand, and thereupon this terrible struggle ensued between this girl twenty-three years of age and this defendant whom you have seen on the stand and whose age is thirty-two, and that in the course of this struggle this woman with her left-hand fired one shot that hit his head, and another shot that went in the neighborhood of the heart, and he cannot even tell you that she was a left-handed woman, and yet her marksmanship was good enough

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for that, and that he then grabbed her and seized her by the wrist and she succeeded with her right-hand in inflicting twelve stab wounds right in the vicinity of the left nipple. All the wounds are in the left nipple, some made with the revolver held in the left-hand, some with a carving knife held in the right-hand. Now, that is absolutely, utterly incredible. It would have been incredible if he always said so, but when you take that story and contrast it with what he said to Mr. Hamill and what he said to the officers and what he said to McGlade, why, there is nothing to it at all before any common sense body of men. It could not happen, it was impossible to have happened, and it is only done to load the whole thing on to this dead woman who cannot put in any answer here, and to account for those stab wounds in her body that he could not account for in the hospital, because he says that at sometime or other in the struggle, although he doesn't tell you how, she must have been cut, whereas, at the hospital he could not account for that at all.

Now, how did she receive the wound? Now, how was she killed? He has told you how she was killed. There was nobody else there that could have killed her and he has told you and five or six different witnesses how she was killed. He said she shot him. How does he say she was killed? Can't tell you at all. Couldn't give any explanation of how she got a

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stab wound in her heart and another stab wound in the breast and two shots there. Why did she scream immediately when those first shots were fired, if she was the aggressor?

When you go to the jury room take these two cartridges that came out of that pistol with you and look at them and see if the trigger has not been snapped against both of them, showing his deliberation and intent.

Why was it he went into the kitchen and got the carving knife to make sure?

MR. SCHICK: I object to the statement made by the District Attorney that the mark on the bullets showed premeditation and the snapping of the trigger. There is no such proof and no such testimony.

THE COURT: It will be for the jury to determine from the evidence in the case whether or not the defendant shot and killed the deceased with a deliberate and premeditated design to take her life.

MR. NOTT: (Continuing) Those bullets were found unexploded in the revolver, and it is for you gentlemen to say whether the trigger was pulled against them as shown by the condition of the cartridge, and if that isn't so, why he went into the kitchen to get the carving knife to make sure of his work, because he snapped the trigger and two cartridges did not explode.

MR. SCHICK: Exception to the statement that that

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is the reason why he went into the kitchen to get the carving knife.

THE COURT: The District Attorney is making his observations based upon the evidence, he is arguing upon the evidence presented, but it is for the jury to find whether the defendant, if he did take the life of the deceased, did so with a deliberate and premeditated design to take her life.

MR. NOTT: (Continuing) Now, Gentlemen, I am going to out my remarks short, because as I say, if this defendant is to be acquitted on this evidence, why, if I talked two hours more it wouldn't make any difference. But if he is to be acquitted on this evidence let not anybody blame the Court, or the District Attorney, or the police for any of the conditions that prevail in this town. If a man can come into a court with this defense that he has here, and get away with it and go out ---

MR. SCHICK: I object to the last statement made by the District Attorney as to the conditions existing in this town, and that not the District Attorney and the Court should be blamed.

THE COURT: The remarks of the District Attorney will be disregarded by the jury, and the jury will confine its attention to a consideration and deliberation of the evidence presented.

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MR. NOTT: What I meant was that a failure of justice in this case is not due to the police, it is not due to the District Attorney; we have done all we could in the matter; it is not due to the Court. If there should be one it would be right from that jury box, and it is for you gentlemen therefore to say what the evidence in this case establishes, and when you have found that out to bring in a verdict in accordance with that evidence and not a verdict based on any sympathy or any prejudice or anything else.

If I have done anything in this case that you do not like, I am not sorry. I have not meant to do anything unfair-- I don't think I have, but if I have you ought not to visit that upon the head of my client, the People of this state, because they have done no wrong. You are to take the evidence only and make up your mind whether this defendant killed this woman, or whether this woman tried to kill him, and in some unexplained and unimaginable way killed herself. And if you find that he did kill her, then it is for you to say whether he did not have a motive, whether he did not inflict more than one wound, whether one of the weapons he used was not in a distant room, that he had to go and get it and bring it back, and therefore to say whether he did not do it with deliberation and premeditation, which the law says constitutes murder in the first degree.

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THE COURT: Gentlemen, do not discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. We will take a recess until twenty minutes after two.

(Recess till 2:20 p. m.)

After Recess, Trial Resumed.

The Court now charges the jury as follows:

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THE PEOPLE vs. JOSEPH MURPHY.

CHARGE OF THE COURT,

ROSALSKY, J.

THE COURT: Gentlemen of the jury, our citizens should appreciate the necessity of freely and willingly giving up their time and attention to the performance of their public duty, even though it entails no small hardship and business inconvenience. You are called upon to perform one of the most important duties the State can exact from a citizen. Perhaps no higher duty can devolve upon you than that of being called upon to serve as jurors on an issue involving the life or liberty of a person accused of crime. You have afforded a fine illustration of the sacrifices which citizens are often called upon to make in behalf of the commonwealth. With unwearied attention you have followed the details of this case, with never a suggestion of the irksomeness of the duties which the State is exacting from you. I would, therefore, convey to you my thanks for the close interest that you have given to the consideration of this case.

I also wish to express my thanks to the learned counsel representing the defendant, and to the learned Assistant District Attorney representing the People, for their gentlemanly and courteous conduct during this trial, each representing his

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cause with great fidelity and learning. You should consider the statements, comments and arguments made by counsel upon either side, based upon the evidence, but you should disregard statements, comments and arguments of counsel on either side which are not supported by the evidence, or arguments which are of a personal nature.

In the introduction of evidence the defendant had a right to contest the case of the prosecution step by step, to dispute every theory and fact advanced against him and to introduce evidence to disprove the charge made in the indictment. All offers of counsel to prove things which were not proven, which were not permitted by the Court to be proved, and all arguments of counsel addressed to the Court upon questions of law, or upon motions for the admission or the exclusion of evidence, should be disregarded by you. The evidence of witnesses stricken out, or matters in evidence which were stricken out, or matters not admitted in evidence which you were instructed to disregard, should be disregarded by you and given no weight or consideration in the determination of the guilt or the innocence of the defendant. If by any excluded answer of a witness, or by any offer of testimony which was excluded, or by any question which was not allowed, any suggestions were conveyed to your mind of things not in evidence, you should resolutely refused to be moved by such

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suggestions. You are only to consider matters which were legally admitted in evidence.

It is the duty of the court to present for your consideration the rules of law which shall govern you in determining the guilt or the innocence of the defendant; and, likewise, it is the duty of the jury to accept the law as declared by the court. It is essential to the due administration of justice that you shall not question the correctness of any rule of law laid down by the court for your guidance. The jury are just as sovereign with respect to all questions of fact as is the jury with reference to all questions of law. It is your duty upon your oaths to apply the law to the facts and to determine whether or not the evidence establishes beyond a reasonable doubt the allegations set forth in the indictment.

It is the duty of the court to safeguard the defendant's rights to a fair and impartial trial.

An indictment is an accusation in writing, charging a person with a crime, and the mere finding thereof is absolutely no evidence of the guilt of such person. The People are required to establish the allegations of the indictment beyond a reasonable doubt before you will be justified in rendering a verdict of guilty. The defendant in a criminal prosecution is not called upon to establish his innocence. The bur-

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den of establishing the guilt of the defendant rests upon the People throughout the entire case.

The defendant is indicted for one of the highest crimes known to the law: Murder in the first degree. There are four kinds of homicide; murder, manslaughter, excusable homicide and justifiable homicide.

The law provides "No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant as alleged are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt."

The corpus delicti, that is the body of the offense, is made up of two things, first, that a human being was killed, and it must be established by direct proof; secondly, the existence of criminal and human agency as the cause of death, which must be established beyond a reasonable doubt. In order that the term "direct proof" might not be confused by you, let me say to you that the term "direct proof" does not mean that the people must prove that the witnesses actually saw the killing. That is unnecessary. But it means "direct proof" of the fact of killing. That is, that the death of a human being --- and in this case the death of Nora Forrester --- was due to violence of a criminal nature and was produced by human agency and that it was not due to accident or mistake or to self

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infliction.

The proof of the identity of the body and that the defendant committed the crime may be established by circumstantial evidence and beyond a reasonable doubt.

Homicide is the killing of one human being by the act, procurement or omission of another. The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate and premeditated design to effect the death of the person killed or of another.

Murder in the second degree is the killing of a human being, when committed with a design to effect the death of the person killed, or of another, but without deliberation or premeditation.

Manslaughter in the first degree is the killing of a human being, when committed without a design to effect death, in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

You gentlemen will observe the distinction relative to the various degrees of homicide. In murder in the first degree it is necessary to prove that a human being was killed from a deliberate and premeditated design to effect his death. That is, the killing, the design to kill, and premeditation and deliberation upon that design.

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In murder in the second degree deliberation and pre-meditation form no elements of the crime. It is necessary to prove the killing and the design to kill.

In manslaughter in the first degree it is necessary to prove that the killing was done without a design to effect the death of the person killed, in the heat of passion and in a cruel and unusual manner, or by means of a dangerous weapon.

If you are satisfied from the evidence beyond a reasonable doubt that the defendant committed the crime of killing Nora Forrester, and there is reasonable ground for doubt of which degree of homicide he is guilty, either of murder in the first degree, or of murder in the second degree, or manslaughter in the first degree, you may convict him of the lowest of these degrees, provided the facts and circumstances justify you in coming to that conclusion.

In other words, I charge you that if you have a reasonable doubt as to his guilt of murder in the first degree and no reasonable doubt as to his guilt of murder in the second degree, you must give him the benefit of that doubt and find him guilty of murder in the second degree. You must apply the same rule to the degree of murder in the second degree and to the degree of manslaughter in the first degree.

While it is within your power to find a verdict of guilty in a lesser degree of crime than the one charged, that

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power must not be arbitrarily used in disregard of the evidence.

The jury is bound to find a verdict in accordance with the evidence, as they believe it to have been established. The jury must not capriciously find a verdict of a lesser degree where the evidence satisfies them that a higher degree of crime has been committed.

Premeditation and deliberation are matters which the jury must find from the evidence in the case. They are frequently the mental operations known only to the defendant himself, and the only possible way for human judgment to ascertain these mental operations is by the acts, declarations or admissions of the defendant, and the reasonable, rational and fair inferences from these acts and declarations.

Gentlemen, it will be necessary for you to determine from all of the evidence presented here whether or not the defendant, if he did kill Nora Forrester, did so from a deliberate and premeditated design to take her life. While the law requires, to constitute murder in the first degree, that the killing shall be deliberate and premeditated, nevertheless it does not require that the deliberation or premeditation shall exist for any great length of time before the crime is committed. The courts of this State have so frequently defined premeditation and deliberation that it would hardly be

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wise on my part to attempt to give you any new definition. I shall therefore read to you certain extracts from the decisions of the Court of Appeals of this state, because they embody the law of this State, which binds our courts and jurors.

In Leighton against the People the Court said: "If, therefore, the killing is not the instant effect of impulse, if there is hesitation or doubt to be overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder."

In People against Majone the Court said: "Under the statute there must be not only an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time; but the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for choice to kill or not to kill and for the formation of a definite purpose to kill. And when the time is sufficient for this, it matters not how brief it is. The human mind acts with celerity which it is sometimes impossible to measure and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case."

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In People against Conroy the Court said: "The intention to commit a homicide, which is not formed under the impulse of immediate provocation, or a sudden and instinctive apprehension of danger from some apparent cause, would seem to involve, to a certain extent, both deliberation and premeditation. These terms are not the creation of our statute, but were considered essential elements of the crime at common law."

There is a general presumption in law that a person intends whatever are the natural and probable consequences of his own acts. It is a fundamental rule of evidence, of very general application, founded upon observation and experience, that a person it presumed, if he is in his right senses, to intend the natural consequences of his acts.

If you should find from the evidence beyond a reasonable doubt that this defendant that morning or at some time prior to his having discharged a loaded firearm at Nora Forrester, if he did feloniously discharge a firearm at her, made up his mind to kill her and that he had opportunity for reflection, and determined in his mind that he would destroy her life and thereupon he took this revolver and discharged the firearm at her and then discharged a second bullet at her, it is for you to say from the action of the defendant, together with all the circumstances testified to by the witnesses, together with the condition of the wounds which the deceased

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sustained sustained, whether or not the purpose and the design of this defendant was to kill Nora Forrester. And if he did so, did he do it from a premeditated and deliberate design to destroy her life? This question cannot be answered by the public prosecutor, nor by the Court, but must be answered by you. Neither the Court nor the District Attorney can suggest to the jury what the verdict should be, but the duty and responsibility rests upon the jury to carefully weigh the evidence and to determine from all the evidence presented whether or not the People have sustained a case against the defendant. The People have presented for your consideration, two classes of evidence. The first class refers to circumstantial evidence and the second class refers to an alleged voluntary confession made by the defendant that he shot the deceased. To establish the defendant's connection with the crime laid against him, the People have called witnesses to prove the circumstances under which it is claimed that the defendant as the person who shot Nora Forrester, and that the shooting of the deceased was not accidental or while the defendant was in the defense of his own life and limb. You must determine whether the claims of the People are supported by the evidence. While you are to consider the circumstantial evidence you must bear in mind that witnesses have been called by the People to testify to these circumstances, and, therefore, you must determine whether the witnesses who have testified

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as to the circumstances have told the truth, or whether they
ave wilfully falsified their testimony and whether they are
biassed or mistaken as to the facts testified to by them.

Circumstantial evidence must point to guilt to the
exclusion of every other reasonable hypothesis. The proof
must not only be consistent with guilt, but inconsistent with
innocence. If the circumstantial evidence be susceptible of two
constructions the most favorable to the innocence of the
defendant should be adopted. But if the circumstantial evi-
dence points in one direction, and in one direction only,
namely, the guilt of the defendant, or if the evidence be incon-
sistent with every reasonable hypothesis of the innocence of
the defendant, and consistent only with his guilt, you are
bound as jurors under the solemnity of your oaths to regard
this evidence as controlling and to be guided thereby; and
the weight to be given to the circumstantial evidence must be
determined by you.

Many of you have stated to both the learned counsel
representing the defendant and to the learned District Attor-
ney, representing the People, that you are not opposed to
circumstantial evidence, providing there is cogency in the
proof presented. If there be cogency in the proof presented
here, we must determine it from the evidence. In the case of
People against Harris, the Court of Appeals, through Mr. Justice

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Gray said, "All evidence is, in a strict sense, more or less circumstantial, whether consisting in facts which permit the inference of guilt, or whether given by the eye-witnesses of the occurrences; for the testimony of eye-witnesses is, of course, based upon circumstances more or less distinctly and directly observed. But, of course, there is a difference between evidence consisting of facts of a peculiar nature, and hence giving rise to presumption, and evidence which is direct, as consisting in the positive testimony of eye-witnesses, and the difference is material according to the degree of exactness and relevancy, the weight of the circumstances and the credibility of witnesses. The mind may be reluctant to conclude upon the issue of guilt in criminal cases upon evidence which is not direct, and yet, when the facts brought out, when taken together, all point in the one direction of guilt, and to the exclusion of any other hypothesis, there is no substantial reason for that reluctance.

"Purely circumstantial evidence may be often more satisfactory and a safer form of evidence, for it must rest upon facts which, to prove the truth of the charge made, must collectively tend to establish the guilt of the accused.

"A fact has the sense of, and is equivalent to, a truth or that which is real. It is in the ingenious combination of facts that they may be made to deceive or to express what is

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not the truth. In the evidence of eye-witnesses to prove the facts of an occurrence, we are not guaranteed against mistake and falsehood, or the distortion of truth by exaggeration or prejudice; but when we are dealing with a number of established facts, if, upon arranging, examining and weighing them in our mind, we reach only the conclusion of guilt, the judgment rests upon pillars as substantial and sound as though resting upon the testimony of eye-witnesses.

"The necessity of a resort to circumstantial evidence in criminal cases is apparent in the nature of things, for a criminal act is sought to be performed in secrecy, and an intended evil-doer usually chooses his time and an occasion when most favorable to concealment, and sedulously schemes to render detection impossible. All that should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from these facts."

A confession of a defendant, whether in the course of judicial proceedings, or to a private person can be given in evidence against him unless made under the influence of fear produced by threats. Unless made under the influence of fear produced by threats, or unless made upon the stipulation of the District Attorney that he shall not be prosecuted therefor.

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But it is not sufficient to warrant his conviction without additional proof that the crime charged has been committed. The rule of law which makes the confession of a defendant competent evidence against him is, as you have observed from my reading of the statute, guarded by several limitations which must be considered by the jury with a view to determining whether or not the confession was the product of fear, duress or threats or made pursuant to a stipulation of the District Attorney that the defendant should not be prosecuted for the crime to which he confesses. Nor is such confession sufficient to warrant a conviction without additional proof that the crime charged has been committed. So that this confession alleged to have been made by the defendant to the police, to Arthur McGlade, to Assistant District Attorney Minton, to the other officers who have been called, can only be considered by you if you find that it was not made under the influence of fear produced by threats, and that it was not made upon the stipulation of the District Attorney that the defendant should not be prosecuted for the crime to which he confessed.

A threat is any menace of destruction or injury to life, reputation or property with a view to restrain a person's freedom of action. A threat is a manifestation by one person of an intent to do actual violence to another. Such manifesta-

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tion might take place in two ways, by words or menaces, by acts or assault. A threat is a declaration of an intention to inflict pain, injury or punishment; a menace.

Nor is it claimed by the defendant that the District Attorney entered into a stipulation with him that he should not be prosecuted for this crime.

While the learned counsel for the defendant asked the witnesses questions concerning the manner in which the confession was made, it is your duty to be guided by the evidence presented, and you must determine whether the confession was voluntarily made, or whether it was made through the use of fear or duress; and after carefully weighing and considering the evidence it is for you alone to determine the circumstances under which the defendant made the confession.

The learned counsel for the defendant claims that the defendant partook of a half a pint of whiskey before Dr. Vieter arrived, and that when Dr. Vieter arrived he also gave him two ounces of whiskey. You will bear in mind the testimony of Dr. Vieter that at the time he furnished whiskey to the defendant he was not in a state of intoxication; you will bear in mind the testimony of Assistant District Attorney Minton that when he examined the defendant at the hospital the defendant in his opinion showed no evidence of intoxication.

The fact that an accused person was intoxicated at the time he made the confession does not render the confession in -

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competent unless the intoxication of such person was of such degree as to incapacitate the person from making a narration of past events or stating his own participation in the crime. Of course, if the defendant was so intoxicated at the time of the confession as to be incapable of giving a clear narration of the events, the question of the weight of his confession is a matter for you to determine. But, as I have said, the jury must determine from the evidence whether the defendant made the confession while in a state of intoxication, and whether at the time he made it he was incapacitated from making an accurate or truthful narration of the facts. If the confession alleged to have been made by the defendant was voluntarily made and was free from any influence of fear produced by a threat, it is evidence of a satisfactory character and should be considered by the jury and given such weight as the intelligent judgment of the jury may determine.

As you have observed, the law of this State permits the acceptance of confessions made by a defendant, and the Court of Appeals has long and often approved of confessions even in capital cases, where the confession was voluntarily made. If you are satisfied that the defendant made the confession to the police, to the lay witnesses, to the Assistant District Attorney, and that such confession was freely and voluntarily made by the defendant, then it is your duty to consider such

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evidence and give it such weight as you believe it is entitled to. If you find that the defendant made a confession that he was responsible for the killing of Nora Forrester you will consider the question whether there is additional proof that the crime charged was committed by the defendant. In the case of the People vs. Burness, the Court of Appeals said:

"Under Section 395 of the Code of Criminal Procedure, before a man who has confessed a crime may be convicted there must be 'additional proof that the crime charged has been committed'. But proof of the finding of the body with marks of violence upon it, supplemented by a defendant's confession of guilt, is sufficient for conviction, as the meaning of the Code is that there must be some other evidence of the corpus delicti besides the confession."

Of course, you must be satisfied that there is proof of the death and the violence which caused it, outside of and beyond the mere confession of the defendant. That is, you have a right to consider the nature of the wound which the deceased sustained; the testimony of Mrs. Brennan that after the defendant left the kitchen he went to the front of the apartment where the deceased was; that she heard two shots in succession and immediately heard Nora Forrester make an outcry. You have a right to take into consideration the character of the wound inflicted upon the deceased. You have

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a right to consider the course of the bullet that penetrated the deceased. You must take into consideration all of the evidence with a view to determining whether or not the deceased killed herself; or whether or not the deceased was killed by the defendant, without justification, and that in so doing he did not kill the deceased to defend his own life, or that while endeavoring to rescue the pistol from her he did not kill her. In other words, you must be satisfied that she was killed in a criminal way.

The language of the statute, "But it is not sufficient to warrant a conviction without additional proof that the crime charged has been committed" means that the People must satisfy you beyond a reasonable doubt that Nora Forrester in fact came to her death by means of violence of a criminal character and produced by human agency; that is, by the defendant; and that her death was not due to accident, mistake or self-destruction.

The defendant claims that he did not feloniously shoot the deceased. That the deceased discharged a loaded revolver at him and stabbed him with a knife. That while he endeavored to disarm the deceased, in order to protect himself from bodily harm, the revolver which the deceased held in her left-hand was accidentally discharged. If you believe that the killing of the deceased was accidental, you cannot convict the defendant. Or, if you believe that the killing of the deceased

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was committed by the defendant in an effort to defend his own person, you cannot convict him. If you believe that the killing of the deceased was not accidental, but committed by the defendant in an effort to save himself from great personal injury, you will apply to the evidence the law of self-defense as I shall declare it and determine whether the act of the defendant was excusable or justifiable.

Homicide is also justifiable when committed in the lawful defense of the slayer, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer and there is imminent danger of such design being accomplished.

Homicide is excusable when committed by accident and misfortune, in doing any lawful act, by lawful means, with ordinary caution and without any unlawful intent. Any person committing violence in his personal defense must not only believe that he is in danger of personal violence, but he must in fact have reasonable ground to apprehend that he is in imminent danger. If from all the evidence you reach the conclusion that the defendant had a right to believe that there was reasonable grounds on his part to apprehend a design on the part of Nora Forrester to do him some great personal injury, and that there was reasonable ground for him to believe that he was in imminent danger of such design being accomplished, or

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if the defendant was attacked by the deceased under such circumstances as to furnish reasonable grounds for his belief of a design on Nora Forrester's part to destroy his life or to do him great personal injury, and that there was reasonable grounds for his believing the danger imminent that such design on the part of Nora Forrester would be accomplished, the defendant had a right to act upon the appearances which then presented themselves to him and kill Nora Forrester if that were necessary to avoid the apprehended danger to the defendant. And the killing of the deceased will under the law be justifiable, even if the appearances were false, and that there was in fact neither design to do him serious injury nor danger that it would be done.

Of course, before a person can justify the taking of a life in self defense, he must show that there was reasonable ground for believing that he was in great peril, that the killing was necessary for his escape and that no other means were open to him. However, he is not called upon to establish this beyond a reasonable doubt, as the burden of proof in a criminal case never shifts from the People to the defendant.

When a person believes himself about to be attacked by another and to receive great bodily injury, it is his duty to avoid the attack if it is in his power to do so, and the right of attack for the purpose of self defense does not arise

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until he has done everything in his power to avoid the necessity thereof. In other words, Gentlemen, you are to view the defendant's case from two theories: one, accidental killing; the other, if to defend his own life the revolver was discharged, you are to determine whether within the terms of the law as I have laid them down for you, the killing was justifiable. Because, after all, a person who claims to have killed another in self-defense must have acted because of the necessity of the situation in which he was placed at the time, and the action of the person in destroying one's life is subject to judicial review; and you must determine, Gentlemen, of the jury, whether the defendant through accident, or in defense of a great injury to his person, killed the deceased.

The People, on the other hand, claim that the defendant did not either as a result of accident nor in defense of himself shoot the deceased; but that the defendant wilfully and from a deliberate and premeditated design to destroy the life of the deceased, shot the deceased. Whether he did, from that point, is a matter for the jury to determine. In determining whether the defendant wilfully kill the deceased you have a right to take into consideration everything that occurred in that house on the morning in question, and the night preceding, and all statements, if any, the defendant made to the police,

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to the lay witnesses, and to the Assistant District Attorney, and determine from all of the evidence, including the alleged confessions, made by the defendant, whether or not the deceased shot and stabbed the defendant and attempted to take his life, and in defense of his own life or limb the revolver was discharged, destroying the life of Nora Forrester. Upon you and you alone rests the responsibility of analyzing the evidence with a view of doing justice both to the People and to this defendant.

The defendant claims in this case that there is an absence of motive on his part to have persuaded him to indulge in the alleged criminal act charged against him. On the other hand, it is argued by the People that there was a motive which induced the defendant to indulge in the alleged criminal act charged against him: that the defendant's concubine was about to leave him, that they had words the night before, that because of jealousy the defendant shot and killed Nora Forrester when he learned that she in fact was about to execute the threat which she had made to leave.

In the case of People against Molineaux, the Court of Appeals said: "In the popular mind, intent and motive are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. Motive is the moving power which impels to action for a definite result.

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Intent is the purpose to use a particular means to effect such result. When a crime is clearly proven to have been committed by a person charged therewith, the question of motive may be of little or no importance. But criminal intent is always essential to the commission of crime."

In People against Dinser, the same Court, with the opinion being written by the same learned judge said: "And, as bearing upon the question of intent, motive or absence of motive may present considerations of the utmost importance. Intent may be inferred from motive clearly established, and, conversely, absence of motive, even if not conclusive, may be considered as pertinent to the question of intent where that is in issue."

Wherever a motive can be established it may tend to persuade a jury that there was a design on the part of the defendant to commit a crime, that there was some inducement which led and tempted the wrong doer to indulge in a criminal act; or, if there be absence of motive for the commission of the crime, it is like the duty of the jury to consider such absence of motive with reference to determining whether or not there is reasonable doubt as to the defendant's guilt.

Under our law there is no particular rule which determines what motive is. One may kill another to obtain a small amount of money. One may kill another to gratify some supposed or real injury. There is no rule, therefore, as

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regards the adequacy of motive for all cases. There is usually a motive for every voluntary act of a rational being which operates as an inducement to the commission of the crime.

For the purpose of finding a verdict in this case, need not necessarily find that the defendant had a motive for the commission of this crime if he committed it. If you find from the evidence that the act of homicide was committed by the defendant from a deliberate and premeditated design to effect the death of Nora Forrester, it makes no difference whether the defendant had any motive, provided you conclude from the evidence that this defendant shot and killed Nora Forrester.

In a case based on circumstantial evidence, motive may form an important circumstance to disclose the identity of the person perpetrating the act. The motive therefore may or may not be disclosed, for the reason that the perpetrator of the crime may keep it hidden from any human being; or it may arise at the very moment of committing the crime. But, as I have said, if you are satisfied beyond a reasonable doubt the defendant acted from a deliberate and premeditated design to effect the death of Nora Forrester, the motive of the defendant is immaterial.

Of course, you gentlemen must carefully analyze the evidence and determine for yourselves whether or not this

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defendant had a motive to kill. You have a right to consider the question of question of motive on his intention to kill. If you believe that he made the confession, you have a right to examine the confession with a view to determining what he said; and, if so, is there anything in the confession which suggests that he had a motive for the destruction of the life of the deceased?

It is solely your province to determine the weight and credit to be given to the testimony of all of the witnesses called by the People and by the defendant. If you believe that any witness has wilfully testified falsely in any material particular it is within your power to accept or reject the testimony of that witness in whole or in part as either credible or incredible as the case may be. The testimony of each witness must be fairly and impartially considered and tested by a discriminating judgment with a view to determining whether the witness had a motive or interest other than to speak the truth. It is always within your power to attach to the testimony of any witness whatever value you think it is entitled to, and you may draw upon your own experience and knowledge of human nature in estimating the value of a witness's testimony. In judging the value of testimony you may take into consideration the demeanor, manner and bearing of the witness; his attitude, whether neutral,

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friendly or hostile towards the prosecution or the defense; and his capacity or opportunity or knowledge or observation of the events or occurrence of which he or she testified.

Whenever you can consistently reconcile conflicting testimony it is your duty to do so, but where you find any conflict of testimony that you cannot reconcile, do not hesitate to cast aside that which you deem exaggerated, colored, partial, biased, incorrect or wilfully perverted, and accept and hold fast to that which you believe to be impartial, unbiased, correct and truthful.

The rules of law laid down for your guidance in determining the weight and credit to be given to the testimony of witnesses equally apply to the testimony given by the defendant and to his witnesses. You have a right to take into consideration the interest of the defendant in the result of the trial in considering his testimony, with a view to determining what weight and credit you shall attach thereto.

The defendant is presumed to be innocent until he is proved to be guilty. That presumption rests with him throughout the case until the moment when the jury are convinced from the proof submitted to them that the defendant is guilty of the crime charged. Then the presumption of innocence is destroyed.

The defendant is entitled to the benefit of every reasonable doubt arising from the evidence in the case. A

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reasonable doubt is not a mere whim, guess or surmise; nor should it be regarded as a mere subterfuge to which resort may be had in order to avoid the performance of a disagreeable duty. A reasonable doubt is not a mere speculative doubt, because everything relative to human affairs that is based upon evidence may be open to some possible or imaginary doubt. It must be a doubt arising from such fact or facts in the case as leads you as intelligent men, acting impartially upon the evidence to come to the conclusion that you are not wholly satisfied in your own minds that the defendant is guilty of the crime charged against him. It must be a doubt based upon the evidence. It is such a doubt as after a careful consideration of all the evidence leaves your mind in such a state that you cannot say that you are convinced to a moral certainty of the truth of the charge against the defendant. If you have a reasonable doubt as to the guilt of the defendant it is your duty to give him the benefit of such doubt and to acquit him.

It is the duty of each juror while the jury are deliberating upon a verdict to give careful attention to the views and opinions of his fellow jurors. A juror should not stop his ears and stubbornly stand upon the position he first takes, regardless of what might be said by the other jurors. You should discuss the case together and compare views and

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reasons. But before you make up your verdict, each juror without reference to the other jurors should be satisfied in his own mind of the guilt or innocence of the defendant, as it is the duty of each juror to reason with his fellow jurors with an honest desire to arrive at the truth and with a view to arrive at a verdict, either for the People or for the defendant. It should be the object of all jurors to arrive at a given conclusion and to that end to deliberate together with calmness. It is your duty to agree upon a verdict, if that be possible, without a violation of conscientious convictions. You are not responsible, Gentlemen of the Jury, for the law appertaining to the death penalty. You have been accepted by both the District Attorney and counsel for the defense to serve in this case because of your statement under oath that you will obey the law of the land. You have no right therefore to take that question into consideration in reaching a verdict. When you were empanelled in this case, you became a part of the court charged with doing your duty without fear or favor, and without allowing sympathy or prejudice to influence you in your verdict. The law is no respecter of persons. In the eye of the law it matters not whether the deceased was the highest or the lowest member of society. The law is blind to the individual. It matters not how abject or abandoned the deceased was. It was not within the power of any human being to destroy her life. Our courts are open to redress

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a wrong, and no human being has a right to destroy the life of another unless under circumstances which render his act excusable or justifiable. If a crime has been committed, and evidence beyond a reasonable doubt is presented to you, establishing the guilt of the defendant, it is the duty of the jury to disregard the individual whose life was taken, but the jury must act upon the legal and competent evidence, and under their oaths perform their duty fearlessly, fairly and impartially.

The magnitude of this case must not be underestimated. The rights of the People as well as the rights of the defendant must be conserved by you. The interest on the part of the People is not a desire for vengeance; it is a desire that the law shall be maintained and enforced. If you believe from the evidence that the People have established the defendant's guilt beyond a reasonable doubt, you should render a verdict of guilty in accordance with the grade of crime that you believe the evidence has established. If not, acquit him.

A case of this character is always unpleasant to all parties concerned. I have a duty to perform under my oath of office. Likewise the public prosecutor has a duty to perform, and so have you. It is the duty of the Court to see that the defendant receives the benefit of a fair and impartial trial,

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that the rights of the People and the rights of the defendant are carefully guarded and protected. It is your duty under your oaths to weigh the evidence carefully and impartially. You must endeavor to dismiss from your mind every impression which may have a tendency to lead you away from an honest and an impartial consideration of the evidence. The rights of the accused and the interests of the People demand that you do this.

Gentlemen of the jury, your verdict in this case will be as follows: guilty of murder in the first degree, or guilty of murder in the second degree, or guilty of manslaughter in the first degree, or not guilty.

Are there any requests or exceptions.

MR. SCHICK: No requests by the defendant.

THE COURT: Now, about the exhibits. The exhibits will be given to the jury upon consent; do you consent?

MR. SCHICK: I consent that they may take all exhibits.

(At 3:30 p. m., the jury retire to deliberate upon a verdict.)

At 5:11 p. m., the jury return to the court room, and state that they find the defendant guilty of the crime of murder in the second degree.

THE COURT: Do you want the jury polled, Mr. Schick?

MR. SCHICK: Yes, sir.

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The jury is now duly polled, the jurors severally stating their verdict to be guilty of murder in the second degree.

MR. SCHICK: I now move that the verdict of the jury be set aside as against the weight of evidence and against the law, and on all the grounds enumerated in the Code of Criminal Procedure.

Motion denied. Exception.

MR. SCHICK: I also move for a new trial on all the exceptions taken at the trial.

Motion denied. Exception.

THE COURT: When will you be ready for sentence?

MR. SCHICK: Four or five days.

THE COURT: The 22nd?

MR. SCHICK: Thank you.

(Defendant remanded to October 22nd, 1912 for sentence.)

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COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York, Part V.

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :Before:

-against-

JOSEPH MURPHY.

: HON. OTTO A. ROSALSKY, J.,

: and a jury.
-----X

New York, October 14th, 1912.

Indicted for murder in the first degree.

Indictment filed August 9, 1912.

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

For People: CHARLES C. FOTT and JAMES O'MALLEY, Esqrs.,
Assistants to the District Attorney.

For Defendant: PHILIP F. SCHICK, ESQ.

The talesmen are examined on the voir dire.

THE CLERK: Joseph Murphy, if you desire to challenge
an individual juror, you must do so when he appears and
before he is sworn. Do you waive the further giving
of this notice?

MR. SCHICK: Yes.

A jury is duly empanelled and sworn.

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MR. NOTT'S OPENING ADDRESS TO THE JURY IN BEHALF
OF THE PEOPLE:

MR. NOTT: If the Court please, Mr. Foreman, and each of you gentlemen of the jury: This defendant has been indicted for the highest crime known to the law, namely, murder in the first degree, and the duty which falls upon you gentlemen here in sitting in this jury box is certainly one of the most important that can be performed by any citizen. Of the importance of it, as related to the defendant, I need hardly speak; as to the importance of it, as related to your fellow citizens, the People of this State, who are plaintiffs in this action, I need hardly speak. If there is any more important duty to the public than the trial of cases where human life is taken by means of such a dangerous weapon as a revolver, and where the defendant is an able bodied man, and the deceased is a woman, I know of no such duty.

I think that you gentlemen already appreciate from what you have heard in this case that it is a case of great gravity and importance, and that we will bring before you, if the facts are proved as stated to your satisfaction, beyond a reasonable doubt, not only the question of the defendant's guilt, but the consideration of his guilt of murder in the first degree, and this is a case in which the people will earnestly contend, if the facts are borne out by the evidence

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that not only would it be a great miscarriage of justice should this defendant be acquitted, but it would be almost equally so if he were not convicted of the crime which the people contend he has committed, namely, murder in the first degree, and in no lesser degree.

This case is grave in the first place because it involves the taking of a human life. It is grave, second, because the human life taken was that of a woman -- taken by a man. And grave in the third place because there were no less than four wounds inflicted by this defendant upon this deceased. And those wounds were inflicted by two different weapons, namely, two revolver wounds and two stab wounds, showing conclusively, as the People contend, under the rulings of the Court of Appeals, that deliberation and premeditation were involved. Because the learned Court will undoubtedly charge under the language of the Court of Appeals that the infliction of more than one wound, the firing of more than one shot, the discarding of one weapon, and the taking of another weapon, and the infliction of more than one wound with the second weapon, as well as the first, may be considered by the jury on the question as to whether this defendant intended to kill this woman, and did so with premeditation and deliberation.

This defendant at the time in question was working as a bartender in a saloon, over which he lived, namely, 640 Eighth

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avenue, in this county, and for some five months he had been living in that flat with the deceased, - a woman by the name of Nora Forrester; the defendant at that time being married to another woman.

The flat was on the fourth floor, being one of two flats, one on each side of the hall, and the plan will be put in evidence showing the arrangement of the rooms there. It consisted of a parlor, two bed rooms next to the parlor, and a dining room and a kitchen.

The deceased and the defendant slept in this front bed room next to the parlor, and in the next bed room slept an elderly woman who had been engaged by them as a domestic for some time before this shooting, and those three were the occupants of this flat.

We will show you that this woman, Mrs. Brennan, the domestic, had come there some weeks before in answer to an advertisement, that had been inserted by this defendant, under the name of Spencer, to apply to Mr. Spencer at these premises, and had gone there and lived as a domestic -- cooking and so on.

Apparently the relations between the defendant and the deceased were amicable and continued up to a few days before this shooting, when the deceased announced her intention of leaving this defendant and returning to her sister's, saying that she and her sister were going to set up in some sort of work --- running a boarding house or a rooming house, - I

forget which. Apparently the defendant became ^{disturbed} over this, and you will hear the testimony on that subject. The night before the shooting Mrs. Brennan and the deceased retired at night, and Mrs. Brennan in the next room heard nothing unusual to attract her attention. In the morning the defendant came into the

kitchen where Mrs. Brennan was, and asked for a cup of tea.

Mrs. Brennan told him she couldn't make him any tea because as the deceased was going to leave she had not ordered any ice and the milk turned sour, and the defendant said he did not feel very well, he felt badly. And then after that colloquy about the tea, and the deceased leaving, he turned and went back into his bed room. He had been there but a short while when Mrs. Brennan heard two revolver shots in close succession, accompanied by a loud scream from Nora Torrester, and she thereupon at once ran out of the kitchen door and downstairs to the saloon where another bartender was on duty. And this other bartender came upstairs --- and he will be a witness for the people, -- and he came into the flat and as he went along the hall he met this defendant just before he, the second bartender had come to the front bed room. That is, as I understand it he had met him in the second bed room and adjoining the front bed room. At this time, just as he got into that room, he met the defendant coming from the front bed room, where

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he and the deceased lived, and the defendant had in his hand this revolver, and the witness seized hold of the defendant and they had a struggle for the possession of this revolver, in the course of which he ran back into the back bed room, and into a closet which was there and there succeeded in getting away from him this revolver. He then noticed that the woman Nora Torrester was lying apparently dead and bleeding upon the floor in close proximity to the bed, her attire, as I understand it, being a nightgown, or some light attire of that sort.

He thereupon left for the purpose of getting an officer, and then they returned the deceased was still lying there and the defendant was sitting on the bed, and had stabbed himself, as they noticed then, in several places, with a large bread knife that was in the place. At that time the officer questioned the defendant as to what he had done, and the defendant had told the officer that he had killed this woman. He made no further statement at that time as to how it had happened.

The deceased was found to have two bullet wounds; one directly through the breast, causing death, another which did not cause death, the bullet not being lodged in the body, but in a proximity to the breast, and these two stab wounds on the chest.

Later the defendant made a statement to the officer, and subsequently made another statement to one of the men of the

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District Attorney's staff, having been warned of his rights in advance. And the second statement which he made was taken down by a stenographer just as given. In the course of the statement he said that the deceased had accused him of being crooked to her; that is, of consorting with other women. And that he had accused the deceased of the same thing --- of consorting of other men --- and they had had a quarrel during this night.

He said that the deceased had gotten this revolver from the closet where kept and had attacked him with it. On being questioned more closely, however, you will see when the statement goes in, it contains very serious contradictions. He stated that one time that he shot --- tried to shoot himself twice. Then he stated that in the first struggle with the deceased, while she had the revolver, the revolver had been discharged and it killed her. He then said that after she had dropped on the floor he shot her twice. And at another time he said he shot her before she dropped on the floor. But he said at either one time or the other he admitted having shot her first after he had gotten the revolver into his hands.

He then stated that he had shot himself twice. But that statement, you see, if accepted literally, would involve five shots, namely, one which went off in the struggle,

two shots he inflicted upon the deceased, and two upon himself. As a matter of fact there were three empty and two loaded bullets found in the revolver.

He then was asked further about stabbing her and at first denied stabbing her. Then he said he didn't remember stabbing her, but that he might have stabbed her, and he couldn't explain how it was that she had received the stab wounds in the course of this occurrence.

Now, it is for you gentlemen, therefore, to take all the facts of the case, with the relations existing between these parties, their situation, the sex of the deceased, her physical strength, the fact that she had two stab wounds and two bullet wounds, the fact that she had announced her intention of leaving this defendant, and his declarations, and make up your mind what those facts prove. If you believe that this defendant out of jealousy and dislike of her going to leave him, or his belief that she was consorting with other men, took her life, and that he did so with premeditation and deliberation, as evidenced by the number of wounds inflicted upon her, and by the fact that immediately before the shooting he was cool and collected and in his right mind, why, then undoubtedly he is guilty of murder in the first degree, and it is for you gentlemen to say whether at the close of this case there will be any doubt whatever upon that proposition.

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I trust that you will find during the case that the prosecuting officers, Mr. O'Malley and myself, have every disposition to try this defendant fairly, give him every chance to explain what he has done, and to interpose no obstacle to his so explaining, but to try him fairly and bring out all the evidence that is in our possession against him, so that you gentlemen may know just as much about this case as we do before it is over; and if, as a result of such knowledge you come to the conclusion that this man has committed murder, I shall ask you gentlemen then to remember that in accepting you I took your statement as to what you would do under given circumstances of facts, and relied on them in taking you as jurors.

If you have any doubt as to the defendant's guilt --- a reasonable doubt, that is, at the end of the case, of course you will acquit him. But it is for you to say whether in view of the facts in the case I have detailed there can be any doubt at all that he is the man that killed this woman, and that he killed her under circumstances amounting to a brutal and a cowardly murder.

MR. O'MALLEY: The people call as the first witness Dr. Lehane.

T I M O T H Y D. L E H A N E, called as a witness in behalf of the People, being first duly sworn, testifies as follows

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DIRECT EXAMINATION BY MR. O'MALLEY:

Q How long have you been a Coroner's Physician? A In the neighborhood of ten years.

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

Q And during that time have you performed numerous autopsies for the purpose of ascertaining the causes of death? A I have.

Q About how many times would you say, Doctor, during the time you have been connected with the Coroner's Office, approximately? A I never kept account.

Q Well, several hundred a year? A Yes, sir.

Q Did you perform an autopsy upon the body of Nora Forrester, in this case, on May 23rd in the present year? A I did.

Q Where did you perform that autopsy, Doctor? A At the Morgue, at the foot of East 26th street, in the City and County of New York, and the Borough of Manhattan.

Q And that date is correct, is it? A Yes, sir.

The 23rd day of May? A May 23rd, 1912, at 10 a. m.

Q Will you please describe to the jury the body of the deceased, so far as size is concerned? A Twenty-three years old; five feet four inches in height; muscular and well nourished and built; she weighed about one hundred and fifty pounds; bluish grey eyes; long black hair; and a good set of teeth. Rigor mortis was absent.

Q Now, Doctor, are you able to tell the jury who iden-

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tified the ~~jury~~^{body} to you? A Yes, sir. Robert Graham, 914

Second avenue; and Officer C. J. Brown of the 22nd Precinct.

Q That is, Graham and Brown identified the body to you as the body of one Nora Forrester; is that right? A Yes, sir.

Q And you then performed an autopsy, did you? A I did.

Q Will you please describe to the jury exactly what you did? A I made an incision right from beneath the chin, down through the anterior and median surface of the body, to the vagina or private parts; I moved back my flap on both sides, but cutting down through the ribs, which I disarticulated, and I exposed the various organs of the body and gave them a careful examination. In the meantime, before doing that, I looked over my body and I found I had four wounds; two stab wounds and two bullet wounds. Stab wound No. 1, three inches in length, running obliquely, running two inches to the left of the median line.

Q Please stand up and indicate to the jury where it was?

A About that spot (indicating) severing the lower portion of the third rib and penetrating the right ventricle, which is one of the chambers of the heart.

Stab wound No. 2, was three quarters inch in length, five inches below the left nipple, running horizontal and through the sixth interspace, which is the space between the fifth and sixth rib, penetrating the inner border of the left lung.

The bullet wounds on the body were two: Bullet wound No. 1, one inch below and two inches below, to the left of the left nipple (indicating). It went through the left ventricle, and was found in the left pleural cavity which is a box or sac containing the lung.

Bullet wound No. 2 was on the left mid-axillary line, a flesh wound --- a glancing wound, -- just offended the skin.

The heart was normal; the pericardium, the sac lining the heart --- or the covering over the heart --- was filled with blood; the spleen was normal; lungs normal; left pleural cavity was filled with blood; the kidneys had chronic diffused nephritis; uterus, normal; intestines, normal; and the brain was normal.

I found one bullet, which was removed from the left pleural cavity.

Q Have you that bullet with you? A I have.

Q You show me a piece of lead, and you say you found that in the body of the deceased? A I did.

Q In the left pleural cavity? A Yes, sir.

Q On the day you performed the autopsy? A I did.

Q After finding it did you take possession of it? A I did.

Q And is it in the same condition to-day as when you extracted it from the body of the deceased? A It is, with my mark on it.

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Q You put a mark of identification on it? A Yes, and placed it in a separate envelope and hermetically sealed it, with the date and my initials on it.

Q And it has not left your possession since? A No, sir.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: No objection.

THE COURT: Received without objection.

(Received in evidence and marked People's Exhibit 1.)

Q From your examination, as you have given it here to the jury were you able to reach an opinion as to the cause of death of the deceased? A I was.

Q Will you please state to the jury what that cause was?
A Pistol shot wound of heart.

Q Did I understand you to say that one of the stab wounds penetrated the heart too? A I believe so, yes, sir; the right ventricle.

Q Can you state to the jury why in your opinion you think the shot wound was the cause of death rather than the stab wound? A Because there was more of an area involved, and there was more hemorrhage, and it was in the more serious part of the heart and the left ventricle is far more important to the human anatomy than the right ventricle.

Q Would the stab wound, the nature of it --- was that sufficient in itself to cause death, having penetrated the heart? A It might, yes, sir.

Q I don't know as you indicated the course of the bullet

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that you extracted, to the jury? A It went straight, directly
backwards. 14

Q Straight and backwards? A Yes, sir.

MR. O'MALLEY: You may examine.

MR. SCHICK: No questions.

J O H N A. V I E T O R, called as a witness in behalf of
the People, being first duly sworn, testifies as
follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that he resides at New York Hospital.)

Q You are a practicing physician and surgeon, are you?

A Yes, sir.

Q And in May of the present year you were connected with
what hospital? A New York Hospital.

Q Are you still associated with that hospital? A Yes.

Q What is your official position there at the time? A At
the time?

Q No at the present time? A At the present time,
senior in the surgical division.

Q And you were the ambulance surgeon that visited the
premises 640 Eighth avenue? A I was.

Q On May 22th of this year? A Yes, sir.

Q Do you recall having seen the body of Nora Forrester
there in the room? A I do.

Q And were there some officers there at the time you

arrived? A Yes, sir.

Q Do you recall their names? A I didn't know their names, no, sir.

Q Please tell the jury what you observed in regard to the body of the deceased when you arrived there? A The body of the deceased was lying on the ground with her feet towards the bed and her head away from the bed, and she had some clothes on her, but for the most part they were night clothes, above the waist line. They had evidently been taken off, or taken off by one of the officers when I came there.

Q Louder. The clothes were practically stripped from the waist up, and she was lying there, and you could see the bullet mark and the stab wounds distinctly. When I came in I saw that she was either probably dead or very close to it, in a very serious condition, and I made a hasty examination of her and saw that she was dead. I satisfied myself that she was dead, and at the time I did not make a very careful examination of the deceased as to the course of the bullet.

Q After you discover that a person has died you don't take charge of the body in that case? A No, sir.

Q You only take cases to the hospital where there is a chance of --- where there is life? A Yes, sir.

Q Did you see the defendant there at that time? A I did.

Q And did you subsequently take the defendant to your hospital? A I did.

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Q Now please describe to the jury what you observed in regard to the appearance of the defendant? A Why, the defendant was sitting on the bed when I arrived, and he had numerous --- he was in his night clothes, and he had numerous stab wounds of his chest wall --- of his chest, around the left nipple. He was bleeding quite freely from those and there was quite a good deal of blood around the bed, and he had a towel, or one of the officers had a towel that he had been wiping it up with and trying to stop the bleeding from his chest. He was rather excited and talking a great deal. I didn't wait very long because he was pretty sick himself, in very bad condition, and I wanted to get him to the hospital as soon as I could.

Q When you say sick, you mean how? A Well, I mean from loss of blood, and I didn't really stop to examine how he was at the time. I took him right to the hospital.

Q How long did he remain there? A He remained there one day.

Q And then was released? A No, at the request of the police he was taken over to Bellevue Hospital from New York Hospital.

Q In addition to the stab wounds did you notice anything in regard to his appearance? A He had a glancing bullet wound on his head with some marks of powder. Just where that was I cannot definitely say, and I have forgotten.

Q Now, as to the kind of the stab wounds: did any of them

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do you recollect, penetrate the chest wall, or were they superficial? A In some of them --- I would not say which ones or how many --- had penetrated the chest wall, because there was signs of air in the pleural cavity.

Q There was air in the pleural cavity? A Yes, sir.

MR. O'MALLEY: You may cross examine.

MR. SCHICK: No questions.

MR. O'MALLEY: I offer here, subject to any correction that the defense or the People may see fit to offer, a diagram showing the fourth floor, three flights up, 640 Eighth avenue, City, County and State of New York, in People vs. Joseph Murphy, measured May 23rd, 1912, Walter H. Volckening, architect.

MR. SCHICK: No objection.

THE COURT: Upon consent it will be received and marked in evidence.

(Received in evidence and marked People's Exhibit 2.)

MR. O'MALLEY: (Holding up diagram for the jury to see) These are premises located on the easterly side of Eighth avenue. This part of the building is toward the front --- faces Eighth avenue --- and as you enter you go from the street, passing through this hallway, and coming from the rear of the building and going up these stairs, and then there is this hallway and you go in this door here, or here, or here. This gray, shaded part is the portion occupied by the deceased. This is

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the kitchen entering here and going through the dining room, into a bed room next, and the bed room that it will be shown the deceased occupied, and this is the part in the front (handing diagram to the jury).

I also offer in evidence two photographs, one taken May 23rd, 1912, --- one showing the front bed room of the apartment in question, looking towards the rear from the parlor.

MR. SCHICK: No objection.

THE COURT: On consent the photograph will be received in evidence.

(Received in evidence and marked People's Exhibit 3.)

MR. O'MALLEY: The other taken the same day, showing the rear bed room of the apartment, occupied by the defendant and the deceased, taken from the front bed room and looking toward the kitchen in the rear. The time at which these photographs were taken was two to three o'clock in the afternoon of that day.

THE COURT: On consent received in evidence.

(Received in evidence and marked People's Exhibit 4.)

SARAH BRENNAN, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that she resides at 236 West 15th street.)

Q I understand you are a little hard of hearing, aren't

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you? A Yes, sir.

Q Well, I will try to speak loudly and you speak as loudly as you can so this gentleman away over there can hear you. On May 22nd of this year were you living with the defendant Joseph Murphy and Nora Forrester? A Yes, sir.

Q About what time did you go to work for the defendant and the deceased? A In the morning?

Q No; how long before that? A Three weeks.

Q How did you come to go there? A I seen it in the paper?

Q An advertisement in the paper? A Yes, sir, in the World.

Q And you answered that? A Yes, sir.

Q And went to these premises? A Yes, sir.

Q Now, under what name did you answer that -- what was the name you saw in the paper? A I thought it was Spence -- I couldn't pronounce it right.

Q Spence, you think it was? A Yes, sir.

Q When you went there whom did you see first? A I didn't see anybody first. She was out.

Q Well, when was the first time you saw the defendant Murphy? A The first time? The night he come for me.

Q What day in April was that? A I couldn't tell.

Q Well, it was about three weeks before you went to work, before the deceased died, was it? A Oh, yes.

Q What did the defendant say to you when he came to see you? A He said for me to come up in the morning, and I says,

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"What time might I come?" Well, he says "Around ten o'clock, or there." So I went and rung the bell and couldn't get no answer.

Q You rang the bell of whose apartment? A Of Spence.

Q Spencer's apartment. Now, what name was on the door?

A It was on their door.

Q What name was? A I didn't see any name on the door. This was downstairs.

Q What name did you see on that apartment box? A It was Spence.

Q What floor was this apartment on --- how many flights up?

A I think it was on the third.

Q Was it three flights up or two? A It was a long stair and four broken stairs.

Q Then you went upstairs and rang the bell? A Yes.

Q And got no answer? A I got no answer.

Q After doing that where did you go? A I came downstairs and the side door of the saloon, you know, was on the entrance, so I rang the bell and he came out.

Q Who did? A Spence -- Mr. Spence.

Q Who do you mean by Mr. Spence? Do you see him in court? A Yes.

Q Point him out? A There he is in the middle.

Q Indicating the defendant? A Yes.

Q He came out of the saloon? A Yes, and I told him that I was up and I couldn't get in, and then he rung the bell and

he says "My wife has gone to market." And then he told me
to come back the next morning.

Q And you did come back? A I did come back.

Q And when you came back the next morning where did you
go --- to the apartment? A Yes, I brung another lady with me.

Q And whom did you see there? A I seen Mrs. Spence.

Q Who do you mean by Mrs. Spence? A Why, Joe's wife.

Q What name did you know her by later? What did you
call her? A I don't know her name. I couldn't remember Spence,
and she said "Just call me Nora, and call him Joe."

Q Then you went to work for them, did you? A Yes, on
Saturday morning it was.

Q Do you recall that that was about April the 26th or
27th? A It was in April, but I couldn't tell the date, I
couldn't tell.

Q Well, you worked for them up until the day that Nora died
didn't you? A yes, sir.

Q Now then I am going to show you this diagram which is
People's Exhibit 2 in evidence, and you have seen this before,
haven't you? A Yes, I have seen it.

Q Now, this is the kitchen, isn't it? A Yes, sir.

Q And this is the dining room? A The dining room.

Q And this is a bed room? A A bed room.

Q And this is another bed room? A Yes, sir.

Q And this is the parlor? A Yes.

Q In which bed room did you sleep? A I slept in the

one next to him.

Q Was this next to the dining room? A Next to the dining room.

Q In other words, you slept in this bed room right next to the dining room? A Yes, next to the dining room I slept.

Q Where did the defendant sleep? A He slept next to the parlor.

Q Who stayed in that room with him? A Him and his wife.

Q In other words, Nora? A Yes; he always called her his wife, you know, to me.

Q Well, you didn't know whether or not they were married?

A No.

Q You thought they were married? A Yes. She told me she was married.

Q Now, then do you recall the Friday before Nora died?

A Yes, sir.

Q You remember the Friday? A Yes, sir.

Q Well, what happened that day? A Nothing. She told me she was going to have company that afternoon ---

THE COURT: Does counsel object?

MR. SCHICK: I object to that, to any hearsay evidence.

THE COURT: Strike out the last answer and the jury will disregard it. Make your objection. Because counsel makes no objection to clearly incompetent testimony and in so doing may have some pertinent object in view.

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I do not want it to appear in a case of this character
that evidence that was hearsay was admitted without the
Court appreciating the fact that the evidence was in-
competent, unless counsel makes no objection to it.

Q Well, now, I was asking you about the Friday before
Nora died, and did she go away on that day?

MR. SCHICK: I object to the form of the question.
It does not specify the date. Friday might have been
any Friday.

THE COURT: The question said the Friday before the
woman died.

Q Do you remember her going away on that day? A Yes,
she told me she was going ---

THE COURT: No, strike out the answer and the jury
will disregard it.

Q But you did have a talk with her? A She told me ---
BY THE COURT:

Did you have a talk with Nora, and if so answer that
question yes or no.

BY MR. O'MALLEY:

You did have a talk with her, didn't you? A No, I
had no talk with her. She told me she was going to the hos-
pital.

THE COURT: Strike it out.

BY THE COURT:

Q Did Nora say something to you on the Friday preceding

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the day that she died? A Not that I am aware of.

BY MR. O'MALLEY:

Q Well, you had a talk in which the hospital was mentioned?

Objected to. Objection sustained. Exception.

Q Did Nora go away on Friday before she died? A Yes, sir.

Q And before she went you had a talk with her, did you?

MR. SCHICK: Objected to, as the question has already been asked and the witness answered no.

THE COURT: I overrule the objection. Would you mind having the record show the age of this lady?

Q How old are you? A I was sixty years of age last month.

Q (Question repeated by stenographer as follows:) And before she went you had a talk with her, did you? A No, sir, I had no talk with her. I was in the kitchen doing my work.

Q Well, did she talk to you? A When she was going out she told me ---

Q Then she did speak to you? A Yes, sir, oh, yes, sir.

After she spoke to you did she go away? A Yes, sir.

Q And how long was it before you saw her again? A Sunday night.

Now, between the time she went away and the time she came back did you talk with the defendant Murphy? A No, sir.

Now, just thing: did you have any talk with the defendant Murphy on Friday or Saturday or --- A No, sir, I had no talk.

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Q Well, did he talk with you? A No. He told me that she was not in the hospital, that she was in her sister's.

Q The defendant told you that she was not at the hospital but at her sister's? A Yes, sir.

Q Did he tell you how he knew that, that she was not at the hospital? A I think he called up on the 'phone.

Q Did he say that? A Yes.

Q Do you know what day that was, - Friday, Saturday or Sunday? A That was on Sunday night.

Q You say you saw Nora again on Sunday night, did you?
A Yes.

Q Was she there again on Monday? A Yes.

Q And Tuesday? A Tuesday.

Q Now, did you see the defendant during those times? A Yes, he come up every day for his lunch.

Q Did he stay there nights? A Yes.

Q Now, did you see the defendant and Nora the night before Nora died? A Yes, sir.

Q Where did you see them? A I seen them in the house in the kitchen, after he came up from work.

Q Did you hear any conversation between them that night at all? A No, I did not, not a word.

Q What time did you go to bed that night? A I went to bed at a quarter to eight.

Q Where were the defendant and Nora when you went to bed?

A In the apartment.

Q You went into the bed room where you told us you slept and did you close or leave your door open? A Well, my door--- his door was always shut, you know, and I couldn't tell whether there was a door in my room or not. But his door was always shut at night.

Q That is, the door leading from his bed room to your bed room was closed.

Q And it was closed this night? A It was closed.

Q Now, you say you went to bed at a quarter to eight?

A At a quarter to eight.

Q During that night did you hear anything at all? A I never heard a move.

Q The next morning what time did you get up? A I got up around five o'clock.

Q And after getting up what did you do? A I washed my clothes. I was going to leave that day because she told me the day before ---

THE COURT: No, do not state what she said. Strike it out.

THE WITNESS: Well, excuse me, I am doing the best I can.

Q I know you are doing the best you can. Now you say you went out and washed your clothes? A Yes, sir.

Q In the kitchen? A Yes, sir.

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Q Now, after you went out and washed your clothes in the kitchen what did you do? A I done nothing. I was washing my clothes until I went and rapped at the door. I always rapped at his door at about half past six in the morning, and I rapped that morning the same as usual, and he says, "All right, Mom."

Q You knocked on the defendant's door about halfpast six?

A yes, sir.

Q And you say he responded? A Yes.

Q Saying "All right"? A He said, "I am all right, Mom."

Q What did the defendant call you? A "Mom."

Q After you called him and knocked on the door what did you do? A I went back to the kitchen again to my wash.

Q After you went back there did you see the defendant again?

A Yes, he came out.

Q In about how long a time? A Oh, I guess it might be ten minutes --- it might not be quite that time.

Q And how was he dressed at that time? A He was dressed all ready to go down to his work, only his coat.

Q He had on his shoes and trousers, did he? A Yes, sir, and collar and necktie.

Q Shirt? A Shirt.

Q But with no coat on? A No.

Q When he came out of the kitchen did he say anything to you? A I always bid him good morning, and I asked him how he felt, and that morning I asked him how he felt, and he said,

"Mom, I don't feel good."

Q Then what took place? if anything? A He says, "Nora is going to leave", and I said, "So I believe."

Q Did he say anything else? A That was all. Then he said --- talked about the tea, he says "I will go and take a drink of tea. Did you make any tea, Mom?" I said, "Yes, but the milk has turned, for she stopped the ice on Monday, and the milk is a little turned." He said, "The milk turned?" I said, "Yes." Well, he said, "I will take a drink anyway and get down on the job."

Q Well, after saying that did he have some tea? A I never looked around. He went into the dining room, I didn't look.

Q Did you give him any tea? A No, he would take it himself, you know. He just took a drink of tea.

Q You saw him take a drink of tea? A No, I didn't see him taking it, but he said to me he would take it, when I was at my wash.

Q After he left the kitchen and went into the dining room what did you hear, if anything? A I didn't hear nothing till I heard the two shots in succession.

Q Now, this morning, was there anybody else in the apartment except you and the defendant and Nora? A Not that I know of nor seen.

Q Now, you say you heard two shots? A Two shots.

Q About how long was that after the defendant went back to his room? A It might be about a couple of minutes.

BY THE COURT:

Q Did you hear any voices prior to the discharge of the two shots?

BY MR. O'MALLEY:

Q Did you hear any one talking before you heard the two shots? A No, sir, I did not.

Q Now, will you indicate to the jury with your hands, by clapping them, how quickly one shot followed the other? (Witness clapping hands twice with about a second of time between the two claps). And then the scream.

Q Who screamed, if you know? A It was Nora, I would suppose.

Q Well, don't you know whether it was a man's or a woman's voice? A Oh, it was Nora's voice, yes.

Q Now, after you heard Nora scream did you look in any place? A I run out of the kitchen. I opened the door and run downstairs to the bartender.

Q Well, before running downstairs did you look through the dining room? A No.

Q You didn't? A No, I didn't. I run, and I seen the bed room door was shut and I run out of the kitchen.

Q What bed room door was shut? A Mr. Murphy's.

Q The door leading into the defendant's bedroom was closed? A Yes, sir.

Q You saw that after you went down? A Yes, sir, before I went downstairs.

Q When you went downstairs where did you go? A I went into the saloon.

Q And whom did you see there? A I seen the night bartender.

Q What is his name, if you know? A Arthur McGlade, I think.

Q Did you say anything to Arthur, yes or no? A I said--

Q You did speak to him, did you? A After speaking to Arthur, what did Arthur do, if anything? A He took off his apron and run upstairs.

Q And what did you do? A I sat in the saloon.

Q How long did you stay in the saloon? A Till the constable come.

Q The officer came? A Yes.

Q And did you go upstairs again? A Yes, sir, I went upstairs again.

Q When you got upstairs who was up there? A There was some --- I couldn't tell who was up there, there was quite a crowd, some officers and some of the people from the flat next door --- a young couple.

Q When you got back upstairs did you see Murphy? A I did.

Q Where was he when you got up there? A He was sitting up in his own bed bleeding.

Q Did he say anything to you? A He said, "Mom, you know

all about this"; that was the word he said, and I never made
him an answer.

Q Did you see the body of Nora at that time? A Yes, sir.

Q Where was it? A On the floor. Her back was towards me
where I was standing. I didn't go in.

Q Well, in what room? A I was standing in my own room,
but I could see from where I was standing --- lying on the
floor.

Q On the floor of what bed room? A Her own bed room.

Q And Murphy was on the bed in the same room, was he?

A Yes, sir.

Q Now, then, I show you that and ask you if you have
seen it before (a knife)? A Yes.

Q And where had you seen it before? A In Joseph Murphy's.

Q Where was it the last time you saw it? A I couldn't
tell whether I used it that morning cutting a piece of bread
or not, or whether it was in the spoon drawer, or on the
dining room table --- I couldn't tell.

Q Any how it was in the apartment that morning? A Yes.

MR. SCHICK: I object to the form of the question,
"Any how it was in that apartment", on the ground she
already answered ---

THE COURT: Sustained, and the jury will disregard
the answer.

Q Do you remember where it was the last time you saw it?

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MR. SCHICK: Objected to. She just said that she
couldn't say.

THE COURT: Objection overruled.

A No, I do not.

Q Did you see this at any time after the defendant
talked with you about having tea that morning? A No.

Q That is, after you went down to the saloon and came
up to the apartment?

MR. SCHICK: Objected to. She already answered
no, sir.

Objection overruled. Exception.

Q After going down to the saloon and coming back up,
when you saw the defendant, you didn't see this knife at that
time? A No, not to my knowledge.

MR. O'MALLEY: I will have it marked for identifi-
cation.

(The knife is marked for identification People's
Exhibit 5.)

CROSS EXAMINATION BY MR. SCHICK:

Q You were employed by the defendant as a housekeeper
in his apartment, were you not? A Yes, sir.

Q And you came there three weeks before Nora Forrester
died? A Yes, sir.

Q You were there every day during those three weeks?
A Every day.

Q And you slept in the apartment? A Yes, sir.

Q And the defendant, you knew at the time he came upstairs to retire, or the time when he left the apartment, did you not? A I did.

Q During those three weeks? A I was three weeks there.

Q Well, you saw the defendant come up to his apartment in the evening? A Yes, sir.

Q And you saw him leave in the morning? A Yes, sir.

Q And you were with Nora Forrester, the deceased, were you not, during the day time while he was employed downstairs in the saloon? A Yes, sir.

Q And did she receive any company? A No, sir.

Q Nor men, while he was employed in the saloon? A No, sir, only --- can I talk?

MR. O'MALLEY: Please finish your answer.

A (Witness continuing) Well, one night she was out all night and she come in intoxicated and I didn't know she was out, and I was in the kitchen and I looked at her. "In the name of God," I said, "were you not in all night?" So I took her into her own bed room. Now, I am doing the best I can. I took her into her own bed room, and Mr. Murphy was sitting on the side of the bed, with his drawers and shirt on, and I stood by with the door in my hands and he said, "Mom, shut the door." I went into the kitchen again, and when he came out to go down to work he said "Now, don't disturb her, don't waken her, and

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if anybody comes up don't let them in." Well, during the morning the bell rung and I met a man in the hallway, and he says, "Is Nora in?", and I says, "No, she is not in". I says, "Are you wanting her?" Well, he said, "Yes, about some things about her sister being in the hospital." Well, I said, "She is not in." So when Nora got up then she sent me downstairs for a kettle of beer. I went for the beer and he come and waited on me, and he asked me whether anybody came up and I told him that there was ---

Q She was in the habit of drinking beer and whiskey was she not? A Yes.

Q And she would send you out to get the beer? A Send me down to the saloon. I didn't need to go on the street.

Q And you occasionally used to go out and get her whiskey?
A No, I never did. I never went out and bought her a glass of whiskey for Nora.

Q She had whiskey in the apartment, did she not? A Yes, she would have it in there.

Q And she frequently drank whiskey? A Yes, sir, she took a little of it.

Q Now, this night you say that she was out all night, did she come home drunk? Was she drunk when she came home?
A Yes.

Q In bad condition. How many times while you were in their employ did Nora come home drunk? A I just seen her

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once the worse of drink.

Q Did you see her smoke opium? A No, sir, I never did.

Q Did she drink with other men in the apartment? A There was never no other man in the apartment, only Mr. Murphy, never in my three weeks that ever I seen.

Q How did Mr. Murphy treat Nora during the time that you were there? A He treated her well, as far as I could see; embraced her every time he came in.

Q You mean the time she came in drunk he would brace her up?

Objected to. Question withdrawn.

THE COURT: She said he embraced her.

Q Did you ever hear the defendant use any harsh words to the deceased? A No, I never did.

Q Or any indecent word? A I never did.

Q He always treated her like a gentleman, did he not?
A He treated her like a gentleman.

Q Did you at any time while you were in their employ advise the defendant to leave Nora, that she was --- A No, I never did. The man never told me nothing of his business or how he was living. That never passed between him and me.

Q Did you tell the defendant just a day or two prior to her death, regarding leaving her --- that he should leave her, or that she was no a fit woman to live with? A I never said it.

Q What did you say, if you said anything at all to the defendant on that day? What did you say to him? A On what

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day?

Q The day before she died? A Tuesday?

Q Yes. A I said nothing to him.

Q Did you say anything to him in the morning when he asked you to make some tea and he said he was sick? A When he told me Nora was going away, I said, "Let her go; don't bother about her", that's what I said.

Q Did Nora ever threaten to commit suicide? A No.

MR. O'MALLEY: Objected to as this time.

Q To kill herself? A No, she never did.

THE COURT: I think the evidence is competent. It was so held in People against Conklin, 175 N. Y. He is entitled to prove that the woman threatened to commit suicide.

MR. O'MALLEY: The only question is whether it is competent now or not.

Q You testified on your direct examination that when you heard two shots you went downstairs in the saloon? A Yes.

Q Did you make any attempt to look around in the apartment? A Upstairs there?

Q Yes. A No. I looked around and as I remember the door was shut. I told you so, but I never want to be ---

Q Isn't it a fact that the door was a little bit open, partly open? A No, it was not, as far as I could see from the kitchen; it was not open, it was shut.

Q How far were you standing from the bed room door? A

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Well, there was my bed room and then the dining room and the kitchen --- I was at the tubs washing my clothes.

Q How far distant? A I couldn't tell you.

Q Now, this is the kitchen, is it not (indicating on diagram)? You were standing at the kitchen at that time?

A I was standing at the kitchen.

Q Where is the defendant's bed room? A Well, this is the parlor, that would be his bed room.

Q And there is a dining room between the bed room and the kitchen.

MR. O'MALLEY: Wait, she was going to correct it.

Q Where is the defendant's bed room? A (Witness continuing) That was next to the parlor.

Q This is the parlor? A Yes.

Q Now, where is the defendant's bed room? A Well, next to the parlor.

Q Then this was the defendant's bed room, is that right, next to the parlor? A Yes.

Q Then there is another bed room after the defendant's bed room? A That is the room I slept in.

Q And then there was a dining room after your bed room? A Yes.

Q And then the kitchen? A Yes.

Q And you were standing in the kitchen when you heard those shots, is that right? A That's right.

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Q And there were two rooms between the bed room and the kitchen? A Yes, sir.

Q Now, is there a door leading from the kitchen into the dining room? A A door leading from the kitchen?

Q Into the dining room? How do you go into the dining room from the kitchen? Can you go from the kitchen into the dining room? A Yes, sir.

Q Then there is a door? A Yes, sir, there is a door on each.

Q That you can go from the kitchen into the dining room, and from the dining room into your bed room, there is another door, is that right? A I couldn't tell you whether there was a door on my room or not; only the one that was on his.

Q Can't you recall now? A No, I cannot. I have done the best I could, and the best I know how.

Q But you could not positively swear that there was no door on your bed room? A No, I wouldn't, for I couldn't.

Q Then after your bed room was the defendant's bed room, is that right? A Yes, sir.

Q Was there a door leading from your bed room into his bed room? A I couldn't tell you. I am telling you I couldn't tell you whether there was a door on my bed room or not, only the one that was on his.

Q There was a door on his? A Yes, sir.

Q Now, if the door of the defendant's room was open where did it lead into? Where could you go from his room?

Could you go into your room? A Yes.

Q And you could go from his room into the parlor? A
Yes, sir,

Q Then there were two doors on the bed room? A There was
a sliding door on the parlor.

Q Now, there was a stove in the kitchen, was there not?
A Yes, sir.

Q Now, will you show me on this chart, the diagram,
where the kitchen was in that? A No, I couldn't tell you, I
am not an educated woman.

Q What were you doing at the time you heard that shot?
A I was at the tubs I tell you.

Q Will you show me the tubs? A The tubs are on the side,
on that side.

Q You were standing at the tubs? A I was standing at
the tubs.

Q You were washing? A I was washing.

Q As soon as you heard the shots you went right down-
stairs? A I did.

Q You didn't look anywhere? A I looked around and his door
was shut.

Q Well, did you go into the dining room to look? A No,
I did not.

Q Then you want the court and the jury to understand
that you were standing in this kitchen at the tubs washing
clothes, - the tubs were located on the side of the room, and

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as soon as you heard the shots you simply gave one look into this room which indicated on this chart makes the fourth from the kitchen, and you could see at that distance that the door of the defendant's bed room was shut? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q I understood you to say that when you heard the shots you stepped over to the door and looked through, did you? A No, sir, I did not.

Q Well, you did look so you could see the bed room door?

A I looked and his bed room door was shut.

Q You could see his bed room door, could you? A Yes.

THE THIRD JUROR: As she stood at the tubs her back was to the other rooms, and she had to turn around to look in the other room. Did she turn around or didn't she?

THE WITNESS: I did turn around.

RE-CROSS EXAMINATION BY MR. SCHICK:

Q Your eye-sight is pretty good, is it? A No. I can't see with that eye (indicating right eye).

Q Can you read and write? A No, I can do neither.

Q Have you ever used glasses? A Yes, I have a pair of glasses.

Q Have you your glasses now? A No, I don't have them now.

Q Now, the kitchen, - can you tell us how large the kitchen was? A How can I tell you?

Q How far can you see without the aid of glasses? A Well, 41
I can see that far anyway.

Q Well, how far about? A Well, I was standing at the
tubs in the kitchen, and then the dining room, my bed room, and
then his door.

Q Well, is his the fourth room? A You see the size of
the rooms.

THE SECOND JUROR: Can the lady see the time?

Q Can you tell the time it is now? A Yes.

Q What is the time? A Well, it wants a couple of a minute
of a quarter after four.

(The time stated by the witness being the time
shown by the clock on the extreme east wall of the court
room.)

THE COURT: Do not discuss this case among your-
selves, nor permit any person to talk with you about it,
nor form nor express any opinion as to the guilt or the
innocence of the defendant until the case is finally
submitted to you. Be in your seats to-morrow at 10:30.

(ADJOURNED to Tuesday October 15th, 1912, at 10:30 a.m)

Last Exhibit:

People's 5.

New York, October 15th, 1912.

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TRIAL RESUMED

A R T H U R M c G L A D E, called as a witness in behalf of
the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that he resides at 584 Washington St.)

Q What is your business? A Bartender.

Q Where are you employed at the present time? A In
Washington Street.

Q By whom? A A man named Henry Drew.

Q On May 22nd of this year, where were you working? A
640 Eighth Avenue.

Q For whom? A Mr. Nash.

Q Working in Nash's saloon? A Yes, sir.

Q Do you know the defendant Joseph Murphy? A Yes, sir.

Q Was he working there at the same time? A Yes.

Q You both were bartenders, were you? A Yes.

Q You worked day times and he nights? A No, I nights
and he days.

Q How long had you worked there? A From November, last
year.

Q From November, 1911? A Yes.

Q When did Murphy come to work there, if you know? A
About February.

Q 1912? A Yes.

Q Had you known him before that time? A Yes.

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Q How long have you known him altogether? A From
about the latter end of November 1911 or the beginning of
December.

Q Did you know the deceased, Nora Forrester, or had you
ever seen her? A Yes.

Q Had you ever been up to the apartment where she and the
defendant lived? A Not before this happened.

Q Where did you used to see her when you did see her? A
I used to see her coming out in the hall, and nights I used to
let her in sometimes. Some nights the hall door would be
closed at eleven o'clock and I would let her in after eleven
o'clock if she came to the door.

Q That is the hall door leading up stairs? A Yes.

Q Now do you remember about five days before Nora died?
A Yes.

Q Did you have a talk with the defendant at that time?
A Yes.

Q Will you tell the jury what that talk was? A He told
me that Nora, his wife had left -- she had gone away and he
heard she was in the hospital but he telephoned to the hospital
to find out was she there and she was not there.

Q He told you that, did he? A Yes.

Q Do you remember what day of the week that was? A I
think that was on Friday.

Q Friday before? A Friday before this murder.

Q Was the defendant at work on Monday and Tuesday preced-
ing the death of Nora? A Yes.

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Q And did you see him on Tuesday night, before the 22nd?

A Yes, I saw him on Tuesday night.

Q What time did he leave work that night? A Seven o'clock.

Q Was that the time he usually quit work? A Yes, every night at seven.

Q Did you see him again that night after he quit work? A Yes, I saw him about ten o'clock then.

Q Where did you see him then? A I saw him in the bar room about ten o'clock.

Q Did you have a talk with him at that time? A No, I had no conversation with him then.

Q Now, did you work all that night in the saloon? A Yes I worked that night and the next morning.

Q Now, do you recall the next morning having seen Mrs. Brennan in the saloon at any time? A Yes, about seven o'clock in the morning Mrs. Brennan came into the saloon.

Q Did she say something to you, yes or no? A Yes.

Q Now, after Mrs. Brennan talked to you, what did you do? A I went up stairs.

Q To what floor? A Three flights up, to the fourth floor.

Q When you got up there where did you go? A I went into Murphy's apartment.

Q Through what door? A Leading from the hallway into

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the kitchen.

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Q Have you seen this diagram before (People's Exhibit 2)?

A No.

Q Well, this (Indicating on Exhibit 2) represents the parlor, this is the bed-room next to the parlor and this is the bedroom next to the dining room, this is the dining room and this is the kitchen. A Yes.

Q Now you came up these stairs (Indicating), did you? A Yes, I came up them stairs.

Q And you went into the kitchen? A yes.

Q Then you went in this doorway? A Yes.

Q Was that door opened or closed, as you remember? A That door was opened.

THE COURT: What doorway do you refer to?

MR. O'MALLEY: The door leading from the hallway into the kitchen of the apartment.

Q When you got into the kitchen did you see anybody in that room? A No, there was nobody in the kitchen.

Q Now tell what you did see after you went in the apartment.

A Well, when I went into the kitchen there was no one in the kitchen, and I went through the rooms -- I don't know whether through the dining room or the first bedroom, I don't know which one I met Murphy in. I met him coming through, coming towards me.

Q Did I understand you to say you didn't know in which room he was? A I am not sure which room it was, whether the

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dining room or the next bed room.

Q Tell the jury what if anything you noticed about his appearance? A Well, he had his pants on and his two shirts and he had blood on his hands and face.

Q Did you see anything in his hands? A Yes, he had a gun.

Q He had what? A He had the gun in his hand. I don't know which hand he had it.

Q Well, what was the next thing that occurred after you saw him, as you have described? A Well I said "Joe, what is the matter?" And he said "Arthur, Arthur," and that is all he said. So I got hold of him at that time, or I pushed him back into the other room and I didn't see anybody in the other room when he handed me the gun in the closet, in the clothes closet.

Q In the clothes closet of what bedroom? A Where the deceased was.

Q That is next to the parlor? A Yes. So he said to me then, he said "Arthur, bring us up a drink of whiskey." "Yes, Joe, I will," I said; "Stay there and I will bring it up." I took the gun and went down stairs.

Q Before you went down stairs had you noticed any other person in the room? A Yes, when I was coming back from the closet door, the dead body on the floor.

Q Where was the body? A Laying on the floor.

Q Tell the jury about how it was lying? A It was lying with the feet towards the bed.

Q Where was the head? A In the other direction.

Q That is, towards the parlor, or towards the closet?

A Towards the closet, yes, on the other side.

Q Then you say you went down stairs? A Yes, I went down stairs.

Q With the revolver? A With the revolver, yes.

Q I show you a revolver and ask you if that is the revolver? A I am not sure, I didn't look at the revolver, I just took it down in my hand.

Q Well, does it look like it? A It looks like it, yes.

MR. O'MALLEY: I will have it marked for identification.

(Marked for identification People's Exhibit 6.)

Q You took it down stairs with you, did you? A Yes, I went down and took the gun down.

Q What did you do with it when you got it down there? A I took it down to the bar and put it in underneath the bar.

Q Now after doing that, what did you do? A On my way down stairs I called the boss.

Q That is, Mr. Nash? A Yes. So then when I went down I telephoned to the station -- I looked outside to see if I could see an officer but I couldn't so I telephoned to the station and told them to send up a couple of policemen, that there was a shooting case on 41st Street and 8th Avenue, and to also send an ambulance. So then Officer Brown came there.

Q Do you see Officer Brown in Court? A No.

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Q Well, he came where -- to the saloon. A To the saloon, yes.

Q And you had a talk with him, did you? A I told him to go up stairs --

THE COURT: Yes or no, did you have a talk with him?

THE WITNESS: Yes.

Q After you talked with Officer Brown, what did Officer Brown do if anything? A He went up stairs.

Q And what did you do? A I went up about five minutes after.

Q Now then when you got up there, who if anybody did you see? A I saw Officer Brown and another officer there and myself.

Q Where was Officer Brown? A In the bed room.

Q Of Murphy's apartment? A Yes.

Q Which bedroom? A Where Murphy slept.

Q Do you know who the other officer was that you saw there?

A Yes, Officer Freeman.

Q Did you see another officer there that morning -- Brady?

A I don't remember. I think Brady was there. I don't remember if he was.

Q When you got into the bedroom who else did you see besides Brown and Freeman? A And Murphy. That is all I saw then, that I remember seeing.

Q Where was Murphy? A Sitting on the bed.

Q In the bedroom where you took the revolver from him?

A Yee.

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Q What was he doing, if anything? A He was sitting on the bed and the policemen had hold of him.

Q Did you notice his condition at that time? A Yes, he was bleeding.

Q And where did you notice him bleeding? A Well, I saw blood on his face. I don't know where the blood came from.

Q Now then you stayed around there a while, did you? A No, I went out of that room then, I went into the next room.

Q Did you leave the apartment and go down stairs? A Not at that time.

Q Did you at any time leave the apartment and go down stairs? A No, not until after the doctor left.

Q Until after the doctor arrived? A Yes.

Q You mean the ambulance doctor, Dr. Viteor? A Yes.

Q Before going down stairs did you talk with any officer?
A No, I didn't talk with any officer.

Q But you did go down stairs? A Yes.

Q What did you do when you went down? A I didn't go up stairs any more then. I went down stairs at the time that the doctor took Murphy away in the ambulance.

Q Did you at any time do anything with this revolver after you put it in the saloon under the bar? A No, I didn't do anything with it.

Q Did you give it to anybody? A No, I didn't give it

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to anybody. I took it down stairs and when Officer Brown asked me for it I took it up to him again .

Q Well, you talked with Officer Brown? A He asked me for the gun.

Q Well, you talked with him, did you, about the revolver?
A yes.

Q And after you talked with him what did you do? A I went down and brought the gun up to him.

Q Where did you deliver it to him? A In the bedroom.

Q And was it in the same condition when you delivered it to Officer Brown as when you took it from Murphy? A yes.

Objected to as leading; objection overruled; exception.

MR. SCHICK: I move that the answer be stricken out.

Motion denied; exception.

Q At any time while in the bedroom did you hear any conversation between any officer and the defendant? A Yes, an officer.

Q Did the defendant reply to any questions that were asked him by the officer? A Yes, he replied.

Q Now will you tell the jury what you heard Officer Brown say to the defendant and the defendant say to the officer?

THE COURT: Talk loudly and slowly.

A Well, Officer Brown asked him what he had done, so he said he shot his wife and he tried to shoot himself.

Q Did he say how many shots he fired? A Yes, he said he fired two shots at her and two at himself.

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Q How many shots at her? A Two.

Q Did you hear any conversation about the knife at that time? A No. Officer Brown showed the knife but there was no conversation about it.

Q But you heard no conversation between Officer Brown and the defendant about it? A No, sir.

Q Have you told us all the conversation you heard between Officer Brown and the defendant? A That is all I heard at that time between the defendant and Officer Brown.

Q Did you yourself have any conversation with the defendant beside what you have told us? A Yes, he asked me to take his watch that was hanging in his clothes; he said; so I went to take his watch and the officer stopped me. He said I wouldn't be allowed to touch anything. So I also remember his saying something about money, so I didn't mind about the money until afterwards he sent me a note from the hospital saying to give \$20. to his mother that he gave to me. So I didn't receive the \$20. at all. I was not allowed to take either the watch or the money.

Q I show you People's Exhibit 5 for identification and ask you if you have seen that before? A Yes, sir.

Q Where did you see it for the first time? A The first time I saw it was with Officer Brown.

Q Up in the apartment? A Yes.

Q Did you notice the condition at that time? A No, I didn't notice the condition.

Q Is that all the conversation that you recollect that

you have told us? A That is all I remember.

Q Do you remember the defendant's say anything about being sorry? A Yes, he said he was sorry he failed, that is all.

CROSS EXAMINATION BY MR. SCHICK:

Q How old are you? A Twenty three.

Q Where were you born? A In Ireland.

Q What part of Ireland? A County Armath.

Q When did you come to this country? A 13 months.

Q What was your business before you became a bartender?

A A grocer's clerk, a grocer's assistant on the other side.

Q How long did you work as a grocer's assistant? A Eight years.

Q Whom did you work for? A A man by the name of John Savage.

Q Did you work eight years in the same place? A Yes, sir.

Q Did you work for anybody else? A No, I never worked for anybody else.

Q Did you go to school in Ireland? A Yes.

Q What school -- a public school? A National school.

Q Did you go to any high school? A No, I never went to high school.

Q Whom do you live with in this country? A I am boarding. I don't know who the lady is.

Q Are your father and mother alive? A No, my father is dead.

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Q Do you live with any relations here? A No.

Q Whom did you work for the first time you landed here?

A Mr. Nash.

Q How long did you work for Mr. Nash? A I worked from the 6th of November 1911 until July this year.

Q When did you for the first time meet the defendant? A Joseph Murphy?

Q yes, sir. A I met him in the latter end of November or the beginning of December, 1911.

Q Were you friends? A Yes, we were always good friends.

Q Did you go out together? A We never were out together but we were always good friends together, to work together in the saloon.

Q Did you speak to Brown about this case since it happened -- Brown, the officer? A No, I was not talking to Brown since this accident.

Q Didn't Brown call on you at the place where you are working? A Yes, he called on me once.

Q How many times did he call on you? A He served me with two subpoenas.

Q And the first time he served you with a subpoena, what did he say to you? A He told me that I had to go down to the District Attorney's officer

Q What else did he say? A He never said anything to me then.

Q Didn't he ask you anything about the case -- didn't he

discuss it with you at that time? A No, he never discussed the matter with me.

Q Did Brown ask you what you were going to testify to?

A No, he never asked me what I was going to testify.

Q Did he ask you what you testified to in the District Attorney's office? A No. He was in the District Attorney's office with me.

Q And who examined you in the District Attorney's office?

A Mr. McDonald.

Q And did he examine you first, or did he examine Brown first? A I don't know. Brown was there before me.

Q As you came to the District Attorney's office you met Brown out in the hall, did you not? A No. The first time I went to the District Attorney's office was at the inquest at the morgue.

Q Did you meet Brown there? A Yes, sir, and that was the first time I met Brown, the next day after.

Q And you talked to Brown before you went to the District Attorney's office to give your testimony? A Yes, sir, he told me --

Q What did you say to Brown at that time? A I didn't say anything to Brown.

Q What did Brown say to you? A He told me that I had to go to the District Attorney's office, that the District Attorney wanted me to see me.

Q Well, you finally arrived at the District Attorney's

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A Yes.

Q And you met Brown outside of the corridor, did you not, before you went in the room? A Not that day.

Q Did you meet him that day at all? A No, not that day.

Q What day did you meet him then? A The next day.

Q Where did you meet him the next day? A The next day that I was at the District Attorney's office.

Q And then you met him up stairs here in this building?

A Yes.

Q You met him outside in the corridor before you went to the District Attorney to give your testimony, is that right?

A No, I don't remember.

Q Didn't you meet him at all? A I remember he was in the District Attorney's office but I don't remember speaking to him. I remember speaking to him up in the District Attorney's office.

Q You spoke to him on that day? A Yes.

Q What did you say to Brown on that day and what did Brown say to you with regard to the case? A He only told me where I had to go and that I had to give testimony against the defendant.

Q Didn't he ask you what you were going to say in the District Attorney's office? A No, he never asked me what I was going to say.

Q Not a word? A No.

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Q Did you tell him what you were going to testify to? A
No, I never told him what I was going to testify to.

Q Where did you meet Brown next? You met him at the
inquest, did you not? A I was not at the inquest and I met
him when I went to the morgue that morning.

Q When did you meet him next? A In Mr. Nash's when
he served me with a subpoena.

Q EXH Do you remember the date? A I don't remember the
date.

Q Did he serve you in the saloon? A Yes.

Q Did you discuss the case with him at that time? A No,
I didn't discuss the case with him at all.

Q Didn't tell him anything about the case? A No.

Q Didn't he ask you anything about the case? A He did
not ask me anything about the case at that time.

Q When did you see him next? A The next time I saw him
then was the same night when Mrs. Bowman came to me for the \$20.
Mrs. Bowman is Mr. Murphy's mother in law.

Q On the same night? A Yes. So she had a note from
the defendant to give the \$20. to her, so she came to me for
the \$20. I told her I never received the money, and I said
"It is a pity you were not in a few minutes sooner for Mr.
Brown was here." So Brown came back in just a few minutes.
I told her to wait so I telephoned the station to see if Brown
was there and they said he was not in, they said he had gone
out. So about ten minutes afterwards Brown came in. So I

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called him into the back room and asked him did he know anything about the money. He said he did not. I said "You know I did not receive any money in the room that morning." He said "No, you did not receive any money." And that is all the conversation.

Q Did you get the \$20. from the defendant? A No, I did not.

Q Did Brown get it? A I don't know anything about it. I know the defendant had \$20. three or four days before it.

Q Do you know whether he had the \$20. the day the crime was committed? A I don't know whether he had it that day. I know he had it three days before.

Q You didn't take the \$20.? A No.

Q Did Brown speak to you about the case that night when Mrs. Bowman was there? A No, he did not.

Q Did he ask you anything about the woman? A No, he did not.

Q Did you say anything to him about the case? A No, I did not.

Q What time did you get to work the morning of May 22, when the crime is supposed to have been committed? A Well, I opened up the place at six o'clock.

Q Six o'clock in the morning? A Yes.

Q Were you the day bartender? A I was the night bartender.

Q How does it happen that on that day you were in the morning to open up the place? A Well, I stayed there. I

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closed up at one o'clock at night and cleaned up and opened up in the morning.

Q And did Murphy take charge of the place? A Yes, at seven o'clock in the morning Murphy always took charge of the place.

Q How long was he on duty? A From seven in the morning until seven p. m.

Q And at seven o'clock you relieved him? A Yes.

Q What happened after seven o'clock? A When.

Q That night, May 22, 1912.

MR. O'MALLEY: May 22nd or 21st? The 22nd was the day the deceased was killed.

Q On that same night when the crime is supposed to have been committed you were on duty all night, were you not? A Yes.

Q You relieved the defendant at seven o'clock in the evening? A Yes.

Q You took charge of the place? A Yes.

Q Was there anybody else there besides you? A The boss was there I think.

Q Mr. Nash? A Yes.

Q Anybody else? A I don't remember if there was anybody else there.

Q Anything occur after seven o'clock? A No. Murphy went up stairs and I saw him again at ten p. m. --

Q Who went up stairs? A The defendant.

Q The defendant went up stairs at what time? A After

seven o'clock.

Q Did Mr. Nash remain in the place? A I don't know if Mr. Nash remained in the place or not, I don't remember.

Q What time did Mr. Nash leave the place? A I don't know. Some nights he would be there until twelve.

Q But that particular night what time did Mr. Nash leave the place? A I don't remember.

Q What happened then after Mr. Nash left? A I don't know anything to happen that night.

Q Did you see Murphy after that? A yes, I saw him about ten o'clock.

Q Did he say anything to you? A No, he had no conversation with me at all.

Q Did you say anything to him? A No, I did not.

Q Did you see the deceased that night? A I don't remember seeing her that night. I saw her a couple of nights before that.

Q What condition was she in a couple of nights before when you saw her? A Well, on Sunday night I saw her, she came to the door after he went up on Sunday night and asked for him.

Q Asked for what? A She asked for the defendant on Sunday night. That was after -- there was a friend telephoned to the hospital to find was she there on Sunday night.

Q What condition was she in? A Well, I don't know. She just came to the door and asked for Joseph Murphy and I told her he had gone up stairs. I don't know what condition she was in. That is all the conversation I had with her.

Q How soon after that did Mrs. Brennan come down to the saloon? A Well, that was in the morning, seven o'clock.

Q What did she say to you? A She came to the door leading to the bar from the hall way and she said "Arthur, come up stairs, I heerd a shot up stairs." So I took off my apron and I went up stairs.

Q What floor? A Three flights up, to the fourth floor.

Q How many tenants are there on the fourth floor? A I don't know.

Q Was there anybody else living on the fourth floor besides the defendant? A Oh yes, there was.

Q Who else was living on the fourth floor? A A man named Brady lived on the opposite side of the hall.

BY MR. O'MALLEY:

Q Officer Brady? A Yes.

BY MR. SCHICK:

Q How many rooms did he occupy on that floor? A I don't know.

Q There are two flats on that floor? A I don't know. I think there are some in the back also.

Q How many tenants on a floor? A I don't know how many.

Q Did you know anybody else living on that floor besides the defendant and Officer Brady? A No, I didn't know anyone living on that floor.

Q Did Officer Brady live with anybody in those rooms? A Yes, he was living with his wife.

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Q You knew his wife? A Yes, I knew her.

Q Was she home that morning when the crime was committed?

A I don't know.

Q Did you see Officer Brady that morning? A Yes, sir, I saw officer Brady that morning.

Q Now, when you went up stairs, was Officer Brady home? A I think he was, I am not sure. Yes, I think I remember seeing Officer Brady.

Q Did you see Officer Brady that morning? A I think I did, I am not sure.

Q Couldn't I in any way refresh your memory so as to make it definite whether Brady was there or not when you were there?

A I know I saw Brady after --

Q Was it possible you could recall by some incident? A I know I remember seeing Brady before the defendant was taken out in the chair. I remember seeing him in the hall.

Q That same morning? A Yes.

Q Did you see Mrs. Brady? A Yes, I saw Mrs. Brady.

Q That morning when you got up on the third floor what did you do? A I went into the Murphy's apartment.

Q Which room did you go into? A I went into the kitchen first.

Q Was Mrs. Brennan there in the kitchen? A No, Mrs. Brennan was down stairs in the saloon.

Q What did you do? A I went into the kitchen and then went into the room.

Q What room? A I don't know whether it was into the -- whether I went to the dining room and into the first bedroom or whether it was in the dining room. I am not sure which of the two rooms.

Q Now, the stairs are up here this way, you come in here in the hall and then you enter the kitchen (Indicating on diagram People's Exhibit 2.) A Yes.

Q When you got in the kitchen what did you do? A I went in towards the bed-room.

Q You could not go into the bed-room direct from the kitchen could you? A Well, I don't know whether it was in the bedroom next to the dining room or the dining room I was in.

Q Well you testified on direct examination that when you come up you were in the hall -- immediately into the kitchen? A Yes, I went in the kitchen.

Q When you were in the kitchen, what did you do? A I went in towards the bed room.

Q Then you went into the dining room, did you not? AA Yes.

Q Was there anybody in the dining room? A I don't know whether it was in the dining room or the next bedroom that I met the defendant.

Q Then it is possible that you met the defendant in the dining room? A Either the dining room or the next bedroom.

Q Isn't it possible?

MR. O'MALLEY: He has answered it, I object to it.

THE COURT: Objection overruled.

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Q How many minutes did you remain in the kitchen? A 65

I didn't remain any minutes.

Q Did you look around? A Yes, I looked around.

Q In what direction did you look? A Well, I looked right around the kitchen as soon as I went in the kitchen door.

Q You looked towards the dining room? A Yes.

Q There is an entrance from the kitchen to the dining room?

A Yes.

Q And as you looked to the dining room you met the defendant

A I don't know whether it was in the dining room or the next bedroom, I am not sure.

Q Was he facing you, coming towards you? A Yes, he was facing me.

Q And did you speak to him first? A Yes, I said --

Q What did you say to him? A I said "Joe, what is the matter?"

Q And what did Joe say? A He said "Arthur, Arthur," that is all he said at the time.

Q He didn't have anything in his hands at that time? A Yes, he had a gun in his hand.

Q Are you sure about that? A Yes, I am sure.

Q Wasn't there a gun lying on the floor? A I don't know.

Q What did you say to him then? A I didn't say anything only I said "Joe, what is the matter?" All he said was "Arthur, Arthur" and the next thing he said to me was to bring

him a drink of whiskey.

Q And you went down stairs and brought him up a drink of whiskey? A No, I didn't bring him up any whiskey.

Q What did you do? A I went down stairs and called the boss and I sent for the police.

Q Did the boss come? A No, the boss didn't go up.

Q Did the police come? A yes, the police came in about fifteen or twenty minutes.

Q Fifteen or twenty? A Well, about fifteen.

Q Where were you during the fifteen minutes? A I remained in the saloon.

Q Where was the defendant? A The defendant was up stairs

Q Anybody else up stairs besides him at that time? A I don't know. There was no one there when I left.

Q The police arrived in about twenty minutes?

MR. O'MALLEY: He said fifteen.

A As near as I could say, about fifteen.

Q It might have been twenty minutes. A Well, I don't know.

Q How do you know it was fifteen? A Well, as near as I could say it was about fifteen while I was going up and coming down and going around.

Q You didn't look at any clock? A No.

MR. O'MALLEY: I object, let him answer.

THE COURT: Well, I shall not restrict counsel on cross examination.

Q well, when you came down stairs did you look at any clock?

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A No, I didn't look at any clock.

Q Did you look at your watch? A No, I did not.

Q You went out and gave a general alarm for the police to come, is that right? A Yes, I telephoned to the police station.

Q Did you look at the clock? A No, I didn't look at any clock.

Q Did you look at your watch at that time? A No.

Q You are not positive just how long a time it took for the police to come, but it was fifteen or twenty minutes? A I am not positive, it may be fifteen, it may be twenty.

Q Who arrived? A Officer Brown.

Q Any other officer? A The other officer didn't come through the saloon -- I don't know what way he went up.

Q Did you go up stairs with Brown? A Yes, Brown said for me to go up and I didn't go up for a couple of minutes after

Q And when you did go up you met Brown up stairs? A Brown was in the apartment when I went up stairs.

Q What room? A He was in the defendant's bedroom.

Q Any other officer there? A Yes, there was another officer.

Q What was the officer's name? A Freeman.

Q Was Officer Brady there? A I don't remember if Officer Brady was there.

Q But you are positive that Brown and Freeman were there?

A Yes, I am positive Brown and Freeman was there.

Q Were they doing anything? A Yes, they had hold of the

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defendant on the bed.

Q And how long did you remain up stairs with the officers?

A I remained there -- the doctor just came in right after me then.

Q How many minutes did you remain there? A I don't know how many minutes.

Q It might have been fifteen or twenty? A It may have been fifteen minutes and it may not.

Q You waited until the doctor came? A Yes, the doctor was right up after me.

Q And then the doctor examined the defendant? A Yes.

Q Did you see the defendant? A No. I didn't see him. I left the room when the doctor came in.

Q But before the doctor came in did you see the defendant?

A I saw him sitting on the bed.

Q Did you see in what condition he was? A No, I didn't see what condition he was in, only there was blood on his face.

Q Did you see any wounds on his body? A I didn't see wounds on his body, no.

Q Was he bleeding? A He was bleeding. There was blood on his face and hands and on his shirt.

Q Who was in charge of the saloon while you were up stairs the second time? A Mr. Nash was in charge of the saloon then.

Q You cannot positively swear that this is the gun (indicating the revolver)? A I cannot positively swear.

Q You could not positively swear that you ever saw this knife before, could you? A I couldn't swear. It is like the knife Brown showed me but I couldn't swear it is.

Q You never saw that knife in the possession of the defendant? A No.

Q You never saw this knife in the premises of the defendant? A Only when Brown had it in his possession.

Q All you know about it is what Brown told you? A All I know is Brown showed me the knife.

Q You knew Nora Forrester for about the length of time you were working for Nash, did you not? A No, I didn't know her that long.

Q For how long a time did you know her? A I knew her when she came to live up stairs.

Q How long a time was that? A That was after -- I don't know what month they came to live up stairs -- after Murphy came to work for the firm.

Q How long was Murphy working there? A I think it was in February 1912 he came there.

Q Was Nora Forrester a drinking woman? A Yes, I understood she drank .

Q A heavy drinker? A I don't know if it was heavy, but I saw her drunk.

Q Did you see her occasionally drunk? A I saw her drunk nights I let her in on the door.

Q How many nights did you see her drunk? A I often let her in and I often saw her drunk nights after eleven or twelve

o'clock.

Q This happened many times? A I don't know how many times.

Q You knew she was an opium smoker? A No, I didn't know it.

Q Did you know, of your own knowledge? A No, I didn't know of my own knowledge.

Q At what hour of the night did you used to leave her in?
A From eleven o'clock up -- I couldn't say.

Q Sometimes at one? A Maybe from one.

Q Two in the morning? A Sometimes two.

Q Three in the morning? A I don't know, it may have been three, I couldn't exactly say.

Q Three weeks prior to the death of Nora Forrester she attempted to commit suicide on the street, do you know that?

MR. O'MALLEY: Objected to unless ~~she~~ he knows.

BY THE COURT:

Q Do you know that?

BY MR. SCHICK:

Q I ask you, of your own knowledge? A Not to my knowledge only what Murphy told me.

THE COURT: Strike it out and the Jury will disregard it.

Q Did she in your presence threaten to commit suicide at different times? A Not in my presenece.

Q Was she arrested at any time prior to this crime?

MR. O'MALLEY: Objected to.

A I don't know.

Q For trying to commit suicide?

MR. O'MALLEY: Objected to, unless you know.

A I didn't know.

Q If you know, of course -- do you know of your own knowledge? A I don't know.

Q You didn't speak to anybody about this case? A No, I don't remember speaking to anybody about it, only to the District Attorney.

Q Outside of the District Attorney you never spoke to Officer Freeman, Brady or Brown about this case, did you? A I don't remember ever having any conversation with them about it.

Q You don't remember? A No, I don't remember every having any conversation. I don't believe I had.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q The revolver that you gave to Officer Brown, was that the same revolver that you took from the defendant? A Yes, the same revolver.

Q Mrs. Bowman was the mother of the defendant's wife, is that right? A Yes.

RE CROSS EXAMINATION BY MR. SCHICK:

Q How do you know that the revolver that you gave to Brown was the same? A Well, I got it in the same place as I left it when I brought it down stairs.

Q You were twice away from the place down stairs, were you not? A I was once away from it.

Q You went up stairs, you were gone for quite a long time;

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can you positively swear that that was the same revolver that
you placed there that you gave to Brown? A I can't swear.
I got it in the same place I left it.

BY THE COURT:

Q Was there any other revolver in the place? A No.

Q Did you keep a revolver there? A No.

Q Did Mr. Nash? A No, he had no revolver, to my own
knowledge.

BY MR. O'MALLEY:

Q And there was no other revolver in the place where you
put this in the saloon but this one? A No.

BY MR. S CHICK:

Q You have some weapon behind the bar there in Nash's
place, have you not? A There is a club in it, that is all.

Q A what? A There is a policeman's club in it.

Q Aren't there several revolvers there behind the bar?
In the drawer near the cash register? A No.

Q Will you positively swear there was not a revolver there
at the time you were employed there, in a drawer near the cash
register? A No, not in my time.

Q Did you ever look into that drawer? A Yes, I looked
into all of the drawers.

A N G E L O Z I T O , called as a witness in behalf of the
People, being first duly sworn, testifies as follows:
(Through Official Interpreter DeVilla).

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(The witness states that he resides at 437 West 39th Street.)

(Witness withdrawn temporarily.)

A R T H U R M C G L A D E , recalled, testifies as follows:
BY JUROR NO. 2:

Q You claim that you closed up at one a. m. A One a. m., yes.

Q Well, how did you let in this Nora Forrester at one, two and three o'clock? A Well, I remained there and cleaned up the bar room and had it ready for the morning.

Q You remained there? A Yes.

Q Until what time? A Until next morning, until I would open up at six o'clock.

Q And you remained there all night? A All night, yes.

Q Cleaning up and getting ready? A Yes, sir, and also to let the people in if any party come after closing time. The hall door was closed at eleven or twelve o'clock, I am not sure which. There was no key for the outside hall door.

Q What time do you open up in the morning? A At six o'clock.

Q And you remain there until the defendant comes and relieves you? A Yes.

BY MR. SCHICK:

Q You are the night bartender and are there all night?

A Yes.

Q You went on duty at seven o'clock in the evening? A

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Yes.

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Q And until what hour did you remain on duty tending bar? A Until seven o'clock in the morning.

Q And you kept open all night? A No we did not keep open all night I closed up at one o'clock.

Q What did you do between the hours of one a. m. and seven a. m. -- six hours? A I cleaned up the bar and had it ready for the next morning.

Q Do you want this court and jury to believe that it took you six hours to clean up? A No, it didn't take six hours but I had to remain to let in any tenants that would come in after hours.

Q You kept the place open and selling liquor and after hours, did you not? A No, I didn't keep open selling liquor, I closed it at one.

Q Then do you want this Jury to believe that you were cleaning up for six hours, from one o'clock until seven o'clock in the morning, is that right? A No, I was not cleaning up all the time.

Q What did you do during those six hours? What did you do? A There were times I was doing nothing.

Q Oh, you just looked around? A Yes.

Q Waiting for customers to come in and sell them liquor after one o'clock, isn't that right? A No, I was not waiting for any customers to come in.

Q Did you play card? A No, I did not.

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Q You were watching for the sunrise, were you not? A

Well, I guess I would be.

MR. SCHICK: I guess so. That's all.

BY MR. O'MALLEY:

Q I understood you to say you were in charge of the building, were you? A Yes.

Q Between one and six o'clock in the morning when you opened the saloon? A Between one and seven o'clock in the morning

ANGELO ZITO, recalled, testifies as follows. (Through Official Interpreter DeVille).

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Do you speak English without an interpreter? A No.

Q Where do you live? A 447 West 39th Street.

Q And where do you work? A At Mr. Nash's place.

Q That is Mr. Nash's saloon at 640 Eighth Avenue? A Yes, on Eighth Avenue.

Q How long have you worked there? A Altogether about fifteen or sixteen months I worked for Mr. Nash, then I went to Italy and came back and I reentered his employment.

Q You were working for him on May 22nd of this year, were you? A Yes.

Q Now, do you know the defendant here, Murphy? A Yes, certainly I do know him.

Q You worked there in the same saloon where he tended bar? A No.

(Question repeated) A Certainly.

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Q Now, do you remember the day that Nora Forrester died up there in her apartment on the fourth floor? A It was on a Wednesday.

Q Now, were you in the saloon that morning? A Certainly.

Q Do you remember a woman coming in there and saying something to Mr. McGlade? A I saw an old woman come down stairs, call him and talk to him and he went up stairs with her.

Q Did you go up the stairs at that time or not? A No.

Q How long after McGlade went up did you go out of the saloon, if you did go out? A I couldn't tell you. I didn't have a watch and even if I had a watch I probably wouldn't be able to tell the time.

Q Well, you did go out, did you? Did you go up stairs? A Yes.

Q Now as you were going up the stairs did you meet anybody? A The bar tender.

Q Whom do you mean by the bartender? What is his name? A I always called him "Mike", that is all I know him by.

Q Is he the same person who was just on the stand here? A yes, sir.

Q Arthur McGlade. Was he going up or coming down when you met him? A He was coming down and I was going up.

Q Did you go up to the apartment? A Yes.

Q When you got up there tell the jury what you did? A

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I first went to the front door, I found it locked and then I went to the kitchen door, I found it open, I pushed it in and walked in. I saw Murphy with a knife in his hand.

Q Where was he when you saw him with a knife in his hand? A He was in the bed in which he had slept during the night.

Q What was he doing with the knife -- did you notice? A He had the knife in his hand and he was full of blood on this side (Indicating left side of the chest.)

Q Did you say anything to him? A No.

Q Did he say anything to you? A No.

Q And what did you do, if anything? A As soon as I saw the defendant with a knife in his hand I immediately ran away down the stairs.

Q Did you see any other person in the room where you saw the defendant at that time? A No.

Q Did you go into the room where he was? A No.

Q Do you remember what room you did go into when you saw him on the bed? A I was standing in the kitchen.

Q And what did you do? A I went down stairs.

Q How long did you stay down stairs? A I remained a very short while.

Q Did you see any officer after you went down stairs? A No. The boss telephoned told --

THE COURT: No, don't state that.

Q When you went down did you talk to the boss, Mr. Nash?

A Yes.

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Q After you talked with Mr. Nash did you go any place?

A Yes, I went to 40th Street to get the police.

Q Did you see any officer there? A I found one officer and I brought him back with me.

Q Do you see that officer in Court? A Yes.

Q Is this the officer you saw (Indicating Officer Brown of the 22nd Precinct)? A Yes.

Q Did you come back to the saloon with him? A Yes.

Q After you got back to the saloon where did you go? A I went up stairs with the police officer.

Q When you got up stairs did you go with Officer Brown into the apartment? A Yes, sir.

Q Now tell the jury exactly what you saw after you went into the apartment there the second time? A I saw several people in there. Murphy was discoursing or talking to the people that were present. Then I saw his wife on the floor, laying down in her nightshirt. And the officer said "What is the matter?" and he appeared to be addressing me and I said --

MR. SCHICK: We object to that.

THE COURT: Objection sustained.

Q Did you see anything in Murphy's hands?

MR. SCHICK: I object to the form of the question, it is leading. What did he see would be more proper.

Objection overruled; exception.

A The knife.

Q And what was he doing with the knife, if anything?

A He held it in his hands and it was all covered with blood.

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Q Did you notice Murphy's breast?

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

Objection overruled; exception.

A I saw blood on the left hand side of his clothes (Pointing to breast.)

Q Did you notice anything about the body that you saw on the floor? A Yes, it was laying down.

Q I mean did you notice anything about the body -- was there anything on it? A No.

CROSS EXAMINATION BY MR. SCHICK:

Q How long have you been working for Nash? A Fourteen or fifteen months, I am not sure.

Q How old are you? A Thirty four years of age.

Q Married? A Yes.

Q How long have you been in this country? A Two or three years.

Q What was your occupation before you came to this country?

A I was a laborer on the other side.

Q Ever been arrested? A No.

THE COURT: You cannot ask that question. You may ask the witness whether he was ever convicted, but not arrested.

MR. SCHICK: Question withdrawn.

Q Were you ever convicted of any crime in Italy? A No.
No.

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Q Ever convicted of any crime in this country? A No.
No.

Q Did you ever work for anybody else besides Nash? A No.

Q What time was it at the time you went up to the defendant's apartment? On May 22nd, 1912, in the morning? A I don't know what time it was because I can't read the face of a clock.

Q Did the bartender go up first or did you go up first?

A The bartender.

Q And after the bartender came down to the saloon you went up stairs? A Yes.

Q And you went right into the kitchen when you got up stairs, on the third floor, is that right? A Yes, I opened the door myself and entered the kitchen.

Q In the kitchen you saw the defendant sitting on the bed and holding a bloody knife in his hand? A Yes.

Q And then you went down stairs? A Yes.

Q And then Mr. Nash told you to call the police? A Yes.

Q And the police came? A yes.

Q And you went up stairs again? A yes.

Q And you went into the kitchen? A Yes.

Q And you saw the defendant still sitting on the bed and holding the bloody knife in his hand? A Not when I went there the second time. He was talking with the people present.

Q Did not you testify on direct examination that when you came back the second time the defendant was holding the knife in his

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in his hand? A No, I said the first time he was sitting there, not the second.

Q Did you not testify five minutes ago on direct examination that the second time you went up stairs the defendant was sitting on the bed and holding a knife in his hand? A No.

Q Do you wish to change your testimony now, if you did testify that way?

MR. O'MALLEY: I object to that.

THE COURT: Objection sustained. He says he did not.

THE THIRD JUROR: He did testify -- I understood him to testify that on his return the second time the defendant was holding the knife in his hand, therefore, I would like to have the testimony read.

THE COURT: He does not dispute that. The question is whether he held the knife while seated on the bed; that is the point Counsel raises.

MR. SCHICK: That is just exactly the way he testified.

THE COURT: My notes show -- but you are not to be controlled by them, you are to be controlled by your own recollection of the evidence, and if you are in doubt as to the evidence, the stenographer will read it -- that he said that the second time when I went there Murphy was talking to the people, Nora was on the floor, the defendant held a knife, it was all covered with blood. The question counsel now asks the witness is whether or not the defendant

was seated on the bed and held the knife in his hand. You may read the testimony, Mr. Stenographer.

THE STENOGRAPHER: (Reading) "Q Now tell the jury exactly what you saw after you went into the apartment there the second time? A I saw several people in there. Murphy was discoursing or talking to the people that were present. Then I saw his wife on the floor, laying down in her night shirt. Q Did you see anything in Murphy's hand? A The knife. Q And what was he doing with the knife, if anything? A He held it in his hand and it was all covered with blood. Q Did you ~~know~~ notice Murphy's breast? A I saw blood on the left side of his clothes. Q Did you notice anything about the body that you saw on the floor? A Yes, it was laying down. Q I mean did you notice anything about the body -- was there anything on it? A No."

BY MR. SCHICK:

Q The second time you went up stairs, who else besides Murphy was in the room? A There were people there, I didn't know them.

Q Do you know Officer Brady who lived in the house? A Yes.

THE COURT: (Addressing Interpreter) Tell the witness to describe the persons who were there, if he can.

A There were women and men in that room. I was scared, very much scared and I went out quick -- I didn't count how many there were.

Q Can you remember anybody that you knew? A The Police

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Officer.

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Q Brady? A The officer who resided in the front apartment of that house.

Q Anybody else? A None of the others were known to me.

Q Was Murphy standing and talking to these people? A Yes

Q What did you do? A As soon as the police entered I went out and went down stairs again.

Q Did you see Officer Brown in the room? A Yes, sir, I brought him up there myself.

Q Did you see him do anything? A I saw him enter with me, I saw him join the crowd, talk to them and then I ~~went~~ withdrew ~~through~~ and down stairs.

Q Did you speak to Brown since? A In regard to these people?

Q In regard to the case? A No, I never spoke to anyone about it.

Q Did you speak to anybody? A No.

Q Until today when you were questioned in Court? A No.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q You were up to the District Attorney's office, weren't you at one time? A Yes.

Q And you made a statement there? A Yes, sir.

Q When you talked about the case at that time, didn't you?

A I didn't talk to anyone, I stated it.

RE CROSS EXAMINATION BY MR. SCHICK:

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MISSING PAGES

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C O R N E L I U S J. B R O W N (16th Precinct) called as
a witness in behalf of the People, being first duly
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are a member of the Municipal Police force, are
you, Officer? A Yes.

Q Attached to what precinct? A The 16th Precinct.

Q Where were you attached on May 22nd of this year?
A 22nd Precinct.

Q Where is that located? A West 37th St, between Ninth
and Tenth Avenues; No. 434.

Q Do you recall the morning of May 22nd of this year?
A Yes sir.

, Q And where were you that morning? A In the station-
house.

Q Did you leave the stationhouse at any time? A Yes sir

Q Where did you go? A I went to Eighth Avenue and 41st
Street,, 640 Eighth Avenue.

Q Did you see the last witness on the stand that morn-
ing? A Yes sir.

Q Where? A Between 40th and 41st Street,, on Eighth
Avenue, on the east side.

Q After seeing him what did he do? A He led me up to
Nash's saloon.

Q At 640 Eighth Avenue? A Yes sir.

Q In Nash's saloon did you see anybody besides this wit-

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Q. name Zito? A. All I can recollect seeing was Mrs. Brennan sitting at a table in the front of the saloon.

Q. Did you speak to her, yes or no? A. No sir.

Q. Did you speak to anybody in the saloon that you remember? A. No sir.

Q. And what did you do? A. I went upstairs with Zito to the fourth floor front.

Q. And going up did you meet anybody? A. No sir.

Q. In the hallway did you meet anybody? A. Yes sir.

Q. Whom did you meet? A. Officer Brady.

Q. At that time did you know Officer Brady? A. Slightly. I didn't know him very well.

Q. Well, I mean did you know he was a police officer?
A. No sir.

Q. Where was he -- in the hall outside the apartment?
A. Yes sir.

Q. Did you speak to him before going in? A. I didn't speak to him, no sir.

Q. Did he speak to you? A. Yes sir.

Q. After speaking to Officer Brady what did you do? A. I entered the apartment.

Q. Through what door? A. Through the kitchen door.

Q. Now go ahead and tell the jury exactly what you did after you entered the apartment? Where was Zito at that time?

A. Zito was behind me.

Q. Now, tell what you did? A. I went in the kitchen

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through a dining room, then through a bedroom then into ~~the~~
the front bedroom, where I seen the defendant Murphy reclining
on the bed with a knife in his hand.

Q What was he doing with the knife? A Stabbing himself
like that (indicating by striking breast).

Q I show you Peoples Exhibit 5 for Identification, and
ask you, did you see that before? A Yes sir.

Q Where? A That was a knife Murphy had in his hand.

Q That you have just described? A Yes sir.

Q And did you put any mark on that knife? A Yes sir --
I didn't put a mark on it, no sir. There was a mark on it.
I tied a tag onto it.

Q And that is the same knife you saw in his hand?
A Yes sir.

Q What did you do with it? A I took it with me to the
stationhouse.

Q Well, before taking it to the stationhouse, after
you saw it in his hand, did you take it away from him? A Yes
sir.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: Objected to, no proper foundation laid.

THE COURT: You may claim the witness. The officer
says that the knife had a mark thereon, that he took it
and placed a tag thereon and that it was the knife used
by the defendant in stabbing himself and that the officer
witnessed the scene.

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BY MR. SCHICK (Examining on offer in evidence):

Q You say there was a mark on this knife at the time you took it to the stationhouse. What kind of a mark, if any, was there? A There was a mark right near the handle.

Q Describe the mark? A The mark runs along ~~right~~ like that right near the handle, right near the blade of the knife. It is a long mark about an inch and a quarter long.

Q On the side of the handle? A On the flat of the handle.

Q Describe the handle? A It is a wooden handle.

Q Describe it? A About three and a half inches long, sort of curled on the end.

Q And where is this particular mark? A Right near the blade of the knife, on the handle, on the side of the handle.

Q Is it on the knife or on the handle? A On the handle.

Q And who made that mark? A The mark was there.

Q What did you do with the knife? A After taking it off Murphy I kept it in my possession.

Q How long did you keep it in your possession? A Till I reached the West 37th Street stationhouse.

Q What did you do with it then? A I showed it to the lieutenant.

Q What then? What became of the knife after that? A Then I put it in an envelope and kept it at the desk.

Q Who kept it at the desk? A I did.

Q You mean that you put it in an envelope and gave it to

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the lieutenant and it remained there? A I gave it to no lieutenant; I kept it myself.

Q Where did you keep it? A On the desk.

Q You carried the knife with you when you go out on duty? A I didn't go out on duty after that. I remained in the West 37th Street stationhouse.

Q What did you do? Did you ever go out patrolling?
A Yes sir. My tour expired at eight o'clock that morning and I was detained by this case until away late in the morning, until I was summoned to the District Attorney's office.

Q That happened May 22nd, 1912? A Yes sir.

Q And where did you keep the knife between May 22nd, 1912 and October 14, 1912? A In the District Attorney's property clerk's office.

Q When did you deliver this to the District Attorney's property clerk, what date? A Well, the same day, I believe.

Q And you didn't see the knife since? A I may have; I won't swear I didn't see it since.

Q Now, you will positively swear that this is the knife, you will positively swear that you took this knife, marked Peoples Exhibit for Identification from the person of this defendant? Look at the jury, don't be afraid? A I want to watch what you are doing, too.

Q Will you positively swear -- I repeat the question -- you have time to change your testimony.

MR. O'MALLEY: I object to that statement.

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THE COURT: Objection sustained.

MR. O'MALLEY: I ask the Court to direct the jury to disregard it.

THE COURT: The jury will disregard it.

Q Do you remember if you commit perjury, if you didn't take this knife from the defendant's person. I will give you all the chance in the world. You face the jury and you now positively swear that you took this knife from the person of this defendant -- what is your answer? A Yes.

MR. SCHICK: That's all. I have no objection to its going in.

Marked in evidence as Peoples Exhibit 5.

BY THE COURT:

Q Where is the tag that you put on it? A I don't know what became of the tag, your Honor.

BY MR. O'MALLEY (resuming direct examination):

Q This mark here is the mark you are referring to? A Yes.

BY THE SECOND JUROR: Q Is that the mark you made, Officer? A That is the mark, about an inch and a quarter long.

BY MR. O'MALLEY:

Q Did you have any conversation with the defendant at that particular time? A No sir.

Q Did you make any other observation in the room -- did you see any other person in the room? A I seen the body of the woman on the floor.

Q Describe how that body was lying? A The head was

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towards the closet and the head feet towards the bed, lying
on her back.

Q How was the body dressed? A Scantily clad; it had on
a kimono and a shirt.

Q Any shoes or stockings? A No shoes or stockings.

Q Now, what did you do at that time, if anything? A I
went downstairs then and summoned a hurry call for an ambulance
from the New York Hospital.

Q And after doing that what did you do? A I went up-
stairs again.

Q Now, who was in the apartment besides you and Zito
that you remember? A Officer Brady, Officer Freeman and I
think there were one or two -- one or two women come in.

Q Arthur McClade, did you see him there? A Not when I
first entered .

Q But you did see him there that morning? A I see him
there later that morning, yes sir

Q After coming upstairs, where was the defendant, if you
remember? A Sitting on the bed.

Q Did you have any conversation with him at that time?
A No sir.

Q After coming back, Officer, I mean? A Not until after
the doctor had dressed his wounds.

Q Dr. Vieter did dress his wounds, did he? A Yes sir.

Q And made an examination of the body of the deceased?
A Yes sir.

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Q Now then, after that did you have any conversation with the defendant? A Yes sir.

Q Will you please tell the jury exactly what was said to the defendant by you and what replies he made? A I asked him who killed the woman. He replied --

MR. SCHICK: I object, if this is in the nature of a confession and this witness on the stand did not warn the defendant of his rights.

THE WITNESS: Your Honor, I did warn the defendant.

THE COURT: Just a moment. Make your objection.

MR. SCHICK: I object on the ground that it is improper, immaterial, irrevelant and incompetent, as this defendant being in the custody of an officer he had no right to question him regarding the crime, and if he did it was his duty to inform him that whatever he may say may be used against him.

THE COURT: That is not the law. I overrule your objection on the grounds urged by you. You may claim the witness with a view to learning whether or not the admission or confession was induced by him through fraud or promise or produced by fear.

BY MR. SCHICK:

Q At the time that you inquired regarding this crime did you say anything to the defendant? A I told him that anything that he said would be used against him, he must be careful about what he says.

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Q What else did you say besides that? A Then I went on to question him.

Q Did you tell him anything else in the way of that it will be better that he tells you how it happened, that it is for his own good and that you will see that he will be all right? A No sir.

Q Well, what did you say? Just give us the exact words, what you did say to the defendant? A I told him that any statement that he made could be used against him and to be careful of what he had to say.

Q And who were present when you said this to the defendant? A Arthur McGlade and the two police officers.

Q Officer Brady and Officer Freeman, is that right?

A Yes sir.

BY MR. O'MALLEY:

Q Now, proceed, Officer, and tell what the conversation was? A I asked him, "Who did this?" He replied, "I did". I said, "What caused you to do this?" And he says, "I don't know." I says, "Was it another man in the case?" He replied, "Yes." I says, "Who was it?" He says, "I won't tell you." And then I asked him, "Was there any fight?" He says, "Yes, we fought the previous evening up until twelve o'clock, and went to bed. At five o'clock in the morning we started fighting again, and I got a gun", he says, "and I shot her."

Q Did he say why he shot her? A No.

Q Did he say how many shots he fired? A No sir.

Q Did he say how many shots he fired altogether? A He says, "I fired two into her and one after myself." He said "I tried to kill myself and I am sorry I failed."

Q Is that all that you recall that he said? A That's all that I recall.

Q Did he say anything at that time about the deceased having a revolver at any time? A No sir.

Q Then did you observe the body of the deceased? A Yes.

Q And you have told us how she was dressed? A Yes sir.

Q You said she had on a shirt and a kimono? A Yes sir.

Q Did you remove the clothing? A Yes sir.

Q How did you remove the shirt? A By slitting it in the back.

Q On each side? A On the back.

Q Now, do you recall how this kimono was -- whether or not the breast of the body was exposed? A The kimono was laying sort of flat towards the floor.

Q That is, open? A Yes sir.

Q Now I show you a garment here and I ask you if you have seen that before? A Yes sir.

Q Where? A In the apartment, 640 Eight Avenue, on the fourth floor.

Q Is that the shirt you speak of that was on the deceased? A Yes.

Q And you took it off, you say, by slitting it up the

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back? A Slitting it, yes sir.

Q What did you do with it? A I put it in a bundle with the kimono and the knife and the revolver.

Q And when you took it off of the body was it in the condition it is now in, so far as the discoloration is concerned? A Yes sir.

Q What did you do with it after you took it off? A I took it to the West 37th Street station after taking it off and wrapping it up.

Q And afterwards did you bring it to the District Attorney's office? A Yes sir.

Q And you got it from the property clerk of the District Attorney's office to-day and you brought it down here? A Yes.

Q Is it in the same appearance, so far as outside appearance is concerned, as when you took it from the body of the deceased? A Yes.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: No objection.

THE COURT: Received.

Received in evidence and marked Peoples Exhibit 7.

Q And this is the kimono you speak of? A Yes sir.

Q And you did with that the same as you did with the shirt that you have described? A Yes sir.

MR. O'MALLEY: I also offer that in evidence.

THE COURT: Received.

Received in evidence and marked Peoples Exhibit 8.

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Q Did you at any time that morning have any conversation with McGlade, the bartender? A Yes.

Q After you had that conversation what did McGlade do Where did he go, if any place? A I sent him downstairs.

Q Did he afterwards come back? A Yes sir.

Q And when he came back what did he have, if anything?

A A revolver.

Q I show you Peoples Exhibit 6 for Identification and ask you if that is the revolver that McGlade had? A Yes sir.

Q Did he hand it over to you? A Yes sir.

Q Did you at that time put any mark on it? A Yes sir.

Q And what was the condition of the revolver when it was handed to you? A It had three empty shells and two loaded shells and one chamber empty.

MR. O'MALLEY: I offer the revolver in evidence.

MR. SCHICK: Objected to, the proper foundation has not been laid, not properly proved.

Objection overruled. Exception.

(Marked in evidence Peoples Exhibit 6.)

Q I understood you to say that you found three empty shells in the revolver? A Yes sir.

Q I show you some shells and ask you if those are the shells that you found? A Yes sir.

Q Did you put your mark on them? A Yes sir.

Q Do you now recognize your mark? A Yes sir.

MR. O'MALLEY: I offer them in evidence.

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MR. SCHICK: Objected to, no proper foundation laid for the offer.

Objection overruled. Exception.

Received in evidence and marked Peoples Exhibit 9.

Q Now I show you two loaded shells and ask you if those are the two loaded shells that you say you found in that revolver? A Yes sir.

Q At the time you found them in the revolver did they have this dent on the end? A Yes sir.

Q Each one? A Yes sir.

MR. O'MALLEY: I offer them in evidence.

MR. SCHICK: Objected to, no proper foundation has been laid for them.

Objection overruled. Exception.

Received in evidence and marked Peoples Exhibit 10.

Q Officer, I show you another piece of metal and ask you if you have seen that before? A Yes sir.

Q When and where? A I found it in the shirt of the deceased.

Q When? A After taking it off of her -- the shirt off of her.

Q Will you tell the jury about where you found it? A I found it in one of the holes that is all gunpowder, black.

Q In this little shirt, Peoples Exhibit 7 in evidence?
A Yes.

MR. O'MALLEY: I ask to have that marked in evidence.

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MR. SCHICK: Objected, no proper foundation laid.

Objection overruled. Exception.

Received in evidence and marked Peoples Exhibit 11.

Q Do you know what caliber revolver this is, Peoples Exhibit 6 in evidence? A .32.

Q What make -- "H. & A"? A Hopkins & Allen, I think it is.

Q I show you Peoples Exhibit 1 in evidence and ask you if you can see what caliber that bullet is? A I couldn't swear to the caliber.

Q (Handing one of the shells from Exhibit 9 to the witness to fit the bullet, Peoples Exhibit 1 into) A I couldn't swear, but it looks like .32. It may have been flattened out when it came out.

Q Did you at any time after this day go to the apartment of the defendant? A Yes sir.

Q And there did you find any garment? A I found an overcoat in the closet.

Q Did you take the overcoat? A Yes sir.

Q And at any time after that did you ever speak to the defendant about this overcoat? A Yes sir.

Q Where? A Bellevue Hospital.

Q About how many days was that after you took the overcoat from the apartment where you saw the defendant that morning? A About one week later.

Q Did you have any talk with him with regard to anything

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15 that you found in that overcoat? A I told him I got an over- 97
coat there and he told me it was his, and I told him there
were six loaded bullets there, and he says he knew it was in
the overcoat pocket.

Q In this overcoat? A Yes sir.

Q And that is the coat that you had the conversation
with him about, did you? A Yes sir.

Q Where did you find those bullets, in what pocket? A In
the outside pocket.

MR. SCHICK: Objected to as incompetent, immaterial
and irrelevant, no proper foundation laid. It would be
preposterous to try to prove that they found bullets in
some garment and bring it home to this defendant.

THE COURT: Is there any evidence that the property
was the defendant's?

MR. O'MALLEY: He had a conversation with the de-
fendant about the overcoat and told him he found it in
his room.

THE COURT: When was the overcoat found?

Q What day? A The day after.

Q The day after you saw the defendant there? A Yes sir.
I went there with the men that took the photographs and the
drawings.

Q And then you took possession of the overcoat, did you?
A Yes sir.

Q And then you afterwards, you say, about a week after-

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wards, in regard to it? A With the defendant, at Bellevue
Hospital.

Q And spoke about this overcoat? A Yes sir.

BY THE COURT:

Q Who had charge of the apartment after the defendant was
taken into custody? A We had a policeman in there for
awhile, but just how long I don't know.

Q Was the policeman there at the time that you found the
overcoat? A No sir.

THE COURT: There are two cases in the Court of Ap-
peals that make it rather difficult to determine whether
or not the evidence should be admitted. The Court of Ap-
peals held in People v. Frank Kinney that where a defend-
ant was seen going to the lavatory of a public saloon and
after he left there were found keys which fitted the door
of the apartment where the deceased was found -- the Court
of Appeals in that case held that the evidence was pre-
judicial and incompetent and reversed it upon that ground.
In the case of the People vs. Ginsta, in 205 N.Y., the
Court of Appeals admitted in evidence the fruits of a
crime, and there was some proof that in the room where the
goods were found there had been no goods there before the
defendant's entry. Now, if you can account for the con-
dition of this coat after the defendant was arrested, I
shall admit it in evidence.

MR. NOTT: The defendant here admitted that it was
his coat.

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MR. O'MALLEY: And that the bullets in it were his

THE COURT: Yes, but the coat was recovered, as I understand, a day after.

MR. NOTT: But the point is to show that he knew that the bullets were in the coat and he admitted that he knew they were in the coat.

BY THE COURT:

Q Did you have a talk with him about the coat? A He told me in Bellevue Hospital -- I told him I found those bullets.

MR. O'MALLEY: He has already testified to the conversation with the defendant about them, your Honor. Will the stenographer read that?

The stenographer (reading) "I told him I got an overcoat there and he told me it was his, and I told him there were six loaded bullets there, and he says he knew it was in the overcoat pocket."

THE COURT: Oh, I beg your pardon. Objection overruled. That is a different proposition entirely.

MR. SCHICK: Exception.

BY MR. O'MALLEY:

Q I show you an envelope and ask you if that is your writing on it? A Not the top, but the bottom is my name.

Q Did you seal it up? A Yes sir.

Q Will you open it, please? A (Witness opens envelope).

Q Those are the six bullets that you found in this over-

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coat? A Yes sir.

Q And about which you talked to the defendant? A Yes sir. I chipped each one off at the lead.

MR. O'MALLEY: I offer them in evidence.

THE COURT: Received.

Received in evidence and marked People's Exhibit 12.

BY THE SECOND JUROR:

Q Were both sides chipped off? A Some of them. I don't know whether I chipped both sides on all, but I know I remember taking the knife and chipping them off.

Q This one has both sides chipped? A Yes.

BY MR. O'MALLEY:

Q Now, after you removed the clothing from the deceased did you notice the condition of her body? A Yes.

Q Generally. Well, describe what you noticed if you can remember? A I remember two bullet wounds and two stab wounds.

Q Give the location of those? A The bullet wounds were around here, around the nipple of the left breast; and the stab wounds were right near.

Q You subsequently had a talk with the defendant, did you not, in the hospital? A Yes sir.

Q And when was that? A That was about a week later in the hospital. I went there at the request of his mother-in-law

Q Now, by his mother-in-law you mean Mrs. Bowman? A Yes.

Q Now, tell all the conversation that you had with him at

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19 that time, if you can recall? A I says to him, "Well, Murphy, why did you do that?" He says, "I don't know. I must have been mad." He says, "I remember her with the gun and she rastled with the gun and the gun went off in the excitement." I said, "Well, Murphy, how do you account for the stab wounds that was on her body?" He says, "I don't know. I must have been mad."

MR. SCHICK: I object to any further conversation excepting if they prove that he made him no sort of promise prior to getting this conversation.

THE COURT: You may claim the witness.

BY MR. SCHICK:

Q What did you tell him before asking him about the crime again the second time? A I asked him did he want to see me.

Q And what did you tell him about the District Attorney? A I told him nothing at all about the District Attorney, because I had no power to tell him anything about the District Attorney.

Q Did you advise him to go down to the District Attorney's office with you and that if he will make a confession they will be easy with him? A No sir, I had no power at all to do that.

Q Didn't you make promises to this defendant before that conversation -- look at the jury, don't look at me -- now tell me, did you make any promises to him at Bellevue Hospital about

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this further conversation? A No sir, I made no promises whatsoever.

BY MR. O'MALLEY:

Q You were proceeding to tell the conversation; had you told it all, Officer? A All I can remember of it. That conversation about the overcoat, that was in it.

Q Now then, do you recall the number of shots that the defendant stated was fired? A He told me one shot was fired and when he seen her fall that he now -- he fired another one and then he fired another one at himself. That was at the hospital he told me that.

Q Did he say anything about what caused the shooting?

A No, not that time.

CROSS-EXAMINATION BY MR. SCHICK:

Q How old are you? A I am thirty years old.

Q Married? A Yes sir.

Q Where do you live? A 563 Tenth Avenue; 41st and 42nd Streets.

Q Where were you born? A I was born in New York City.

Q Father and mother alive? A Yes sir.

Q Did you go to public school? A Yes sir.

Q Did you graduate from public school? A No sir, I went to the next to the highest in the grammar, that was as far as I could go at that time.

Q What age did you leave school? A Twelve years of age when I left school.

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Q Will you please face the jury when answering my questions. At what age did you leave school? A Twelve years old.

Q What did you do after that? A I worked as a wagon boy up in McPartland & O'Flaherty's.

Q How long did you work there? A Possibly a year.

Q What did you do after that? A I worked in the printing business.

Q Whom did you work for? A William Davy, 19th Street and Eighth Avenue.

Q How long did you work for Davy? A I served my time there, five years.

Q Why did you leave Davy? A On account of my health.

Q Were you discharged? A No sir, I never was discharged in my life.

Q Where did you work next? A I worked for the New York Central Railroad.

Q How long did you work for the New York Central Railroad? A Possibly six years.

Q Don't you know? A Well, I won't give you a stated time. I said possibly six years.

Q When did you go to work for the New York Central Railroad? A I can't remember the year.

Q What time did you leave the employ of the New York Central? A The day before I went on the police force.

Q What year was that? A That was 1907.

Q Do you remember the month? A Very well -- January.

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Q 19077 A Yes sir.

Q And you have been on the police force ever since?

A Yes sir.

Q What are your duties as a policeman? A To protect life, property and limb.

Q And what precinct were you attached to at the time the supposed crime was committed? A 22nd Precinct.

Q Where is that located? A 434 West 37th Street.

Q Were you on patrol duty on that day? A On that morning.

Q That morning? A Yes sir.

Q What time? A From twelve until eight; we were doing a late tour.

Q And when they made a call for police at the station were you in the station? A Yes sir. I had what was called a stationhouse post.

Q And who called for you? A The lieutenant.

Q What did he tell you? A He told me there was a shooting match at Eight Avenue and 41st Street, to rush up there.

Q Did you go up there? A Immediately.

Q Did you go with anybody? A I went alone.

Q Did you see Angelo in the stationhouse? A I don't know Angelo.

MR. O'MALLEY: Zito, he means.

A (Witness continuing) Zito comes to the stationhouse at no time.

Q Did you go back with Zito to Nash's house? A When I

met him between 40th and 41st Street on Eighth Avenue.

Q You and Zito went up to the house, did you not? A Yes.

Q And Zito remained in the apartment for some time with you? A That I don't know.

Q But he was in the apartment with you? A He accompanied me to the apartment, yes.

Q Before you went into the apartment you met Officer Brady in the hall? A Yes sir.

Q You had a conversation with Officer Brady? A Yes sir.

Q And he handed you something in the hall, did he not?

A He handed me something?

Q Yes. A Not as I know of.

Q He handed you some instrument, a weapon? A No sir.

Q He handed you a knife? A No sir.

Q You are sure? A Positive.

Q Did you have any conversation regarding a knife with Officer Brady prior to your entering the apartment? A No sir.

Q Did you have a conversation with Officer Brady after that, after you left the apartment? A I may have, I don't remember.

Q Now what room did you enter in when you first came in from the hall? A In through the kitchen.

Q What did you do next? A Went into the diningroom.

Q And what did you do then? A I went through a bedroom.

Q And then? A Then into the defendant's bedroom.

Q That was the fourth room? A Yes sir.

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Q Let me understand you. You go in the hallway and go into the kitchen? A Right.

Q Went into the dining room? A Yes.

Q First bedroom? A Yes sir.

Q And the second bedroom, which was the fourth room?

A Yes sir.

Q Now, when you got into the fourth room, was anybody in the room besides the defendant? A And the deceased.

Q Anybody else in the room besides the deceased and the defendant? A Not that I seen.

Q Nobody else. Now, what did you do? A I took the knife away from the defendant the first thing.

Q Where was the defendant? A Lying at the head of the bed.

Q Sitting on the bed? A Yes sir.

Q And holding the knife in his hand? A Yes sir.

Q And what did you do? A I took the knife away from him.

Q What did you say to him? A I said to him, "What is the matter with you? Are you crazy?"

Q Did you say anything else? A No sir.

Q What happened next? A And went down and got the ambulance, rang for an ambulance from the New York Hospital.

Q What did you do after that? A Proceeded back upstairs.

Q Did anybody remain upstairs while you were gone for the ambulance? A Yes sir.

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Q Isn't it a fact that Brady called the ambulance? A No.

Q And when you went downstairs the ambulance was coming, already arrived? A No sir, I called the ambulance.

Q Did you leave any officer upstairs while you were gone? A Officer Brady and Officer Freeman.

Q Then when you went downstairs to call the ambulance you left Officer Freeman and Officer Brady in the apartment, is that right? A That's right.

Q While you were in the apartment prior to your going for the ambulance where was Officer Brady and Freeman? A They were up there in the apartment.

Q In what room? A In the bedroom.

Q What bedroom? A In the front bedroom.

Q Did they ever come into the same room where you were?

A They were in the same room with me all the time.

Q Then Officer Brady and Officer Freeman were present when you took the knife from the defendant? A I did not say that. Officer Brady was present but Officer Freeman was not.

Q Then let me understand you. See if I understand you. Officer Brady was in the bedroom, in the same room that you were and the defendant and the deceased, and Brady saw you take the knife from the defendant; is that right? A Yes sir, that's right.

Q Where was Officer Freeman? A Officer Freeman ^{come} about a minute later, a minute and a half possibly, maybe two minutes.

Q And did Officer Brady say anything to the defendant?

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A Not that I can recollect.

Q Did Officer Freeman say anything to the defendant,

A Not that I can recollect.

Q And you went down for the ambulance? A Yes sir.

Q And you got back to the apartment about five or ten minutes after that? A Possibly five or ten.

Q Did you say anything to the defendant? A Not at that time.

Q What did you do? A I waited for the doctor to come. The doctor come about five minutes possibly after I got up there.

Q What did you do then? A Well, after the doctor dressed the wounds I asked the doctor if I could ask him some questions.

Q You didn't know whether you could ask him some questions before you inquired of the doctor? A Certainly not -- The man -- I did not know the state of the man's condition at the time.

Q You didn't make any attempt to have any conversation with the defendant at all prior to the doctor coming up, is that right? A That's right.

Q You first wanted to consult a physician, if the defendant was in any condition to answer your questions, is that right? A That's right.

Q Then when the doctor informed you that he was sane and

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in fit condition, that you could go ahead and ask him questions you proceeded with your examination? A Yes sir.

Q And what did you say to him? A I warned him of his rights.

Q Now, what did you say? Just let us have the exact words? A I told him, "Murphy, I am going to ask you some questions. Now, you don't have to answer these, for anything you say can be used against you".

Q Are those the exact words you said to Murphy? A Well now, that happened four or five months ago, Counsellor, and I couldn't answer.

Q Well, let us try to get it out, if we can, right. Try to give us the exact words? A I am giving you as near as possible, as I can remember it.

Q Well, repeat it. A I told him, "Murphy, I am going to ask you some questions." I says, "Anything you say now can be used against you, so you had better be careful."

Q What did Murphy say? A Murphy made no reply.

Q What did you then say? A I asked him "Who did this?"

Q Who did what? A Did the shooting.

Q Well, give us the words, just the exact question you put to Murphy? A Counsellor, I am giving you as near as I can possibly remember it.

Q Well, go ahead? A I asked him, "Who done this?" And he replied, "I did." I said, "What was the cause of it?" and he says -- I says, "Was it another man?" and he replied "Yes."

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I says, "Who is the man?" He says, "I ain't going to tell you. Well", I says, "have you been fighting long?" He says, "We fought all evening till twelve o'clock the previous night. At five o'clock in the morning we got up again and starting fighting again", he says, "and I went and got the gun and shot her".

Q And did he say anything else? A He says, "I put two shots into her and I fired one at myself and I am sorry I didn't fail to kill myself " -- "sorry to failed to kill myself."

Q What else did he say? A That's all I can remember now.

Q And Brady and Freeman were present during this conversation, were they not? A Yes sir.

Q And who else heard the conversation? A That I don't know. I was too busy at that time with the defendant to take notice of who was there.

Q Were there any women in the room? A There may have been. I won't swear that there was not.

Q Was Zito there? A I won't swear whether he was or not. McGlade was there, though, I will swear to that.

Q Where did McGlade hand you this revolver? A In the bedroom off the defendant's bedroom. I had sent him down to get it. I had asked him who had the revolver and he said "I did," and I said, "You had better go down and bring that revolver up to me."

Q You testified on direct examination that this gun, mark-

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ed People's Exhibit 6, was handed to you by Arthur McGlade?

A Yes sir.

Q This is the same gun he handed to you? A The same gun 1640.

Q Where, what place? A Upstairs in the bedroom off of the defendant's bedroom.

Q Did he have it in his hand? A When he handed it?

Q Yes. A Yes sir.

Q Did he take it out of his pocket? A No sir. He brought it up in his hand to me.

Q Brought it from where? A I don't know. I couldn't swear from where he brought it. I know he came in the apartment with it and gave it to me.

Q I hold these two bullets in my hand, marked People's Exhibit 10, and I look at them; where did you get those? A In the revolver.

Q I show you three empty shells, marked People's Exhibit 9. You testified on direct examination that you took these empty shells from this gun? A Yes sir.

Q You also testified that the defendant said that he shot twice at the deceased and twice at himself? A No sir, I said once at himself.

Q That would make three? A Yes sir.

Q How many cartridges can you put in this gun marked People's Exhibit 6? A Six.

Q Then you testified on direct examination that you found

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six bullets in the overcoat belonging to the defendant? A Yes.

Q The day after the crime had been committed? A Yes sir.

Q You could not positively swear that these cartridges or bullets were placed in that pocket by the defendant, or belonged to the defendant? A Only what he told me.

Q Who had charge of the apartment during the twenty-four hours after you found the --

THE COURT: Is it necessary to inquire along that line? The defendant stated to him that he knew that the cartridges were in his overcoat. You may question him on any legitimate subject. I am not restricting you.

Q Isn't it a fact that right after the crime was committed that those apartments were in your own charge? A No sir, they couldn't be in my charge because I had to go to the stationhouse.

Q Were they in charge of Officer Brady? A No sir.

Q Officer Freeman? A No sir.

Q Well, who remained at the apartment at the time prior to your going there for the overcoat, if you know? A There was an officer till the body was removed, I believe, and then I believe that the door was locked.

Q Who locked the door? A I don't know.

Q You cannot positively swear that the apartments were locked? A I can positively swear that they were locked, yes.

Q Who locked the apartment? A I don't know.

Q Well, how can you swear then that they were locked?

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A Because when I went back there they had to take the nails out of the door to let me in.

Q Do you know who nailed the door? A I don't know.

Q Did you have any conversation regarding this case with Officer Brady? A No sir.

Q Will you positively swear now that Officer Brady did not give you this knife which is marked People's Exhibit 52

A I will positively swear he did not.

Q Will you positively swear now that you took that knife from the person of the defendant? A Yes sir.

REDIRECT EXAMINATION BY MR. O'MALLEY:

Q You were at the Morgue the day the autopsy was performed, were you not, by Dr. Lehane? A Yes sir.

Q Did you identify the body of the deceased to Dr Lehane? A Yes sir.

Q And was the body that you identified the same body that you saw in the apartment, in the defendant's bedroom in the apartment that we have been talking about in this case? A Yes.

Q And this apartment where you saw the body of the deceased and you found the defendant that morning was in the County of New York? A Yes sir.

RECROSS EXAMINATION BY MR. SCHICK:

Q Your post is near Nash's saloon, is it not? A No sir.

Q Around Nash's saloon? A No sir.

Q You knew this defendant for how long? A I never knew

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him until the morning.

Q You never met him? A I may have met him but wouldn't remember him.

Q Do you know Mr. Nash that runs a liquor place, a cafe, at the corner of Eighth Avenue and 41st Street? A I know him by sight.

Q How long have you known him by sight? A Oh, I have seen him around there -- I couldn't tell you.

Q How many years? A Possibly a year, possibly six months.

Q Did you ever go in his cafe? A No sir.

J A M E S T. B R A D Y (1st Precinct), a witness called in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Were you attached to the First Precinct on May 22nd of this year? A I was.

Q Where were you residing on that day? A 640 Eighth Avenue.

Q What floor? A Fourth floor; three flights up.

Q How long had you lived there at that time? A Well, about two months.

Q Did you know the defendant at that time, who lived across the hall from you in an apartment? A I did not.

Q Had you ever seen him, to your knowledge? A No sir.

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Q Or the woman known as Nora Forrester, who lived with him? A Never knew her.

Q Were you on duty on the morning of May 22nd, 1912?

A I was not.

Q Where were you about seven o'clock in the morning?

A I was in my apartment, in bed.

Q What, if anything, attracted your attention? Don't tell us any conversation. Did you leave your apartment that morning? A I did leave my apartment, yes.

Q Before doing so did you have a talk with your wife?

A My wife?

Q Did she speak to you? A My wife spoke to me and told me that the people --

Q Your wife spoke to you? A Yes.

Q Were you in bed at that time? A Yes sir.

Q Both of you? A Yes sir.

Q After your wife spoke to you what did you do? A She told me there was some trouble --

THE COURT: Strike it out.

Q What did you do? A I told her it was only a family quarrel --

THE COURT: Strike it out.

A (Witness continuing) I went back to bed again, I turned over and went to sleep again.

Q About what time was that? A Around 6.30 or 6.40, I believe.

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Q Did you afterwards get up? A Well, I did, when she came in and woke me up again.

Q About what time did you get up, do you remember? A It was about twenty minutes afterwards.

Q When you got up did you go out of your apartment?
A I did.

Q Whom did you see when you went out? A Well, the first man I met was Officer Brown.

Q Was he then on the floor? A He was already going into the apartment.

Q Through what door? A Through the kitchen door.

Q Your apartment is right across the hall, is it? A Yes

Q You have a front apartment, which fronts on Eighth Avenue? A Yes sir.

Q Yours is the downtown apartment and Murphy's apartment is the uptown apartment? A Yes sir.

Q Did you go into that apartment with Officer Brown?
A I did.

Q Tell the jury exactly what you did after you went in there? By the way, did you know Officer Brown at that time?
A Well, by seeing him on patrol around there.

Q You had no personal acquaintance with him? A No.

Q And he didn't know you? A No.

Q All right, go ahead? A After my wife had woke me up --

Q Don't tell us of that, just tell us what you did after you got into the apartment? A Well, I was kind of long about

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getting up, I was between half asleep and half awake --

Q Don't tell us anything about that --

BY THE COURT:

Q How long have you been a member of the Police Department? A Three years and a half.

BY MR. O'MALLEY:

Q I am speaking now, after you got into Murphy's apartment with Brown -- A Officer Brown asked me was I a policeman and I told him yes. He said, "If you are a policeman you can assist me." And we went inside and the defendant was laying on the bed and he had stab wounds on his chest here, and the knife was in his hand and the hands resting on the bed. Officer Brown and took the knife off the defendant and then he went downstairs and he called an ambulance. And I stood up there with Officer Freeman and took charge of the apartment until he come back.

Q During the time that Officer Brown was gone did you have any conversation with the defendant -- yes or no? A Yes.

Q Did you ask the defendant any question -- yes or no? A Yes sir.

Q Did he reply to you? A He did.

Q Will you please tell the jury what question or questions you asked the defendant and what reply he made?

MR. SCHICK: Objected to, on the ground that he might have made some promise or threat.

THE COURT: You may claim the witness.

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BY MR. SCHICK:

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Q If you asked the defendant any questions what did you say to him? A What did I ask him?

Q Yes. A I asked him who killed this woman.

Q Did you make any promises to him? A No, sir.

Q Or any threats? A No sir.

BY THE COURT: Q Did you tell him at that time that you were a police officer? A No sir, I did not.

Q Did you exhibit your shield to him? A No sir.

BY MR. SCHICK:

Q At the time that you put this question to him was Officer Brown present? A Officer Brown had went downstairs.

Q Was Officer Freeman present? A Well, he may have been outside. You see, there was a couple of reporters there trying to get in, wanted to work their way in, to come in --

MR. SCHICK: Well, that's all.

THE COURT: Do not discuss this case among yourselves nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Two o'clock, gentlemen.

(Recess till 2 P.M.)

After recess trial resumed.

J A M E S T. B R A D Y resumes the stand and further testifies:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Will you please tell the jury what question or questions
Q

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you asked the defendant, and what replies the defendant made, after Officer Brown had gone downstairs? A I asked the defendant, "Who killed this woman?" He said, "I did". I said "Why did you kill her?" He said, "It was a little love affair." Then I asked him, I said, "Is this your wife?" He said, "No, it is not."

Q Were you there when the defendant was taken away? A I was.

Q Was the deceased removed while you were there, or afterward? A She was not.

Q How long were you there altogether that morning? A I was there until the defendant was taken out of the house.

Q Then where did you go? A I went in my apartment and got ready for work.

Q And went on duty that morning? A I went on duty at four o'clock that afternoon.

CROSS-EXAMINATION BY MR. SCHICK:

Q How long have you been a policeman? A About three years and a half.

Q What was your occupation before that? A Conductor.

Q On the surface cars in the City of New York? A Well, it was in Brooklyn -- the Brooklyn Rapid Transit, the surface and elevated.

Q How long were you a conductor? A Close onto nine years. I was, well, between switch boy to conductor, about

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nine years.

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Q How old are you? A Twenty-eight.

Q How long did you live in the Nash house? A I lived there about -- well, I was married on the 12th of May -- I lived there about two weeks -- not quite two weeks.

Q Your wife lived there prior to your marriage? A I believe she did.

Q Do you know any other tenants in the house? A No sir.

Q Did you live with your wife before you married her?
A No sir.

Q Did she live with anybody else at Nash's house? A Not that I know of.

Q Do you know now that she lived with another man before you married her? A I do not.

Q How long did you know your wife before you married her? A About a year.

Q What was her occupation?

MR. O'MALLEY: I object to this, I do not see how it is competent. I did not object to one or two questions.

THE COURT: Do you think that these questions are pertinent, Counsellor?

MR. SCHICK: I do, cross-examination.

THE COURT: Of course, if the defendant wants to prove any immoral act committed by this man, he is entitled to do so under the decisions.

MR. SCHICK: Question withdrawn.

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Q Did you know any of the other tenants in the house?

THE COURT: I am not restricting you.

MR. SCHICK: I withdraw the last question and I repeat the question put before to the witness -- you said

Q You said you were acquainted with your wife for a period of one year prior to May 12th, 1912? A Yes sir.

Q And what was her occupation during that time?

MR. O'MALLEY: I cannot see how the occupation of the wife can be proved by this witness. If the wife were on the stand she might be asked.

THE COURT: If he knows.

Q Do you know of your own knowledge whether she was employed anywhere, in any legitimate business? A No sir.

Q Do you know that your wife was a common prostitute, a night walker? A No sir, I do not.

Q And that she took men up in the Nash house, into her apartments, and stayed with them there? A No sir, I do not.

Q Well, face the jury. Will you positively swear that you did not know that your wife was a common prostitute? A I do certainly swear that I did not know anything about it, and if I did she would never be my wife.

Q And you swear that you don't know? A I don't know now, no.

Q How often did you use to call on your wife before you married her? A Sometimes twice a week.

Q Did you ever take her out? A I did, to the theatre.

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Q How often?

MR. O'MALLEY: I again object to this line of testimony from this witness.

THE COURT: I sustain the objection as to the last question.

MR. O'MALLEY: We will have Mrs. Brady on the stand here this afternoon and he can question her.

Q Well, won't you positively swear you did not stay with your wife prior to March and live with her in Nash's house?

A No sir, I never did.

Q And slept there different nights? A No sir.

Q Do you ever go into Nash's saloon? A No sir.

Q In Nash's cafe? A Never did.

Q Did you know at the time you lived in Nash's house that was a place where prostitutes, crooks and thieves congregated in the house? A No sir, I did not.

Q White and colored people? A No sir, I didn't know nothing about the house.

Q Do you know of your own knowledge of any colored people living in the house and known as common prostitutes in the neighborhood? A No sir.

Q Do you know now? A No sir, there was nobody living in that house up to the time I was living there.

Q Did you know the character of the people who frequented the place downstairs? A No sir, I didn't know the people downstairs -- didn't know anybody in the house at all.

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Q And you testified on your direct examination that you didn't know Officer Brown prior to the commission of this crime is that true? A I said that I knew him by sight.

Q For how long did you know him by sight? A Well, I was in West 37th Street Precinct when Officer Brown was transferred there and I was just after being transferred from that precinct.

Q So you knew that he was a police officer? A I knew that he was a police officer.

Q And the night he came in Nash's house you knew him as a police officer?

MR. O'MALLEY: That was in the morning?

A In the morning.

Q How often did you meet Officer Brown prior to May 22nd, 1912? A Twice.

Q And did he ever patrol in front of Nash's house, on that corner? A Not as I know of.

Q Did you ever meet him there? A No sir.

Q Did you ever meet him in Nash's cafe? A No sir.

Q What time was it when you went into the defendant's room on the morning of May 22nd? A About five minutes to seven, I believe.

Q You went in there with your wife? A No, I went in there with Officer Brown.

Q Didn't you go in there before you went in there with Officer Brown? A No sir.

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Q Was your wife in there at the time that you and Officer Brown were in the room? A She might have come as far as the kitchen. She was not in the room where the defendant was, and his wife.

Q You arrived in the room together with Officer Brown,

A Yes sir.

Q Did you hear Officer Brown question the defendant?

A Well, I ain't exact to what conversation he held with him, because there were people there trying to -- reporters and stuff trying to get in there, to get information, and I was keeping them out.

Q You were in the bedroom where the defendant was, where the body of the deceased lay on the floor, and Brown was there, wasn't he? A Brown was in the room where the deceased was laying on the floor, and the reporters had got as far as the next bedroom, and I was ordering them out through the dining room, out through the other bedroom.

Q Did they go out? A They did, yes sir.

Q Did you come back into the bedroom? A I did, yes sir.

Q Did you hear then Brown question the defendant? A No, I did not. He was all done asking the questions then.

Q What did you do? A Well, I stood there and assisted the best way I could.

Q What did you do? A I stood there and was taking the names of witnesses.

Q Who was in the room? A There was Officer Brown, I and

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I believe Officer Freeman was there, too.

Q Now, you took the name of some witnesses? A That was in the hallway, I took that name.

Q But you didn't take the name of anybody in the bedroom? A No, not in the bedroom.

Q Did you leave the bedroom alone? A I went out with Officer Brown, I believe.

Q Where did you go? A As far as the kitchen door.

Q Where did you go then? A Then when I saw the place was properly policed -- there was another policeman there to take charge -- and the defendant went downstairs, they took the defendant downstairs in the ambulance, why, I saw there was nothing else left for me to do, so I went in my own apartment.

Q When you came in the bedroom with Officer Brown where did you find the defendant? A He was laying on the bed.

Q Describe the position? A Well, he was in a sitting position at the head of the bed, towards Eighth Avenue side.

Q What was he doing? A He was sitting there at the bed and he had the knife in his hand, gripped and his hand laying on the bed -- on the mattress.

Q Did he have the hand spread out, holding the knife?
A No, he had it just in that position (indicating with left hand stretched out to the left).

Q And the hand exactly on that space? A Yes sir.

Q How close at any time did you get to the defendant?
A Well, there was one time there I came close enough to ask

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him who killed this woman; that was at the bed.

Q Was he drunk? A Well, I couldn't say whether he was drunk or sober, I guess I ain't no physician, I couldn't say.

Q Did you make any attempt to take the knife from his hand? A No sir, Officer Brown had already taken the knife from his hand.

H E N R Y E. F R E E M A N (22nd Precinct), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are an officer of the Municipal Police force?

A Yes.

Q How long have you been on the force? A Fifteen or sixteen months.

Q On May 22nd of this year to what precinct were you attached? A Attached to the 22nd.

Q Did you go to the premises 640 Eighth Avenue that morning? A Yes sir.

Q What time did you arrive there? A About five minutes past seven.

Q Did you go there alone? A Yes sir.

Q From where? A I was patrolling my post from 36th to 42nd Street on Eighth Avenue when some unknown person came up to me and said --

Q Said something to you? A Said something to me.

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Q After that was said to you what did you do? A I hastened, went with the person to the premises 640 Eighth Avenue, on the fourth floor.

Q When you got up there did you see Officer Brown?

A Yes sir.

Q Where was he? A He was in the room on the fourth floor of the said premises, 640 Eighth Avenue.

Q At 640 Eighth Avenue. Did you see Officer Brady there too? A Yes sir.

Q Anybody else that you recall now? A Well, there was Arthur McGlade and there was Mrs. Brenna, I seen in the room.

Q Did you go into the bedroom? Whom did you see in the bedroom next to the parlor? A Why, I saw a woman lying on the floor, and saw Joseph Murphy, the defendant, lying on the bed in a very weak condition.

Q At any time that morning after you entered the apartment, did you hear any conversation between the defendant and anyone? A I heard Officer Brown say --

Q Say yes or no to that? A Yes sir.

Q Now, will you please tell the jury what conversation you heard between Officer Brown and the defendant? A Officer Brown says to the defendant, he says, "Who did this?" And the defendant says, "I did." He says, "What did you do it for?" He said, "We had some quarrel the night previous, and it ceased until the early part of the morning, and around halfpast five or quarter to six it resumed again," he says, and he says, she

tried, to, she tried to -- I just can't recall now just what the other conversation was, but just only that I says I heard him -- he says he did it -- present in the room, see?

Q Did he say anything about any shots being fired?

A Yes sir.

Q Tell the jury what he said on that? A He said he fired two shots at her and three at himself and he is very sorry that he failed to end it all.

Q Were you there when the ambulance surgeon came?

A Yes sir.

Q Now, did you go with the defendant from the apartment?

A I did, sir.

Q Where did you go with him? A I escorted him to the New York Hospital.

Q After you got there did you have any conversation with the defendant? A I did.

Q Tell the jury what that conversation was? A I asked the defendant, I said, "What did you do it for?" He says he had a quarrel with her and she went to the closet to get the gun and in the struggle he tried to wrench it from her hand, and two shots were fired, and that was all, and he was badly under the influence of liquor, he says, and he didn't know what he was doing. That was at the hospital.

Q When you first talked with him in the apartment did he say anything in regard to the deceased having the revolver? When you talked with him that morning in the apartment did he

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say anything about the deceased -- A No sir.

CROSS-EXAMINATION BY MR. SCHICK:

Q ~~When~~ You went into the apartments of the defendant with Officer Brown, did you not? A No sir, Officer Brown was there when I was coming up.

Q Did you see Officer Brown downstairs? A No sir.

Q When you got into the room what did you see? A I seen an unknown woman lying on the floor with her head towards the closet and her feet towards the bed, and I saw the defendant laying on the bed and half-cladded, with the bed full of blood.

Q What else did you see? A I saw Officer Brady, Arthur McGlade and Officer Brown up there, and Mrs. Brennan.

Q They were all in the room when you came up? A When I came up, yes sir.

Q And then you heard a conversation between the defendant and Officer Brown? A I heard a conversation, yes sir.

Q Could you give that conversation, try to give it as exactly as you remember it? A As I can recall I heard Officer Brown say, "Who did this?" He said, "I did."

Q That is all that was said? A That is all that I heard.

Q You remained in the room all the time? A No sir.

Q You were the one that took the defendant to the hospital? A Yes sir.

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Q How long a time did you remain in the room? A Well, about fifteen minutes.

Q And you heard no other conversation besides that which you just now related? A That is all I heard.

Q And then you had a conversation with the defendant at the hospital? A Yes sir.

Q What did you say to the defendant and what did the defendant say to you? A I said to the defendant, I says, "What did you do it for Mr. Murphy?" "Well," he says, "We have been quarrelling for some time." He says, and ~~we~~ ^{they} stopped the quarrel until the early part of the morning and they resumed it around six o'clock, and he says that the quarrel got so warm that she went to the closet to take a gun and to try to shoot him, and he tried to wrench the gun from her hand and in the struggle, why she was shot.

Q You had a conversation with the defendant at the inquest, did you not? A Not as I can recall.

Q Did you say something to the defendant regarding Officer Brown's testimony? A Not that I can recall, but you may tell me something of the incident and I may be able to recall it.

Q Didn't you say to the defendant, "Mercy, as I am not going to testify about a knife, because I didn't see any" --
A I did not.

Q Well, what did you say regarding the knife at the inquest? A I didn't say anything regarding to that.

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Q Well, what did you say, if anything, to the defendant at that time? A I don't recall anything that I said to him.

Q Well, will you positively swear you did not have a conversation with the defendant at the inquest regarding Officer Brown? A Well, I will not, sir, because I cannot recall it. sick?

Q Have you been ~~sick~~ since the inquest took place? A Have I been sick?

Q Yes? A No sir.

Q You can remember things that happened two or three years ago? A I have a very distinct recollection.

Q Do you remember the time that you graduated from school? A I do.

Q What was the date? A 1904.

Q What date did you pass your Civil Service examination?

THE COURT: How material is that?

MR. SCHICK: I want to show that his memory is sound, but yet he fails to remember this incident that took place several months back.

THE COURT: There are ways of testing the memory of a witness.

MR. SCHICK: He may have some reason for concealing this testimony or holding it back.

MR. O'MALLEY: I object to that remark.

THE COURT: The remarks of counsel will be disregarded by the jury.

MR. SCHICK: That is all.

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HERMANN W. FABER, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

BY MR. O'MALLEY:

Q (The witness states that he resides at 144 West 111th Street.)

Q What is your business? A Salesman.

Q By whom are you employed? A James H. Fuld, 447 Broadway.

Q Do you know this defendant? A Yes sir, I do, sir.

Q How long have you known him? A About three years, pretty near.

Q And you were friendly with him? A Sir?

Q You are a friend of his, aren't you? A Yes sir.

Q Do you recall having had a conversation with the defendant on Sunday night, May 19th, of this year? A I do, sir.

Q Where was that conversation had? A Downstairs in the barroom of Mr. I. Nash's place.

Q In Nash's saloon? A Yes sir.

Q Will you tell the jury what the defendant said to you at that time, if anything? A He said she had been gone for about three or four days and he don't know what to make of it, but heard that she was in the New York Hospital, and at seven o'clock when he got off duty and Mr. McGlade took his place I went upstairs to his apartment with him and while sitting upstairs he says to me that if I would not mind going downstairs

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and telephoning to the New York Hospital to see whether she was there or not.

Q Whom do you mean by "she"? A The deceased.

Q Nora Forrester? A Nora what?

Q Nora Forrester? A All right. And I called up the phone, whatever it may be, whatever it is, and I called and the remark was that there was no Nora Lane, which I called for, not there.

Q You knew her by Nora Lane, did you? A Nora Lane.

Q Was the deceased known by that name? A At one time, yes sir.

Q Did you afterwards see the defendant? Did you see Murphy again after you telephoned? A The same evening, yes sir.

Q And did you tell him what you had learned at the hospital? A I did, sir.

Q Did he say anything that you remember? A He couldn't quite understand it.

Q Can you give us his language, what he said? A Well, I can't quite recall, but I will try to give it as near as I possibly can. He went to work and said he cannot understand where she can be, unless she is on a "stew;" that meant a drunk, you know.

Q You were not there at all the day the deceased died, were you? A No sir.

CROSS-EXAMINATION BY MR. SCHICK:

Q How long did you know the deceased? A I knew her about

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six months prior to her death.

Q You called often at the apartment of the defendant?

A I was there, yes sir.

Q How often? A Where do you mean?

Q How often did you call on the defendant? A I was down there about three times.

Q And the deceased? A Three times.

Q Three times a week? A No, no, all told.

Q Did you ever hear her say that she would commit suicide, or threaten to commit suicide -- kill herself? A No sir.

Q Do you know of your own knowledge if she was addicted to the use of opium or morphine? A No sir.

Q Was she a drinking woman? A Yes sir.

Q A heavy drinker? A Well, about fair -- I can't just judge.

Q Did you ever see her drunk? A I did.

Q What you would term to be in a "stewed" condition?
A Yes sir.

Q When did you visit this defendant last? A I don't understand.

Q When were you at the defendant's apartment last?
A The Sunda, before the accident happened.

Q Was that in the nighttime? A Yes sir.

Q Was anybody else in the apartment besides the deceased and the defendant? A The deceased was not there when I was upstairs.

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Q Did you live in Nash's house? A No sir.

Q Did you live in Nash's house at that time? A No sir.

Q Do you know any of the tenants in Nash's house?

A A few.

Q Do you know that it is a place where common prostitutes live and bring men there?

MR. O'MALLEY: I object to that.

THE COURT: How is that material? How is it material?

MR. SCHICK: Well, it may be material.

THE COURT: Well, if you are trying a disorderly house you could prove the reputation of the house. If you intend to attack the credibility of any particular witness, or to attack this witness's reputation on the ground that he consorted with dissolute women --

MR. SCHICK: That's all.

Q Did you ever buy any drinks in Nash's place between the hours of one A.M. and seven?

THE COURT: How can you impeach a witness on a collateral matter? On the authority of People v. Stokes, 53 N.Y., I sustain the District Attorney's objection. Suppose this witness will testify that he did procure liquor there, you cannot ~~impeach~~ contradict him on a collateral matter.

MR. SCHICK: Question withdrawn.

Q Do you know of your own knowledge whether liquors were

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sold in Nash's place between the hours of one and seven in the morning?

MR. O'MALLEY: Objected to.

THE COURT: Is it for the purpose of contradicting --

MR. SCHICK: The testimony of the bartender McGlade, who testified --

THE COURT: This question is specifically put to the witness for the purpose of attempting to impeach or contradict the witness McGlade, is that your purpose?

MR. SCHICK: Yes sir.

THE COURT: And you have no other purpose in view?

MR. SCHICK: No other purpose.

THE COURT: On the authority of the People vs. Stokes 53 N.Y., I sustain the objection.

MR. SCHICK: I withdraw the question.

J A M E S H A M I L L, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are an employee of the District Attorney's office?

A Yes sir.

Q What are your official duties? A Stenographer, attached to the Homicide Bureau.

Q How long have you held that position? A Seven years.

Q And during those seven years, as I understand it, it has been your duty to take the statements in all the homicide

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cases? of witnesses? A Yes, and the defendants.

Q And you have been a stenographer how long? A Nineteen years.

Q Do you recall the 22nd day of May of the present year, having seen this defendant Joseph Murphy? A Yes, sir.

Q Where did you see him? A In the New York Hospital.

Q And about what time of day, do you remember? A Some-time in the morning, I forget.

Q That was the morning after he was brought there? A Yes, sir.

Q Who went to the hospital with you? A Mr. Minton, the Assistant District Attorney.

Q Where did you see the defendant for the first time after you got to the hospital? A In one of the wards of the hospital, where he was in bed.

Q And did you hear any conversation between the defendant and any one? A I did; a conversation between Mr. Minton and the defendant.

Q And were you present with your note book? A I was.

Q And did you take down all that was said? A I did.

Q Did you hear Mr. Minton say anything to the defendant preliminary to questioning him? A Yes, sir.

Q Will you please say what that was? A He said "Murphy, I am going to question you relative to the shooting of Nora Lane. I want to warn you that you do not have to answer any

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of my questions, unless you want to do so voluntarily or of your own free will, and anything that you say to me will be used against you.

Q And then he proceeded to ask him questions, did he?

A Yes, sir.

Q And did the defendant reply? A He did.

Q And did you take down in shorthand all that was said there, either by Mr. Minton, or by the defendant? A I did.

Q And did you take correct notes of the conversation?

A I did.

Q And did you correctly transcribe those notes? A Yes, sir.

Q And have you compared the transcript copy with your original notes? A Yes, sir.

Q And are they correct? A They are.

Have you a copy of your transcript? A Yes, sir.

MR. O'MALLEY: I offer in evidence the entire examination.

MR. SCHICK: Objected to as incompetent, immaterial and irrelevant, nothing to prove that the witness is not able to give the conversation,--He heard it, he was present -- without referring to this examination or a written document.

THE COURT: Considerable time will be taken up. Why don't you follow the practice that was adopted in the Governall case, and in the Freedman case, in 193 and 205

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New York?

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Q Can you independent of your notes tell what was said there that morning? A I have a general recollection of it, but I cannot give the questions and answers as they were asked.

MR. O'MALLEY: Now I offer the statement in evidence.

MR. SCHICK: Objected to on the same grounds.

THE COURT: Is that the original that you are offering?

MR. O'MALLEY: The original, yes.

It is a copy which you have compared with your notes?

Yes, sir.

MR. O'MALLEY: Why, I will introduce his notes in evidence and ask that he read them.

Same objection. Objection overruled. Exception.

Will you please read the notes? A (Reading)

" . . . I will well enough to talk, Murphy?

" . . . COURT: Yes.

" . . . I came up here to ask you about this stabbing and shooting, Murphy. Are you too weak to talk?

" . . . A: No.

" . . . I am from the District Attorney's office. Before I ask you any questions I want to tell you that you don't have to answer any questions unless you want to. If you want to tell me voluntarily how this thing happened, of your own free will ---

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"THE DEFENDANT: (Interrupting) Yes, sir.

"MR. MINTON: I want to warn you that anything you say which might be detrimental to you will be used against you. If you want to tell me how this happened I would be very glad to hear about it.

"THE DEFENDANT: We had a little scrap last night. She accused me of being crooked. I accused her of being the same thing. She jumped out of the bed and grabbed the gun out of the closet and I tried to take the gun from her hand and a shot went off and she fell. Then I fired two more myself and I fired one at my head and another at my heart.

"BY MR. MINTON:

"Q How long had you been living with Nora Lane? A Five months.

"Q Are you married? A No, not married.

"Q Is she married to anybody? A No.

"Q How many altercations have you had with her in the last five months? A This is the first one.

"Q What was that about? A Her sister told her she seen me down the back room with other women. She accused me of being crooked and I accused her of being crooked.

"Q You accused her of being crooked too? A Yes.

"Q What was your ground for complaint against her -- why did you think she was crooked? A Because she used to go out and stay out at night to two or three o'clock in the

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morning.

"Q. Had you been drinking last night? A. No, perfectly sober when I left for work.

"Q. Where were you working last night? A. Nash's, 640 Eighth avenue.

"Q. And you live in the same house? A. Yes.

"Q. In a furnished room with Nora Lane? A. No, a furnished flat. She used to pay one-half and I used to pay one-half.

"Q. Now, where was this revolver kept? A. Up in a closet.

"Q. Was it loaded? A. Yes.

"Q. And you say she jumped up and grabbed the revolver? A. Yes.

"Q. Did she shoot the revolver? A. I tried to twist it out of her hand and the shot went off and hit her in the breast.

"Q. The first shot hit her in the breast? A. Yes.

"Q. How did she get those stab wounds? A. Stab wounds—I don't know.

"Q. Was there any carving knife around? A. I stabbed and shot myself both.

"Q. She had three or more stab wounds in her body. Can you tell me how she got them? A. No.

"Q. Did you stab her with the carving knife? A. I might have done it in the excitement.

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"Q Don't you remember whether you stabbed her with the carving knife? A No, I don't. I remember stabbing myself.

"Q How many times did you shoot her after the first time? A Two. I seen she was dead and then I didn't think there was any use of me living any more and I tried to kill myself.

"Q Why did you shoot her after you had taken the gun off her? A She dropped to the floor dead.

"Q After the first shot did you shoot her twice again? A Yes.

"Q Why did you fire two more bullets after that first shot? A I suppose I was crazy.

"Q You suppose you were crazy? A Yes.

"Q Do you remember whether you stabbed her or not, Murphy? A No.

"Q You might have stabbed her? A I might; I can't say.

"Q Where was this knife lying? A Laying out in the kitchen.

"Q How near the bed room? A Three or four rooms away.

"Q And where did this shooting take place? A In the bed room.

"Q And were you both in bed when this altercation started? A No, I was ready to go to work.

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"Q Tell me how this thing happened to start. You say she accused you of being crooked? A Yes.

"Q What did she say? A She said I was going behind her back with other girls -- that her sister told her about it.

"Q Who is her sister? A Mrs. Graham.

"Q Where does Mrs. Graham live? A I think 914 Second avenue.

"Q Well, then, what did you say to that? A I denied it.

"Q And did she keep on accusing you of it? A Yes. I told her I had been true to her ever since I had been with her.

"Q And then did she keep on accusing you? A Yes.

"Q What else did she say after that? A That was all.

"Q Was she in bed at the time? A She jumped out of bed after the revolver.

"Q How far did she have to go to get the revolver? A Just jump right out of bed and reach for it.

"Q Where was the revolver kept, in the closet? A Yes.

"Q How near the bed was the closet? A About a yard and a half, I guess.

"Q Didn't you see her jumping for the revolver? A Yes, but I was in the other room.

"Q Couldn't you see her from where you were? A No, my back was kind of turned, and when I saw her with the

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gun in her hand I grabbed the gun.

"Q Where was she standing with the gun in her hand?

A In the bed room, standing by the bed.

"Q And how far away from the front room is the bedroom? A Right by the bed room. This isn't the first time I hid the revolver. I hid it once before.

"Q Why did you hide it before? A Because she threatened to shoot me before.

"Q How long ago was that? A The old lady in the house told me. I put it in a pitcher in the closet. That was a couple of weeks ago. I thought there wasn't any danger any more. The girl, I thought, was a little out of her head.

"Q How old was the girl? A Twenty-three.

"Q And you had known her five months? A Known her two years, but been living together for five months.

"Q What do you work at? A I was bartender downstairs in the saloon.

"Q Did she drink? A Yes. She didn't know what she was talking about. She was a maniac, drinking every night.

"Q Did you ever get drunk at all? A Yes. Never been too full that I didn't know what I was doing.

"Q You weren't drunk last night? A No.

"Q Weren't drunk this morning? A No.

"Q When you grabbed this gun what did she have on, a night-gown? A A night-gown, that's all.

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"Q And in the struggle the first shot hit her? A In the breast, yes.

"Q Now, then, you got the gun away from her? A Yes, and fired two shots at her.

"Q Where was she when you fired the two shots? A She was standing up -- she fell down.

"Q When did she fall, after the first shot? A After the first shot.

"Q And you fired two more shots after that? A Yes.

"Q Was she lying on the floor then? A Yes.

"Q And you pointed the revolver at her? A Yes.

"Q What did you do that for? A I pointed it at myself because I seen she was dead.

"Q Didn't you see she was dead before you fired the two shots? A Yes.

"Q Then why did you fire the two more shots? A Because I wanted to kill myself.

"Q Well, you fired two shots at her, didn't you? A Yes.

"Q Where did you get the carving knife from? A Went out in the kitchen because the gun was empty and I went to the kitchen to get more cartridges. The cartridges was in a closet, in my overcoat, and I couldn't get them out of the revolver to kill myself. There was only two -- the last two that was left -- and I went out and took the carving knife and stabbed myself.

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"Q Where did you stab yourself, in the breast? A

Yes, in the breast.

"Q Well, now, did you go back and stab Nora? A No.

"Q How did she get the stab wounds in her? She
had three stab wounds in her breast. A I don't know.

"Q Did you stab her before you shot her? A No.

"Q You don't know how she got the stab wounds? A No.

"Q You shot yourself how many times? A Twice.

"Q Once in the head? A Yes, and once in the breast.

"Q And how many times did you stab yourself? A I
don't know. About half a dozen times, I guess.

"Q Is there anything else you want to tell me about
this, Murphy, that I haven't asked you about? A That's
all."

BY MR. O'MALLEY:

Q Now, that was adjourned at what time? A About eleven
thirty-five, I think. It started at eleven twenty-two.

That is the 22nd? A Of May.

CROSS EXAMINATION BY MR. SCHICK:

Who notified the District Attorney of this occurrence?

A The Police Department notified me.

At what hour in the morning? A I don't remember.

Q Did you hear the Assistant District Attorney tell the
defendant or ask the defendant if he had any counsel, or if
he desired any attorney? A He didn't ask him that.

Q Did you hear him ask if he desired to consult any attorney? A No.

Q The District Attorney asked if he had any friends whom he would like to see or consult with before he put any questions to him, did he? A He did not.

Q Did the District Attorney inform him he was entitled to see an attorney and consult with him before he asked him any questions?

MR. O'MALLEY: Objected to. It was not necessary.

THE COURT: Under the case of the People against Hill, it is not necessary. The District Attorney is not even obliged to inform a defendant as to his rights in the premises. The Court of Appeals held that a confession obtained, even though a defendant was not advised as to his rights, was competent to be received in evidence. But the Court, if I recollect, expressed an opinion that it might be well to advise a defendant as to his rights. According to Mr. O'Malley, I believe that Mr. Minton, who examined the defendant, advised him as to his rights.

Q Did the defendant express any desire to see anybody?

A No, not while I was present.

Q Did he express a desire to see an attorney before he made a statement to the Assistant District Attorney? A No, not while I was present.

Q Was anybody else present outside of you and the Assistant District Attorney? A Yes.

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Q Who? A A police officer on duty at the hospital.

Q What is his name? A I think it is Strang. I can make sure --- William H. Strang, of the 18th Precinct.

Q Was he present all the time while this testimony was taken by you? A He was.

Q What did the Assistant District Attorney say, when he approached the bed of Murphy, the defendant? What was his first statement? A I have already read it.

Q Well, tell us again? A He said, "I am a representative of the District Attorney's office. I came here to question you about the shooting and stabbing of Nora Lane."

BY MR. O'NEALLEY:

Q You are giving your best recollection of it now? A Yes, sir, that is the substance.

Q But you have already read everything that was said? A Yes, sir.

BY MR. SCHICK:

Q What was the condition of the defendant? A I don't know. He was in bed, with the blankets over him.

Q How near to the bed were you? A Right beside.

Q How far? A I was probably touching it.

Q Couldn't you see or judge his condition? A I would have judged at the time that he was in pretty bad condition physically.

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WALTER H. VOLCKENING, called as a witness
in behalf of the People, being first duly sworn, testi-
fied as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

(The witness states that he resides at 116 Decatur street, Brook-
lyn.)

Q What is your business? A Architect.

Q And you frequently do work for the District Attorney's
office, in making diagrams of premises, do you? A I do.

Q Did you make the diagram in this case, People's Exhibit
2 in evidence? A I did.

Q On what date was that? A 23rd day of May, 1912.

Q Were you in all the rooms shown upon that diagram?

A Yes, sir.

Q While you were in the bed room next to the parlor did
you or did you not pick up anything from the floor? A I did.

Q And who was present at that time? A Mr. Brown, the
Officer; and Mr. Coe, the photographer.

Q I show you a piece of metal, and ask you if you have
seen that before? A Yes, sir.

Q And where did you see it? A You mean where did I
pick it up from the floor?

Q Yes. Will you hold the diagram so that the jurors
can see it and indicate? A Well, the exact spot I cannot tell
you, but it was right in here (indicating on diagram (People's
Exhibit 2)).

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Q That is in the bed room next to the parlor? A Right
in here.

Q Just mark there, will you, where you picked it up?
A Right down there.

Q Was it lying there on the floor? A It was lying on
the floor, yes, sir.

Q When you picked it up what did you do with it? A I
handed it to Officer Brown and told him to ---

Q Don't tell us what you said; you handed it to Officer
Brown? A Yes, sir.

Q. O'BALLEY: I ask to have it marked for identifi-
cation.

(Marked for identification People's Exhibit 13.)

CROSS EXAMINATION BY MR. SCHICK:

Q When did you go over to the Nash house to make this
plan? A 23rd day of May.

Q That was the day after the crime was supposed to have
been committed? A I guess so, yes, sir.

Q You went through all the rooms? A I went into each
room.

Q What hour of the day were you there? A I am not sure
whether it was just before or just after noon.

Q About two o'clock in the afternoon? A I wouldn't want
to say exactly.

Q One o'clock? A It may have been right after lunch, or

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it may have been just before lunch, I am not sure.

Q It was a bright day, wasn't it? A A clear day.

Q A pretty day? A A clear day.

Q Was the kitchen dark? A Not particularly dark.

Q Do you know the number of the windows in the kitchen?

A The number of windows in the kitchen?

Q Yes. A One window.

Q Next to the kitchen is a dining room? A Yes, sir.

Q And you go from the kitchen into the dining room. Any windows in the dining room? One window on a court.

Q Was it dark in the dining room? A Darker than the kitchen.

Q Much darker than the kitchen? Well, I wouldn't say much darker, but darker.

Q Then you went from the diningroom into the first bed room? Yes, sir.

Q Any windows in that bed room? One window.

Q How large a window? Well, I can't tell you ---

Q. OF ALLEY: No, look at the diagram.

Q (Witness continuing) Two feet nine in width.

Q Dark in the bed room? It was lighter than the dining room.

Q Much lighter? A little bit lighter.

Q But you wouldn't call it a light room? A It was not as light as this.

Q You would call it a dark room? A I wouldn't call it

a dark room, no.

Q The next room is another bed room? A Yes, sir.

Q How many windows in that? A One window.

Q Was it dark in there? A Not particularly dark, no.

Q Now, suppose if you stood in the kitchen and looked into the last bed room, the fourth room? A Through the door opening?

Through the door openings; do you think you could see everything in the fourth room?

MR. O'ALLEY: That is a hypothetical question, "see everything". I will object.

You cannot see everything in the room.

Q Did you try, - I mean while you were there did you make any observations? A I looked from the kitchen, opposite the door leading from the kitchen to the dining room, and could see the bed in the bed room.

BY MR. O'ALLEY:

You are speaking of the bed room next to the parlor? A I am speaking of the bed room next to the parlor.

CORDELL L. BROWN, recalled, testifies as follows:

DIRECT EXAMINATION BY MR. O'ALLEY:

I show you People's Exhibit 13 for identification, and ask you if you have seen that before? A Yes, sir.

Q Were you present in that bed room there when Mr. Volok-

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ening picked that up? A Yes, sir.

Q Did he hand it to you? A Yes, sir.

Q Did you put any mark on it? A Yes, sir.

Q Do you identify it now as the same piece of lead that Mr. Volckening showed to you? A Yes, sir, there is two little scratches on that.

MR. O'MALLEY: I offer it in evidence.

MR. SCHICK: Objected to, not the proper foundation-- found twenty-four hours after the crime was committed.

THE COURT: On the authority of People against Barnes, 202 New York I shall allow it in evidence. The Court there permitted the admission of bullets found some weeks after. And I allowed it in the case of the People Governalli, 193 N. Y.

MR. SCHICK: Exception.

(Received in evidence and marked People's Exhibit 13.)

MR. O'MALLEY: With the exception of one witness, Mrs. Brady, the People will rest, if you will give us the privilege of calling her when she comes later on, sometime during the case. Her testimony is not very material. One minute, - I will call Officer Brown again.

CORNELIUS J. BROWN, recalled.

DIRECT EXAMINATION BY MR. O'MALLEY:

You testified that you saw Mr. Volckening pick that up (Exhibit 13)? A Yes, sir.

Q Did he immediately hand it to you? A Yes, sir.

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Q Is it in the same condition now as it was when Mr. Volckening picked it up and handed it to you? A Exactly the same.

Q What marks did you put on it for identification? A Two little lines, these two little lines here.

Q Those two little crosses? A Yes, sir.

Q Those are the only change in the condition, those two little scratches that you put on there for identification?

A Yes, sir.

MR. O'MALLEY: People rest, with that exception.

MR. SCHICK: Defendant moves to dismiss the indictment on the ground that the People have failed to prove a case. The indictment charges this defendant, Joseph Murphy, at the Bar, on the 22nd day of May, in the year of our Lord 1912, at the Borough and County aforesaid, with force and arms, upon one Nora Forrester, in the peace (Defendant's counsel now reading the remainder of the indictment.)

Now, the People attempt to prove that the defendant killed the said Nora Forrester with a weapon called a carving knife, thereby inflicting various wounds upon her body. He is not charged with that crime, not so charged in the indictment. If it is true it is an independent crime in itself, and before the People could offer such proof here and testimony he ought to be so charged in the indictment. Being not held for that crime

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and being not charged with killing this deceased, Nora Forrester, with such a weapon, I contend that we are entitled to a dismissal and that the defendant be discharged.

THE COURT: Let me have the copy of your indictment.

(Copy indictment handed to the Court.)

THE COURT: Motion denied.

MR. SCHICK: I respectfully except. The defendant waives opening up to the jury.

MR. WOTT: It seems to me that not only the jury but the Court and the District Attorney are entitled to know what the defense is going to be, and not sit back and put in proof as it suits them, without in any way indicating what the defense is. It is of course in the discretion of the Court, I take it, but it seems to me that the Court and jury are entitled to have some inkling of what the defense is going to be, before they begin calling witnesses.

MR. SCHICK: I think the Code of Criminal Procedure provides that after the District Attorney has opened the case and offered the testimony on behalf of the People, and he rests, that the defendant, or his attorney, may --

THE COURT: It is not compulsory to open the case to the jury.

MR. SCHICK: The defendant elects now to waive an address to the jury.

THE COURT: I cannot compel him to open.

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MARY BOWMAN, called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. SCHICK:

Q Where do you reside? A 457 West 37th Street.

Q Are you related to the defendant, Joseph Murphy? A Well, his first wife is my daughter.

Q He married your daughter -- what year? A Well, about fifteen years ago.

Q How long did he live with your daughter? A She is dead eight years.

Q Did they have any children? A Yes, sir, two children both living -- one twelve and one eight, both girls.

Q And those children have been living with you? A Since the mother's death, and the father most of the time.

Q How many years? A Eight years next December.

Q Did the defendant contribute to their support? A Yes sir, a good father and a good provider.

MR. NOTT: Objected to.

THE COURT: Do you want to prove the good reputation of this defendant?

MR. SCHICK: Why, --

THE COURT: You cannot do it by specific acts. You may have the witness testify as to the general reputation of the defendant.

MR. SCHICK: I have a perfect right to prove that he is a married man and the father of children, where those

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children are now or what their condition is.

MR. NOTT: I do not concede that he has that right. I do not see how it is pertinent to this case where those children are. He is not living with them.

THE COURT: Justice Bartlett of the Court of Appeals in 192 N. Y., has said that the defendant may be permitted to give a brief history of his life. This evidence is not in the nature of character evidence, as I understand it, and I will allow it.

Q And he has been supporting these children for the past seven years? A Yes, sir, always.

Q And how often did he visit the children?

MR. NOTT: I object to that.

THE COURT: Objection sustained. You may briefly --

Q He has been a good father to his children?

MR. NOTT: I object to that as calling for a conclusion, and in the second place as incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

Q How did the defendant conduct himself at any time that he visited your house?

Objected to; objection sustained.

CROSS EXAMINATION BY MR. NOTT:

Q After your daughter's death this defendant married a second time, did he not? A Yes, about three years ago or four years ago, I believe.

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Q And have you heard as to his conduct with that wife as to whether or not he used to beat her? A No, I never heard he beat her.

Q Do you know the lady, the second wife? A I met her once.

Q She never told you anything about that? A She had told me, I had met her, yes, she had come to my house.

Q Did she tell you why she left him? A Well, they had words. She came to my house and I said I don't know what he does outside, that is his own business.

Q Did she tell you why she left him?

MR. SCHICK: Objected to, no testimony that this ever defendant/left his second wife.

THE COURT: Did you offer this last evidence as good character evidence?

MR. SCHICK: No, I offered it just as Your Honor suggested, as to the history of his past life.

THE COURT: Then you should object to the evidence that the District Attorney is now endeavoring to elicit from the witness.

MR. SCHICK: I also thought if he is trying to attack the character of the defendant --

THE COURT: Under the law if a defendant puts his character in issue the District Attorney has a right to attack it.

MR. SCHICK: The character of the defendant is not at

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issue.

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THE COURT: Then if you object I shall sustain the objection.

Q Did you know Nora Lane or Nora Forrester? A I have met her once.

Q Did the defendant bring her to your house? A Yes, sir.

Q And tell you that he was living with her? A Yes, sir.

Q He told you that he was living with this woman? A That they had a flat.

Q And you knew that they were not married? A Well, I had told her --

Q Is that correct? A Yes, she told me.

Q And you knew at that time that he was married to another woman? A Well he was separated three or four years from her.

Q Well, they had never been divorced, had they? A I don't know. I never asked him any of his private business as long as he took care of the children.

J O S E P H M U R P H Y , the x defendant herein, called in his own behalf, being first duly sworn, testifies as follows
DIRECT EXAMINATION BY MR. SCHICK:

(The witness gives his address as 640 Eighth Avenue.)

Q How old are you? A 32 years.

Q Where were you born? A County Louth, Ireland.

Q When did you come to this country? A In 1895.

Q You may tell the Court and the Jury anything from the time that you left Ireland up to the time that this supposed crime

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is supposed to be committed.

MR. NOTT: Objected to as too broad; that calls for anything he wants to say.

THE COURT: Why don't you want to question the witness? It is preferable that you should do that.

Q How old were you when you came to this country? A
Going on 15 years old.

Q Was your father alive at that time? A No, sir.

Q Was your mother alive? A No, sir.

Q Any brothers, sisters? A I have got one sister living at Manchester, New Hampshire.

Q When did your father die? A He died when I was two years old.

Q When did your mother die? A When I was three years old.

Q And who took care of you after that? A Two aunts.

Q And how long did you live with your aunts? A Until I came to this country.

Q You were fifteen years of age? A Yes, sir.

Q Did you go to school in Ireland? A Yes, sir.

Q How many years did you go to school? A Well until I was fourteen years old.

Q And what did you do then? A After I came to this country?

Q Why, I went to my sister, direct to my sister in Manchester New Hampshire and stayed there about one month.

Q What did you do after that? A I came here to New York

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and obtained a position as a grocery clerk.

Q You were working as a grocery clerk in what year? A
1905.

Q Whom were you working for? A J. C. --

BY MR. NOTT: (Interposing)

Q Or, do you mean 1895? A 1895.

BY MR. SCHICK:

Q (Repeated) A J. C. Offinanger.

Q How long did you work there? A About eighteen months.

Q Whom did you work for after? A I went from there to
Charles Hess, 69th Street then and 3rd Avenue.

Q What business? A Same business.

Q How long did you work for him? A About nine months;
nine or ten months.

Q And what did you do after that? A I went from there
to 129th St. and 5th Avenue.

Q And whom did you work for there? A I worked for John
F. Bloom, Jr.

Q How long did you work for them? A Well, about two
years. I got married from there.

Q You got married? A To my first wife.

Q What year was that? A 1899.

Q How long did you live with your first wife? A Until
she died.

Q What year did she die in? A 1904.

Q Did you have any children by your first wife? A Yes,

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sir; three.

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Q Are they alive? A Two of them.

Q Girls or boys? A Yes, sir .

Q What are they, girls? A Three girls.

Q How old are they? A One is eight and one will be twelve the 11th of the next month.

Q Where are they now? A With my mother in law.

Q Do you support them? A Always done the best I could for them, yes, sir.

Q Where did you work after that, after you left 63rd St.?

A Why, I went to work with James Butler for a while and I was taken sick with rheumatism so I went to the country, to Suffern, New York, and I obtained a position there in the grocery with Glory and Inmode, and I stayed there about a year and I came back here and I went to work for Park & Tilfords at 39th St. and Boradway; now it is on 41st Street -- the same store has moved to 41st Street.

Q How long did you work for Park & Tilford's? A About three years.

Q Where did you go from there? A Well, from there I opened a saloon of my own down in No. 5 Jones Street.

Q How long did you keep this saloon? A I guess about nine or ten months -- I failed.

Q What did you do after that? A Why, the Congress Brewing Company of Brooklyn took me and put me in 91st St. and 1st Ave.

Q How long did you saty there? A About a year. I guess.

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Q What did you do after that? A Why, I went bartending then. I got a position as bartender at 41st Street & Ninth Avenue for Bernard Shevlin.

Q How long did you work for him? A I worked for him three times -- about five years altogether.

Q Did you go from there to Nash? A No, I went from there -- I was taken sick again with rheumatism and I went to Bellevue Hospital., I was laid up with rheumatism about a month. I came out and Mr. Shevlin obtained a position for me on 37th St. and Broadway.

Q Whom were you working for at 37th St. and Broadway? A It was David Wainwright.

Q How long did you work for him? A Until the place closed.

Q When was that? A That was in May the 1st -- I think it was 1905.

Q Where did you go to work from there? A Well, I went to work for Mr. Nash.

Q And were you working for Mr. Nash ever since? A No, not ever since. I left Mr. Nash and I went back to them about two or three times. This last time he put me to work in January some time in January, when we took the apartment up stairs.

Q You have heard the District Attorney refer to your second wife, about her leaving you; did you get married a second time?

A Yes, sir, I did.

Q When did you get married the second time? A In December 1905.

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Q Whom did you marry? A I married Ambrosine Rogers.

Q Where did you marry her? A Broome & Elizabeth Sts.,
in the Episcopalian Church.

Q Do you see her in Court here? A Yes, sir.

Q How long did you live with her? A About two years,
I believe.

Q You don't live with her now? A No, sir.

Q Did you abandon her? A I did, yes, sir.

Q You had some trouble with her, didn't you? A I did,
yes, sir.

Q You can tell us how this trouble arose between yourself
and your second wife.

THE COURT: Is it necessary to open the door on that
proposition?

MR. SCHICK: No, I will withdraw the question. If
they prove it I will put him back afterwards on the stand.

Q And you said you were working for Nash? A Yes, sir.

Q At the place 41st St. and 8th Avenue? A Yes, sir.

Q And there you met the deceased Nora Forrester, known as
Nora Lane? A Yes, sir, known as Nora Lane.

Q How long did you live with her in Nash's house? A
About five months, I believe.

Q When did you first get acquainted with her? A About
two years ago.

Q And you went to live with her about five months before
May 22nd, 1912? A Yes, sir.

Q Now just tell us what occurred on the 22nd of May, 1912,

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anything between you and Nora Lane or Forrester -- just exactly what happened, and how it occurred. A Yes, sir.

Q Tell this Court and Jury. A On the morning of May 22nd Mrs. Brennan, the housekeeper, came and knocked on the bedroom door and I said "all right Mom", and I got up and I slipped on my shoes and pants and my shirt and I went from the bedroom into the bathroom, leaving Nora Lane in bed, and as I went in -- as I passed in the kitchen I said "Good morning Mom" to Mrs. Brennan, the housekeeper, and I went in the bathroom as I was sick to my stomach. I generally used to drink quite a little, you know at night and my stomach was in pretty bad condition so I had to vomit and I went in and I probably was five minutes in the bathroom when I came out, and Mrs. Brennan asked me how I felt and I said "Not very well, Mom" so I says "Mom, haven you got any tea?" She says "Yes, but there is no milk." So I says "That's all right, pour me out a cup of tea, I am in a hurry to go down stairs." This was about ten minutes to seven. I drank the cup of tea without any milk in it, because I generally used to send up a bottle of milk after I went down stairs, with the porter. And Mrs. Brennan told me how that Nora had stopped the milk and the ice on Monday. So I drank the cup of tea and returned into the bedroom where Nora Lane was in, and as I passed into the bedroom Nora Lane was standing up at the dresser and as I passed her I turned around for to get my collar and tie, and she -- with that she raised her left hand and fired a shot at me, inflicting a scalp wound

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here on the side of my head and before I could catch her hand again she fired right close to my breast and the bullet went into my breast. And with that she had a carving knife in her hand and she tried to stab me, which she did and I tried in the struggle to get the gun and the knife away from her when the gun discharged and hit the girl in the left breast, and with that I fell over on the bed in a faint and when I came to the knife was laying alongside of me on the bed and the gun on the floor. I have picked up the gun on the floor, and I met Arthur McGlade coming in and he asked me what had happened. I don't know really what I said to him after that, but I asked him to bring me in a drink of whiskey, to bring me a whiskey, a whiskey right away. Well, he went down stairs and after he went down stairs I guess he was gone probably five minutes, when in comes the Italian porter to me, and I felt so weak from the loss of blood -- it was pouring from my wound in the breast -- that I thought I was going to die then and I asked the Italian porter to take \$20. I had in the pocketbook down to give to Walter McGlade. So he went out and I guess he was gone sometime, I couldn't tell how long it was, when Officer Brady and his wife came in. I was laying on the bed and the knife still at the end of the bed, and they called to me and I laid there on the bed -- himself and his wife, nobody else. This was before any officers arrived at all, because I didn't have a drink that morning and I knew perfectly well what happened up to the doctor came. So both him and his wife called to me and I got up in a sitting position on the side of the bed and

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Mr. Brady took the knife off the bed, Officer Brady, and he said to his wife "You stay here with him while I go down and ring for the ambulance." And as Mr. Brady went out he took the knife along with him. Mrs. Brady says to me "Joe" -- she knows me very well for the last three years -- she says "Joe, look what you have done, you have killed your wife" like that to me and I never answered her. I was sitting crying on the side of the bed and I got down and I kissed the face of the dead girl and I threw myself back on the bed and I said "I wish God would take me too."

So after Mr. Brady going down stairs I don't know whether she went out or not, but Officer Brown and Officer Freeman came in together. Remember, gentlemen of the Jury, that there was no knife in the room at the time Officer Brown arrived in the house and Officer Freeman, both there together. And Brown asked me my name and my age and I gave it to him, and he also asked me the name of the dead girl, which I gave him. But remember saying anything else, I don't remember, until the doctor came; and Brown left Officer Freeman with me while he went down stairs to see if the ambulance was coming but Mr. Brady called up. So Officer Freeman was with me and up comes officer Brown and the doctor from the New York Hospital, and May -- or Mrs. Brady was there and I asked -- the first thing I asked the doctor for was a drink of whiskey, and the doctor opened his grip and handed me a two ounce bottle of whiskey, which I taken, and I asked for more and they brought up a half pint of whiskey from down stairs

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and I finished the half pint of whiskey and after that I don't know what I have said or done. But that is the occurrence of what occurred in reality, and as far as Officer Brown is concerned I am here, gentlemen of the jury, for my life --

MR. NOTT: I object to making a speech; I don'tm
object to his telling what happened.

THE WITNESS: I am on trial for my life, Mr. Nott --

MR. SCHICK: Just a minute.

THE COURT: The defendant may continue to tell his story to the Jury.

MR. SCHICK: Why, certainly.

MR. NOTT: I do not object to his telling the story, but I do object to his making the speech.

MR. SCHICK: Why not?

THE COURT: Proceed.

A (Witness continuing) Well, that is all I remember until I went to the New York Hospital.

Q Anything that you may remember that occurred with Officer Brown prior to your going to the hospital you may now state to the Court and Jury irrespective of the objection of the District Attorney, and don't be afraid.

THE COURT: There is no cause to admonish the District Attorney Mr. Schick.

MR. SCHICK: I withdraw that part of my remark and I apologize.

A Well, the only thing I have got to say is that Mr. Brady was

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14 the one to discover the knife and took ~~it~~ ¹⁶⁹ it out of the room, and that both him and Officer Brown are not telling the truth. Officer Freeman is telling the truth but the other two are not.

Q You heard the witness Arthur McGlade testify that he took the gun out of your hand, is that true? A yes, sir.

Q Did he take the gun out of your hand? A Yes, sir, he took the gun out of my hand.

Q Did he go up with Officer Brown together at any time? A No, sir.

Q Now will you tell us if you can remember what occurred at the hospital? A Well, I couldn't tell you Mr. Schick, because I was in very bad condition. Mr. Brown came to me at the hospital, at Bellevue Hospital, about a week afterwards and he asked me about the shooting and I said well, I said "You know I didn't do the shooting" I said "She shot me twice and shot herself in the struggle" and he said -- I said "How is it that you come to put down that I shot her and shot myself?" Well he says "I will have to go down and make out a different statement at the District Attorney's office." And he also told me that he found I guess three bullets in the revolver, at Bellevue Hospital. And that was all I had to say to Officer Brown that I remember.

Q You never at any time admitted to Officer Brown that ~~h~~ you did the shooting? A No, sir.

Q Did you ever say anything about your shooting the deceased to Officer Freeman? A No, sir.

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Q Or Officer Brady? A No, sir.

Q Do you recall about making a statement to the Assistant District Attorney and to the stenographer McDonald (Hammill), that you shot the deceased? A I never made any statement, Mr. Schick.

Q Did you ever have any trouble with Nora, before, before this shooting? A Never.

Q Did you quarrel that night or that morning? A No.

Q Did Nora make any attempt to take her own life before this?

MR. NOTT: Objected to as incompetent, immaterial and irrelevant. They do not claim now that it is suicide, they claim that it is a struggle in which she shot him and then shot herself.

THE COURT: I think the point is well taken. If the defense was that the deceased sought to destroy her own life then this evidence would be competent and it would have some legitimate bearing on the issue. As I understand the theory of your defense it is that through accident or the result of a wrangle between the deceased and this defendant, the defendant endeavoring to take from the deceased a revolver, that it exploded, and a bullet from it penetrated the body of the deceased.

MR. SCHICK: I content now that it is proper for me to show the thought (frame) of mind of the deceased, that she threatened many times prior to this to take her own

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life, and that would be proper to show by this witness on the
stand. I cannot show it by any outsiders.

THE COURT: It would be proper, there is no doubt,
under certain circumstances. Under certain circumstances
that defense is a proper one, and it is also legitimate to
interpose as many defenses as one desires. Now, the only
question is, what is the theory of your defense here? Was
it suicide?

MR. SCHICK: Well, certainly, there is no question
about that.

MR. NOTT: You haven't so stated, there is no testi-
mony to that effect.

THE COURT: In other words, you say she committed
suicide?

MR. SCHICK: Not that she committed suicide but that
in the struggle she killed herself.

THE COURT: I know, but that was due to a struggle for
the revolver; it is what is termed "accidental" shooting?

MR. SCHICK: I will withdraw that question.

THE COURT: I want to help you. This man is on trial
for a very serious crime, but tell me -- your theory
evidently is that while this defendant was struggling with
the deceased for the possession of the revolver it was
exploded during that struggle.

MR. SCHICK: Correct.

THE COURT: That is, that this defendant did not
from a deliberate and premeditated design to take the life

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of the deceased shoot her; isn't that your theory?

MR. SCHICK: That is right, correct. I withdraw the last question. That is all, your witness.

THE COURT: Of course, both accidental shooting and self defense --

MR. SCHICK: The Jury has the full story now, they can take it.

CROSS EXAMINATION BY MR. NOTT:

Q How long have you possessed a revolver? A I guess it is a year ago last August, Mr. Nott.

Q Sure about that? A Yes, sir.

Q Didn't you possess a revolver when you lived with your second wife? A Never had a revolver before in my life.

Q Didn't you threaten her with a revolver on several occasions? A Never had a revolver.

Q Didn't you have a black revolver when you lived with her? A No, sir.

Q You are sure of that? A I am positive.

Q It is a fact that you lived at 37th St. and 8th Ave. with her, did you not? A Not at 37th Street. I lived between 7th and 8th Avenues, 214 West 37th Street with my second wife, yes, sir.

Q And on occasions you threatened to kill her, did you not? A No, sir, never at any time.

MR. NOTT: Will Mrs. Murphy stand up?

(A lady arises in the Court room.)

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Q That is your second wife, isn't it? A Yes, sir.

Q Didn't you on many occasions threaten to kill her? A
Never.

Q Didn't you draw a gun on her on several occasions? A
Never.

Q That is true? A That is as true as I am on the stand.

Q Didn't she leave you because you beat her? A No, sir,
I left her.

Q Didn't you on one occasion after you left her break into
the flat where she lived and destroy all her clothes? A No,
sir, I did not.

Q Did you ever break into the flat after you had left it?
A I broke into the flat before I left her at all, because I
went out to the bathroom one night and she wouldn't let me in the
door and I had to break it in. She bolted the door when I went
out in my stocking feet.

Q Did you afterwards break in and destroy some of her
clothes? A No, sir.

Q You are sure about that. A No, sir.

Q Yes. Did you on one occasion after you left her come
to the door and when she opened the door for you then beat her?

A No, sir.

Q You didn't do that? A No, sir.

Q Do you know a lady by the name of Catherine Milano?

A Yes, sir.

Q Is she in court? A Yes, sir.

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Q Didn't you break open a door in her presence, of your ¹⁷⁴
flat, after you had separated from your wife? A No, sir.

Q Didn't you leave your finger marks on the throat of your
wife, Mrs. Murphy? A Never.

Q Never? A Never.

Q Didn't Mrs. Milano see you coming out of the flat that
time that you broke into it? A She couldn't have seen me come
out because I never went in. I was only too glad to get away
from her.

Q You are sure of that? A I am sure of that, positive.

Q Where did you get this gun that you did buy? A Why,
43rd St. and 8th Ave., the pawn shop next door to where Mr.
Hash's place is.

Q How did you come to buy it? A Because I was going to
the country and I thought I would take it along with me.

Q You bought it when? A August 29th, I believe.

Q 1911? A 1911.

Q And where were you going to the country? A Smithtown,
Long Island.

Q On a vacation or what? A To work.

Q You didn't mention that place before? Who did you go
there to work for? A I worked for the Riverside Inn.

Q You thought you would take a revolver with you? A
yes, sir.

Q And did you at that time ~~have~~ buy ammunition for it?

A No, the ammunition was given to me.

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Q How many cartridges? A Oh, I guess ~~in~~ the whole box of cartridges was given to me.

Q Where did you keep the ammunition for this revolver after you got back to New York? A Why, both the revolver and the ammunition was in a suit case with my clothes.

Q And after you moved to these premises on 8th Avenue, No. 640, where did you keep them? A Why, I went down to the mother in laws and I took the gun as I was going in that flat. It was a furnished apartment though and I thought I would have it for safe keeping, for safety in the house.

Q What house? A 640 - 8th Ave.

Q Oh, you took the gun along for safe keeping, you thought it would be safer ~~than~~ in that house, is that it? A No, for safety for myself.

Q Did you think you were in danger in that house? A Why, yes.

Q From whom? A Well, because it was a furnished flat house and everybody was in that house.

Q Did you know anybody from whom you were in danger in that house? A Well no. Because there was perfect strangers coming in and out there all the time.

Q Why did you go to live in a house in which you thought your life would be in danger from the tenants? A Because it was convenient to my work and the man I worked for was the boss of it.

Q You thought therefore that you would take a gun along

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to protect your life from the tenants? A No, not from the tenants, but from the people coming in and out.

Q Did you carry the gun around with you? A Never.

Q Then how could it protect you from the people coming in and out? A Because I left the kitchen door open while Nora Forrester was out at night.

Q How could the gun protect you if you did not carry it?

Well, it was in the bed room.

Q Where did you keep the ammunition? A The ammunition, well, I got it the night I went down to my mother-in-law's to bring the gun up to the house. That was when I took the furnished flat five months previous.

I know. Where did you keep the ammunition for the gun?

A I took a handful of bullets for the gun from the ammunition box and put them in my overcoat pocket.

Q What month was it that you moved there? A January or February, - I wouldn't be sure.

Q Do you mean to tell the jury you kept that same handful of cartridges in the overcoat pocket for five months?

A Yes, sir.

Q Never carried the gun with you? A No, sir.

Q And you want the jury to believe that you went around with a handful of bullets in your overcoat pocket and didn't have the gun? A It was not a handful.

Well, half a dozen. You want the jury to believe you carried the bullets there, but never carried the revolver?

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A Well, I carried it from my mother-in-law's up to the apartment.

Q In that suit case? A No.

Q You say after that you still continued carrying loose bullets in an overcoat pocket? A Yes, sir.

Q But never your gun in your overcoat pocket? A No, sir.

Q Why did you carry loose bullets around in an overcoat pocket, if you didn't have any gun? A Because I never wore my overcoat --- hardly ever.

Q Do you remember last January and February? A Yes.

Q It was a mighty cold winter, wasn't it? A Yes, sir.

Q And you tell the jury you never wore the overcoat out?

A Only when I went down to my mother-in-law's once a week.

Q Is that the only time you went out? A That's all. Only to go from the bar room upstairs, and from upstairs to go to work again.

Q You never left except that? A Well, I don't know where I ever went to.

Q You never went anywhere except to go to your mother-in-law's once a week.

Q And that is perfectly true? A Yes, sir.

Q And when you went to your mother-in-law's, then you would wear an overcoat in which were these six loose cartridges, - is that correct? A Yes, sir.

Q Now, you say you had known this Nora Forrester for

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about two years before you went to live with her; is that correct? A Yes, sir.

Q At the time you went to live with her you were a married man? A Yes, sir.

Q And it was after you went to live with her that you picked out just this apartment over where you worked; is that correct? A Yes, sir.

Q To go back a minute: didn't you at the time you lived with your second wife, on one occasion beat her, and kick her in the eye? A No, sir; I will explain all about that to you if you will give me a chance.

Q Didn't she go to the German dispensary and be treated for the injuries thus inflicted? A I don't know where she was.

THE COURT: While it is true that you have a right to question this defendant as to any vicious or criminal act, at the same time you are now examining him on a collateral matter and any answer given by the witness negative to your question is binding upon the People, and under one of the latest authorities by the Court of Appeals you cannot contradict or impeach him.

H. COTT: Oh, I appreciate that, if the Court pleases. I cannot try out a dozen assault cases here in this case. I mean that if he denies it I am not at liberty to call witnesses to contradict him.

THE COURT: You have a right to question him.

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MR. NOTT: That is all I can do, as I understand the rule of law. Otherwise, of course we would be trying half a dozen assault cases in one.

Q You said a minute ago you could explain how she came to go to the German dispensary for an injury to the eye: how did she? A When we lived in 214 West 37th street we separated in 54th street Court room, the Judge ordered me to pay her \$4 a week, and I told Judge Cornell I was willing to pay her \$4 a week, providing I knew where she lived, and who with. She claimed she was going to work. So she finally got down off of the stand and made an agreement with me to let me go my own way and she would go hers. So she should go. So I went to work. Two weeks after losing my position on Broadway and 37th street Mr. Wainright, 37th street and seventh avenue, gave me a position at \$18 a week, and when she heard that I was working there she wanted to make up with me again, so she met me on the corner of 37th street and Eighth avenue, about half past one in the morning, after me getting through with work, and she had two bottles of beer in her arm, and she come up to speak to me, and I pushed her and she fell, and the --- I don't know how she got her eye cut, or what happened to her. I know I was arrested that night for it, and taken to the 54th street Court the next morning. I was held in \$500 bail.

To keep the peace? A Well, until the case would come up.

Oh, the assault on your wife? A Yes, sir.

Did it come up? A Why, it came up, yes.

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Q Were you convicted? A I went back to live with her again.

Q Were you convicted? A No, sir.

Q Where did it come up? A It came up ten months later.

Q Whereabouts? A In the Criminal Court, in Special Sessions.

Q And were you convicted or acquitted, or what, or pleaded guilty? A No, we were living together again at that time, and we both made up.

Q Then you say that you punched her when she was walking on the street? A I didn't say that.

Q Well, you pushed her; was that what you said? A Yes.

Q And she fell down; is that the way she hurt her eye? A Yes, sir.

Q What did she hit her eye on? A She had two bottles of beer under her arm. I don't know what she hit her eye on.

Q Have you lived under the name of Spencer? A Yes, sir.

Q Have you ever been convicted? A No, sir.

Q Sure about that? A Yes, sir.

Q Under the name of Spencer? A Not under any name.

Q When did you take the name of Spencer? A I have always had it --- it is my middle name.

Q When did you live under that name? A 640 Eighth avenue.

Q Anywhere else? A Never.

Q Did you tell your second wife that you lived under the name of Spencer previous to knowing her? A No, sir.

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Q You say you knew Nora Lane about two years previous;
is that correct? A Yes, sir.

Q You knew she lived with a man named Lane? A Yes, sir.

Q And then did she ask to come and live with you, or did
you ask her to come and live with you? A Why, we used to go
to hotels together, occasionally, before we went to live to-
gether, and then she suggested that we should get a furnished
apartment together, and I said yes, as soon as I got to work.
So herself and her sister came over to me two or three days
afterwards, and her sister had some fight with one Henry ---

Q Oh, I don't ask all about that. I asked you who sug-
gested it, you or she, that she should come and live with you?

A She suggested it.

Q She did everything in this case? A No, I don't want to
say that about the girl, no.

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Q She suggested coming to live with you? A Yes.

Q Did she pay half the rent? A She did.

Q How did she make the money with which to pay it? A I don't know.

Q Didn't you know she was making it from men and paying your rent with it? A I don't know.

Q Well, what did you think? A Well, I never inquired.

Q You knew she was going out nights? A It was none of my business.

Q You were living with her and she was paying half the rent? A Yes, sir, she said she had some friend named Charlie, a bookmaker or racetrack man.

Q And Charlie was putting up the money for your flat?

A No, he was not. I was putting up half.

Q Well, you needed all the money to pay the rent. He half was putting up money for the rent for your flat? A He was not.

Q Well, she was, and that came from Charlie? A I don't know where it came from.

Q When she went out late at night did you think she was going to Sunday School? A I don't know.

Q What did you think she was doing?

Objected to. Objection overruled. Exception.

A I don't know.

Q Did you ever give a guess what she was doing? A Well, yes.

Q What did you think she was doing? A Well, ---

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Q Speak up, please. We are waiting to hear? A I really couldn't tell.

Q What did you think? You know what she thought she was doing? Now, what did you think she was doing? A I couldn't really say.

MR. SCHICK: Objected to on the ground ---

A (Witness continuing) That is unfair, Mr. Nott.

Objection overruled. Exception.

Q What did you think she was doing when she was staying out late nights and coming in at two or three o'clock in the morning and bringing in money to pay half your rent? What did you think she was doing? How did you think she was earning it?

A Well, I don't know how she was earning it.

Q Well, I ask you how you thought she was earning it?

A Well, my candid opinion was, I thought she was making it off the streets, or something else.

Q Were you fond of this girl, or weren't you? A Very fond of her.

Q And were you jealous of her? A Never.

Q Never a bit jealous, but very fond of her? A Yes, sir.

Q Did you want her to leave you? A Why, she suggested that many times.

Q Did you want her to leave you? A No.

Q And you wanted her to stay with you, didn't you? A Yes.

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Q Did she tell you the week previous that she was going to leave you? A She told me that about one hundred times in all that she was going to leave me.

Q And she did tell you that the week before this happened?

A She told me the night before that it happened.

Q I ask you now, about the week before. Did she tell you it the week before? A Yes, she might have told me the week, the night, or the month before.

Q Did she go away several days telling you she was going to the hospital? A Yes, sir.

Q Did you get your friends --- A Mr. Wilson?

Q To call up the hospital? A Yes, sir.

Q You took enough interest for that? A Yes, sir.

Q Did he tell you she was not there? A Yes, sir.

Did that make you angry? A No, sir.

Not a bit? A Not a bit.

Q You found out when she told you she was going to the hospital, and had been away several days, was not there, and had lied to you, but that did not make you angry? A No, sir, not at all.

Q Perfectly pleasant about it? A Perfectly pleasant about it.

Then that Sunday did she come back? A She came back on Sunday about half past seven.

Q Did she tell you that she was going back to live with her sister? A No, she didn't say that.

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Q Where did she say she was going? A Why she had told me so often --- she never said she was going to live with her sister. She told me one night she was going to get married, and I should lend her ten dollars, which I did the next morning.

Q Did she tell you then that she was going back to live with her sister that week? A No, sir.

Q Now, the night before this shooting, Tuesday night, did you have any quarrel with her? A No, sir.

Q You had no quarrel at all? A Not a quarrel.

Q Do you remember telling this jury that Officer Freeman told the truth? A I remember him telling the truth about the apartment.

Q Did you tell this jury that Officer Freeman told the truth? A (No answer).

Q Didn't you or didn't you tell the jury that? That is a plain question? A Yes, I believe I did.

Q Did you hear Officer Freeman say how you made the statement that you had quarrelled during the night till midnight; that you then stopped quarrelling, and that you resumed the quarrel about five o'clock in the morning? A No.

Q Is that true, or not? A No, that is not true.

Q You never told him that? A No.

Q Have you ever had any trouble with Officer Freeman? A No.

Q Did you ever lay eyes on him before he arrested you?

A No, sir.

Q Do you know any reason why he should testify falsely

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against you? A I do not.

Q Have you ever had any trouble with Officer Brown? A No.

Q Do you know any reason why he should testify falsely against you? A I do not.

Q Have you ever had any trouble with that Italian, Zito?

A No, I never did.

Q He is a friend of yours, isn't he? He worked in the same place? A Well, he is so much of a friend that he has got twenty dollars belonging to me.

Q Have you ever had any trouble with him? A Never.

Q Do you know any reason why he should testify falsely against you? A Well, he has testified ---

Q Do you know any reason why he should? A No, I do not.

Q He has testified that he saw the knife in your hand, as you sat on the bed? A Yes.

Q Now you tell this jury whether you quarrel with that woman that night? A No, sir.

Q What time did she get in? A She never left the house from Sunday night until this accident happened.

Q From Sunday night until the time of the shooting she never left the house? A No, sir.

Q Did you bring her up any drink? A Why, yes.

Q You used to bring her drink, is that it? A No, the old lady used to get it for her.

Q Did you bring her up any? A Yes, we had a pint of beer that night and a bottle of whiskey before we went to bed.

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Q On Tuesday night? A On Tuesday night, yes, sir.

Q You had a bottle of beer? A No, sir, I had a can of beer and a bottle of whiskey.

Q What size bottle? A Half a pint.

Q What time did you and she go to bed? A I guess around ten o'clock.

Q And you never had any quarrel at all? A No, sir.

Q So all the people that have here testified that you told them that you had a quarrel during that night, have testified falsely --- you never told anybody that? A The only thing was that the girl went to bed a little under the weather -- a little intoxicated -- and she was noisy when she was drunk; she was always swearing and cursing, you know -- it was a habit of hers -- but there was no quarrel between the two of us whatever.

Q Did you finish all the whiskey that night? A No, sir.

Q Sure about that? A I just had a glass of beer and I went to bed at ten o'clock.

Q You say you brought up half a pint of whiskey; did you finish it that night? A No, sir.

Q There was some left in the morning? A No, sir, there was not.

Q Well, then, you did finish it that night? A No, sir.

Q Was the whiskey finished that night in the flat? A Well, it must have been.

Q Well, the next morning you asked your friend Arthur

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to go down and get you more whiskey? A Yes, sir.

Q Then it was finished, wasn't it? A Yes, sir.

Q I suppose she drank it all, didn't she? A Well, I don't know who drank it; I know I didn't drink it.

Q You didn't drink any of the whiskey? A Yes, I had one drink the night before I went to bed, and one glass of beer.

Q What time did you go to bed? A Ten o'clock.

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

Q And she finished it all before that? A No, sir.

Q Had you? A No, sir.

Q Then how had it been finished if neither of you finished it? A Because the girl was in and out of bed all night long.

Q I see; and you kept awake? A No, I didn't keep awake.

Q Now, in the morning you say you got up and started the day by going into the bathroom and vomiting, is that it? A Yes.

Q Were you sober? A Perfectly sober; as sober as I am at present.

Q Perfectly sober? A Yes.

Q So at the time that the People claim you shot this girl, you were not intoxicated, were you? A No, sir.

Q Were you perfectly sober? A I didn't shoot the girl.

Q I know, that is what we are coming to, - but you were not intoxicated? A No, sir.

Q Did you tell the officer that you were sober the night before? A I don't remember what I told the officer.

Q Now, you say that after going to the bath room and

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vomiting, you went back again through into the kitchen, is that correct? A Yes, sir.

Q The bath room is right back of the kitchen? A Yes, sir.

Q So you went through from the bed room into the bath room, there you vomited, and then came back to the kitchen, and asked the old lady for tea? A Yes, sir.

Q And at that time the old lady told you that Nora Forrester had stopped the milk and the ice because she was going away? A Yes, sir.

Q Did that make you angry? A Not at all.

Q Did the old lady tell you she was going too? A No, the old lady told me on Saturday morning; when I gave her three dollars, which she was getting, three dollars a week and her meals and her bed, that I told her Nora wasn't home Saturday, I said, "I guess Nora is gone", so I says, "Mom, I can't afford to pay you all alone", to her, and ---

Q Was the girl Nora paying half of the old lady's wages too, - is that it? A No, I was paying the old lady's wages, and the old lady asked me if she could stop there until she got a position, and I said certainly.

What I asked you was, did the old lady on this Wednesday morning tell you that she, the old lady, was going? A No, sir.

Q She did not? A No, sir.

Q So she is not truthful when she said that? A Well, I would not say she was not truthful.

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Q Did she tell you Nora had stopped the ice and milk, and that Nora was going? A Yes, sir.

Q That did not disturb you a bit? A Not a bit.

Q You were glad to see Nora go? A Well, in one way I didn't care.

Q You didn't mind a bit having the girl who was paying half the rent going and leaving you with all the rent to pay, didn't you? A No, sir.

Q Not a bit? A I didn't intend to keep the flat myself.

Q Well, you didn't mind giving it up? A Well, I had a party that Sunday came up to me and wanted to pay me \$5 a week, a friend of mine, a plasterer who wanted to go half the rent with me -- he was going to give me five dollars a week.

Q I thought you just said you were going to give it up? A No, sir.

Q The knowledge that she was going didn't bother you in any way or make you angry? A No, sir.

Q You didn't want her to go as soon as she could go as not? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Now, let me see if we get this straight. Then as you walked back from the kitchen into the --- you walked through the dining room in the first bed room, and then you saw her standing by the bed, is that correct? A No, sir, by the dresser.

Q In the bed room? A Yes, sir.

Q She was standing there? A Yes, sir.

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Q With a revolver in one hand and a knife in the other, is that it? A Yes, sir.

Q How many people did you tell that you saw her jump out of the bed and get the pistol out of the closet? A I never told anybody that.

Q Never told anybody that? A No, sir.

Q Everybody else is lying that says that, except you?

MR. SCHICK: Objected to.

COURT: Objection sustained on the ground that a witness cannot characterize the testimony of another.

Q You never told a living soul that you saw this girl jump out of the bed, run over to the closet and get the revolver out of the closet?

MR. SCHICK: Objected to on the same grounds.

Objection overruled. Exception.

MR. SCHICK: Also objected to on the ground that he already answered it no.

Objection overruled. Exception.

Did you ever have any trouble with Arthur McGlade?

A No, sir.

Q Did you hear McGlade on this very chair this morning testify that you you said went over and got it out of the closet, jumping out of the bed? A No.

Q You didn't hear that? A No, sir.

Q Did you hear McGlade this morning? A I heard everything McGlade said, yes.

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Q Well, I think I am in error about McGlade mentioning the closet. Did you hear McGlade on that chair testify that you said you shot your wife twice and shot yourself once?

A No, sir.

Q Or twice --- did you hear him testify to that? A I heard him testify to that, yes.

Q Have you ever had any trouble with him? A Never.

Q Do you know any reason why he should testify falsely against you? A No, sir.

Q Did you say that in his presence? A No, sir, I did not.

Q Where was this knife kept? A The knife was always kept out in the drawer in the kitchen.

Q And you had just been in the kitchen? A Yes, sir.

Q And when you got back from the kitchen she was standing up here in the bed room with that knife in her hand, is that correct? A That is correct, yes, sir.

Q That is where she was standing with that knife in her hand? A Yes, sir.

Q Do you know how that knife got in there? A Yes, sir, the knife was in the front room from the night before, because I had the knife myself --- both me and her.

Q What were you doing with it in there? A We had some sandwiches in there with a pint of beer and it was the only sharp knife that was in the house.

Q And you brought the knife? A Yes, sir, I brought the

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Q It happened to be in there? A Yes, sir.

Q And when you came back she was standing with the knife in one hand, and the revolver in the other? A Yes, sir.

Q Which hand did she have the revolver in? A With her left hand.

Q And the knife in her right hand? A Yes, sir.

Q Now, I want you to be sure about that, and I don't want any mistake about it, I will give you all the time you want about it to think it over, but I don't want you to change your answer. Now, think it over, just as long as you like. Which hand did she have the revolver in? A Left hand.

Q Sure about that? A Yes, sir.

Q And you cannot be mistaken? A No.

Q And she had the knife in her right hand? A Yes.

Q And this is the way she shot herself in her left breast with her left hand (indicating)? A I don't know how she shot herself. I grabbed both her wrists and tried to get both away from her.

Q Was she a left-handed woman? A I can't tell you.

Q You lived with her five months. Was she right-handed or left-handed? A I can't say.

Q Did she cut the bread with her right or left hand? A I couldn't say. We never sat down to meals together.

Q Did you cut the sandwiches? A No, sir.

Q Did she? A Yes, sir, she did.

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Q Do you know whether she was right-handed or left-¹⁹⁴
handed? A I couldn't say.

Q You came into this room and there was this woman standing with a knife in one hand and with a revolver in the other?
A Yes, sir.

When did you first make up your mind to tell that story to anybody? I never made up my mind to tell the story.

Q When did you first tell that story to anybody? A I have never told the story to anybody, only to my counsel.

You never told that in the hospital? A No, sir.

You never told it to the police officers, did you? A No, sir.

Q When you were put under arrest, when the officers asked you how it happened, didn't you think it would be important for you to tell them that a woman attacked you with a knife and a revolver? I don't know what I said to the officers.

Didn't you tell this jury a minute ago that you were perfectly sober on that morning and knew just as well what happened then as now? I knew what happened then.

Didn't you think it would be important for you to tell the officers that this woman attacked you with a knife and a revolver when you were put under arrest? A Why, I should think so.

Why didn't you do it? A I don't know what I said to the officers.

Q Did you tell them that? A I don't know.

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Q Didn't you tell the jury a minute ago that you knew what happened that morning just as well as you knew what happened now? A Previous to the officers coming in.

Q And then you, all of a sudden forgot? A No, I did not.

Q Did you tell them that, or didn't you? A Did I tell them what?

Q That this woman attacked you with a knife and a revolver? A I don't know what I told the policemen.

Q Did you tell Mr. Minton that in the hospital? A I don't know. I never made any statement to Mr. Minton in the hospital.

Q So Mr. Jamill, when he read those notes to the jury made all that up out of his head? A I don't know anything about the gentleman.

Q This woman rushed at you, did she? A Yes, sir.

Q Did you run away? A Well, I couldn't run away very well.

Q Well, what did you do? A She raised her hand and fired a shot which caught me here in the left side (indicating on left side of head), and the blood come streaming down my face.

Q Did she say anything to you before she did this? A Well, she did say, "God damn you, you won't get rid of me so quick." That was all the conversation the girl ever said.

Q Were you trying to get rid of her? A No.

Q Had you asked her to go? A Me and the old lady had a conversation.

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Q Had you asked her to go? A No.

Q You were not trying to get rid of her? A No.

Q Can you give this jury any reason why she attacked you?

A I cannot.

Q She was a girl twenty-three years old? A Yes.

Q And you are a man of thirty-two? A Yes, sir.

Q And then as she came rushing towards you, saying "God damn you, you won't get rid of me so quick", then she fired this revolver shot from her left hand, - is that correct?

A Yes, sir.

How far away was she from you? A Right close to me.

Q And firing with the left-hand that bullet struck you where? A Right here.

Q And you never tried to shoot yourself at all? A No, sir.

Q And you never told a living soul that you tried to shoot yourself? A No, sir.

THE COURT: Let the record show which side he indicated.

THE COURT: The right side.

Q Did Mr. Earl McClade say that he heard you say that you tried to shoot yourself and were sorry you failed? A I heard him say that, yes.

Q That you tried to shoot yourself, and was sorry that you failed? A I heard him say that, yes, sir.

Q That is, you never said that? A Well, I never said

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that, not to my memory, no.

Q Then how soon together did these shots come? A Right one after another.

Q Right away, two, - like that (indicating with two quick slaps of the hand)? A Yes, sir.

And the second one hit you where? A Right in this breast. (Indicating left side).

Then what did she do? She raised her right hand with the carving knife in it.

Q And how many times did the lady succeed in stabbing you with the carving knife? A Several times.

Q Here you are a man of thirty-two years of age, and this woman succeeded in stabbing you six or seven times with a carving knife and you could not defend yourself, is that correct? A Well, I tried to the best I could.

Q Did you get the revolver away from her? A No, sir.

Q Never got it away from her? A Not until I came to. She was laying on the floor.

You never disarmed her and never had that revolver in your hand, even? A I had it in my hand when I gave it to Arthur McGlade, and he took it off of me.

Then you picked it up off the floor? A Yes, sir.

Q But during this struggle you never had it in your hand? A No, sir.

Now, let me get that straight so there is no dispute about it. During the struggle you never had your hand on this

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revolver and you cannot be mistaken about that? A Well, I twisted her hand with the revolver in it.

Q Did you have your hand on the revolver? A Well, I couldn't say that I did. I know she had a tight grip on it.

Q Did you have your hand on the carving knife? A No, sir, not to my memory.

Q So you could not get either hand on either the revolver or the carving knife? A Well, I had hold of both of her wrists.

Q And this woman succeeded in stabbing you six or eight times and inflicting two shots on you with a revolver, and you were defenseless in her hands? A Until I fell over on the bed. I couldn't do any more.

Q Is this the shirt with a sore that night or morning? A Yes, sir.

Q And these wounds were inflicted during this struggle, you say? A Yes, sir.

Q Is that correct? A Yes, sir.

Q And you were not sitting there and stabbing yourself at all --- you never sat in the bed stabbing yourself? A No.

Q Well, will you tell the jury why it is that all the cuts are just in that one place on that shirt if they came through the struggle, and you were not sitting on the bed? A I don't know.

Q You can't explain that, can you? A No, sir.

Q You haven't any explanation to offer of it? A (No answer).

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MR. NOTT: I offer this in evidence now.

THE COURT: Received.

(Received in evidence and marked People's Exhibit 14.)

THE COURT: Can you agree among yourselves upon how many cuts appear in the shirt, Mr. Schick.

MR. NOTT: I think the jury can count them themselves. They are all there in that place, not a single one on the right side.

MR. SCHICK: Oh, you couldn't do that very well, your Honor.

Q Now, that is a bullet wound there (in shirt) isn't it?

A Yes, sir.

Q And you tell the jury with her left hand this woman put the bullet wound into the same location exactly over where those stab wounds came, and she did one with her right hand and one with her left-hand; is that correct? A Yes, sir.

THE COURT: On what side of the shirt?

MR. NOTT: The left side, sir.

Now, please sit up, now pretend that you are the woman, and that I am you --- no, I am the woman and you grab me in the same way you were trying to defend yourself from the woman? A I grabbed hold of her wrist like that and said, "My God, Lord, what the matter with you?"

Q Will you tell the jury how it was when you had the wrist like that that she was stabbing you? A She had the knife like this.

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Q In her right-hand? A Yes, sir, and the gun in her left.

Q And she was stabbing you and you were holding her wrist like that? A Yes, sir.

Q And in spite of all your resistance she stabbed you right there? A Yes, sir.

Q The same place where she had previously shot you? A Yes, sir.

Q How did she get stabbed? A I couldn't tell you, except in the struggle.

Q Did she use the knife both ways, first one way and then the other? A Well, we had a struggle there. She might have been stabbed in the struggle.

Q You told the jury that you remember exactly what happened up to the time the officer came. Now, tell this jury how this woman got two stab wounds one penetrating right through to the heart? A I don't know.

Q Can you give any explanation? A I cannot.

Q Can you tell the jury how she got shot through the heart, through the breast? A No, sir.

Q You were holding her hands? A Yes, sir.

Q Do you know how she got shot? A No, sir.

Q You cannot give them any explanation? A I cannot.

Have you got any of those stab wounds left on you now?

A I have.

Q Are the marks on you now? A Yes, sir.

Q Do they show? A Yes, sir.

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Q Just open your shirt and show them to the jury and let us see what a woman can do, her hands being held by the wrist?

A (Witness exposing his breast to the jury).

Q Those are the stab wounds, are they, right close around the nipple? A Yes.

MR. NOTT: May it appear on the record that there are twelve stab wounds around the left nipple, the bullet wound being two and one half inches from the nipple and the stab wounds being within an inch and a half to two inches on either side of the nipple.

Q Now, Murphy, do you mean to tell this jury that that woman inflicted those on you all in that one place? A Yes, sir.

Q And you didn't sit there stabbing yourself, just as the Italian and all the rest of them have said? A I did not, no, sir.

Q Did Mr. Minton come to see you in the hospital? A I didn't see Mr. Minton.

Q Did anybody from the District Attorney's office come to see you in the hospital? A No, sir.

Q Did Mr. Hamill, the witness, come to see you in the hospital? A Not that I know of.

Q Didn't Mr. Minton ask you if you felt well enough to talk and you said yes? A I don't remember.

Q Did you say to Mr. Minton, "We had a little scrap last night. She accused me of being crooked"? A No, sir, I

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don't remember.

Q What? A I don't remember it.

Q You don't know whether you said it or not? A No, sir.

Q Do you think Hamill made it up? A He might have for that.

Q I see. Did you say "I accused her of being the same thing"? A No, sir.

Q "She jumped out of bed and grabbed the gun out of the closet?" A No, sir.

Q "And I tried to take the gun from her hand, and a shot went off and she fell"? A No, sir.

Q Did you say that? A No, sir.

Q "Then I fired two more myself, and I fired one at my head and another at my heart"; did you say that? A No, sir.

Q You never fired any shots at yourself? A I never made any such statement.

Q And you never fired a shot at yourself and you never stabbed yourself? A No, sir.

BY THE COURT:

Q You inflicted none of the wounds that you have exhibited to the jury? A Not that I can recall, your Honor.

Q Did you attempt to take your own life? A Not that I can recall.

BY MR. NOTT:

Q How long had you been living with Nora Lane?

A About five months, I think.

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Q Now, was this question asked you and did you make this answer "How long had you been living with Nora Lane? A Five months?" Now did Hamill know that if you didn't say it? A I don't know.

Q Was this question asked you, "What was that about?" (Referring to an altercation) A Her sister told her she seen me down the back room with other women. She accused me of being crooked, and I accused her of being crooked." Did you say that? A I don't remember.

Q Did she tell you that her sister had said she had seen you in the back room with other women? A Well, she told me that about three weeks previous to this occurrence.

Q How did Hamill know that if you didn't tell him? A I don't know.

Q "What was your ground for complaint against her?" A Because she used to go out and stay out at night till two or three o'clock in the morning." Did you say that? A I have got no complaint to make against the girl.

Q Did you say that? A I didn't say anything that I can remember.

Q Did you say that? A No, sir.

Q Were you asked this question: "Had you been drinking that night?" And did you answer "No, perfectly sober when I left for work?" A No, sir.

Q Did you make that answer? A I don't remember.

Q As a matter of fact you say now you had been drinking? A Yes, I had been drinking.

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Q Did you say in answer to a question: "No a furnished flat. She used to pay one-half and I used to pay one-half". Did you say that? A I don't remember.

Q Well, how did Hamill know she paid half the rent unless you told him? A I don't know.

Q Were you asked, "Where was the revolver kept?" And did you say "Up in a closet"? A I don't know anything about this.

Q Did you say this? A I don't know; I don't remember.

Q Were you asked this question: "How did she get these stab wounds?" And did you say "Stab wounds --- I don't know." Did you say that? A I don't remember.

Q Were you asked this question, and did you make this answer: "Was there any carving knife around?", and did you answer "I stabbed and shot myself, both? A I don't remember.

Q Were you asked this question: "Don't you remember whether you stabbed her with the carving knife? And did you say, no, I don't. I remember stabbing myself? A I don't remember.

Q Did you make this answer to this question: "How many times did you shoot her after the first time?" And did you say "Two"? A I don't remember ever saying such a thing.

Q Did you say "Two. I seen she was dead, and then I didn't think there was any use of me living any more, and I tried to kill myself?" A No, sir.

Q You never said that? A No, sir.

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Q. Were you asked this question and did you make this answer: "After the first shot did you shoot her twice again?"

A. Yes". A. No, sir.

Q. What? A. I don't remember.

Q. Did you make this answer to this question: "Why did you fire two more bullets after that first shot? A. I suppose I was crazy"? A. I did not.

Q. Were you asked this question? "Where was this knife lying? A. Laying out in the kitchen." Did you say that?

A. No, sir.

Q. Were you asked this question, and did you make these answers: "Was she in bed at the time? She jumped out of bed after the revolver"? A. No, sir.

Q. How far did she have to go to get the revolver? A. Just jump right out of bed and reach for it"? A. Did you say that? A. I don't remember.

Q. Where was the revolver kept, in the closet? A. A. Yes." Did you say that? A. I don't remember.

Q. Now, did you make this answer to this question: "Now then, you shot her many times, is that right? A. Yes, and fired two shots at her." Did you say that? A. No, sir.

Q. Did you say she fired the two shots? A. She was standing up - fell down." Did you say that? A. No, sir.

Q. Did you make these answers to these questions: "Q. When did she fall, after the first shot? A. After the first shot.

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Q And you fired two more shots after that? A Yes." Did you say that? A No, sir.

Q "Q Was she lying on the floor then? A Yes." Did you say that? A No, sir.

Q "Q And you pointed the revolver at her? A Yes."
A No, sir.

Q Did you make this answer to this question: "Well, you fired two shots at her, didn't you? A Yes."? A No, sir.

Q Were you asked this question and did you make this answer: "Where did you get the carving knife from? A Went out in the kitchen because the gun was empty and I went to the kitchen to get more cartridges."? A I couldn't have said such a thing.

Q "Q The cartridges was in a closet in my overcoat, and I couldn't get them out of the revolver to kill myself." Did you say that? A No, sir.

Q How did Hamill know that you had the cartridges in that overcoat? A I don't know.

Q "Q And I went out and took the carving knife and stabbed myself"; did you say that? A No, sir.

Q "Q Where did you stab yourself, in the breast? A Yes, in the breast." Did you say that? A No, sir.

Q "Q You shot yourself how many times? A Twice." Did you say that? A No, sir.

Q "Q Once in the head? A Yes, and once in the breast." Did you say that? A I never remember saying anything.

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Q "Q And how many times did you stab yourself? A I don't know. About half a dozen times, I guess." Did you say that?

A No, sir, I did not."

Q And now before this jury you put this all onto this woman and say she shot you, she stabbed you, and that you didn't do a thing; is that correct? A That is correct.

Q And this is the first time that you have ever made that statement in any public place or to any official, is that correct? A What statement?

Q The statement that she attacked you in the way you have said? A Why, yes, that is the first statement I have ever made.

Q You were in the Coroner's Court when the inquest was held? A Yes.

You didn't tell us then? A I didn't say a word.

I know, you just sat tight and brought this defense here in court? A I had nobody to represent me in the Coroner's Inquest.

Q Now, let us see if this was not the way it was, when you made the first statement to Officer Brown in the flat and Officer Brady, when you said it was because of a little love affair, or because of another man, you had not had time to think it over then, had you? A No, sir.

Q Later in the hospital when you made the statement ---

A I don't remember anything that I said to any of the officers.

Q Did you say to Officer Brady that it was because of a

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little love affair? A No, sir.

Q You didn't say that? A I never spoke to Officer brady before the morning he came in and took the knife off of the bed.

Then in the hospital you had had time to think it over a little more, and you put in there that she did have the revolver in her hand, but that you shot her and then shot yourself, is that correct? A No, sir.

And now here, after you have had still more time, you come in with the story that you never had the revolver and the knife at all? A I didn't come in with any story, Mr. Wott. I am telling you the story of the happenings of May 22nd.

RE-DIRECT EXAMINATION BY MR. SCHICK:

You heard the stenographer Hamill read from a note book various questions and answers supposed to have been put to you in the New York Hospital on the day this accident occurred --- you heard him read them? A Yes, sir.

Do you recall making such a statement, or being questioned by an assistant District Attorney and Mr. Hamill on that date? A I don't recall.

I say, I don't recall anybody asking you any questions?

A No, sir, I don't.

Do you recall in the morning before you left your apartment, Arthur McBlade, who testified in behalf of the People, brought you up half a pint of whiskey, is that right?

A Yes, sir.

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Q And then the doctor who removed you from your apartment to the New York Hospital, he gave you a two ounce bottle of whiskey? A Yes, sir.

Q And you drank that? A Yes, sir.

Q And you were under the influence of liquor nearly all that day? A Yes, sir.

Q Do you know if anybody asked you any questions? A I don't know.

Q Or what you said to anybody? A No, sir.

RE-CROSS EXAMINATION BY MR. SCHICK:

Q You say this doctor gave you two ounces of whiskey?
A A two ounce bottle.

Q You drank it all? A Yes, sir.

Q And was this doctor or sent when you drank all this other whiskey was right at once up? A He was, and so was the police officers.

Q How much was the second dose this doctor let you drink?
A Why, it was half a pint of whiskey came up from downstairs, and they poured it out into a cup for me.

Q And you say the doctor let you drink half a pint of whiskey? A Yes, sir; and he got it out of his own suit case.

Q Well, I am asking you again the second dose? A Yes, sir, the doctor let me drink it.

BY MR. SCHICK:

Q And at the time you were removed from the apartment

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Q And at the time you were removed from the apartment you were bleeding? A Yes.

Q You had a wound in your head? A Yes.

Q And in your chest? A Yes.

Q And wounds? A Yes.

And suffering from loss of blood? A Yes.

You couldn't know who was around you or what you said?

O jected to. O jection sustained.

THE COURT: Do not discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Be in your seats at 10:30 to-morrow.

(ADJOURNED to Wednesday, October 16, 1912, at 10:30 a.m.)

Last Exhibits:

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THE PEOPLE vs. MURPHY.

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New York, October 16th, 1912.

TRIAL RESUMED.

J O S E P H M U R P H Y, the defendant herein, resumes the stand and further testifies.

DIRECT EXAMINATION BY MR. SCHICK: :

Q What is the number of the street where this accident, this shooting, took place? A 640 Eighth avenue.

Q That is the corner of 41st street and Eighth avenue?

A Yes, sir.

Q Who owns that place? A Mr. Nash.

Q There is a liquor store downstairs where you were employed as bartender? A Yes, sir.

Q Is there a cafe there? A Yes, sir.

Q And back rooms to drink --- how many rooms are there on the ground floor besides the bar? A There is the back room and a toilet in the rear.

Q What kind of people were in the habit of coming in there?

MR. NOTT: Objected to as incompetent, immaterial and irrelevant, having no bearing whatever on the issues of this case.

THE COURT: How material is that? What is the materiality of the evidence?

MR. NOTT: Also objected to as calling for a conclusion.

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MR. SCHICK: Brady testified on direct examination that he resided in this Nash house upstairs for several months and he was supporting the woman he married the year prior to his marriage.

MR. NOTT: Objected to; he didn't testify to anything of the sort.

THE COURT: He said he did not visit the place. He said he lived there two weeks after he was married.

Q You know Officer Brady? A By sight.

Q How long did he live in the Nash house? A Well, he had been coming in and out of the Nash house ---

MR. NOTT: Objected to. He was asked how long he lived there.

Q How long had he lived there? A I don't know.

Q How long did you know, of your own personal knowledge that Officer Brady visited the Nash house --- for how long a period of time?

MR. NOTT: Objected to as irrelevant, immaterial and incompetent, going into a collateral matter.

Objection sustained. Exception.

Q What was upstairs, above the liquor place? A Furnished apartments.

Q Were they divided into rooms? A Four and five rooms and bath.

Q I mean at the time that this accident occurred? A Yes, sir.

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MR. NOTT: I object to that characterization of the occurrence.

THE COURT: Well, change your question. Objection sustained as to the form of the question.

Q Do you know any of the people that lived in that house above the saloon? A I do.

Q Are you acquainted with their business?

MR. NOTT: I object to that as incompetent, immaterial and irrelevant, having no bearing on the issue whatever.

THE COURT: I do not see the materiality of the evidence, Mr. Schick.

MR. SCHICK: I want to show the impossibility of this Officer Brady testifying on direct examination that he was not acquainted with the character of the people in this house or the people downstairs. I want to show the kind of place. I want to show that it is impossible for a police officer attached to the Metropolitan Police Force not to know, and I want to take his testimony.

THE COURT: But you cannot attack it. It is a collateral matter. Suppose you had asked Officer Brady whether or not he had stolen a man's watch? If he were not convicted you could not call a witness to contradict him or impeach him.

MR. NOTT: Your Honor applied the same rule against

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the People when I asked this witness now on the stand as to his relations with his second wife. We could not go in that.

THE COURT: You cannot contradict it. We are not to try out every issue that is raised.

MR. SCHICK: That's all.

BY THE THIRD JUROR:

Q In your testimony you said that you were on your return from the kitchen? A Yes, sir.

Q That the woman held in her hand a revolver? A Yes, sir.

Q And made this declaration? A Yes, sir.

Q (Continuing) "Now, God Damn you", and she shot you?

A Yes, sir.

Q Was she a profane woman? A She was, yes, sir.

Q Was it her ordinary language? A It was, when she was intoxicated.

Q Was she intoxicated that morning? A She was.

BY THE COURT:

Q Did you ever exhibit your revolver in the presence of the deceased? A No; not that I know of, your Honor.

Q Not that you know of? A No, sir.

Q And where did you keep your revolver? A The revolver stood in the closet, in the clothes closet where we used to keep our clothes and hats.

Q What part of the closet? A Right on the shelf, your Honor.

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MR. SCHICK: The defendant rests.

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D R. J O H N A. V I E T O R, recalled in rebuttal by
the People, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q On May 22nd, this year, when you were in the apartment
at 640 Eighth avenue, and saw the defendant, do you recall
having given him some liquor? A Yes, sir.

Q And where did you get that? A I had that in the bag
that I carry with me.

Q About how much did you give him? A I should imagine
about four ounces.

THE COURT: Illustrate to the jury about how much
four ounces of liquor is.

THE WITNESS: Well, I should say it would be about
a three finger drink.

Q You mean by a three finger drink, in the ordinary
whiskey glass? A Yes, sir.

Q Did you permit the defendant to drink there in the
apartment that morning a half pint of whiskey? A I didn't
see him do it.

Q Did you tell him that he could drink it? A No, sir,
not to my recollection.

Q Did you give him any whiskey except what you have al-
ready said you gave him? A No, sir.

Q Will you tell the jury what the condition of the
defendant was that morning from the time you first saw him

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until you took him to the hospital, respecting whether or not
he was intoxicated or not? A Why, I should say he was not
intoxicated.

Q Were you in the hospital after he was taken there,
doctor? A I took him there and then he was out of my charge
after he was admitted.

Q Did you talk with him any that you recall? A Nothing
in particular as I remember.

CROSS EXAMINATION BY MR. SCHICK:

Q The whiskey that you gave the defendant to drink was
brought up from downstairs, was it not, by McGlade? A The
whiskey I gave him to drink I had from my ambulance bag, from
the supply in the bag.

Q Did you pour out the whiskey into a tea cup? A I
believe I gave it to him out of the bottle.

Q And did you look at the bottle --- how much he consumed?
A Yes, he consumed about half a bottle.

RE-DIRECT EXAMINATION BY MR. O'MALLEY.

Q You mean the bottle you had? A Yes, the bottle
I had --- an eight ounce bottle.

J O H N M. M I N T O N, JR., called in rebuttal by the

People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q You are an Assistant District Attorney attached to the

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staff of Mr. Whitman? A Yes, sir.

Q And how long have you been in the office? A In the neighborhood of a year and a half.

Q To what Bureau in the office are you attached? A Homicide Bureau.

Q And in connection with your duties connected with that Bureau you go out and take statements of witnesses and of defendants in homicide cases, do you not? A I do.

Q And did you on the 22nd of May of the present year go to the New York Hospital and take the statement of this defendant, Joseph Murphy? A I did.

Q Were you accompanied there by Mr. Hamill, the stenographer? A Yes, sir.

Q Who was regularly attached to the Homicide Bureau?
A Yes, sir.

Q And do you recall now where you saw the defendant?
A I saw him in the ward, in the hospital.

Q At that time he was in bed? A Yes, sir.

Q Do you recall having asked him certain questions?
A I do.

Q And his having made answers thereto? A I do.

Q Did he answer all questions that you put to him?
A Yes, sir.

Q And did he do that readily? A Yes, sir.

Q How long were you with him altogether, if you recall, Mr. Minton? A About ten minutes.

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Q Now, during that time from your observation of him and your conversation with him and the answers he made to your questions, will you state whether or not the defendant in your opinion was intoxicated? A Not in my opinion, no, sir.

CROSS EXAMINATION BY MR. SCHICK:

Q What did you say to the defendant when you first spoke to him? A As well as I remember now I asked him whether he felt well enough to talk.

Q Did he have an attorney present? A He did not.

Q Did you tell him that he could send for an attorney or a friend before you asked him any questions?

MR. O'MALLEY: I object, your Honor, you ruled out that line of testimony yesterday.

THE COURT: The District Attorney is not called upon under the case of the People against Hill ---

MR. SCHICK: I put the question to him. The District Attorney can make his objection.

THE COURT: Is your question concluded?

MR. SCHICK: Yes.

Objection sustained. Exception.

Q At the time that you examined this defendant in the hospital did you know that he had two bullet wounds, - did you not, and he was stabbed in several places? A So I was told.

Q And he was lying in bed, was he not? A He was.

Q And he was under the treatment of a physician? A I

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presume s.o.

Q Did you ask any physician in the hospital, or the surgeon in charge of a ward, whether it was safe for you to put any questions to this defendant in the condition that he was at that time? A I asked some one at the door, I don't remember whether it was an orderly or a surgeon, or the officer, whether the man was well enough to talk.

Q Did you ask who was in charge of that ward, and particularly in charge of this defendant? A I don't remember whether I asked the surgeon or some one else.

Q Do you want me to refresh your memory? A If you can.

Q Where is this hospital? A New York Hospital is up on 17th street, as I remember.

Q 17th street and what? A Seventh avenue, I think.

Q What time of day did you go there? A About eleven o'clock.

Q How do you know it was eleven o'clock? A Because I have read over the statement and it is down on the statement, and I remember independently of the statement.

Q What statement did you read over? A The statement that was taken down in shorthand of the answers that he made to my questions.

Q Is that the first time you looked at the clock? A Did I look at the clock?

Q Yes. A I didn't look at the clock in the hospital.

Q Well, what time did you arrive at the hospital? A In

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the neighborhood of eleven o'clock.

Q How long did you stay there? A Ten minutes, with the defendant. I was in the hospital some time.

Q Who was the first person you met before entering the hospital? A Mr. Hamill.

Q That is the stenographer? A Yes, sir.

Q You arrived at the hospital, you rang the bell? A No, I didn't ring the bell.

Q Did you go into the office of the hospital? A I did.

Q Whom did you see? A I saw a clerk.

Q Do you know his name? A No.

Q Did you see anybody else? A I saw a number of people standing around.

Q I mean, did you speak to anybody else regarding this defendant? A No.

Q Whether you could examine him? A No.

Q Why, you think it was very funny?

MR. O'MALLEY: I object to that.

Q You know this man was in danger of his life at the time, he was lying in bed, that you had no right to examine him without consulting a physician first who was in charge, whether it was safe to examine him?

MR. O'MALLEY: I object to the question. It assumes a lot of facts that are not true.

THE COURT: Objection sustained as to the form of the question.

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MR. SCHICK: I respectfully except.

Q Did you speak to anybody else besides the clerk before you proceeded with the examination of the defendant? A I spoke to somebody at the entrance to the ward, I don't remember who.

Q Whom did you speak to? A I don't remember.

Q An orderly? A I think so.

Q But you spoke to no physician or surgeon, nor did you make any inquiries whether it was safe for you to proceed with this examination, did you?

THE COURT: He said that he did, that he inquired of some person; as to whether the person was a physician, superintendent, or orderly he does not know.

MR. SCHICK: An orderly is not competent ---

THE COURT: He said he did not know to whom he spoke.

MR. SCHICK: Well, I want to know what physician this man made inquiry of, asking at the hospital whether he was competent to judge of the condition of the defendant at that time.

MR. NOTT: An orderly stationed at the door for the purpose of preventing people from seeing patients that are not able to see ---

BY THE COURT:

Q Did you speak to some one there? A I spoke to some one at the door, I don't remember now, Judge, whether it was

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an orderly or doctor or an officer there, but I asked first whether the man was in a fit condition to talk, before I went to his bedside.

Q Then you were allowed to go in and talk to him? A Yes, sir.

BY MR. SCHICK:

Q Do you mean to say that those who spoke to you opened the door for you? A The door was opened. There are no doors to the wards.

Q But you cannot swear now that the man that you spoke to was a physician? A I cannot.

Q Or whether he was in charge of the ward where this defendant was lying in bed? A I cannot.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q The first question you asked him was whether or not he felt able to talk? A Yes, sir.

Q In taking the statements where you find a defendant or a witness in the hospital, you never go in without first getting permission? A No, sir.

BY THE COURT:

Q You have had experience in taking the statements of persons in hospitals? A Yes, sir, I have taken a number.

Q And you have been doing that for over a year and a half? A No, sir, I have been doing that in the neighborhood of a year.

BY MR. SCHICK: Q You have no knowledge of surgery or medicine?

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A No, sir.

Q When you approached the bed of this defendant, he was bandaged up and lying in bed? A He was, and he showed me the bandages.

M R S. M A Y B R A D Y, called by the People in rebuttal, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NOTT:

(The witness states that she resides at 321 West 42nd street.)

Q You are a married woman? A Yes, sir.

Q And married to Officer Brady, who was a witness here yesterday? A Yes, sir.

Q And you resided with him in the apartment 640 Eighth avenue? A Yes, sir.

Q And when were you married? A In May, 1912.

Q Where? A In 57th street church.

Q And how long had you been living in those premises before you married? A Well, about a year.

Q And is that your mother in court, sitting there, that lady with the blue handkerchief? A Yes, sir.

Q And had she lived there with you? A Yes, sir.

Q What is your mother's occupation? A Well, my mother goes out by the day's work.

Q And state during the summer before you married, who lived in the house there with you? A Well, when I had my sister and my brother-in-law there stopping with me and when they went away ---

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Q That was in the summer? A Yes, sir.

Q And then in the fall when they left who came to the house? A Right after my brother-in-law went away they took up keeping house for themselves, I rented out my two rooms to a gentleman and lady by the name of Mrs. Bell.

Q And then did your mother come back at times she was not working? A Yes, sir. My mother was there two or three times a week, and she had a house in Rockaway, and she went down there to attend to her business.

Q And she would come up and be in your apartment two or three times a week? A Yes, sir.

Q And in the meantime you rented out one of the rooms to Mr. and Mrs. Bell? A Two rooms.

Q And you were residing there at the time you met Officer Brady and married? A Yes, sir, I had just came there at the time I met my husband.

Q Now do you remember the early morning of May 22nd? A Yes, sir.

Q Did you know this man Murphy and the woman who lived with him? A Well, I know Mr. Murphy, but I didn't know the lady.

Q That morning shortly before in the neighborhood of six o'clock or so, were you in bed? A Yes, sir.

Q What room did you occupy of your flat as a bed room?

A Well, at that time I occupied the parlor. I had the bed in the parlor.

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Q That was in the summer? A Yes, sir.

Q And then in the fall when they left who came to the house? A Right after my brother-in-law went away they took up keeping house for themselves, I rented out my two rooms to a gentleman and lady by the name of Mrs. Bell.

Q And then did your mother come back at times she was not working? A Yes, sir. My mother was there two or three times a week, and she had a house in Rockaway, and she went down there to attend to her business.

Q And she would come up and be in your apartment two or three times a week? A Yes, sir.

Q And in the meantime you rented out one of the rooms to Mr. and Mrs. Bell? A Two rooms.

Q And you were residing there at the time you met Officer Brady and married? A Yes, sir, I had just came there at the time I met my husband.

Q Now do you remember the early morning of May 22nd? A Yes, sir.

Q Did you know this man Murphy and the woman who lived with him? A Well, I know Mr. Murphy, but I didn't know the lady.

Q That morning shortly before in the neighborhood of six o'clock or so, were you in bed? A Yes, sir.

Q What room did you occupy of your flat as a bed room? A Well, at that time I occupied the parlor. I had the bed in the parlor.

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Q So that was in the front? A Yes, sir.

Q Did any sound or noise in the next flat attract your attention at that time? A Yes, about 10 minutes to 7 I woke up, or something like that, and it seemed as if you took a pillow and knocked it --- it was like something heavy falling down.

Q Did you then wake up your husband? A No, sir, I got up and went to the door at that time, and when I went to the door I saw the bartender from downstairs coming out of the next apartment, and then I went back and woke my husband.

Q You mean when you saw the bartender coming out that is McGlade? A Yes, sir.

Q And then where were you when you saw McGlade coming out of the apartment? A I was standing at my parlor door.

Q And when you got up to go look out of the door did you put anything on? A Yes, I had my bathrobe on.

Q You put on a bathrobe, went through, and which door did you look out of? A Well, the parlor. There is no door to the parlor, but I looked out of the bedroom door and he was coming out of the kitchen door.

Q McGlade? A Yes, sir.

Q And went downstairs? A Yes, sir.

Q After you saw McGlade going downstairs again and you went back to your bedroom --- A Yes, sir.

Q Don't say what you said or your husband said, but at that time did you wake up your husband? A Yes, sir, I woke

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him up.

Q And at that time your husband was asleep? A He was asleep.

Q Did you and he exchange some remarks? A I told him---

THE COURT: Don't say what you said.

Q You and he said something to each other? A Yes.

Q Now, did he get up? A No, he didn't get up.

Q And did you go back to bed, or did you stay up? A No, I went back to bed again.

Q A few minutes after that, or some time after that, did anything else attract your attention? A Yes, I heard somebody knocking on the door, I heard loud knocking.

Q On your door? A Well, I couldn't tell. I thought it was on my door, but I got up again, so I put my bathrobe on and opened the door and the Italian janitor ---

Q You opened the door, - which door did you open then?
A The same door.

Q And looked down the hall toward the rear? A Yes, sir.

Q Whom did you see there? A I saw the janitor of the house there.

Q You mean this Italian? A Yes, the Italian man.

Q Zito. And what was he doing? A He was knocking on the front door there, another parlor door.

Q When you say the front door --- there isn't any door to the parlor? A Well, it leads right into the bed room and into the parlor.

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Q You have never been in the other flat? A Yes, I have
been in the other flat. They were all arranged the same.

Q Was he knocking on the door that went in the kitchen?
A No, on the door that went into where the trouble happened.

Q What did he do? A He didn't get any answer and then
he knocked on all the rest of the doors, and knocked on the
kitchen --- he knocked on all the doors.

Q First he knocked on this door here, on this door here,
(indicating on diagram)? A Yes, sir.

Q Then he went down the hall, knocking on the other
doors? A Yes, he knocked on them all.

Q When he came to the kitchen door what did he do? A
Called Mr. Murphy and didn't get any response and he stood
there a few minutes and pushed the kitchen door in then.

Q Broke it in? A Yes, sir.

Q And all the time you were standing at your door?
A Standing at my parlor door.

Q Did you see the Italian come out? A Yes, sir.

Q Did he say something to you? A He told me the man
killed his wife?

THE COURT: Strike that out.

Q He said something to you? A Yes, sir, he went down.

Q After he made this remark did you go back to your
husband again? A Yes, sir.

Q After that time did he get up? A Yes, sir, I called
him then, and he got up.

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Q State whether or not he put his clothes on? A Yes, sir, he put his clothes on.

Q Then did he go out? A Yes, sir.

Q Did you go out with him? A I went as far as the door with him.

Q As far as the door of your flat? A Yes, sir.

Q And when you looked out of the door what did you see?

A And there was an officer in the hall.

Q And do you know his name, or do you know him by sight? A I would know him if I see him --- I don't know his name.

Q Is that the officer (indicating Officer Brown)? A Yes, sir.

Q Did your husband say anything to that officer and did the officer say anything to your husband? A Yes.

Q What did you hear him say?

MR. NOTT: That was brought out by the defense. It is already in evidence, that Officer Brown asked Officer Brady if he was a police officer, and the officer said yes. And then he said, "Well, you can be of help to me." That is already in evidence, otherwise I should not ask the question. It was brought out on cross examination of these two officers by the defendant's counsel. However, I won't press it if your Honor thinks it is improper.

THE COURT: Unless upon consent --- do you object?

MR. SCHICK: I object.

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Objection sustained. Question withdrawn.

Q Did you hear your husband say anything to the officer and the officer say anything to your husband? A Yes, sir.

Q Now after that conversation between the officer and your husband where did your husband and this officer go? A They went into the apartment next door.

Q Now, was that the first time that your husband had left the flat that morning? A Yes, sir.

Q Did you go into the apartment? A At that time?

Q Yes. A No, sir.

Q Where did you go? A I started to go in, and my husband told me to go back into the house and stay there.

Q And did you go back? A Yes, sir.

Q What was the very first time that you went into the flat? A The first time I went in was after Mr. Murphy was taken to the hospital.

Q Was the body of the deceased still there? A Yes, sir.

Q Is it true that you and your husband went into this flat before anybody else did, and there found this defendant sitting on a bed with a knife near him? A Well, I didn't. I don't know what my husband did. I didn't go with him.

Q Well, did you go in there at all? A No, sir.

Q And did your husband go in there until the time that he went in with officer Brown? A No, sir.

Q That was the first time he got his clothes on and left

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the flat? A Yes, sir.

CROSS EXAMINATION BY MR. SCHICK:

Q How old are you? A I will be twenty-one next March.

Q How long did you live in the Nash house? A About a year and a half.

Q Before you were married to Officer Brady? A About a year.

Q Where were you born? A In Lawrence, Long Island.

Q How long have you lived in New York altogether? A Well, since I came to that apartment -- since I moved into Mr. Nash's.

Q Did you go to school in Lawrence, Long Island? A Yes.

Q Graduated from public school? A Yes, sir.

Q At what age? A Well, about when I was about seventeen.

Q Seventeen years old. Did you then move to the City?

A No, sir.

Q Did you go to work? A No, sir.

Q Did you stay at home? A Yes, sir.

Q When did you first come to the City? A About a year and a half ago.

Q Where did you live at the time you came to the City?

A I moved into Mr. Nash's.

Q That is the first house you lived in? A Yes. Well, I had been to the City but not to live.

Q You used to frequent Nash's house before you moved

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in there? A No, sir.

Q Whom did you live with in Nash's house? A I lived with my mother.

Q Did your mother move in with you, to Nash's house, when you came over from Lawrence, Long Island? A Yes,,sir.

Q Do you know Martin Graham? A No, sir, I do not.

Q You never met Martin Graham? A No, sir, I never did.

Q Did you live with anybody before you married Officer Brady? A No, sir, I did not.

Q Officer Brady called on you for some time before he married you in the Nash house, did he not? A He kept company with me, yes.

Q And he called at the Nash house? A Yes, he brought me home.

Q For how long a period? A I kept company with my husband a year before I married him.

Q Did you go downstairs into Nash's cafe? A No; occasionally I went down for a bottle of milk.

Q Did you ever go into the cafe back of the saloon?
A No, sir, I did not.

Q Back of the bar? A No, sir, I didn't. I don't drink.

Q Did any of the men that frequented Nash's place downstairs call at your apartment upstairs? A No, sir, I don't know anybody that frequents Nash's.

Q Do you know Morris Baker? A No, sir, I do not.

Q You say you rented two rooms in your flat to Mr. and

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Mrs. Bell? A Yes, sir.

Q Who is Mr. Bell? A Well, I couldn't tell you who those people were.

Q Do you know his business? A No, sir, I don't. I understood them to be theatrical people.

Q They are living now in your apartment? A No, they are not.

Q You positively swear now that you neither known Martin Graham nor Morris Baker? A Yes, sir, I do.

Q That you never met either one of these gentlemen?

A No, sir.

MR. NOTT: If they are in court let them stand up and see if she knows them.

MR. SCHICK: They were here in court all the time.

Q You recall the morning of May 22nd, 1912? A Yes, sir.

Q You say some noise attracted your attention and woke you up? A Yes, sir.

Q What was that noise? A Well, I don't know what it was. It was like something falling.

Q You heard something fall? A Yes, sir, like something falling down, yes.

Q Did you hear any shots? A No, sir, I did not.

Q Did you hear any human voice? A No, sir, I did not.

Q Quarreling? A No, sir.

Q Loud shouting? A No.

Q You heard something fall? A That's all.

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Q How often did that occur? A Only once.

Q And that was about seven o'clock in the morning?

A Yes, sir.

Q And then you got out of bed? A Yes, sir.

Q And you told your husband that you heard something fall? A No; I went to the door then.

- Q You went to the door? A Yes, sir.

Q What did you see? A I saw the bartender come out of there.

Q Did you know this bartender? A Well, I knew him by sight.

Q Did you ever speak to him before? A Yes, sir, he has let me in the door sometimes on account of the front door being locked at night.

Q Had he let you in from the door that leads into the barroom? A No, not into the barroom.

Q Now, let me understand. The entrance of that Nash house is on Eighth avenue, is it not? A Yes, sir.

Q And when you open that door there is a vestibule, you get into a vestibule? A Yes, sir.

Q And then there is a door on the right-hand side as you go in? A Yes, sir.

Q And that door leads into the bar room? A Why, certainly it leads into the barroom.

Q And he frequently let you into the house, did he not?

A Into the vestibule, on account of Mr. Nash made a new order

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to lock the outside door.

Q One minute? A Mr. Nash, he made a new rule. You see, we had the outside door. Where you go into the vestibule there are two doors, and he made a new rule, he locked the outside door on account of so many peddlers coming in at ten o'clock at night and nobody had a key to that door, and anybody that was out after ten o'clock you would have to knock on the barroom window, and the bartender would come and open the door for you. That was the night bartender and any time I was out with my husband or anything he would have to open the door and let me up.

Q You occasionally went down and got some whiskey and beer from the bartender? A No, sir, I don't drink either.

Q What was the latest hour he ever opened the door that leads from that side bar room for you? A About half past eleven.

Q You knew him well, didn't you? A No, I did not, only from seeing him there, that's all.

Q You know him to speak to? A Well, I have said how do you do to him as I came in, that's all.

Q And you greeted him occasionally, did you not? A Greeted him, yes. He said "How-do-you-do?".

Q When you saw him on this particular morning in the morning did you speak to him? A No, sir, I did not.

Q Not a word? A Not a word.

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Q What did you do? A I just stood there and I saw him come out and go downstairs, that's all.

Q Weren't you anxious to know what the noise was about that attracted your attention to go out in the hall from your own apartment? A I didn't go in the hall, I just opened the door.

Q When you were standing in your own door, looking into the hall and you met this bartender running up, did he say anything to you? A No, sir.

MR. NOTT: Objected to. She didn't meet him. She was at one end of the hall, looking out of the door, in a bath gown and she saw him.

MR. SCHICK: That is true.

Q What did you say to him? A Nothing.

Q Did he say anything to you? A No, sir, I wasn't near him.

Q Did he see you? A No, I don't think he even saw me.

Q Did you see him? A Yes, sir.

Q What happened after that? A I went back to bed again.

Q Husband fast asleep? A I woke him up at that time and he told me to come to bed.

Q What time did you the next time wake up? A Well, I don't know just how long it was.

Q Eight o'clock or nine o'clock? A Oh, no, it was just a few minutes afterwards, a little afterwards.

Q How many minutes? A About twenty minutes after.

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Q That would make it half past seven that you got up the second time? A No, it was not quite half past seven.

Q Twenty minytes after seven? A Yes, sir.

Q How is it that you have the time fixed in your mind?

A I haven't it fixed.

Q Did you have any clock or look at any watch? A Certainly I had a clock.

Q Did you look at it? A Yes, sir, I did.

Q What time was it? A About twenty minutes after seven.

Q The second time after you got out of bed was twenty minutes after seven --- what did you do then? A Well, I heard a knocking, and I thought it was on my door, so I got up, of course, and opened the door, and then I saw the Italian janitor who was knocking there.

Q You went out in the hall? A No, I did not.

Q Did you look out? A Yes, sir.

Q And you saw the Italian janitor --- he was knocking on all the doors? A Yes, sir.

Q Before he got to the kitchen door? A Yes, he knocked on the parlor door first, and the bed room door first.

Q He started and went along knocking until he came to the kitchen door; that's right, isn't it? A Yes, sir.

Q That's right, isn't it? A Yes, sir.

Q And then he went into the kitchen? A He burst the door in.

Q He busted the door in? A Yes, sir.

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Q Sure? A Oh, yes, sir.

Q Positive? A Positively.

Q Where did he bust the door in? A He put his shoulders against the door and pushed it in.

Q He shoved against the door and then he knocked at the door and in she went? A Yes, sir.

Q And he went after it? A Yes, sir.

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

Q Then what happened? A Well, he came out again, he didn't stay in there but a couple of minutes and then he came out there again.

Q All the time he stayed inside you waited outside, standing in your kitchen door? A I was not in my kitchen door, I was in the bed room door.

Q Oh, you were in your bedroom door and waiting for this Italian janitor to come out? A He didn't stay there just a minute --- he went right in and he came right out.

Q And did you speak to him? A Yes, sir.

Q Did he speak to you? A Yes, sir.

Q What happened after that? A Why, I went and called my husband then.

Q And was your husband in bed? A Yes, sir.

Q And did he come out of bed? A Yes, sir, yes.

Q And what did he do after that? A He got dressed.

Q And what happened then? A He was out in the hall then.

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Q With you together? A No, I didn't go out with him. I started to go and he told me to go back and stay inside.

Q You were not anxious to know what happened? A No, I was not. I might have been anxious, but he told me not to go in.

Q Now listen, face this jury: now do you want the jury and the court to believe that you in the company of your husband did not go in together into this defendant's room? A Yes, I do; I swear it.

Q You were not in that room with your husband together?
A No, I was not.

Q And that your husband removed the knife from the room?
A I don't know what my husband did. I was not in there with him.

Q I mean when you were with your husband, together in that room? A I was not in there with him.

Q You will positively swear? A Positively swear.

Q And that is as true as everything else you have said from this stand?

Objected to. Objection sustained.

Q And you will also positively swear that you did not have as many as five or six men call on you in that flat every day prior to your getting married to this police officer Brady? A I am not here to speak of my character.

Q Well, now, answer the question --- did you have men call on you? A No, I did not.

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Q As many as half a dozen a day in that flat? A No, I did not. Your Honor, I did not. I am here to tell you what I know about this case, not about my character.

Q Well, are you ashamed of your character? A No, but when my character case comes up and otherwise I refuse to answer you.

Q That's all, if you refuse.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Does your mother visit you still in your apartment?

A Yes, sir; I have my mother here if you wish to put her on the stand.

Q And she still comes to the apartment and has since you have been married? A Yes, sir.

Q And was there two or three times a week since you have been living there? A Yes, sir.

RE-CROSS EXAMINATION BY MR. SCHICK:

Q Your mother was only at your apartment two or three times a week? A Yes, sir, she was not living there all the time. My mother was there the biggest part of the time and had most of her furniture there.

Q But she was not living with you constantly there?

A I didn't say she was.

Q And you were sleeping in that apartment and you occupied those rooms yourself, did you not? A I had my brother and sister, my sister and brother-in-law there with me when my

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mother was not there with me.

Q Your brother and sister were not there all the time?

A Oh, yes, they were when my mother was not there. How do you know? You wasn't there.

BY THE TWELFTH JUROR:

Q Do you know Officer Brown? A No, sir.

Q Does your husband know Officer Brown? A Well, I don't know.

Q Was Officer Brown ever up in your house? A Well, once-- he served the first summons on me, yes.

Q Did you ever see him lately ---

BY MR. NOTT:

Q You mean for this case he served a subpoena on you?

A Yes.

BY THE TWELFTH JUROR:

Q Did you see him lately? A Only when I was kept here in court.

BY MR. SCHICK:

Q Officer Brown called at your house since this accident occurred?

MR. NOTT: I object to the form of the question.

THE COURT: Objection sustained.

Q Did Officer Brown call at your house since this accident happened?

MR. NOTT: Objected to.

THE COURT: Objection sustained as to the form.

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You are characterizing the happening here as an accident.

Q I mean since this supposed crime has been committed, did Officer Brown call at your house? A He called once to serve a summons on me.

Q And did you speak to him regarding this case? A No, sir, he just came to the door.

Q Did he say anything to you about this case? A No, sir; I didn't know that officer.

Q Did he instruct you what to say if you would be subpoenaed as a witness? A Why, no, I have not spoke to him about it.

Q Did he tell you what you should testify to? A Oh, no, sir.

Q He never mentioned a word about the case? A No, sir.

Q Not a syllable? A No, sir.

Q Neither to you or your husband in your presence? A No; not in my presence, he has not spoke to my husband concerning this case.

MR. NOTT: People rest.

C A S E C L O S E D.

MR. SCHICK: The defendant renews the motions to dismiss at the end of the entire case, on the ground that the People have failed to make out the case according to the facts charged in the indictment.

Motion denied. Exception.

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MR. SCHICK: The defense moves on the further ground
that illegal evidence has been admitted regarding another
supposed crime, or charge, that this defendant killed
Nora Forrester, the deceased, by a weapon known as a
carving knife, and as not charged in the indictment.

Motion denied. Exception.

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MR. SCHICK'S CLOSING ADDRESS TO THE JURY
IN BEHALF OF THE DEFENDANT.

MR. SCHICK: May it please the Court and Gentlemen of the Jury, under our jurisprudence, under our system of government, each man that constitutes a part of society or the State owes certain duties or obligations as a citizen. There are certain duties we must perform; certain rights and privileges we receive in return. The system of jurisprudence that we are under is the Anglo-Saxon jurisprudence. It is not like any other on the European continent, or anywhere else. The reason I mention this is because this happens to be a place, a country, a State we live in that the population, the people, are not of one kind; we are not all Anglo-Saxons, Russians or Aryans, or Semitic, or other members, but we constitute a heterogeneous mass, a population gathered from the four corners of the Earth. Therefore, people who come and live here and make this country their home, their abode, they may come here early in life and have all the great opportunities offered to them. They may be trained according to the dogmas and tenets announced by the great makers of this great republic. Those of you who come later in life and have lived in countries where the system of government is different, where you have been trained differently under the environment and the circumstances, you have become imbued, you have learned different,

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and it may be hard to adapt yourself to conditions and rules and regulations in a place where now you live.

The reason I mention these different things is I want to prepare your mind to be pure and clean and be divorced of everything else, to be divorced from prejudice, passion, favor or bias, that when you come down to the solid facts, to judge the evidence and the testimony in this case, that you should give this defendant at the Bar a fair deal, do justice to him. And as I say, as we live under the Anglo-Saxon system, the Anglo-Saxon system of jurisprudence, where this law, this jury system, was created, in England, after the Bill of Rights, the great Magna Charta, the charter of liberty, wrested from the Crown by the barons, by the people from the government. Because originally those who governed over people --- even now continental countries --- those who are in power, those who have the right to seize the person and bring him to a court and try him on a charge or the infraction or violation of a rule, are not the servants of the people; they are the masters of the people, and they are tyrannical; they disregard the rights and privileges and immunities of the individual. But in a country like ours where the people are the masters, where men whom we take and place in power are to serve the interests of the people, even there sometimes our servants who are supposed to serve us usurp the power and instead of being servants become our masters. That is where sometimes a defend-

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ant like the defendant at the Bar, who is being tried now for the crime of murder in the first degree, may be at a disadvantage. The great machinery of the State, with all its paraphernalia and all its servants ready to act at any moment, and here they seize upon the defendant and he is within the clutches of the law, in spite of all your beautiful phraseology and that his constitutional rights and his liberty shall not be violated, that he shall have a fair chance, that he shall be tried according to the law of the land with due process of law. And I tell you now that when the defendant is seized, and he is not properly informed of his rights and privileges, he is not getting a fair deal. Every man, no matter what the crime may be he is charged with, whether it is trivial or seriousness, he should know the gravity of the crime and the importance of it, he should be informed of his rights, that he may know how to act. If you do not do that you take something away from him which belongs to him as much as it is a right to live. I say that when you take an ordinary man from the ordinary walk of life and over-awe him with numbers, and when he has no opportunity to ask whether he must answer or not, you are taking something away which you cannot replace. And it is with you men in whose hands ultimately the power of government rests, the power of law --- not only that you are here to-day to be twelve men and to judge upon the fact whether a crime

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has been committed or not, but you can take the entire proceedings from the very first minute until the last and judge it from every angle, whether this defendant at the Bar received a fair chance.

In England, where the system was born, where they first adopted this jury system to try a man by twelve men, it is very simple. A man commits a crime in a small town of three or four thousand inhabitants or less, where Smith is acquainted with Brown, and Brown is acquainted with White and White is acquainted with the family of Roberts, and they all go to the same school, the same high school; they are acquainted with each other generation after generation; they know the father, the grandfather, the great grandfather of Brown or White; and a man is charged with any kind of crime and he comes into court and they know the blood of the family, every branch of it, direct or collateral; they are acquainted with the acts of all the witnesses, with their lives, their past lives, for generations, intimately. Every man who acts on a jury, his mind is like an open book --- it is almost impossible to judge wrongly, and it does not take long to make up your minds whether the defendant is guilty or not.

Take it in an American town, go to Massachusetts, go to Missouri, Idaho, or west of the Rockies, and a person is brought into court charged with a crime. Why, everybody knows everybody else. It doesn't take long. You don't have to worry

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after the trial is over, did I do right, did I do justice to my fellow man? Did I do justice to the defendant at the Bar? As I say, everybody in the community is known to everybody else. There is absolutely no doubt after, you have no nightmare to come up after you in your after life, in your mind, such as to cause you to say, "I hope God will forgive me, maybe I have made a mistake in that case, and maybe that man is innocent that we incarcerated, and who is serving a sentence of ten or twenty years or otherwise." Very seldom, if ever, you can make a mistake.

But there is, Gentlemen of the jury, when it comes to try a case in a great city like New York, where life is so complex, where you have people here from all over the world, of all nationalities, of all races, they all being brought up in different countries, different systems of government, different ideas, different environment, surroundings, that build up the character of the individual. Everything in your life, every act that you may commit, everything that you may do, there is something behind it, some reason why you do it.

Now, I say, in a great city like this where you have people from all parts of the world and everybody lives according to his own ideas, according to the way he was trained, -- he goes to a mosque and praises Allah because his father was born an Arabian, or in some part of the Ottoman Empire. You

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will go to a Catholic Church because your people for generations back worshipped in a Catholic Church, and you will go to, a synagogue or a Temple, because your training has been with people which goes back generations or centuries that way. You will go to a protestant chapel, a Methodist Church on account of your training. The early environment when your mother nestled you at her breast, when you were sucking at her breast for milk --- the blood of the family -- the training is not one generation, or two or three: the Bible says, "I will visit the sins upon the sons and their sons until the fifth generation". It is not one generation, it is not the present environment. It goes far back that makes finally the man that you are.

That is why you must be liberal, you must be tolerant, you must divorce your minds from anything that may create a prejudice or a favor in your mind either one way or the other. In order to properly judge the evidence in this case you must do it like true men, good men; you must make up your minds that this business may be the most solemn day in the history of your lives. You have the right to do it, and if it would not be out of place I would feel like offering a prayer to the Almighty that he might guide me to properly put this evidence before you. Because you have the day before you to judge a man, to grant him or take his life away.

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Now, let us come to the evidence. The first witness, Dr. Lehane, testified regarding the body of the deceased, what he found. He describes the wounds on the body of the deceased.

This defendant is charged with murder in the first degree, a crime that he committed with premeditation, with deliberation --- schemed --- some motive behind it.

It was brought out in the testimony of one of the witnesses that he was jealous, or there might be another man in this case. That the defendant was afraid of what? That this woman that he was living with is going to leave him. No positive evidence or direct evidence was ever offered in this case to show that this woman was going to leave the defendant because she was in love with another man, and that this defendant was jealous and that is why he killed the deceased. They had an opportunity to prove by the first witness, the doctor who performed the autopsy, the man who examined the body, who was here in court, and the People had a right and should have proved that the wounds that were inflicted on the body of the defendant could have been not self-inflicted --- were inflicted the way the defense claims. Having failed to do that, it is possible that it happened the way that was related by the defendant on the stand.

They had another doctor, the second witness, who followed the first, and they did not avail themselves of the opportunity

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to prove that.

Then came the third witness for the People, Mrs. Sarah Brennan, who testified that she was the housekeeper for the defendant and the deceased; that she lived with them for a period of three weeks; that during the time that she lived in those premises with the defendant and the deceased, that the defendant acted like a good man, like a gentleman --- they never had any altercations and never had any quarrels, never had any differences, and he always treated her like a man should a good woman.

Did the people bring out through this defendant --- remember perhaps this is the only disinterested witness --- while the witness on the People's side, Mrs. Brennan, she was subpoenaed by the People, and they had all the opportunity in the world to prove by her if there was any quarrel that morning or night preceding the accident. Mrs. Brennan, she was a witness for the people, she was brought into Court by the People, and what did Mrs. Brennan testify to?

She says that the defendant asked her for a cup of tea that morning, and he did not feel well, and she gave it to him; and when she heard shots in the other room --- and she didn't see anything else prior to that --- she went downstairs and got McGlade, the bartender, up.

There was the opportunity for the People to prove, if

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there was any premeditation, any scheming on the part of this defendant to take the life of the deceased, to prove it, because the other testimony which was inducted into this case by the police --- I will come to that, I will let you judge what the police said --- outside of that they have no evidence-- the three policemen, I will leave you to judge what their testimony amounts to --- but remember outside of the testimony of the police the most important witness for the State was Mrs. Brennan. She was the person that knew how this defendant and the decedent lived, and what if anything occurred during the time of her stay in those apartments, during the time prior to the murder, or immediately before it, or at that time. That was the witness, that was the person who could tell the truth, the entire truth, unvarnished, and that woman certainly told the truth. An old lady, over sixty, standing on the brink of the grave --- no reason to tell stories or to conceal testimony or to hold back. One who is ready at any moment to come before her maker and give an account of all her dealings, that was the witness, that is the only person that you can get anything out of. They failed, failed. They didn't get anything that would help the People or would substantiate their side of the case, or that would bear out the indictment of premeditated murder --- that he committed this crime, schemed it beforehand --- malice aforethought, prepared it --- oh, no.

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Then comes the bartender. He testified to going upstairs and received the gun from the defendant --- took it out of his hand. He didn't admit it to the bartender that he had killed the deceased. The bartender testified, taking the words out of his own mouth, he said, "I and the defendant were friends, on friendly terms, working for the same employer, the same line of business, meeting each other every day. If this defendant would have committed the crime, if this defendant would have killed Nora Forrester, wouldn't it have been natural for him, for the first person to confess to, or the first man to tell, was his friend and only friend? Is it possible that he would be looking for the entire police force of New York City, every policeman he would meet on his way from the apartment or hospital or afterwards and level out to them what he did or did not do? No evidence on that. The reason he did not confess to Arthur McGlade was because he did not commit the crime. That is the only answer.

All the evidence, all the exhibits produced here, -- the kimona, the shirtwaist of the deceased -- we admit all that. This plan here made by one of the witnesses, why, it is of no importance. We admit that the apartment is so many rooms on a floor and that this defendant occupied the fourth room from the kitchen. And as to how many bedrooms and that he lived and slept with this deceased, that the revolver and

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the knife were both used as described by the defendant and the deceased in a struggle that early morning --- that is admitted; no dispute about the bullet or the lead. All these exhibits, you need not go over them. You heard all the testimony regarding that. It is of no importance. I just want to come to the point direct, to the actual time, to the minute of the struggle between this defendant and the deceased.

Now, as far as the testimony of the bartender goes, he says he went there, got this gun, then went downstairs, gave the alarm, sent for the police, got the ambulance. Very well. What made the defendant confess to this man, the bartender?

Of course on another point the bartender was hazy. It was my duty to try to get out as much testimony from the witnesses that appear for the People as I possibly could, with the little skill that I do possess. When it came to a question, asking him "What did you do between the hours of eleven o'clock at night and seven o'clock in the morning" --- or "one o'clock and seven o'clock in the morning", you remember his answer; he said, "I cleaned up." Of course he would not incriminate himself, nor would he want his employer to suffer, to admit that he sold liquors, and that he admitted the deceased Nora Forrester at all hours, after twelve midnight into her apartment.

I feel sorry, because I am a human being. I am so

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constructed. I cannot help it. My adversary, who might be older than myself, maturer in mind, might be more cold-blooded than I. I may be more susceptible than he is. I feel sorry for this defendant. I feel sorry for the deceased, for Nora Forrester. I feel sorry for her brothers, for her sisters. If I in any way tried to attack the character of any woman in this case, or tried to bring out something against her character in order to make the position of this defendant stronger, and in order to impeach the testimony, I did it conscientiously. I did it because I was trying to do my best for the defendant.

Some of these women, like the woman that lost her life that morning, May 22nd, 1912, a girl of twenty-three years of age, and it appearing in the testimony the kind of life she led, brought out by my learned friend on the other side that she went out on the street to solicit men and make a living, she is not to blame for that. I am sorry from the bottom of my heart for any woman of that kind. As I recall a case I argued before Judge Dugro, in the Supreme Court, he said --- he said, "Those people cannot help it; they cannot work. Their environment, the pitfalls of a great City like this, lots of things", he says, "that happen here cannot be explained." And that is the way sometimes things can happen and do happen, and we lose sometimes our best friends, that they wander from

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the paths of righteousness and virtue, and sometimes we cannot understand. But they are not to be condemned for that. You must sympathize with them, you must try to bring them back to a better life. They are not to be condemned. That is why I am trying to take your minds away from that phase of the case. Don't think because, for instance, this defendant did live with a woman, not his wife,--you must consider that this defendant at the Bar lost his mother when he was three weeks old, lost his father when he was three years old, lost the guiding hand, perhaps, of a good father, the loving attention of a good mother --- brought up by strangers, shifted for himself, at the age of fifteen working for different people; marrying at an early age, living with his wife for seven years, being by habit gentle, living like a good citizen, a man of good moral character and suddenly losing his wife and remained with two children. Never knowing, perhaps, as I said, the loving caress of a mother and a kind father, being without blood relations, without father or mother or brother or sister or anybody in a City like New York, and had to guide himself; the surroundings, the environment --- being a bartender --- selling liquor to people, coming in contact with that class of people that are continually drinking and making --- not of a very high moral standard. As I said, not because the people want to be that way, not because they

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are malicious or vicious --- it might be circumstances that made them such --- that they are victims, perhaps, of this high and complex civilization, this artificial life that exists in a great city.

So we come to the testimony offered by the three police officers, Brady, Brown and Freeman. Taking the testimony of Mr. Brown, who testified first, who was so positive in all his testimony, who seemed to glory in the testimony that he was offering, and he was so certain and positive. You observed his demeanor on the stand, the way he shifted one way and the other. I asked him once and I asked him twice, I said, "Face the jury2. I meant by that if he was telling the truth, and if there was any manhood in his why he would face you twelve men who are here for the purpose of convicting this defendant or freeing him. That is all I meant. Now, it is up to you men, twelve men, good and true, to judge whether the testimony given by Brown should have any credence or not. Whether he told the truth. He said that he said to this defendant, "I am going to ask you now why you committed this crime, why you killed the deceased", "and I warned him that anything you may say will be used against you."

Brady testified to what Brown said, and was the testimony of Brady the same as Brown? No, it was not. Brady could not recall that Brown ever warned this defendant. Why?

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Because the chances are that Brown never warned him and Brown never questioned him and he never admitted to Brown that he killed the deceased, that is why. The stories of Brown and Brady did not agree.

And then Freeman, he was not very certain about his testimony as to what the defendant said. I leave it to you to say that it is possible whether this defendant did say to Freeman what Freeman testified.

Now, Gentlemen of the Jury, we come to the confession made by this defendant to the District Attorney and his stenographer Hamill. You must take into consideration the condition of this defendant at the time that the supposed confession was made. The testimony is that this defendant was taken to the hospital immediately after the accident --- after the shooting. While he was in the hospital suffering from two bullet wounds, and these stab wounds in his chest, suffering from a loss of blood, perhaps being in a delirium of fever, and it is admitted and not contradicted that a half a pint of whiskey was brought up by Arthur McGlade and he drank that.

MR. NOTT: I object. McGlade said he did not bring it up. He said he was asked to, and did not bring any.

THE COURT: Statements not borne out by the evidence will be disregarded by the jury.

MR. SCHICK: I will stand corrected and I will say

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that the defendant testified on the stand that he consumed a half a pint of whiskey, if you will have it that way, but I still can talk. If you can recall, if you can remember that Arthur McGlade brought up a half a pint of whiskey and it was consumed by the defendant, and the doctor testified on the stand, who was in charge of the ambulance, that he gave him four ounces of whiskey in addition to that, and you must consider the state of his mind. Men who are suffering from bullet wounds and in addition these stab wounds, besides having this whiskey --- I don't want to go into the effects now by making a speech of what effect the whiskey may have on the mind, how it mounts to the brain and clogs it and clouds it and steals your reason. You are men of sufficient intelligence to know what effect it may have on a person in the condition that the defendant was in that morning. I leave it to you whether it was fair or right, and whether the moral rights and the legal rights of this defendant were violated at that particular time.

This District Attorney who says in his first question,--- he says,---"I will be glad to hear what you have to say." You know with that preface he was not acting for the best interests of this defendant. Nor do I believe he was acting for the best interests of the People. We are the people, we are the taxpayers. The reason we are here to-day is to judge one of our fellow men for an infraction of the rules decided and laid

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down by our society, but we must judge him right, justly, properly and according to the law and the statutes that we enact in this State.

Do you mean to say that it was right to go into that hospital, rush in, the way that this defendant was lying in bed, without consulting the physician or surgeon in charge of the defendant in that particular ward, and fire perhaps hundreds of questions at him, and was the defendant in a condition to answer questions? If there would be nothing else in this case remember that this defendant is charged with the most heinous crime on the calendar, you who are the sole judges of the facts would have the moral right, the legal right to bring in a verdict of acquittal on that single point alone --- to disapprove of such practices in this county or any other county in this State, which are just as bad as the third degree, practiced up until recently by the police department of this town, and other big cities in this great country, where a man is seized in the clutches of the law, and I explained to you before that instead of these men who are supposed to exercise their rights properly and justly and give every one a fair and square deal, and that they are only our servants, they have become our tyrants, and become tyrannical. The very fact that they are part of the machinery of the law, they believe they can do everything.

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Recently the Legislature in this State passed a law to establish night courts. What is the purpose of night courts? So that when you or I are suddenly seized in the street, or anywhere, and charged with a crime, that instead of being taken to police Headquarters and put through a third degree, or some crook of a bondsman is allowed to make twenty-five dollars or thirty dollars in order to furnish you bond to bail you out during the night, in order that you may appear for examination next day, in order that the citizen should not be deprived of his life and liberty and of his constitutional rights, after he has been arrested, that he may be immediately taken before the proper tribunal, examined, and that he may be able to furnish a bond or bail --- he should not be deprived of the society of his wife, father and mother and children during that night, that he may be taken home immediately and having an opportunity of getting counsel properly to attend his case next day in court --- that is why the night courts were established, in order to protect the rights of the citizens.

Now, then, arguing from that point, where a man is charged with the great crime, with the crime of murder, he is to be protected, he ought to be given the same opportunity as a man who is charged with a misdemeanor. Instead of every Tom, Dick and Harry, every police officer being permitted to ask questions and threaten the defendant, there should be a way to tell the defendant, "You are charged with the crime of

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murder, you had better immediately consult your friends, your friends will immediately employ counsel." Possibly it may come in time that the state will assign counsel immediately, as soon as a man will be charged with murder, the very first minute he is arrested, why counsel will be assigned to him, perhaps temporarily, to tell him to be silent, because no man that is charged with a crime in this county is in condition to say anything in his own behalf or against himself.

It is true, it is true that the learned District Attorney, the District Attorney of this county, including all the members of his staff, are supposed to be just as much for the defendant as they are for the people. The question in my mind and maybe in your mind is whether they exercise that right.

Now, I want to also impress upon your minds --- you may disregard everything I say that I believe, or anything that I say should have been done, any omission or commission; I have tried simply to be fair and just and tried to put the facts in this case before you the best way I know how. Of course, there are many imperfections in our laws and there may be errors committed at this trial. On the law the Court will instruct you. I will not go into the explanation of the law applicable in this case or in a lower degree, or in manslaughter, or otherwise. The way I understand the case, and the way the evidence was presented here in Court there can be

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no other conclusion but that you must acquit this defendant. That the People have failed to make out a case against this defendant. The mere fact that the killing has occurred is no proof. No eye-witness to this supposed crime. After we have eliminated all the supposed confessions, all the confessions testified to by the officers of the Metropolitan Police Department, and after we have closely shown and proved to your satisfaction the way the last confession is alleged to have been obtained by a member of the staff of the District Attorney and his stenographer, that this defendant cannot be called to ever have made such a confession. Why, that is possible, that may be true, because the condition that he was in that morning, two hours after the crime was committed. You may disregard it if you believe that the defendant is telling the truth.

Now, then the defendant. As I must repeat again, you must consider his condition, his status in life, the society he lived in, the environment, the opportunity that he had; as I said, the way he was brought up, came to this country, the different occupations he was in, his surroundings up to the time of the crime; after his wife died he married again, he married a woman --- well, I should say perhaps not agreeable to him, they could not agree --- why, it does not appear. The defendant testified that her department --- that she was

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quarreling and that she could not conform to his wishes, and he and she had agreed, mutually agreed to separate and live apart. That happened, - it occurs every day in a great city, especially like this. It is nothing against the defendant.

Now, then, as I said, there were no influences in his early life, no father, no mother, no brothers and sisters; and the way he was thrown --- almost precipitated upon the world in life --- he wanted some one, some one he could love. That is within the province of every human being. No one wants to be isolated, you do not want to live alone. That is why he married, that is the desire in every human breast --- company, companionship. I cannot go into the reason why he should have picked out this woman whom he lived with, this Nora Forrester. The fact is, that the second time he married he made a mistake. He agreed with his wife to separate, and yet he could not live alone. He was in the saloon business, ten or twelve hours a day, steady, never out of employment, tried to do the best under the circumstances. He wanted to have some one with him, he wanted to live with some one. I know some of you may be against such a life. Se we are. It is against the law, but sometimes you do things you cannot tell will be inside the law.

A good father, his two children are waiting home, two children that he didn't see since this supposed crime was

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committed. Two children that are waiting for a loving word from their father, for a guilding hand.

I must refer once more back, that is, if there is any doubt into the entire case and you have weighed the evidence, and if there is a doubt in your minds, you should acquit this defendant --- for the sake of his children, that these two little girls should not be deprived of their father as he was deprived of his father and mother in childhood.

You must consider whether a man, a loving father like he was, would commit a crime the way that it is charged that he did. What was the motion? Did the State succeed in showing why he should have killed Nora Forrester? He was alone in a great city, as I said, with no friends, no relations; he loved Nora Forrester in spite of all her faults. She was a woman of the street, a common prostitute, but she might have had noble qualities, qualities that might have made her an angel, a good woman under proper guidance. She was a good woman to this man, he loved her with all his soul and with all his heart. Why, I ask you --- and you are here as the judges of the facts to decide --- why should he have killed this woman? And she was the only person in the world that he loved while she was living with him.

Some of you gentleman might be considering this to be maybe only sentiment. There is nothing without sentiment--

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everything in this man's life --- you have a right to judge him, every act of his to this very minute that is in his favor, that you must decide in his favor.

You recall on the stand, he said: "I loved her; why should I have killed her? When I saw her lying on the floor I got down on my knees and kissed the poor girl." Do you mean to say that the man that is guilty of murder, the man that commits a crime, and premeditated and schemed over it, would have dared to go on that stand and faced you jurymen and testify as he did? No, sir. The reason he went on the stand is he wanted to convince you that no crime was committed, that he was innocent and wholly so, and that the crime occurred the way he described it to you.

I thank you, Gentlemen.

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MR. NOTT'S CLOSING ADDRESS TO THE JURY

IN BEHALF OF THE PEOPLE.

MR. NOTT: If the Court please, Mr. Foreman, and Gentlemen of the Jury, I shall sum this case up to you gentlemen very briefly, because I consider it to be an insult to the intelligence of a jury, especially one drawn from the special panel of this court to take any great amount of their time on a case where the facts are so absolutely clear and convincing, and where the People's evidence depends entirely on that of absolutely disinterested witnesses, many of whom were friends and friendly to this defendant. I consider it to be an insult to your intelligence to go into the facts at any great length when they are so fresh in your mind and where the case made out is so clear. I regret perhaps that more members of the jury have not had greater experience in the trial of these cases, for if you had you would have seen here and appreciated the force of counsel's remarks in his trying to scare a jury into not doing its duty, trying to conjure up to a jury the fact that they might err in their duty, when every juryman of experience knows that the only duty they have to do is to decide the case on the evidence before them, and that if they render an honest verdict upon that evidence they can be no more blamed, or criticised, or held responsible, in any way, shape or manner than anybody else connected with the

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case who has done his or her duty.

Appeals have been made to your sympathy, as I feared they would be. Now, when I examined you gentlemen under oath here you said you were not going to be influenced by that, and either that was a direct form of words which meant nothing to you, and you had no intention of carrying it out, or else it meant what you said.

Defendant's counsel has appealed to your sympathies for this defendant and has called up to your mind the fact that he is a good father. I don't know that it is a sign of a good father to leave his children with their grandmother and go off and start to housekeeping with a prostitute. I don't know that anything that has occurred in this case, excepting the remarks of counsel shows anything to the credit of this defendant when you come to the facts of the case. But you gentlemen have said that you would decide this case simply on the evidence here, unswayed by sympathy, and it was relying on your statement to that effect that I took you as jurors in this case. Because if you had come out and said, "I am of a sympathetic nature, and my verdict might be affected by sympathy", why, I would not have taken you. Therefore I relied on your statement, and I think therefore it is not unfair to say that I have a right to rely on you, and to feel that you will live up to what you said.

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Gentlemen, you can easily see the effect of a false verdict. Suppose a police officer in this case, because he felt sorry for the defendant had not arrested him, but let him go. Would you commend his conduct? He would have been discharged from the police force if he had done that, and yet the police officer is just as responsible for this verdict, for the effect of any verdict on the defendant, as you are, because if he had not arrested him and held him he would never have been brought to trial.

The stenographer of this Court is under oath. Suppose because he was sorry for the defendant he took a false record of the case, thinking that if he were convicted it might help him on appeal, what would you say of such conduct?

The judge in this case, - suppose that he were to lay down the law which he knew was not the law because he felt sorry for the defendant. What would you say of that conduct?

And yet the stenographer and the judge are just as responsible for the effects of a verdict as you are, and when it comes to your function, your only function is to tell the court what happened that night, and that is done in the form of a verdict, and then the law --- which neither you nor I nor anybody else here is responsible for --- it has been in effect for hundreds of years --- takes its course. And if we all do our duty no one can ever say that we are to blame

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for anything.

Now, the people claim at the outset of this case --- and they claim now with added force, because they claim they have made good everything they said they were going to prove-- that this was a cowardly and brutal murder. And not only that, but we now claim that it was not only cowardly and brutal, but it was a sordid murder. That this defendant had this girl living in this place, and that this girl was, to use the phrase common among that class of people, "hustling" for him on the street to pay his rent, and that when he found she was going to leave him and stop "hustling" for him, and not pay his rent any more, that feeling of rage, combined with jealousy, he having thought she would go to some other man, produced this murder. And, unfortunately, it was neither an extraordinary or unusual case to have a man who had been living with a woman of this class, consumed with jealous rage when he finds that she is going to leave him and go to some one else.

MR. SCHICK: I object to the remark, saying that this defendant lived off the deceased. There is no such evidence, no such testimony.

MR. NOTT: I am going to read just what he said about that.

MR. SCHICK: Exactly --- that she paid half the rent of

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that flat but not lived off this woman.

MR. NOTT: (Continuing) Now, it is for you to say what his motive was, and in that connection, I will call your attention to this: we have proved a common, an ordinary and an adequate motive, but they say she shot him and they have not proved any motive at all. If she shot him, as they claim she did, there was absolutely no motive to it.

Now, the defendant has characterized everybody that has testified in this case as a liar in effect. He said that every witness, with the exception of Mrs. Brennan --- and I am going to read some of her testimony --- has testified falsely against him; and the counsel, following that cue, has made the same charges and has criticised everybody that had anything to do with the conduct of this case. So far as this criticism of the District Attorney's office and the members of the staff is concerned, I will simply say this, that neither Mr. Minton nor Mr. Hamill did a single thing in this case that has not received the sanction of the courts up to the Court of Appeals, which has said that it is proper and right and within the law to interrogate a defendant as to what he has done. And, Gentlemen, isn't it commonsense to do so? In your own business wouldn't you do so? The District Attorney is your lawyer. Isn't it commonsense to do so? And it never hurt an innocent man to ask him questions because it is only the guilty man

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that has anything to lose. If an innocent man, who is going to put in an honest defense when it comes the time of trial will always tell the same story, and it is for his benefit to get his story on record just as quickly as he can, and he will always do it and is glad to do it, because as soon as he can show that he told the same story immediately after the crime that he tells on the trial, the better it is for him, and it is only the man that is going to put in a perjured and a false defense that ever objects to being asked about what happened and puts up this holler that he ought not to have been made to speak at the time, when he had not had time to think up a defense?

Now, this case is a perfect illustration of that. When he was first asked about it he had not had time to think and he said, "Yes, I shot her", and he said it was because of another man, or a love affair. Then at the hospital he had had time to think it over a little more, and there for the first time he said --- well, he admitted he had shot her but said she had previously tried to shoot him, and he tried to take the weapon away from her and then shot, but when he was asked about the stab wounds and could not explain ---

MR. SCHICK: One minute. No such evidence. I ask the District Attorney to read that, what he said at the hospital.

MR. NOTT: I am going to.

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MR. SCHICK: I object to that statement of the District Attorney.

THE COURT: The statements made by counsel on either side, which are not sustained by the evidence will be disregarded by you, but statements made by counsel on either side which are sustained by the evidence, or arguments which legitimately flow from such statements, or comments made thereon, should be given consideration by the jury.

MR. NOTT: (Continuing) At the hospital he was then asked --- that statement has gone very well, but he was asked how about the stab wounds, and that he could not explain at the hospital, so he comes into court with a third story which absolutely differs from everything he said before. Absolutely. And you gentlemen know that as well as I do.

Now, who are the witnesses for the People? Is there a single one of them that has any hostility against this defendant? Counsel for the defendant, as usual, has attacked the police officers in the case. Now, Gentlemen of the Jury, I do not think any citizen of this county at this present time will accuse the District Attorney's office of any undue partiality to the police or of being unduly in their favor, or defending where they ought not to be defended. I do not think that that charge can be fairly made against the District Attorney's office. But I do believe in being fair. Because

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there are some crooked police officers, it doesn't say that they are all crooked --- there are plenty of them perfectly straight --- and unless counsel can show that a police officer is telling a lie I do not think it is fair just because he is a police officer to get up and accuse him of wanton and deliberate perjury against a man who never injured him, to send him to the chair.

Now, I ask you, if there any evidence in this case that shows any motive or bias or prejudice on the part of the three police officers against this defendant? Or, if there is any evidence that shows that they have not spoken the truth?

Besides the police officers there is McGlade, whom defendant's counsel has characterized as a truthful man. There is Mrs. Brennan; there is Faber, the man whom he sent to telephone to the hospital, and there is Mrs. Brady, against whom I consider a perfectly outrageous attack was made, based on nothing whatever; and there are the physicians and Mr. Minton and Mr. Hamill.

Now, if you can point out one of those witnesses whose character has been impeached, whose veracity has been impeached, who had anything disreputable shown against him, or who had any motive to testify falsely against this defendant --- if you can point to such a witness, I shall be glad to have

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you do it; I don't know him at all.

They have said that Mrs. Brennan is an honest woman. I fully believe it. The old lady went there on the stand and told what she had to tell the best she knew how, and they say that her testimony does not in any way support the People's case. Well, let us see. Remember now his defense is that this woman fired two shots at him, one of which inflicted a slight abrasion in the head, and the other went into his breast, and it was not until after those two shots had been fired that any injury of any sort beheld her. Just keep that in mind.

The People's claim is that he shot this woman, and that is supported by his own admissions. Mrs. Brennan said he talked about the tea and said, "Did you make any tea?" I said, "Yes, but the milk has turned for she stopped the ice on Monday, and the milk is a little turned." "She stopped the ice on Monday and the milk is a little turned."

She stopped the ice Monday and then he saw that she was going to leave. That she had stopped his supplies and that she was going to leave that day. And he had to make up his mind whether at seven o'clock he was going down to work and let her go, or whether he was going to kill her.

"He said, 'The milk turned?' I said 'Yes.' Well, he said 'I will take a drink anyway and get down on the job.'"

Then he left the kitchen and went to the dining room.

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Then she says, "I didn't hear nothing further till I heard the two shots in succession. Q Now, you say you heard two shots?

A Two shots." It was about two minutes after he went back before he heard the shots.

"Q Now, will you indicate to the jury with your hands by clapping them, how quickly one shot followed the other?" She clapped like that. "And then the scream."

Now, she heard two shots and then she heard the woman scream simultaneously with those two shots. If the woman fired the two shots at the defendant and the defendant did not fire the two shots at the woman, what did she scream for? She screamed because the two shots were fired at her, that is what brought out that scream at once. And it was after the scream that Mrs. Brennan went down stairs.

We have heard a great deal about the bad character of this deceased. Well, of course, she was an immoral character. We have heard a great deal about the frightful way she used to drink. Whom have we heard it from? Why, from the defendant, who has every interest and motive to prove everything bad of her, but what does Mrs. Brennan say about that?

"And did she receive any company? A No, sir. Q Nor men while he was employed in the saloon? A No, sir."

She (Mrs. Brennan) said that she went down for beer for her and this defendant usually furnished her with the beer. "Q And occasionally you used to go out and get her whiskey?

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A No, I never did. I never went out and bought her a glass of whiskey, for Nora. Q She had whiskey in the apartment, did she not? A Yes. Q And she frequently drank whiskey? A Yes, sir, she took a little of it."

She says that she saw her on one night come home under the influence of liquor. She said, "I just seen her the once the worse for drink."

Now, that is the testimony of a woman that they say themselves is honest. Therefore, you have this testimony from Mrs. Brennan that the defendant knew that this woman was going to leave him. That it was brought home to him that he was going to leave soon because she had stopped the supply of ice. That after learning that he went back into the room, that two shots were fired, there was a scream from the bed room, and the old woman then went downstairs and while this woman (the deceased) had drink there occasionally she (Mrs. Brennan) never saw her drunk but once. And if she had seen her drunk that night and the orgy that this defendant would have you believe was going on there that night, the old woman would have seen and heard that.

Now, the next witness was McGlade. McGlade is in the business of a bartender, but I think he is the most decent respectable young fellow in that line of business I have seen for a long time. Perhaps you might say he has not been here

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long enough to get contaminated by the business, and there is no attack on his character, and they admit that his character is good and that he is friendly to the defendant. And what does he say? He went up into the room and was there after he first met the defendant. The defendant said to him, "Oh, Arthur, Arthur", and asked him to get a drink. He went downstairs, and at once, instead of getting a drink, telephoned for the police. Then he came up and there was Officer Brown.

Officer Brown --- I am reading from page 50 --- "Officer Brown asked him what he had done, so he said he shot his wife, and he tried to shoot himself."

Now, did this McGlade hear that or didn't he? Is McGlade perjuring himself when he says he heard the defendant say that to the officer? Why, they just told you he is an honest fellow. Is he perjuring himself to send his friend who used to work at the same place with him away?

"He said he fired two shots at her and two at himself."

Q How many shots at her? A Two."

Then he said later he was sorry he failed.

"Q Do you remember the defendant saying anything about being sorry? A Yes, he said he was sorry he failed, that is all."

Now, if that is so it contradicts this whole defense absolutely and in toto, because the evidence is that every

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wound that was inflicted upon the defendant himself was inflicted by this woman. That he did not try to kill himself, and that he inflicted no wound or shot upon her. Therefore if he told officer Brown that he shot her twice and shot himself, his testimony on the stand is absolutely false.

Now, Zito, the Italian, also worked at the same place. He went up there. He said, "I first went to the front door, I found it locked and then I went to the kitchen door. I found it open, I pushed it in, and walked in. I saw Murphy with a knife in his hand.

Murphy says that the knife was a plant of Officer Brady, and there is this Italian who didn't know the significance of that testimony, who testified in a foreign language, and who didn't know there was any contradiction about it --- he says that when he came up there there was Murphy sitting there with a knife in his hand.

"He was in the bed in which he had slept during the night."

"Q What was he doing with the knife --- did you notice?

A He had the knife in his hand. Q And what did you do, if anything? A As soon as I saw the defendant with a knife in his hand I immediately ran away down the stairs."

Now, is that man perjuring himself against a man who never injured him, that he used to work with? Is that perjury?

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And Mr. Volckening testified that the bed could be seen from the kitchen, and if you have any doubt about it you can take the photograph in there and you can see right from the bed to the kitchen with the pots and pans on the shelf.

Then Officer Brown came up there. Now, I want to say a word about Officer Brown's testimony. If police officers go on the stand and their testimony absolutely coincides in every way, shape and manner, counsel always say they are perjuring themselves, because they agree so perfectly. On the other hand, if they go on the stand, and one remembers one thing and another remembers another, or one remembers more than another, as all honest witnesses do, then they say they are perjuring themselves because they do not agree. So no matter whether they agree or don't, they are always accused of perjury.

Officer Brown was first there, he had charge of the case, and it was he who put these questions and he would remember naturally more, where the others remember the substance. He says when he came in there he saw the defendant Murphy reclining on the bed with a knife in his hand ---

"Q. What was he doing with the knife? A. Stabbing himself like that (indicating by stabbing breast."

So he actually saw the man stabbing himself and the defendant says the woman stabbed him. But you have seen the witnesses and it is for you to say whether a woman in the course

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of a struggle, with a full-grown, strong athletic man, could plant ten or twelve ---

MR. SCHICK: Objected to. It is for the jury to say whether he is strong and athletic.

THE COURT: Well, it is for the jury to say from all the evidence.

MR. NOTT: (Continuing) If you believe that a woman with a revolver in her left-hand and a knife in her right hand could plant in the course of that struggle, twelve stab wounds and a bullet right at the heart, all I have to say is that you would believe anything. And here is a man who has absolutely no motive to lie, whose character is not attacked in any way, shape or manner, who came in and saw him stabbing himself. And not only that, but it is corroborated by the defendant's own statement to Mr. Minton --- that he went into the kitchen, got the knife and stabbed himself with it.

MR. SCHICK: No such testimony. He said the knife was brought there the night before --- he said they were cutting sandwiches.

MR. NOTT: I will read it, - and I do think counsel might cease interrupting.

"Q Where did you get the carving knife from? A Went out in the kitchen, because the gun was empty and I went to

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the kitchen to get more cartridges. The cartridges was in a closet, in my overcoat, and I couldn't get them out of the revolver to kill myself. There was only two -- the last two that was left, and I went out and took the carving knife and stabbed myself."

Now, why should you say Officer Brown is lying when he said he saw "him stabbing himself"? When there at the time in the hospital he made that statement himself?

"Q Now, proceed, Officer, and tell what the conversation was? A I asked him "Who did this? He replied "I did."

Did what? That is for you to say.

"What caused you to do this? A I don't know. Was it another man in the case? Yes. Who was it? I won't tell you. And then I asked him was there any fight? He says, Yes, we fought the previous evening up until twelve o'clock, and went to bed at five o'clock in the morning we started fighting again and I got a gun and I shot her."

Now, is that absolute perjury, when it is supported by his own statements where they were taken down stenographically, when it is supported by the testimony of Officer Brady and Officer Freeman? And he is also supported by the testimony of his friend mCGLade who heard him say he shot his wife twice and shot himself.

"Q Did he say how many shots he fired altogether? A

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He said 'I fired two shots into her and one after myself.' He said, 'I tried to kill myself and I am sorry I failed.'"

That is just what McGlade heard him say that he was sorry he failed.

"Q Did he say anything at that time about the deceased having a revolver at any time? A No, sir."

Now, Gentlemen, if you are going to carry the common sense that you possess in your business into this case, you will know that when an innocent man that has been fired at by another who has tried to kill him, the first thing he says is, "Why, that person had a revolver and tried to shoot me. I was acting in self-defense." Did he say that there? No, never a word of it, because he hadn't thought it out and hadn't had time.

Then on cross examination Officer Brown repeated the same conversation that he had before.

Now, Officer Brady took the stand. You have seen him --- a decent young officer. Is there a word breathed against him here? Is there anything against him? A stranger to this defendant! This crime did not take place even in his precinct where he was working at the time, and he was routed out of sleep by his wife and went in and met the other officer at the door. He said, "We went inside and the defendant was laying on the bed, and he had stab wounds on his chest here,

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and the knife was in his hand and the hands resting on the bed. Officer Brown went and took the knife off the defendant, and then he went downstairs and he called an ambulance. And while the officer was away I asked the defendant who killed this woman. He said, "I did."

Did he say a word about self-defense, that she tried to kill him?

"I said, 'Why did you kill her?' He said, 'It was a little love affair.' I asked him, I said, 'Is this your wife?' He said, 'No, it is not.'

When this defendant was on the stand he said Officer Freeman told the truth. I then asked him if he told the truth about the conversation and promptly he put him into the class of liars. I am now reading from Freeman's testimony:

"Officer Brown says to the defendant, he says, 'Who did this?' And the defendant says, 'I did.' He says, 'What did you do it for?' He said, 'We had some quarrel the night previous, and it ceased until the early part of the morning, and around half past five or quarter to six it resumed again.'"

Was the Officer telling lies? What did he (the defendant) say to Hamill later? He said he had had this altercation after she had accused him of being crooked, and he accused her of the same thing.

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"And it ceased until the early part of the morning and around half past five or quarter to six it resumed again," he said, and he said" ---

"Q Did he say anything about any shots being fired?

A Yes, sir. He said he fired two shots at her and three at himself and he is very sorry that he failed to end it all."

These witnesses disagreed as to the number of shots fired. One says he fired one, one says he fired two, and one says three. An honest witness cannot remember those things absolutely. They will give their best recollection, but the point of it is, what they all remember and all swear that he said that he fired two shots at his wife, that he fired some shots at himself, and that he was sorry that he failed to kill himself.

Now, he (Officer Freeman) had a conversation at the Hospital with the defendant: "I asked the defendant, I said, 'What did you do it for?' He said he had a quarrel with her and she went to the closet to get the gun and in the struggle he tried to wrench it from her hand and two shots were fired, and that was all, and he was badly under the influence of liquor, he says."

And now he says he is perfectly sober, and said so to Hamill.

(Continuing) "And he don't know what he was doing."

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So you see it was about at the time he first got to the hospital that he first had the idea of wresting the revolver out of her hand. He never said that at all before.

"Q When you first talked with him in the apartment did he say anything in regard to the deceased having the revolver? When you talked with him that morning in the apartment did he say anything about the deceased --- A No, sir."

Now, that is in brief what the People's witnesses have testified to as to what the defendant said went on in that room, and if the People's witnesses are to be believed it leaves absolutely no doubt in the mind of any sane man that this defendant, being angered by the fact that this woman was going to leave him, was going to stop paying half his rent, was going to some other man, got his revolver --- the shooting was admittedly done with his own revolver which he had in that house, and he said to the Court that he never exhibited the revolver to the deceased --- and he shot her for that reason.

Now, we come to the defense. What motive does the defense show that this woman should attack him? I asked him that specifically. Absolutely none. Before I come to that, though, I wish to read some extracts from what he said in the interview with Mr. Hamill. He was first asked if he felt well enough to talk. He said yes. He was then warned that he didn't have to answer any questions, and anything he said would be used against him. He then said: "We had a little

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scrap last night. She accused me of being crooked. I accused her of being the same thing. She jumped out of the bed and grabbed the gun out of the closet and I tried to take the gun from her hand and a shot went off and she fell."

Here he says that she jumped out of the bed with a revolver in one hand and a carving knife in the other.

"Q How many altercations have you had with her in the last five months? A This is the first one. Q Had you been drinking last night? A No, perfectly sober when I left for work."

So there isn't any defense of alcoholism in this case.

"Q How did she get those stab wounds? A Stab wounds -- I don't know. Q Was there any carving knife around? A I stabbed and shot myself both."

And here he comes and puts upon this poor dead woman -- he tries to put an attempted murder on a dead woman who cannot answer for herself, and there he is down in black and white as saying, "I stabbed and shot myself both."

"Q She had three or more stab wounds in her body. Can you tell me how she got them? A No.

"Q Did you stab her with the carving knife? A I might have done it in the excitement.

"Q Don't you remember whether you stabbed her with the carving knife? A No, I don't. I remember stabbing myself.

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"Q How many times did you shoot her after the first time? A Two. I seen she was dead and then I didn't think there was any use of me living any more and I tried to kill myself.

"Q And after the first shot did you shoot her twice again? A Yes."

Now, you remember that statement. The man that made that statement is guilty of murder in the first degree, if he made that statement.

"Why did you fire two more bullets after that first shot? A I suppose I was crazy.

"Q You might have stabbed her? A I might, I can't say.

"Q Where was this knife lying? A Laying out in the kitchen."

Now, there is evidence that she was stabbed through the heart. That the immediate cause of death was the bullet wound. And he says that the knife was lying out in the kitchen, and as bearing upon premeditation and deliberation you have a right to consider that he went from that bed room out to the kitchen, got a knife and brought it back into that bed room, and then attacked her with a knife to make sure he had finished the work that he had begun with that revolver.

"Q How near the bed room? A Three or four rooms away."

He went through that length of space to get that knife,

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came back with it, and the uncontradicted evidence is that she had a stab wound that went through one of the ventricles of the heart.

"Q You weren't drunk last night? A No.

"Q Weren't drunk this morning? A No.

"Q Now, then you got the gun away from her? A Yes, and fired two shots at her.

"Q Where was she when you fired the two shots? A She was standing up --- she fell down.

"Q When did she fall --- after the first shot? A After the first shot.

"Q And you fired two more shots after that? A Yes.

"Q Well, you fired two shots at her, didn't you? A Yes.

Q Where did you get the carving knife from? A Went out on the kitchen because the gun was empty, and I went to the kitchen to get more cartridges. The cartridges was in a closet, in my overcoat, and I couldn't get them out of the revolver to kill myself. There was only two --- the last two that was left --- and I went out and took the carving knife and stabbed myself.

"Q Where did you stab yourself, in the breast? A Yes, in the breast.

"Q You shot yourself how many times? A Twice.

"Q Once in the head? A Yes, and once in the breast.

"Q How many times did you stab yourself? A I don't know.

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About half a dozen times I guess."

And so the defense in this case is that the woman attacked him and inflicted every wound that was inflicted upon him with a revolver and a carving knife.

Now, the defense depends utterly and absolutely and entirely upon the word of this defendant. You have a right, and not only have you a right, but I suppose it is your duty in weighing this testimony to think of the motive he has to testify. He is the only interested witness in this case. Every other witness who has been called here in this case, except this defendant, is a disinterested witness; and the defense asks you to discredit all these disinterested witnesses and bring in a verdict which will brand them and stamp them as perjurers, and turn him out on his own evidence, which is the only interested evidence in the case.

It appears that this defendant, after his first wife's death, a year after, married again and that he then left his second wife. You can gather from his own answers the fact that he pushed her down in the street, he was held for an assault, and then she came back to him, as those poor women do when a man gets in court, they get soft-hearted and come back. She came back and lived with him again. That did not last long. He left her again, and then took up with this woman.

Now, let us see about this noble man:

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"Q Did she pay half the rent? A She did.

"Q How did she make the money with which to pay it?

A I don't know.

"Q Don't you know she was making it from men and paying your rent with it? A I don't know.

"Q Well, what did you think? A Well, I never inquired.

"Q You knew she was going out nights? A It was none of my business.

"Q You were living with her and she was paying half the rent? A Yes, sir, she said she had some friend named Charlie, a bookmaker or race track man."

Just think of a man coming before a jury and saying that he is the only truthful witness in the case and saying that the woman who had a friend named Charlie, a bookmaker, and whom she lived with, was paying half his rent.

"Q And Charlie was putting up the money for your flat?

A No, he was not. I was putting up half.

"Q Well, you needed all the money to pay the rent. He was putting up money for the half the rent for your flat?

A He was not.

"Q Well, she was, and that came from Charlie? A I don't know where it came from.

"Q When she went out late at night did you think she was going to Sunday school? A I don't know.

"Q What did you think she was doing? A I don't know."

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Then you saw how he hedged and tried to evade that question, and then when I asked further he finally said, "Well, my candid opinion was I thought she was making it off the streets, or something else."

He then describes and says they were in perfect peace and amity that night; he was absolutely satisfied to have her leave, didn't object at all, didn't mind her going away with another man and leaving him, didn't mind her stopping paying the rent, had no feeling about that whatever, and that she was perfectly peaceful and happy with him. He says that she was drinking all night and was acting like a maniac. Poor Mrs. Brennan saw nothing of it whatever. He says that in the morning he went out to get dressed and he came back, and there all of a sudden this woman who had been living friendly with him, and who had had no trouble of any sort confronted him in the doorway of that bedroom with a revolver in her left-hand and a carving knife in her right-hand, and thereupon this terrible struggle ensued between this girl twenty-three years of age and this defendant whom you have seen on the stand and whose age is thirty-two, and that in the course of this struggle this woman with her left-hand fired one shot that hit his head, and another shot that went in the neighborhood of the heart, and he cannot even tell you that she was a left-handed woman, and yet her marksmanship was good enough

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for that, and that he then grabbed her and seized her by the wrist and she succeeded with her right-hand in inflicting twelve stab wounds right in the vicinity of the left nipple. All the wounds are in the left nipple, some made with the revolver held in the left-hand, some with a carving knife held in the right-hand. Now, that is absolutely, utterly incredible. It would have been incredible if he always said so, but when you take that story and contrast it with what he said to Mr. Hamill and what he said to the officers and what he said to McGlade, why, there is nothing to it at all before any common sense body of men. It could not happen, it was impossible to have happened, and it is only done to load the whole thing on to this dead woman who cannot put in any answer here, and to account for those stab wounds in her body that he could not account for in the hospital, because he says that at sometime or other in the struggle, although he doesn't tell you how, she must have been cut, whereas, at the hospital he could not account for that at all.

Now, how did she receive the wound? Now, how was she killed? He has told you how she was killed. There was nobody else there that could have killed her and he has told you and five or six different witnesses how she was killed. He said she shot him. How does he say she was killed? Can't tell you at all. Couldn't give any explanation of how she got a

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stab wound in her heart and another stab wound in the breast and two shots there. Why did she scream immediately when those first shots were fired, if she was the aggressor?

When you go to the jury room take these two cartridges that came out of that pistol with you and look at them and see if the trigger has not been snapped against both of them, showing his deliberation and intent.

Why was it he went into the kitchen and got the carving knife to make sure?

MR. SCHICK: I object to the statement made by the District Attorney that the mark on the bullets showed premeditation and the snapping of the trigger. There is no such proof and no such testimony.

THE COURT: It will be for the jury to determine from the evidence in the case whether or not the defendant shot and killed the deceased with a deliberate and premeditated design to take her life.

MR. NOTT: (Continuing) Those bullets were found unexploded in the revolver, and it is for you gentlemen to say whether the trigger was pulled against them as shown by the condition of the cartridge, and if that isn't so, why he went into the kitchen to get the carving knife to make sure of his work, because he snapped the trigger and two cartridges did not explode.

MR. SCHICK: Exception to the statement that that

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is the reason why he went into the kitchen to get the carving knife.

THE COURT: The District Attorney is making his observations based upon the evidence, he is arguing upon the evidence presented, but it is for the jury to find whether the defendant, if he did take the life of the deceased, did so with a deliberate and premeditated design to take her life.

MR. NOTT: (Continuing) Now, Gentlemen, I am going to out my remarks short, because as I say, if this defendant is to be acquitted on this evidence, why, if I talked two hours more it wouldn't make any difference. But if he is to be acquitted on this evidence let not anybody blame the Court, or the District Attorney, or the police for any of the conditions that prevail in this town. If a man can come into a court with this defense that he has here, and get away with it and go out ---

MR. SCHICK: I object to the last statement made by the District Attorney as to the conditions existing in this town, and that not the District Attorney and the Court should be blamed.

THE COURT: The remarks of the District Attorney will be disregarded by the jury, and the jury will confine its attention to a consideration and deliberation of the evidence presented.

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MR. NOTT: What I meant was that a failure of justice in this case is not due to the police, it is not due to the District Attorney; we have done all we could in the matter; it is not due to the Court. If there should be one it would be right from that jury box, and it is for you gentlemen therefore to say what the evidence in this case establishes, and when you have found that out to bring in a verdict in accordance with that evidence and not a verdict based on any sympathy or any prejudice or anything else.

If I have done anything in this case that you do not like, I am not sorry. I have not meant to do anything unfair-- I don't think I have, but if I have you ought not to visit that upon the head of my client, the People of this state, because they have done no wrong. You are to take the evidence only and make up your mind whether this defendant killed this woman, or whether this woman tried to kill him, and in some unexplained and unimaginable way killed herself. And if you find that he did kill her, then it is for you to say whether he did not have a motive, whether he did not inflict more than one wound, whether one of the weapons he used was not in a distant room, that he had to go and get it and bring it back, and therefore to say whether he did not do it with deliberation and premeditation, which the law says constitutes murder in the first degree.

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THE COURT: Gentlemen, do not discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. We will take a recess until twenty minutes after two.

(Recess till 2:20 p. m.)

After Recess, Trial Resumed.

The Court now charges the jury as follows:

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THE PEOPLE vs. JOSEPH MURPHY.

CHARGE OF THE COURT,

ROSALSKY, J.

THE COURT: Gentlemen of the jury, our citizens should appreciate the necessity of freely and willingly giving up their time and attention to the performance of their public duty, even though it entails no small hardship and business inconvenience. You are called upon to perform one of the most important duties the State can exact from a citizen. Perhaps no higher duty can devolve upon you than that of being called upon to serve as jurors on an issue involving the life or liberty of a person accused of crime. You have afforded a fine illustration of the sacrifices which citizens are often called upon to make in behalf of the commonwealth. With unwearied attention you have followed the details of this case, with never a suggestion of the irksomeness of the duties which the State is exacting from you. I would, therefore, convey to you my thanks for the close interest that you have given to the consideration of this case.

I also wish to express my thanks to the learned counsel representing the defendant, and to the learned Assistant District Attorney representing the People, for their gentlemanly and courteous conduct during this trial, each representing his

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cause with great fidelity and learning. You should consider the statements, comments and arguments made by counsel upon either side, based upon the evidence, but you should disregard statements, comments and arguments of counsel on either side which are not supported by the evidence, or arguments which are of a personal nature.

In the introduction of evidence the defendant had a right to contest the case of the prosecution step by step, to dispute every theory and fact advanced against him and to introduce evidence to disprove the charge made in the indictment. All offers of counsel to prove things which were not proven, which were not permitted by the Court to be proved, and all arguments of counsel addressed to the Court upon questions of law, or upon motions for the admission or the exclusion of evidence, should be disregarded by you. The evidence of witnesses stricken out, or matters in evidence which were stricken out, or matters not admitted in evidence which you were instructed to disregard, should be disregarded by you and given no weight or consideration in the determination of the guilt or the innocence of the defendant. If by any excluded answer of a witness, or by any offer of testimony which was excluded, or by any question which was not allowed, any suggestions were conveyed to your mind of things not in evidence, you should resolutely refused to be moved by such

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suggestions. You are only to consider matters which were legally admitted in evidence.

It is the duty of the court to present for your consideration the rules of law which shall govern you in determining the guilt or the innocence of the defendant; and, likewise, it is the duty of the jury to accept the law as declared by the court. It is essential to the due administration of justice that you shall not question the correctness of any rule of law laid down by the court for your guidance. The jury are just as sovereign with respect to all questions of fact as is the jury with reference to all questions of law. It is your duty upon your oaths to apply the law to the facts and to determine whether or not the evidence establishes beyond a reasonable doubt the allegations set forth in the indictment.

It is the duty of the court to safeguard the defendant's rights to a fair and impartial trial.

An indictment is an accusation in writing, charging a person with a crime, and the mere finding thereof is absolutely no evidence of the guilt of such person. The People are required to establish the allegations of the indictment beyond a reasonable doubt before you will be justified in rendering a verdict of guilty. The defendant in a criminal prosecution is not called upon to establish his innocence. The bur-

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den of establishing the guilt of the defendant rests upon the People throughout the entire case.

The defendant is indicted for one of the highest crimes known to the law: Murder in the first degree. There are four kinds of homicide; murder, manslaughter, excusable homicide and justifiable homicide.

The law provides "No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant as alleged are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt."

The corpus delicti, that is the body of the offense, is made up of two things, first, that a human being was killed, and it must be established by direct proof; secondly, the existence of criminal and human agency as the cause of death, which must be established beyond a reasonable doubt. In order that the term "direct proof" might not be confused by you, let me say to you that the term "direct proof" does not mean that the people must prove that the witnesses actually saw the killing. That is unnecessary. But it means "direct proof" of the fact of killing. That is, that the death of a human being --- and in this case the death of Nora Forrester --- was due to violence of a criminal nature and was produced by human agency and that it was not due to accident or mistake or to self

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infliction.

The proof of the identity of the body and that the defendant committed the crime may be established by circumstantial evidence and beyond a reasonable doubt.

Homicide is the killing of one human being by the act, procurement or omission of another. The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate and premeditated design to effect the death of the person killed or of another.

Murder in the second degree is the killing of a human being, when committed with a design to effect the death of the person killed, or of another, but without deliberation or premeditation.

Manslaughter in the first degree is the killing of a human being, when committed without a design to effect death, in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

You gentlemen will observe the distinction relative to the various degrees of homicide. In murder in the first degree it is necessary to prove that a human being was killed from a deliberate and premeditated design to effect his death. That is, the killing, the design to kill, and premeditation and deliberation upon that design.

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In murder in the second degree deliberation and pre-meditation form no elements of the crime. It is necessary to prove the killing and the design to kill.

In manslaughter in the first degree it is necessary to prove that the killing was done without a design to effect the death of the person killed, in the heat of passion and in a cruel and unusual manner, or by means of a dangerous weapon.

If you are satisfied from the evidence beyond a reasonable doubt that the defendant committed the crime of killing Nora Forrester, and there is reasonable ground for doubt of which degree of homicide he is guilty, either of murder in the first degree, or of murder in the second degree, or manslaughter in the first degree, you may convict him of the lowest of these degrees, provided the facts and circumstances justify you in coming to that conclusion.

In other words, I charge you that if you have a reasonable doubt as to his guilt of murder in the first degree and no reasonable doubt as to his guilt of murder in the second degree, you must give him the benefit of that doubt and find him guilty of murder in the second degree. You must apply the same rule to the degree of murder in the second degree and to the degree of manslaughter in the first degree.

While it is within your power to find a verdict of guilty in a lesser degree of crime than the one charged, that

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power must not be arbitrarily used in disregard of the evidence.

The jury is bound to find a verdict in accordance with the evidence, as they believe it to have been established. The jury must not capriciously find a verdict of a lesser degree where the evidence satisfies them that a higher degree of crime has been committed.

Premeditation and deliberation are matters which the jury must find from the evidence in the case. They are frequently the mental operations known only to the defendant himself, and the only possible way for human judgment to ascertain these mental operations is by the acts, declarations or admissions of the defendant, and the reasonable, rational and fair inferences from these acts and declarations.

Gentlemen, it will be necessary for you to determine from all of the evidence presented here whether or not the defendant, if he did kill Nora Forrester, did so from a deliberate and premeditated design to take her life. While the law requires, to constitute murder in the first degree, that the killing shall be deliberate and premeditated, nevertheless it does not require that the deliberation or premeditation shall exist for any great length of time before the crime is committed. The courts of this State have so frequently defined premeditation and deliberation that it would hardly be

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wise on my part to attempt to give you any new definition. I shall therefore read to you certain extracts from the decisions of the Court of Appeals of this state, because they embody the law of this State, which binds our courts and jurors.

In Leighton against the People the Court said: "If, therefore, the killing is not the instant effect of impulse, if there is hesitation or doubt to be overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder."

In People against Majone the Court said: "Under the statute there must be not only an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time; but the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for choice to kill or not to kill and for the formation of a definite purpose to kill. And when the time is sufficient for this, it matters not how brief it is. The human mind acts with celerity which it is sometimes impossible to measure and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case."

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In People against Conroy the Court said: "The intention to commit a homicide, which is not formed under the impulse of immediate provocation, or a sudden and instinctive apprehension of danger from some apparent cause, would seem to involve, to a certain extent, both deliberation and premeditation. These terms are not the creation of our statute, but were considered essential elements of the crime at common law."

There is a general presumption in law that a person intends whatever are the natural and probable consequences of his own acts. It is a fundamental rule of evidence, of very general application, founded upon observation and experience, that a person it presumed, if he is in his right senses, to intend the natural consequences of his acts.

If you should find from the evidence beyond a reasonable doubt that this defendant that morning or at some time prior to his having discharged a loaded firearm at Nora Forrester, if he did feloniously discharge a firearm at her, made up his mind to kill her and that he had opportunity for reflection, and determined in his mind that he would destroy her life and thereupon he took this revolver and discharged the firearm at her and then discharged a second bullet at her, it is for you to say from the action of the defendant, together with all the circumstances testified to by the witnesses, together with the condition of the wounds which the deceased

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sustained sustained, whether or not the purpose and the design of this defendant was to kill Nora Forrester. And if he did so, did he do it from a premeditated and deliberate design to destroy her life? This question cannot be answered by the public prosecutor, nor by the Court, but must be answered by you. Neither the Court nor the District Attorney can suggest to the jury what the verdict should be, but the duty and responsibility rests upon the jury to carefully weigh the evidence and to determine from all the evidence presented whether or not the People have sustained a case against the defendant. The People have presented for your consideration, two classes of evidence. The first class refers to circumstantial evidence and the second class refers to an alleged voluntary confession made by the defendant that he shot the deceased. To establish the defendant's connection with the crime laid against him, the People have called witnesses to prove the circumstances under which it is claimed that the defendant as the person who shot Nora Forrester, and that the shooting of the deceased was not accidental or while the defendant was in the defense of his own life and limb. You must determine whether the claims of the People are supported by the evidence. While you are to consider the circumstantial evidence you must bear in mind that witnesses have been called by the People to testify to these circumstances, and, therefore, you must determine whether the witnesses who have testified

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as to the circumstances have told the truth, or whether they
ave wilfully falsified their testimony and whether they are
biassed or mistaken as to the facts testified to by them.

Circumstantial evidence must point to guilt to the
exclusion of every other reasonable hypothesis. The proof
must not only be consistent with guilt, but inconsistent with
innocence. If the circumstantial evidence be susceptible of two
constructions the most favorable to the innocence of the
defendant should be adopted. But if the circumstantial evi-
dence points in one direction, and in one direction only,
namely, the guilt of the defendant, or if the evidence be incon-
sistent with every reasonable hypothesis of the innocence of
the defendant, and consistent only with his guilt, you are
bound as jurors under the solemnity of your oaths to regard
this evidence as controlling and to be guided thereby; and
the weight to be given to the circumstantial evidence must be
determined by you.

Many of you have stated to both the learned counsel
representing the defendant and to the learned District Attor-
ney, representing the People, that you are not opposed to
circumstantial evidence, providing there is cogency in the
proof presented. If there be cogency in the proof presented
here, we must determine it from the evidence. In the case of
People against Harris, the Court of Appeals, through Mr. Justice

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Gray said, "All evidence is, in a strict sense, more or less circumstantial, whether consisting in facts which permit the inference of guilt, or whether given by the eye-witnesses of the occurrences; for the testimony of eye-witnesses is, of course, based upon circumstances more or less distinctly and directly observed. But, of course, there is a difference between evidence consisting of facts of a peculiar nature, and hence giving rise to presumption, and evidence which is direct, as consisting in the positive testimony of eye-witnesses, and the difference is material according to the degree of exactness and relevancy, the weight of the circumstances and the credibility of witnesses. The mind may be reluctant to conclude upon the issue of guilt in criminal cases upon evidence which is not direct, and yet, when the facts brought out, when taken together, all point in the one direction of guilt, and to the exclusion of any other hypothesis, there is no substantial reason for that reluctance.

"Purely circumstantial evidence may be often more satisfactory and a safer form of evidence, for it must rest upon facts which, to prove the truth of the charge made, must collectively tend to establish the guilt of the accused.

"A fact has the sense of, and is equivalent to, a truth or that which is real. It is in the ingenious combination of facts that they may be made to deceive or to express what is

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not the truth. In the evidence of eye-witnesses to prove the facts of an occurrence, we are not guaranteed against mistake and falsehood, or the distortion of truth by exaggeration or prejudice; but when we are dealing with a number of established facts, if, upon arranging, examining and weighing them in our mind, we reach only the conclusion of guilt, the judgment rests upon pillars as substantial and sound as though resting upon the testimony of eye-witnesses.

"The necessity of a resort to circumstantial evidence in criminal cases is apparent in the nature of things, for a criminal act is sought to be performed in secrecy, and an intended evil-doer usually chooses his time and an occasion when most favorable to concealment, and sedulously schemes to render detection impossible. All that should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from these facts."

A confession of a defendant, whether in the course of judicial proceedings, or to a private person can be given in evidence against him unless made under the influence of fear produced by threats. Unless made under the influence of fear produced by threats, or unless made upon the stipulation of the District Attorney that he shall not be prosecuted therefor.

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But it is not sufficient to warrant his conviction without additional proof that the crime charged has been committed. The rule of law which makes the confession of a defendant competent evidence against him is, as you have observed from my reading of the statute, guarded by several limitations which must be considered by the jury with a view to determining whether or not the confession was the product of fear, duress or threats or made pursuant to a stipulation of the District Attorney that the defendant should not be prosecuted for the crime to which he confesses. Nor is such confession sufficient to warrant a conviction without additional proof that the crime charged has been committed. So that this confession alleged to have been made by the defendant to the police, to Arthur McGlade, to Assistant District Attorney Minton, to the other officers who have been called, can only be considered by you if you find that it was not made under the influence of fear produced by threats, and that it was not made upon the stipulation of the District Attorney that the defendant should not be prosecuted for the crime to which he confessed.

A threat is any menace of destruction or injury to life, reputation or property with a view to restrain a person's freedom of action. A threat is a manifestation by one person of an intent to do actual violence to another. Such manifesta-

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tion might take place in two ways, by words or menaces, by acts or assault. A threat is a declaration of an intention to inflict pain, injury or punishment; a menace.

Nor is it claimed by the defendant that the District Attorney entered into a stipulation with him that he should not be prosecuted for this crime.

While the learned counsel for the defendant asked the witnesses questions concerning the manner in which the confession was made, it is your duty to be guided by the evidence presented, and you must determine whether the confession was voluntarily made, or whether it was made through the use of fear or duress; and after carefully weighing and considering the evidence it is for you alone to determine the circumstances under which the defendant made the confession.

The learned counsel for the defendant claims that the defendant partook of a half a pint of whiskey before Dr. Vieter arrived, and that when Dr. Vieter arrived he also gave him two ounces of whiskey. You will bear in mind the testimony of Dr. Vieter that at the time he furnished whiskey to the defendant he was not in a state of intoxication; you will bear in mind the testimony of Assistant District Attorney Minton that when he examined the defendant at the hospital the defendant in his opinion showed no evidence of intoxication.

The fact that an accused person was intoxicated at the time he made the confession does not render the confession in -

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competent unless the intoxication of such person was of such degree as to incapacitate the person from making a narration of past events or stating his own participation in the crime. Of course, if the defendant was so intoxicated at the time of the confession as to be incapable of giving a clear narration of the events, the question of the weight of his confession is a matter for you to determine. But, as I have said, the jury must determine from the evidence whether the defendant made the confession while in a state of intoxication, and whether at the time he made it he was incapacitated from making an accurate or truthful narration of the facts. If the confession alleged to have been made by the defendant was voluntarily made and was free from any influence of fear produced by a threat, it is evidence of a satisfactory character and should be considered by the jury and given such weight as the intelligent judgment of the jury may determine.

As you have observed, the law of this State permits the acceptance of confessions made by a defendant, and the Court of Appeals has long and often approved of confessions even in capital cases, where the confession was voluntarily made. If you are satisfied that the defendant made the confession to the police, to the lay witnesses, to the Assistant District Attorney, and that such confession was freely and voluntarily made by the defendant, then it is your duty to consider such

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evidence and give it such weight as you believe it is entitled to. If you find that the defendant made a confession that he was responsible for the killing of Nora Forrester you will consider the question whether there is additional proof that the crime charged was committed by the defendant. In the case of the People vs. Burness, the Court of Appeals said:

"Under Section 395 of the Code of Criminal Procedure, before a man who has confessed a crime may be convicted there must be 'additional proof that the crime charged has been committed'. But proof of the finding of the body with marks of violence upon it, supplemented by a defendant's confession of guilt, is sufficient for conviction, as the meaning of the Code is that there must be some other evidence of the corpus delicti besides the confession."

Of course, you must be satisfied that there is proof of the death and the violence which caused it, outside of and beyond the mere confession of the defendant. That is, you have a right to consider the nature of the wound which the deceased sustained; the testimony of Mrs. Brennan that after the defendant left the kitchen he went to the front of the apartment where the deceased was; that she heard two shots in succession and immediately heard Nora Forrester make an outcry. You have a right to take into consideration the character of the wound inflicted upon the deceased. You have

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a right to consider the course of the bullet that penetrated the deceased. You must take into consideration all of the evidence with a view to determining whether or not the deceased killed herself; or whether or not the deceased was killed by the defendant, without justification, and that in so doing he did not kill the deceased to defend his own life, or that while endeavoring to rescue the pistol from her he did not kill her. In other words, you must be satisfied that she was killed in a criminal way.

The language of the statute, "But it is not sufficient to warrant a conviction without additional proof that the crime charged has been committed" means that the People must satisfy you beyond a reasonable doubt that Nora Forrester in fact came to her death by means of violence of a criminal character and produced by human agency; that is, by the defendant; and that her death was not due to accident, mistake or self-destruction.

The defendant claims that he did not feloniously shoot the deceased. That the deceased discharged a loaded revolver at him and stabbed him with a knife. That while he endeavored to disarm the deceased, in order to protect himself from bodily harm, the revolver which the deceased held in her left-hand was accidentally discharged. If you believe that the killing of the deceased was accidental, you cannot convict the defendant. Or, if you believe that the killing of the deceased

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was committed by the defendant in an effort to defend his own person, you cannot convict him. If you believe that the killing of the deceased was not accidental, but committed by the defendant in an effort to save himself from great personal injury, you will apply to the evidence the law of self-defense as I shall declare it and determine whether the act of the defendant was excusable or justifiable.

Homicide is also justifiable when committed in the lawful defense of the slayer, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer and there is imminent danger of such design being accomplished.

Homicide is excusable when committed by accident and misfortune, in doing any lawful act, by lawful means, with ordinary caution and without any unlawful intent. Any person committing violence in his personal defense must not only believe that he is in danger of personal violence, but he must in fact have reasonable ground to apprehend that he is in imminent danger. If from all the evidence you reach the conclusion that the defendant had a right to believe that there was reasonable grounds on his part to apprehend a design on the part of Nora Forrester to do him some great personal injury, and that there was reasonable ground for him to believe that he was in imminent danger of such design being accomplished, or

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if the defendant was attacked by the deceased under such circumstances as to furnish reasonable grounds for his belief of a design on Nora Forrester's part to destroy his life or to do him great personal injury, and that there was reasonable grounds for his believing the danger imminent that such design on the part of Nora Forrester would be accomplished, the defendant had a right to act upon the appearances which then presented themselves to him and kill Nora Forrester if that were necessary to avoid the apprehended danger to the defendant. And the killing of the deceased will under the law be justifiable, even if the appearances were false, and that there was in fact neither design to do him serious injury nor danger that it would be done.

Of course, before a person can justify the taking of a life in self defense, he must show that there was reasonable ground for believing that he was in great peril, that the killing was necessary for his escape and that no other means were open to him. However, he is not called upon to establish this beyond a reasonable doubt, as the burden of proof in a criminal case never shifts from the People to the defendant.

When a person believes himself about to be attacked by another and to receive great bodily injury, it is his duty to avoid the attack if it is in his power to do so, and the right of attack for the purpose of self defense does not arise

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until he has done everything in his power to avoid the necessity thereof. In other words, Gentlemen, you are to view the defendant's case from two theories: one, accidental killing; the other, if to defend his own life the revolver was discharged, you are to determine whether within the terms of the law as I have laid them down for you, the killing was justifiable. Because, after all, a person who claims to have killed another in self-defense must have acted because of the necessity of the situation in which he was placed at the time, and the action of the person in destroying one's life is subject to judicial review; and you must determine, Gentlemen, of the jury, whether the defendant through accident, or in defense of a great injury to his person, killed the deceased.

The People, on the other hand, claim that the defendant did not either as a result of accident nor in defense of himself shoot the deceased; but that the defendant wilfully and from a deliberate and premeditated design to destroy the life of the deceased, shot the deceased. Whether he did, from that point, is a question for the jury to determine. In determining whether the defendant wilfully kill the deceased you have a right to take into consideration everything that occurred in that house on the morning in question, and the night preceding, and all statements, if any, the defendant made to the police,

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to the lay witnesses, and to the Assistant District Attorney, and determine from all of the evidence, including the alleged confessions, made by the defendant, whether or not the deceased shot and stabbed the defendant and attempted to take his life, and in defense of his own life or limb the revolver was discharged, destroying the life of Nora Forrester. Upon you and you alone rests the responsibility of analyzing the evidence with a view of doing justice both to the People and to this defendant.

The defendant claims in this case that there is an absence of motive on his part to have persuaded him to indulge in the alleged criminal act charged against him. On the other hand, it is argued by the People that there was a motive which induced the defendant to indulge in the alleged criminal act charged against him: that the defendant's concubine was about to leave him, that they had words the night before, that because of jealousy the defendant shot and killed Nora Forrester when he learned that she in fact was about to execute the threat which she had made to leave.

In the case of People against Molineaux, the Court of Appeals said: "In the popular mind, intent and motive are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. Motive is the moving power which impels to action for a definite result.

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Intent is the purpose to use a particular means to effect such result. When a crime is clearly proven to have been committed by a person charged therewith, the question of motive may be of little or no importance. But criminal intent is always essential to the commission of crime."

In People against Dinser, the same Court, with the opinion being written by the same learned judge said: "And, as bearing upon the question of intent, motive or absence of motive may present considerations of the utmost importance. Intent may be inferred from motive clearly established, and, conversely, absence of motive, even if not conclusive, may be considered as pertinent to the question of intent where that is in issue."

Wherever a motive can be established it may tend to persuade a jury that there was a design on the part of the defendant to commit a crime, that there was some inducement which led and tempted the wrong doer to indulge in a criminal act; or, if there be absence of motive for the commission of the crime, it is like the duty of the jury to consider such absence of motive with reference to determining whether or not there is reasonable doubt as to the defendant's guilt.

Under our law there is no particular rule which determines what motive is. One may kill another to obtain a small amount of money. One may kill another to gratify some supposed or real injury. There is no rule, therefore, as

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regards the adequacy of motive for all cases. There is usually a motive for every voluntary act of a rational being which operates as an inducement to the commission of the crime.

For the purpose of finding a verdict in this case, need not necessarily find that the defendant had a motive for the commission of this crime if he committed it. If you find from the evidence that the act of homicide was committed by the defendant from a deliberate and premeditated design to effect the death of Nora Forrester, it makes no difference whether the defendant had any motive, provided you conclude from the evidence that this defendant shot and killed Nora Forrester.

In a case based on circumstantial evidence, motive may form an important circumstance to disclose the identity of the person perpetrating the act. The motive therefore may or may not be disclosed, for the reason that the perpetrator of the crime may keep it hidden from any human being; or it may arise at the very moment of committing the crime. But, as I have said, if you are satisfied beyond a reasonable doubt the defendant acted from a deliberate and premeditated design to effect the death of Nora Forrester, the motive of the defendant is immaterial.

Of course, you gentlemen must carefully analyze the evidence and determine for yourselves whether or not this

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defendant had a motive to kill. You have a right to consider the question of question of motive on his intention to kill. If you believe that he made the confession, you have a right to examine the confession with a view to determining what he said; and, if so, is there anything in the confession which suggests that he had a motive for the destruction of the life of the deceased?

It is solely your province to determine the weight and credit to be given to the testimony of all of the witnesses called by the People and by the defendant. If you believe that any witness has wilfully testified falsely in any material particular it is within your power to accept or reject the testimony of that witness in whole or in part as either credible or incredible as the case may be. The testimony of each witness must be fairly and impartially considered and tested by a discriminating judgment with a view to determining whether the witness had a motive or interest other than to speak the truth. It is always within your power to attach to the testimony of any witness whatever value you think it is entitled to, and you may draw upon your own experience and knowledge of human nature in estimating the value of a witness's testimony. In judging the value of testimony you may take into consideration the demeanor, manner and bearing of the witness; his attitude, whether neutral,

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friendly or hostile towards the prosecution or the defense; and his capacity or opportunity or knowledge or observation of the events or occurrence of which he or she testified.

Whenever you can consistently reconcile conflicting testimony it is your duty to do so, but where you find any conflict of testimony that you cannot reconcile, do not hesitate to cast aside that which you deem exaggerated, colored, partial, biased, incorrect or wilfully perverted, and accept and hold fast to that which you believe to be impartial, unbiased, correct and truthful.

The rules of law laid down for your guidance in determining the weight and credit to be given to the testimony of witnesses equally apply to the testimony given by the defendant and to his witnesses. You have a right to take into consideration the interest of the defendant in the result of the trial in considering his testimony, with a view to determining what weight and credit you shall attach thereto.

The defendant is presumed to be innocent until he is proved to be guilty. That presumption rests with him throughout the case until the moment when the jury are convinced from the proof submitted to them that the defendant is guilty of the crime charged. Then the presumption of innocence is destroyed.

The defendant is entitled to the benefit of every reasonable doubt arising from the evidence in the case. A

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reasonable doubt is not a mere whim, guess or surmise; nor should it be regarded as a mere subterfuge to which resort may be had in order to avoid the performance of a disagreeable duty. A reasonable doubt is not a mere speculative doubt, because everything relative to human affairs that is based upon evidence may be open to some possible or imaginary doubt. It must be a doubt arising from such fact or facts in the case as leads you as intelligent men, acting impartially upon the evidence to come to the conclusion that you are not wholly satisfied in your own minds that the defendant is guilty of the crime charged against him. It must be a doubt based upon the evidence. It is such a doubt as after a careful consideration of all the evidence leaves your mind in such a state that you cannot say that you are convinced to a moral certainty of the truth of the charge against the defendant. If you have a reasonable doubt as to the guilt of the defendant it is your duty to give him the benefit of such doubt and to acquit him.

It is the duty of each juror while the jury are deliberating upon a verdict to give careful attention to the views and opinions of his fellow jurors. A juror should not stop his ears and stubbornly stand upon the position he first takes, regardless of what might be said by the other jurors. You should discuss the case together and compare views and

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reasons. But before you make up your verdict, each juror without reference to the other jurors should be satisfied in his own mind of the guilt or innocence of the defendant, as it is the duty of each juror to reason with his fellow jurors with an honest desire to arrive at the truth and with a view to arrive at a verdict, either for the People or for the defendant. It should be the object of all jurors to arrive at a given conclusion and to that end to deliberate together with calmness. It is your duty to agree upon a verdict, if that be possible, without a violation of conscientious convictions. You are not responsible, Gentlemen of the Jury, for the law appertaining to the death penalty. You have been accepted by both the District Attorney and counsel for the defense to serve in this case because of your statement under oath that you will obey the law of the land. You have no right therefore to take that question into consideration in reaching a verdict. When you were empanelled in this case, you became a part of the court charged with doing your duty without fear or favor, and without allowing sympathy or prejudice to influence you in your verdict. The law is no respecter of persons. In the eye of the law it matters not whether the deceased was the highest or the lowest member of society. The law is blind to the individual. It matters not how abject or abandoned the deceased was. It was not within the power of any human being to destroy her life. Our courts are open to redress

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a wrong, and no human being has a right to destroy the life of another unless under circumstances which render his act excusable or justifiable. If a crime has been committed, and evidence beyond a reasonable doubt is presented to you, establishing the guilt of the defendant, it is the duty of the jury to disregard the individual whose life was taken, but the jury must act upon the legal and competent evidence, and under their oaths perform their duty fearlessly, fairly and impartially.

The magnitude of this case must not be underestimated. The rights of the People as well as the rights of the defendant must be conserved by you. The interest on the part of the People is not a desire for vengeance; it is a desire that the law shall be maintained and enforced. If you believe from the evidence that the People have established the defendant's guilt beyond a reasonable doubt, you should render a verdict of guilty in accordance with the grade of crime that you believe the evidence has established. If not, acquit him.

A case of this character is always unpleasant to all parties concerned. I have a duty to perform under my oath of office. Likewise the public prosecutor has a duty to perform, and so have you. It is the duty of the Court to see that the defendant receives the benefit of a fair and impartial trial,

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that the rights of the People and the rights of the defendant are carefully guarded and protected. It is your duty under your oaths to weigh the evidence carefully and impartially. You must endeavor to dismiss from your mind every impression which may have a tendency to lead you away from an honest and an impartial consideration of the evidence. The rights of the accused and the interests of the People demand that you do this.

Gentlemen of the jury, your verdict in this case will be as follows: guilty of murder in the first degree, or guilty of murder in the second degree, or guilty of manslaughter in the first degree, or not guilty.

Are there any requests or exceptions.

MR. SCHICK: No requests by the defendant.

THE COURT: Now, about the exhibits. The exhibits will be given to the jury upon consent; do you consent?

MR. SCHICK: I consent that they may take all exhibits.

(At 3:30 p. m., the jury retire to deliberate upon a verdict.)

At 5:11 p. m., the jury return to the court room, and state that they find the defendant guilty of the crime of murder in the second degree.

THE COURT: Do you want the jury polled, Mr. Schick?

MR. SCHICK: Yes, sir.

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The jury is now duly polled, the jurors severally stating their verdict to be guilty of murder in the second degree.

MR. SCHICK: I now move that the verdict of the jury be set aside as against the weight of evidence and against the law, and on all the grounds enumerated in the Code of Criminal Procedure.

Motion denied. Exception.

MR. SCHICK: I also move for a new trial on all the exceptions taken at the trial.

Motion denied. Exception.

THE COURT: When will you be ready for sentence?

MR. SCHICK: Four or five days.

THE COURT: The 22nd?

MR. SCHICK: Thank you.

(Defendant remanded to October 22nd, 1912 for sentence.)

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