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January 14th, 1914.

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I N D E X.

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

THE PEOPLE OF THE STATE OF NEW YORK, :  
-against- :  
JAMES PURCELL. :

Before:

HON. JOSEPH F. MULQUEEN, J.,

And a Jury.

New York, January 14, 1914.

Indicted for murder in the first degree.

Indictment filed March 7th, 1913.

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

For People: ISIDOR WASSERVOGEL, and THERON R. STRONG, ESQRS  
Assistants to the District Attorney.

For defendant: EMIL E. FUCHS, ESQ.

THE CLERK: James Purcell, 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, Counselor?

MR. FUCHS: Yes.

The talesmen are examined on the voir dire.

(The jury is duly impaneled and sworn.)

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

MR. STRONG: May it please your Honor, Mr. Foreman and Gentlemen of the Jury, you have been selected here as jurors to sit in the trial of a case that is of the most vital interest to the defendant, as his life depends upon the issue and upon your verdict. It is of vital interest also to the State of New York, because they have passed laws forbidding such crimes as the defendant is alleged to have committed, and has provided a penalty for it, and you are here as representatives of the People to uphold that law.

The reason for the penalty is that it is necessary that society should not have men capable of committing such crimes at large, and it is only right and just that the penalty should be enforced if the crime has been committed.

The indictment charges that the defendant, on the 14th day of February, in the year 1913, discharged a loaded firearm at his daughter, Agnes Purcell, a girl about 12 years of age at the time; that he discharged the loaded firearm intending to kill her, and that before discharging it he thought it over, that is, he premeditated and deliberated upon the act. Those are the elements constituting the crime which we will attempt to prove to you. The

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statute relating to the crime of murder in the first degree requires all those elements to be proved beyond a reasonable doubt.

The defendant interposes a plea of not guilty to this indictment, and states that he was insane at the time of the commission of the act.

After the question of the defendant's sanity is put in issue, we shall prove that the court appointed a commission to inquire into the defendant's sanity at the time of the commission of the act, and whether he was sufficiently sane to consult with counsel and to be put on trial. This commission reported to the court some time ago and reported that the defendant was sane at the time of the commission of the act.

MR. FUCHS: I desire to take an exception to the District Attorney's statement of that fact to the jury. I think that the cases hold that that is a fact that cannot be brought out. I have a case here, if your Honor please, on that very question.

THE COURT: Well, the real object of the appointment of the commission is to determine whether a defendant is able to advise with counsel and go to trial. He can refer to that much of the report. They have decided that he is able to consult with counsel. In any event, the report of the commission would not be binding upon this

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jury; they have to decide the case according to the law.

MR. STRONG: Then I shall confine myself to the latter point, that the defendant was reported capable of advising with counsel, and is now before you for trial.

MR. FUCHS: I will ask your Honor for the benefit of an exception.

THE COURT: The reference to the fact that the court has decided that he is fit to go to trial -- that point has been decided merely to satisfy the conscience of the court. It is not at all binding on the jury.

MR. FUCHS: I understand, but the statement to the jury, it seems to me that this jury ought to go into this case absolutely free of any other previous finding.

THE COURT: Well, the court will so instruct them. He is merely giving a history of the procedure.

MR. FUCHS: I do not think it was competent, in my opinion.

THE COURT: I do not think it is competent to state the finding of the commission as to his sanity at the time of the commission of the act, but he has a right to explain why he is here, notwithstanding the claim that he is insane.

MR. FUCHS: Well, all I ask is that I have an exception to the District Attorney's remark.

THE COURT: I will ask the jury to disregard that

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statement, and the District Attorney not to make any further reference to it.

MR. FUCHS: Your Honor will give me the benefit of an exception. I appreciate your ruling and the exception is not to the ruling but to the remark of the District Attorney.

THE COURT: I will grant your motion, and direct the District Attorney to make no further reference to the commission.

MR. STRONG (Now continuing with his opening address):  
The defendant's sanity is now before you for final determination; that issue is going to be submitted to you, and proof given on both sides as to whether he was sane at the time of the commission of the act, and it is going to be for you to decide that question. And in examining the facts and the circumstances surrounding the killing of this Agnes Purcell, I wish you would look at all the facts and realize that with them in mind you are going to determine whether the defendant was sane or insane at the time of the commission of the act.

In order to examine the evidence intelligently on the subject of insanity, I shall tell you what the law in regard to a man's criminal responsibility is in this State. The law provides that if a man knew the nature and quality of the act that he was committing --

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MR. FUCHS: I think we can save time by this. I simply want to interpose an objection to the District Attorney instructing the jury on a question of law. It seems to me that the court --

THE COURT: Well, he has a right to express his opinion of the law.

MR. FUCHS: It is not an opinion, he is saying it is the law.

THE COURT: That is equivalent to saying "This is my opinion of the law." The jury will take the law from the court, if there is any difference of opinion, and find the facts for themselves from the evidence. That is their duty, in a nutshell.

MR. STRONG (Continuing with his opening to the jury): As I was saying, I am simply telling you what I understand the law to be in regard to a man's responsibility for his acts, and I am telling that to you so that you can examine the evidence, having that law as a guiding light in mind.

A man is responsible for his acts when he knows what he is doing, knows the nature and quality of the act he is doing, and when he knows that it is wrong. Those are the two elements that create responsibility in a human being. If he is so insane that he does not know the nature and quality of the act, or does not know that it is wrong, he is not responsible for his act. And that is the issue

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in this case. That is the law relating to the issue in this case.

Having explained to you the procedure through which the defendant is brought before you for trial, I will now proceed to give you a short narrative of the facts. My narrative will simply contain a brief outline of what the witnesses will prove in the case piecemeal, that is, as they take the stand, so that you may follow the evidence that they give and have a connected story of what we are getting at in your minds when the witnesses are being examined.

We will first prove to you that the deceased died as a result of wounds from a bullet discharged from a revolver; we will prove that by medical testimony. The second fact which we will prove will be that these pistol shot wounds were inflicted by the defendant, who was the father of the deceased. Third, we shall prove that the motive for killing the deceased, and his attempt to kill his wife, was jealousy against his wife and the suspicion that she had poisoned the mind of his daughter against him, or brought up his child to hate him. That is the motive in the case. Fourth, we shall prove that he knew what he was doing at that time and knew that it was wrong.

Purcell, the defendant, and his wife, were married for about thirteen years. Their daughter was about twelve years

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of age at the time that Purcell shot her. Two or three months before the commission of the crime Purcell found that his wife had been going up to visit or to dine with a lady and gentleman by the name of Mr. and Mrs. Delaro. Mrs. Delaro was Mrs. Purcell's sister and the defendant's sister-in-law, and Mr. Delaro was Mr. Purcell's brother-in-law.

She went up there quite frequently, of course, to her sister's house to dine, and Purcell found out that she was meeting a man by the name of Gus Neuse. He asked her about this Gus Neuse several times, and she told him that Gus Neuse was the manager, the office manager of Mr. Delaro's place of business at 500 Fifth Avenue.

On one occasion Purcell found a visiting card in his wife's pocketbook, and on that visiting card was a blurred number, but he could distinguish the numbers "45" on it, "Harlem." He looked up the name of Neuse in the 'phone book and found the name of Gus Neuse in the 'phone book, an optician, and the place of business up at 125th Street some place. He concluded that his wife had lied to him for some reason or other and that she was meeting a man by the name of Gus Neuse, an optician up in Harlem and had told him that he was an office manager for Delaro.

On another occasion she dropped some tooth paste in a

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little wrapper with the name of Lorber's Restaurant written on it out of her pocket book, and he picked it up and said, "Where did you get this? Have you been up to Lorber's? Whom did you meet up there?" She said she had gone up there to meet Neuse.

On another occasion he saw some black and blue marks on her body and asked her for an account of how she got those. He was not satisfied with her explanation of how she received them, and said that he thought it was very funny that she could get those black and blue marks on her.

On another occasion when she came back to his house from being up at Delaro's she resisted his attempts to have sexual intercourse with her, and he asked her what the trouble was. She said, Oh, that she was tired, that she had been up to her sister-in-law's helping her make dresses for some of her children. And then after he did actually have sexual intercourse with her, he said she seemed to be in great pain, and he came to the conclusion that what she was doing up there at Delaro's was improper, and that the relations with this Neuse were improper, and he became unnecessarily jealous of even her own daughter and consulted his lawyer to find out whether he could not put a stop to her relations with the Delaros and see whether he could not keep his child at home and prevent it from going up there to his sister-in-law's house.

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These were the foundations that we can prove for his jealousy of this Gus Neuse and his feeling against his wife and child.

When his counsel advised him that he had no just cause for preventing his wife and child from visiting their relatives, he goes over to Jersey and buys a revolver and forms his intention to clean up the whole family. His intention will be proved to you by letters which he wrote himself immediately before the commission of the crime, in which he indicates that he is about to kill his wife, that he is about to kill his daughter, and he is about to make away with himself.

We shall prove to you that the night before the commission of the crime (this crime was committed about half past six in the morning) -- the night before the commission of the crime he went to bed about 12 o'clock, that he did not sleep but pondered over the commission of this act. That about 4 o'clock in the morning he went into his wife's room after dressing himself, and woke her up and asked her about her relations with Neuse. She protested her innocence of any wrongdoing with Neuse and her fidelity to her husband. With that he takes out the revolver that he has bought and presses it against her mouth and says, "I have got the goods on you; you had better tell me the truth." She still said that she was faithful to him, and

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asked him to get her a glass of water -- to stave off this thing -- he had the revolver right there at her mouth. She asked him to get her a glass of water, and he did so.

He put back the revolver in his pocket and they sat down at the table and began to talk of other matters for about two hours. After that they began to hunt for some papers that he had written out in connection with some legal proceeding that he was interested in, and while his wife was looking for those papers in one of the rooms there in the apartment, he comes up close to her, behind her, and fires a shot at her head, and she drops.

The shot did not take effect, did not hit her. The powder grains went into her cheek. He thought he had killed her, and he went over to where his child was sleeping, and he will tell you -- or, as he says, in his own words, in a statement made very shortly after the commission of the crime. He says, "I went over and I fired a shot at my child." He was asked what part of the body he fired at and he said, "I just fired at the lump coming up underneath the bed clothes."

One shot at his wife and three at his child. He then went out of the apartment and later on went to the station house and gave himself up. After he had been in the station house about three hours, his statement was

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taken by myself.

In that statement, among other things, he told me that he had shot his wife in a fit of jealousy. He told me that he believed that the mind of his daughter had been poisoned against him. That the child had been brought up to hate him; that that was the reason for killing her. He told me he had bought the revolver intending to kill his wife and his child with it. He told me that he had murderous intentions when he bought the revolver. He told me that he was convinced of his wife's infidelity to him. He told me he knew what he was doing at the time he shot his wife, and at the time he shot his daughter, and that he intended to kill her.

I asked him whether he knew that it was wrong, the act that he was doing was wrong, and he said he did.

On those facts we will ask you to find that the defendant knew what he was doing at the time he committed the act, and we will ask you to find that he knew that it was wrong, and we will ask you for a verdict of guilty on the facts charged in the indictment.

THE FOURTH JUROR: Where was this crime committed?

MR. WASSERVOGEL: 221 West 18th Street.

MR. WASSERVOGEL (Continuing): By consent, the diagram of the premises wherein this crime was committed, is

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offered in evidence as People's Exhibit 1.

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

THE COURT: Is there anyone to explain the diagram to the jury?

MR. WASSERVOGEL: It will be explained to the jury by the witnesses on the stand, your Honor.

J O S E P H I V O R Y (Police Lieutenant, 18th Precinct), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You are a Lieutenant of Police? A Yes, sir.

Q How long have you been connected with the Police Department? A 37 years, going on 38.

Q On the morning of the 14th of February last year, were you on desk duty? A Yes, sir.

Q Where? A At the 18th Precinct Station House, at 221 and 223 West 17th Street.

Q While you were on desk duty, did you see this defendant, James Purcell? A Yes, sir.

Q Did he come into the station house? A Yes, sir.

Q Did he come in alone? A Yes, sir.

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

Q Tell us what he said and what you said, please. A I was writing at the desk when he came in about 6:45.

Q In the morning? A In the morning.

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And he stood in front of the desk and he took off his hat and he said his name was Purcell, that he was after shooting his wife and daughter; and I told him whatever he said might be used against him, that I was after sending a policeman around to his house. I got a telephone five minutes previous. I sent an officer around to the house and a detective -- got him out of bed, he was coming downstairs. I asked him if he was drunk, what the trouble was after that; he said, "No, but worse."

Q Anything further said? A I didn't say anything more to him. I told him to sit down in a chair at the end of the desk. I didn't have any more conversation with him until I found out -- oh, yes, he said that he thought the daughter was dead, but he did not think the wife was dead. So I did not say anything more to him, only put him sitting in a chair beside the desk where I was.

Q Did you have any other talk with him at all? A No, sir.

Q You said something about a telephone communication regarding this matter; when was that received? A About five minutes before he came into the house, from <sup>some</sup> outside person.

Q You don't know who that person was? A No.

Q Simply the report of the shooting? A No. They said there was a shooting at the Purcell apartment.

Q Well, you need not tell us that -- unless they want it.  
(now turning to defendant's counsel.)

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MR. FUCHS: No.

Q Did you send a man around to the apartment after that?

A Oh, yes, I sent Detective Martin, and Detective Lehane had gone previous to this.

CROSS EXAMINATION BY MR. FUCHS:

Q Purcell came in just voluntarily -- there was no officer or anybody else with him? A No, sir.

WILLIAM P. MARTIN (18th Precinct), called as a witness in behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q How long have you been connected with the Police Department? A Eight years.

Q Were you on duty on the morning of the 14th of February last year? A Yes, sir.

Q At the 18th Precinct Station House? A Yes, sir.

Q Were you ordered to go to the premises 221 West 18th Street by Lieutenant Ivory? A Yes, sir.

Q Did you go there? A Yes, sir.

Q To the apartment of the Purcells? A Yes, sir.

Q Did you go to the Purcells' apartment? A Yes, sir.

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

Q Did you see the defendant Purcell that morning? A Yes.

Q Where did you see him the first time? A In the station

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house.

Q Before you went over to the apartment? A Yes, sir.

Q At what time was that? A About 6:30, I think it was around that time.

Q Did you at that time have a conversation with him?

A Yes, sir.

Q What conversation did you have with him at that time?

A I asked him what the trouble was and he told me that he had shot his wife and daughter, and that I would find them in his apartment.

Q Well, did you go over to the apartment? A Yes, sir.

Q Was anything said by him about a gun? A He told me the gun was lying on the table in the dining room, that he had left it there.

Q Well, tell us all that. A And I went to the apartment on the sixth floor.

BY THE COURT:

Q What did he say to you? State all that he said to you.

A I asked him why he had shot his wife and daughter, and he said that his wife had been untrue to him and that she had turned his daughter against him; and I asked him if he had any evidence to support his suspicions and he said No, that he believed it from her actions. And I then went to the apartment and I found the gun and found his daughter lying in bed with three gunshot wounds, two in the breast and one in the

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right forearm.

BY MR. WASSERVOGEL:

Q Do you remember in which room you found the daughter?  
Look at this diagram (showing witness People's Exhibit 1)  
and see whether you can tell. A This room here (indicating  
on diagram.)

Q Next to the parlor? A On the bed, yes, sir.

MR. WASSERVOGEL (Showing and explaining People's Exhibit 1 to the jury): Gentlemen, here is the parlor of this apartment, and the bedroom is right next to it, and the officer says that it was in this bedroom that he found the child.

THE COURT: I suggest that you mark that.

MR. WASSERVOGEL: Yes, sir, I will have him mark it with an X.

THE COURT: Well, you had better make some mark for the jury to remember.

MR. WASSERVOGEL: I will mark it with an "A."

THE COURT: "A" is the bed in which the girl was found.

Q You say you found the gun too? A Yes, sir.

Q Where did you find it? A Lying on the dining room table.

Q He told you, I believe, that he left the gun there?

A Yes, sir.

Q Is this the gun (indicating a revolver)? You turned

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it over to the property clerk, I suppose, in the regular way?

A Yes, sir. That's it.

BY THE COURT:

Q You made a mark on it, did you? A Yes, sir, "J. P."

MR. WASSERVOGEL: I offer it in evidence as People's Exhibit 2.

(The revolver is received in evidence and marked People's Exhibit 2.)

Q In what condition was it when you found it? A There were four discharged shells and one loaded shell in it.

BY MR. WASSERVOGEL:

Q And you turned the shells in to the property clerk at the same time? (Indicating shells produced.) A Yes, sir.

MR. WASSERVOGEL: They are also offered in evidence, as People's Exhibit 3.

(The four empty shells and the one cartridge are received and marked in evidence as People's Exhibit 3.)

Q Did you examine the premises at all? A Yes, sir.

Q What examination did you make? A Why, I looked the whole apartment over and I found a discharged bullet in the wall -- in the parlor, I think it was, on the east wall.

Q Can you indicate on this diagram which wall you found the bullet imbedded in? A Yes, right over here (indicating on diagram People's Exhibit 1.)

Q Near the mantle? A Yes. A little bit to the left

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of the mantle.

Q Put a "B" there, heavy. A (Witness marks on diagram as requested.)

Q Is this the bullet you found imbedded there? (Indicating piece of lead.) A Yes, sir.

MR. WASSERVOGEL: May this be marked in evidence People's Exhibit 4?

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

BY THE COURT:

Q Was that in the woodwork or the plaster? A Plaster.

Q How far from the floor? A I imagine it was about five and one-half feet or six feet.

BY MR. WASSERVOGEL:

Q Did you have any talks with the defendant? A I had a talk with him later when I brought him from the Tombs to the Coroner's office.

Q And when was that? How long after this day, do you recall? A That was the day the inquest was held, I think. I am not just sure of the date. It was a couple of days later.

Q What was said at that time? A Why, he talked generally about the matter and wanted to know if I had seen his wife or any of the other --

Q What did he say about this crime? A He repeated practically the same things.

Q What did he say? A He said that he was jealous of his

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wife, and didn't have any foundation for his jealousy, and the child, the daughter, had taken a dislike to him and he felt that the dislike was prompted by his wife. And I asked him if he drank, and he said No. I asked him if he used any drugs, and he said No. I asked him if he had made up his mind to commit this act before that, and he said Yes, he had made up his mind some time prior to it, and that he had meant to kill her a couple of weeks before that, and he also said something about he was going to work the insanity gag.

Q What did he say about that? A He said he was playing off that he was insane in the Tombs and receiving wireless telegram messages and all that, and that he saw rats running around the cell, and was working that system.

Q Well, what did he say about that? A Well, that is what he said he was doing, that he was making the keepers believe he was getting wireless messages and seeing rats and things running about the cells.

Q That was on the day you took him to the Coroner's Court, that was February 21st, a week after? A Yes.

Q Did you have any other talk with him, that you remember?  
A Well, I talked with him. I was present when he was talking to Mr. Strong, he talked to me.

Q Well, Mr. Strong will testify to that. A Yes.

CROSS EXAMINATION BY MR. FUCHS:

Q You were the officer that arrested Purcell, weren't you?

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A Yes, sir.

Q And Purcell knew that? A Yes, sir.

Q And he told you that he was working some game about seeing rats? A Yes, sir.

Q When did he tell you that? I mean just at what point?

A On the way over from the Tomba. I went over to get him to bring him to the Coroner's office.

Q You testified at the Coroner's Court, didn't you? A I believe that I did, yes.

Q Don't you know? A Yes, I did.

Q Did you say anything in your testimony at the Coroner's Court about him telling you that? A I was not asked that.

Q So you thought that it was no use of your saying it because you were not asked? A No, sir.

Q Did you tell that to Mr. Strong that day? A I told him a day or two prior, I think it was.

BY THE COURT:

Q What do you mean by "prior"? A No, after the session, that is when I told him, after leaving the Coroner's Court I made a statement to him then.

BY MR. FUCHS:

Q Weren't you asked in the Coroner's Court to relate all conversations that you had with Purcell? A At the time, yes.

Q And was not this just that day? A Yes, sir.

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Q And still you did not say it? A I don't know whether I made that statement at the time or not. I made it to Mr. Strong a little while later.

Q How long later? A Why, that same day, I believe it was.

Q Are you sure about that? A I think so. I am not sure, no, not whether I made it then or not.

Q And a thing as important as that, where insanity is the defense of a man whose life is at stake, you were asked to state conversations at a Coroner's Court, and you come here now and say you did not say that, although you knew it at that time?

MR. WASSERVOGEL: The insanity had not been pleaded before the Coroner.

THE COURT: He may answer.

Q You were asked to state all conversations and you did not state that? A I don't know whether I was asked that question or not. I don't think that I was.

Q Was Mr. Strong there when you came up? A Yes, sir.

Q Did you have a talk with Mr. Strong? A Yes, sir.

Q Did you tell him then before this proceeding what Purcell had said to you on the way up? A I don't recall that I did, no.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q The statement that you did make to Mr. Strong was taken

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down by a stenographer, wasn't it? A Yes, sir.

MR. WASSERVOGEL: If you haven't any objection, I will offer the statement in evidence, as long as there is a question about it now.

BY MR. FUCHS:

Q You did not typewrite this statement, did you?

MR. WASSERVOGEL: Of course he did not.

Q When was this statement made? A I think that same day, the date of the inquest.

MR. FUCHS: This is not dated. If it was, I would have no objection to it.

MR. WASSERVOGEL: Do you object to the statement?

MR. FUCHS: There is no statement there.

MR. WASSERVOGEL: Mark it for identification.

(Marked for Identification People's Exhibit 5.)

Q Will you state positively now that you made that statement just handed to you by the District Attorney on the same day that the Coroner's hearing was had? A I won't say that positively, no.

Q Will you say whether it was within a week? A I think it was, yes, sir.

Q You think it was? A I am not sure of the date, no, sir. It is a matter of record.

Q However, you had seen Mr. Strong the morning that you went over there, just after the defendant is alleged to have

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said that to you and you said nothing to Mr. Strong? A I saw Mr. Strong in the Coroner's Court.

Q And you said nothing to him although you were calling the facts of this case to him? A I don't recall whether I did or not. I know I made a statement to him and I told him about it, and he asked me to come to the office, and I went to the office and he called a stenographer.

Q You took the stand and you were asked by Mr. Strong "Will you relate all the conversations you had with the defendant"?

THE COURT: There is not any evidence that he asked that question. If you have the minutes here you can point out what he was asked.

MR. FUCHS: Well, I ask him now.

THE COURT: Well, how can he remember?

THE WITNESS: I don't recall it.

THE COURT: It might have been conversations at the time of the arrest that he asked about. The jury must not speculate as to questions that might have been asked.

Q I show you this statement, which purports to be the minutes of the inquest held before Coroner Hellenstein on the 21st day of February, 1913, and ask you whether that was your statement then? A Yes, that is the substance of what I said.

THE COURT: You had better have that marked for

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identification as a paper shown to the witness.

MR. WASSERVOGEL: That is just a transcript of a very informal proceeding.

MR. FUCHS: I ask that that be marked for identification.

MR. WASSERVOGEL: No objection to it going in evidence.

MR. FUCHS: I consent that it go in evidence.

THE COURT: We do not want to burden the record.

The only use that can be made of other evidence, or statements made before the Coroner, is to let the jury see whether the witness made contradictory statements or not. You know the Coroner's Inquest amounts to nothing. The Coroner is just to ascertain the cause of death and whether a crime was committed, in his opinion, but his opinion amounts to nothing. The Grand Jury can disregard it and go right ahead, and the People are not bound by the manner in which his investigation is conducted.

MR. FUCHS: I understand that.

THE COURT: The Coroner might ignore every homicide case without any loss whatever to the community.

MR. FUCHS: This is important to ascertain on the question of veracity, whether this defendant --

THE COURT: If he makes different statements at any place, whether before a Coroner or before you, or in any conversation with anyone, it may be called to his attention now, so that he may have a chance to explain and so that

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the jury may determine whether he did make different statements or not.

MR. FUCHS: Well, that is the reason I asked that it be marked in evidence.

THE COURT: Well, if the People do not object, I will let it go in.

MR. WASSERVOGEL: No objection at all.

(Received in evidence and marked Defendant's Exhibit A.)

Q Under the rules of the Police Department you are required to keep a book, are you not? A Yes, sir.

Q Have you a book with the entries made in it on the day that this conversation took place? A Not of this particular conversation.

Q Will you let me see your book, please? A Yes, sir. There (indicating) is the start of it.

THE COURT: Before you go into that, I suggest if that other paper has been put in evidence, that it should be read to the jury.

MR. FUCHS: I intended to read it afterwards.

MR. WASSERVOGEL: Why not read it just now?

THE COURT: The proper time to read it is when it is first in the minds of the jury. While you are looking at that book, the District Attorney can read that paper.

MR. WASSERVOGEL (Reading Defendant's Exhibit A to the

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jury):

"Officer William P. Martin, Detective Bureau, assigned to the 18th precinct, sworn:

"I was assigned on February 14th, 1913 by Lieutenant Irving of the 18th precinct to investigate this case. I went into the reception room of the station house, and the defendant was there standing at the station house desk. I put my hands on his pockets, to see if he had a revolver or any other weapon, and I didn't find any. I asked him where his revolver was; and he said he had left it in the flat. I went to the apartment, 218 West 21st Street, and found the body of Agnes Purcell lying on a bed; she was a girl about twelve years of age. I see three gun shot wounds on her body. I found a revolver on the dining room table, where the defendant had told me it was. I opened the revolver, and it contained four empty shells and one loaded. I marked the revolver for identification, and placed it in my pocket unloaded.

"When I came back to the station house I had a conversation with the defendant; he was sitting over under the stairway. I went over and asked him what he had committed the crime for; and he told me that he had an idea that his wife had done wrong. I asked him why he had killed the child; and he said that his wife had turned the child against him. I asked him whether he had shot the child,

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and he said he had.

"I was present at the time the Coroner's Physician performed an autopsy on the body of the child, and I identified it as the body of the child I had seen in the apartment.

"Defendant James Purcell remanded to the City Prison to await the action of the Grand Jury."

BY MR. FUCHS:

Q When you made that statement before the Coroner's jury, you were not asked any other questions except what appears there, were you, and still you said, "I asked the defendant if he had shot his child, and he said 'Yes.' I asked the defendant so-and-so, and he said 'Yes,'" and you did not state this that I asked you about the defendant?

THE COURT: Well, it appears he did not state it, so what is the use of that? Now, you may ask why he did not, if you please. The jury, of course, will determine what he testified to and whether it contradicts the statements made here today or not.

MR. FUCHS: Or whether on a question of veracity it is consistent.

THE COURT: But it appears there that he was not asked anything about any conversation except that which he had with the defendant in the station house.

MR. FUCHS: And he was not asked anything --

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THE COURT: Well, put the District Attorney on trial then, for neglect of duty.

Q I show you your book and ask you whether there is a single mark in that book indicating that this defendant made any statement to you which you have just mentioned? A That particular statement is not in there, no.

Q And you are to keep that book to put in all important information which would help you in the determination of a criminal case? A I have put it on record before the District Attorney.

Q Answer that question. Under the rules of the Department, aren't you to insert in that book any remark or any statement by a defendant which is important in this case?

A No, not all remarks and all statements, no, sir, if there was a matter of record.

Q Important statements, are you to put them in? A We usually do, yes, sir.

Q Isn't it a rule of your department to do it? A Not that I know of, no, sir.

Q And yet you put in everything in relation to this defendant, there isn't one scintilla or anything in there by you which relates to this conversation? A On this particular statement, no. This is all on record by the --

Q I ask you if there is anything in that book. A No, sir.

THE COURT: He has said No repeatedly.

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RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q At that time the defense of insanity had not yet been interposed, had it? A No, sir.

Q And the whole proceeding in the Coroner's Court took how long, would you say? A About five minutes.

Q Mr. Fuchs was present, wasn't he? A Yes, sir.

Q Did he say anything on the subject of insanity at that time? A No, sir.

Q Not a word? A No, sir.

Q Did you find these letters in the apartment of the defendant? A On the dining room table, yes, sir.

MR. WASSERVOGEL: May they be marked for identification as one exhibit?

THE COURT: Well, you had better mark them as separate exhibits, I think.

(Marked for Identification People's Exhibits 6, 7, 8, 9 and 10.)

Q You were also one of the officers that identified the body to the Coroner's physician, Dr. Weston? A Yes.

RE-CROSS EXAMINATION BY MR. FUCHS:

Q You know how far after the 21st day of February that the question of insanity became one in issue, do you not? A I believe that it was just after the commission.

Q What do you say, you believed? A The only thing I knew about the defense was when I was notified by subpoena to

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appear before the insanity commission.

Q And you know the purpose of an insanity commission, don't you? A Yes, sir.

Q You are a police officer for eight years? A Yes.

THE COURT: Well, does he know? He may think he knows, but does he know?

MR. FUCHS: Well, he says he does know.

THE WITNESS: I have appeared before them before.

BY THE COURT:

Q Well, I know, but you don't know what they are for, do you? A No, not officially.

BY MR. FUCHS:

Q And although you then found out that insanity was the plea, you made no note in your book? A No, sir. I had it on some paper, another record of it.

Q With you? A No, sir, I haven't it with me.

Q Have you any notes her to show that you made any note of it, independent of the statement that you made here and that you made on that typewritten sheet? A No, sir.

Q And you say it is not one of the rules of the Department that all important information that you receive from a defendant should not be entered in any book? A Not when it is made a record of.

Q Is it one of the rules of the Police Department that it should not be entered in the book?

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THE COURT: Should be or should not be entered?

Q Well, I asked whether under the rules of the Department it should be entered. A I don't know of any particular rule that covers that.

Q And if there is such a rule you don't know about it? Is that it? A No, sir.

BY MR. WASSERVOGEL:

Q You did make a mental note of it and you told Mr. Strong about it? A Yes, sir, and I put it on paper and signed the statement.

BY MR. FUCHS:

Q You came down for several meetings of the commission, did you not? A Yes.

Q Did you ever tell any of the commissioners the fact? A I never was called.

Q Did you go to any of the commissioners? A I was in company with Mr. Strong, who had the statement in his pocket and on record.

Q And still you were never called? A No, sir. I was there on six or seven occasions.

Q But it was after the time you appeared before the Coroner, some time after that, that you first made that statement to Mr. Strong? A I think it was the same day.

Q And that was about receiving wireless messages? A Yes.

Q Do you know whether the defendant or anybody in his be-

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half ever claimed that he received wireless messages? A Not that I know of, no, sir.

A L B E R T T. W E S T O N (Coroner's physician),  
called as a witness in behalf of the people, being first  
— duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q How long have you been Coroner's physician in this  
county? A 25 years.

Q About how many autopsies have you performed during  
that time? A Five thousand.

MR. WASSERVOGEL: I suppose it will be conceded that  
the doctor is capable of testifying as to the cause of  
death?

MR. FUCHS: Yes.

Q Did you perform an autopsy on the body of Agnes Purcell?  
A I did.

Q Did you make a memorandum at the time you performed  
that autopsy? A I did.

Q I show you a piece of paper and ask you whether that is  
your memorandum? A This is a subsequent -- this is the in-  
quisition paper which was made subsequently.

Q But you made that memorandum yourself? A I did, yes,  
sir.

Q In your handwriting? A Yes, sir.

Q What date did you perform the autopsy on? A It was the

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day after the death, on the 15th, 15th of February, 1913.

Q Where was the body at the time you performed the autopsy? A At the Morgue at the foot of East 26th Street.

Q Was anybody present there to identify the body to you?

A There was.

Q Who was it? A Mr. Martin, who was a relative, and two police officers.

Q You say Detective Martin? A No, he is a relative, an uncle of the deceased, I believe.

Q Do you know their names? A The officers'?

Q Yes. A Lehane and Delaro.

Q Did you see officer Martin, who was just on the stand here, at the Morgue? A I did, yes, sir.

Q He identified the body to you? A He did.

Q And he had with him a relative of the deceased, is that right? A Yes, sir.

Q Do you remember their names? Does it show from your memorandum? A The relative, I think the relative was Delaro and the officer was Martin and Lehane.

Q And you don't know what relationship Delaro bore to the deceased, do you?

THE COURT: Well, that is not important.

Q What wounds did you find on the body?

BY THE COURT:

Q Do you testify from memory, or do you want that paper

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to refresh your memory? A I will testify from my recollection of the case.

BY MR. STRONG:

Q What wounds did you find on the body? A Two pistol shot wounds of the breast.

Q How many, do you remember? A There were two.

Q You say there were two pistol -- A Two penetrating pistol shot wounds.

BY THE COURT:

Q Any other wound? A A wound in the arm.

BY MR. STRONG:

Q Did you find the bullets? A I did.

Q Just describe to the jury the condition of the body as you found it? A In what way?

Q Well, the nature of the wounds and the course of the bullets, as far as you recollect? Through what vital organs did the bullets pass? A Passed through the chest, through the lungs, and one bullet passed through the great vessels of the heart.

Q One of the bullets passed through the great vessels of the heart and the other through the lungs? A Through the lungs.

Q And can you give your opinion as to the cause of death? Can you say what it was? A It was from a penetrating pistol shot wound of the breast.

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Q Did you find the bullets? A My impression is the bullets passed completely through the body and passed out.

(No cross-examination.)

MRS. MARY PURCELL (500 Third Avenue), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You are the wife of the defendant? A Yes, sir.

Q You are living at present with your mother, are you not? A Yes.

Q At what address? A 500 Third Avenue.

Q When and where were you married to this defendant?

A September 5th, 1900, in the Church of the Redemptress, 3rd Street.

Q This city? A Yes, sir.

Q Agnes was your daughter, the daughter of the defendant?

A Yes, sir.

Q How old was she when she died? A 12 years and 2 months.

Q At the time of her death, where were you living?

A 218 West 21st Street.

Q How long had you been living there? A From the Saturday previous.

Q Only a few days? A Yes.

Q What day of the week did this happen, do you remember?

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A Friday; the following Friday.

Q Can you tell us what conversation, if any, you had with the defendant during the night before this occurrence? A Before the accident happened?

Q Yes, before this happened. A Well, do you mean the night before, when he went to bed?

Q The night before. A Well, we went to bed; there wasn't any disagreement of any kind.

Q You went to bed with the defendant? A Yes.

Q And occupied the same bed with him, did you? A I did.

Q During the night did he have any talk with you at all, at any time? A Well, after we went to bed we talked for a little while.

Q That is what I want to know. What talk did you have with him? A I don't remember.

Q Well, did you go to sleep there during the night?  
A Yes.

Q Did he wake you up at any time? A He woke me up towards morning.

Q About what time would you say in the morning? A I should judge around 4 o'clock.

Q At that time when he woke you up did he have a talk with you then? A Yes, he told me to say my prayers, and I asked him why, and he said he was going to kill me. I asked him

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what for.

Q Go on, talk up. A I asked him what was the reason.

Q Don't be backward; please tell us everything that he said. A And he said I had been going out with some man in Harlem by the name of Neuse, an optician. I told him I didn't know the man, I never heard of him. He knew that I did know a man by the name of Neuse that worked for my brother-in-law, and I told him if he would wait till the next day -- I asked him what the man by the name of Neuse, what he looked like, and he said he was a short man with a heavy jaw, or something to that effect; and I said the man I knew was a thin, young man and that I had only met him a few times at my sister's home, and if he would wait until the morning he could see and prove to his satisfaction that I didn't know any other but this young man. I didn't know the optician in Harlem.

Q This particular Neuse you knew or were acquainted with was employed by your brother-in-law, Mr. Delaro? A Yes, sir.

Q And Mr. Delaro's business at that time was what? A Electrical Inspection and Rebate Company, 500 Fifth Avenue.

Q What other talk did you have with him then? What did he say? A Well, I told him, I begged him to let me live, I told him I had never done anything wrong, and he said I had been out in taxicabs with this man several times, and he knew himself that I had never been away from home at the time.

Q Had you at any time been intimate with this man?

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A Never.

Q You had not? A Never.

Q Did you on that occasion see this revolver, People's Exhibit 2 in evidence? A Why, it was a white revolver.

Q The revolver he showed you then? A It looked white to me, I thought it was white -- nickel.

Q Well, what did he say about the revolver? A He didn't say anything about the revolver. He held his hand on my throat and held the revolver against my breast.

Q And did he take it away from your breast after a while?

A Yes. I begged him to let me get a drink of water. At first he refused, and finally he decided to let me get the drink of water, but he wouldn't let me go outside. He put the gun into his pocket. I went into the dining room and he went and got the water for me. He wouldn't permit me to go outside, because it was near the door. Then I sat in the dining room and he brought the water to me.

Q Where was your daughter Agnes at that time? A In her bed room.

Q Where was your bed room? A This was her bed room (indicating on diagram, People's Exhibit 1.)

Q Which? A This, next to the parlor.

Q And your bed room was next to Agnes' bed room? A Yes. He had the door locked between these two. He locked it the night before.

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MR. WASSERVOGEL: The room indicated by the witness will be marked "C," Mr. Fuchs.

Q You say the door between your bed room and Agnes' bed room was locked that night? A Yes, he locked it the night before when he was playing with the little one.

Q Did you go back to bed? A No.

Q You remained up? A Yes, I remained up.

Q Tell us what happened after that. A He said that I had sold some of his papers to the police, had sold some of his testimony to the police, and I told him I didn't even see them. I saw him folding them and putting them in his pocket, but I had not seen any more of them. So when he wanted them I went to my little Agnes' bed room, to the dresser, to look for them.

Q You looked where? A I went to the dresser and looked in the drawer for the papers, and the little girl woke up and asked me what I was looking for. I told her I was looking for her papa's papers and I asked her if she destroyed any. She said No, she didn't even destroy her home work, because her father told her to be careful about the papers around the house. So I told her to go back to bed, and I walked from the dresser into the parlor mantel where there was a magazine, and I picked it up to see if the papers were in the magazine, and he called out then did I get it, and I said No, and with that he fired the first shot. It went over my head, and the shot went into my face, into my skin.

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Q You mean the powder? A Yes.

Q Are there any of those marks on your face now? A Yes.  
That one (indicating) is the most prominent.

Q Just show the powder mark.

MR. FUCHS: I object to that and ask an exception.

Objection overruled. Exception.

(Witness steps down from the stand and advances to  
various parts of the jury box and exhibits her face to the  
jurors.)

Q That is about a year ago, isn't it? A Eleven months  
today.

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Q Were any of the powder grains removed, do you know?

A Yes, quite a few came out.

Q How many shots passed you, your head? A One.

Q What happened next? A Well, I fell to the floor and -- I didn't quite fall -- and I jumped up and I thought the next shot he meant for himself, but he seemed to jump from where he was standing --

Q Don't say what you thought.

MR. FUCHS: Objected to.

BY THE COURT:

Q Did you say anything when this shot was fired? A No, I did not. My little girl screamed.

Q You fell to the floor? A Yes.

Q Then the next thing you know you heard another shot?

A Yes.

Q Where was that shot, do you know? A No. I didn't see it, I heard it.

Q Well, did it come from him, do you know? A It came from the side of where I was running out.

BY MR. WASSERVOGEL:

Q Did it come from the same direction from where the first shot came? A No. He jumped from the place where he shot at me in towards the little girl's bedroom.

Q Did the report of the gun seem to come from her bedroom?

A Yes, sir.

Q Where were you then? A I was going -- passing the

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table in the dining room.

Q Where did you go to? A Then I walked out in the hall and as I went out in the hall I heard another shot.

Q Where did you go to? A I went down stairs.

Q Where to? A To the Janitor's apartment.

Q And made a report of this, did you? A Yes.

Q Did you hear the little girl scream at all as these shots were fired? A She screamed when the shot was fired at me.

Q Did you have a conversation with the defendant regarding your daughter prior to this occasion? A Through the night I asked him to let me live, to let me take care of my little girl and he said she would be taken care of.

Q I mean before that, did he ever have a talk with you about her conduct? A No, never.

Q Toward him or anything like that? A No.

Q Do you remember an occasion when he spoke to you about Lorber's Restaurant? A Yes.

Q How long prior to that was this? A He asked me through the night was I ever up to Lorber's.

Q That is, that same night? A Yes.

Q Tell us that. A He asked me when I had been there and I told him I had never been there.

CROSS EXAMINATION BY MR. FUCHS:

Q He was doing his lessons that evening with the little girl before this thing happened? A Yes, sir.

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Q And when you went to bed there was nothing disagreeable at all? A Nothing.

Q And when you ran out, you ran out feeling that he would not hurt the child, didn't you? A Yes.

Q Or you would not have run? A Yes.

Q His accusations as to this optician at 125th Street, they have absolutely no foundation, have they? A Absolutely none.

Q And his statement about your sister, there was no foundation, so far as you know, as to your sister? A None.

Q Your sister is married? A Yes.

Q And lives with her husband? A She does.

Q At 147th Street? A Yes.

Q At the Buckingham Palace? A Yes.

Q At the time that he had you in that position with the revolver, when he said that he would take care of the child, did he mention anything about Heaven, or anything of that sort? A No. He said that if I didn't commit the crimes that he accused me of that I would be an angel in Heaven. I told him I didn't want to be an angel in Heaven, I wanted to take care of my little girl.

Q He told you you would be an angel in Heaven? A Yes.

THERON R. STRONG, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

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DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You are one of the assistants to the District Attorney?

A I am.

Q And on February 14th of last year you were in charge of the Homicide Bureau, I believe? A I was, yes.

Q And in the performance of your duties, did you go to the 18th Precinct Station House on the morning of the 14th of February? A Yes.

Q At about what hour? A It was quite early. I had been called up. I think I got there about half past eight o'clock or nine.

Q Did you see the defendant, James Purcell? A Yes.

Q He was under arrest at that time? A Yes, he was there in the station house.

Q Did you have a conversation with him? A Yes.

Q Tell his Honor and the gentlemen exactly what was said, as near as you can recall, at any rate? A After we sat down at a table, with a stenographer there, I said, "Purcell, I am one of the Assistant District Attorneys. At the present time you are under arrest charged with having shot your daughter, Agnes Purcell. Any statement that you make to me can be used against you, and you do not have to say anything to me unless you want to."

I then asked him where he lived and he told me. I said, "How long have you been married?" He said, "Thirteen

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years." I asked him how old his daughter was. He said. Twelve years. I asked him what the trouble was and he said, "I don't know whether it was imaginary or real" -- "imaginary or not," I think he said. And I said, "What was it"? And he said he believed that his wife had been unfaithful to him, and I asked him to tell me about it, and he said he had gone to bed about 12 o'clock that night, and that he did not sleep and that he had been worried; he got up and he told his wife that he had the goods on her -- or, he talked about her relations with a man by the name of Gus Neuse, and she denied that there was anything wrong between them. And then he said that he took out a gun and had threatened her with it and she insisted that she was faithful to him, and asked for a glass of water, and that he got the glass of water, and then they talked together for about two hours, and that he had missed some papers that he had written out in answer to certain accusations made against him by the newspapers and he was looking for those papers and could not find them. He asked his wife about them, and that when he asked her about them she was in, I think, the sitting room of the apartment, and he took out his revolver and fired a shot at her, and after he fired the shot at her he went into his child's room and fired a shot at her.

And I said, "At what part of the body"? and he said, "I fired at the lump as it was coming up from underneath the

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clothes."

I said, "What did you want to shoot at your wife for?" and he said, "Oh, it was a fit of jealousy, I suppose. I thought she was unfaithful to me."

I said, "What did you want to shoot at your child for, and what did you want to kill her for?" and he said, "I thought her mind had been poisoned against me. The child had been brought up to hate me."

I asked him whether he knew that it was wrong to kill this child at the time he did it, and he said he did.

I asked him where he got the revolver and he said he got it over in Jersey at a pawnshop on Grove Street; and he told me how he had gotten over to the pawnshop.

I asked him also about his personal history, whether he had had any serious diseases. He said he had had pneumonia twice, I think, or three times. I asked him whether he had had any other diseases, and he said he had acquired syphilis about eight years ago, after he was married, and he told me that he had had some operations performed for the removal of a rib --

BY MR. FUCHS:

Q You do not mean that, do you? A I mean just what I said.

Q Oh, I beg your pardon. A Some operation for the removal of a rib. He had had some trouble with his nose on

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account of that disease also. He told me that he communicated it to his wife.

I asked him what the basis for his conclusion was, that his wife was unfaithful to him, asked him to give me all his reasons for believing her unfaithful, and then he related how he had learned that she had met this man Neuse up at the Delaros', and he had asked her what business Neuse was in, and Mrs. Purcell told the defendant that Neuse was the manager of her brother-in-law's office, Delaro's office, at 500 Fifth Avenue. That he had found a card -- one day a card dropped out of her pocketbook, and on that card was written "45" in blurred numbers, "Harlem," and he looked up Neuse in the 'phone book and found out that there was a Neuse, a Gus Neuse, in the 'phone book, number "4554 Harlem," at 125th Street. So he thought that was very funny that she should tell him that Neuse was Delaro's office manager, when, in fact, he was an optician up in Harlem that she had been going with.

And then on another occasion he said that these Lorber's tooth picks had dropped out on the floor out of her pocket book, and when he asked her about those he said she denied that she had been up there with anybody, at first, and finally she said she had been up there with Neuse.

On another occasion he said that she came home from the Delaros and he attempted to have intercourse with her when they went to bed -- put his hand on her private and she resisted it,

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and said he thought that was funny; said she was in great pain after they had had intercourse that night, and he thought that was very peculiar, and the next morning asked her about it and she explained it and said she was tired, because she had been sewing for a long time up at the Delaros. He said he thought that was funny, because to go up there and help Mrs. Delaro sew, when he did not like to have her go up there at all -- that he had forbidden her from going up there.

He also told me that he had consulted his lawyer to see whether he could not prevent his wife and child from going up to the Delaros, because he thought they had a bad influence on his wife, and his lawyer told him that he could not prevent them, because they were relatives of his wife's, and respectable people. He said he thought that was all right and made friends with the Delaros again himself.

He also mentioned the fact that on one occasion he noticed that she had black and blue marks on her body, and he asked her about them and she told him that she had got them by hitting into some boxes at Franklin Simon's Company, where she was working, and he said he thought that was rather funny and didn't think much of the explanation.

I asked him why he thought his child's mind had been poisoned against him -- or, there was another matter that he told me about his reasons for his feeling toward his wife. He said that one time she sang a song in the apartment, "You

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Will be Sorry Just Too Late," and he asked her what that meant, and she said, "Oh, nothing, but anyway you cannot say that I never told you about it." And I asked him what that meant to him. "Well," he said, he thought that perhaps it meant that she was going to take the child away and go away and live home herself.

Then I asked him about his reason for suspecting the child's mind had been poisoned against him, and he said on one occasion a woman came up to his child on the street and asked how her father was, and she said, "I don't know how father is; go up and ask him;" and he said "Whenever I go up to her she turns away from me and does not show affection towards me."

BY MR. WASSERVOGEL:

Q Was there anything said about his having appeared as a witness for the Curran Committee a few days before the commission of this crime? A Oh, yes. I asked him about his occupation. He said that he had been a professional gambler for a number of years in this city, and that he had tried to give up the gambling business, but he did not get along well, and in April of 1913, I believe it was, he said he went out to California to take up the gambling business again.

Q April, 1912? A April, 1912. That's right. He went out to California to take up the gambling business there,

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and that his wife and child went to live with the wife's mother.

He stayed out there, I think, until September, 1912, and then came back to New York. When he got back to New York he took a room for himself, his wife and child still living with the wife's mother. He said he used to see his wife and child about, well, every Wednesday and Saturday at his room -- they would come over there and visit him.

When he got back to New York here -- or, he came back to New York for the purpose of assisting in the investigations which were then being conducted against graft in the Police Department, I believe it was; he was to be a witness before the Curran Committee and he was employed by the Society for the Prevention of Crime, receiving \$15 a week from them, and that was his employment on the day that this homicide was committed.

There was something said by a man by the name of Cruise and some other man whose name I have now forgotten, that he had some grievance against or that he knew something about, and he had written out a memorandum of what he was going to say about them, and those were the papers that he had left in his apartment and had lost and that he asked his wife about and that his wife was looking for just at the time she was shot at.

That is about all I remember of that conversation at

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the present time.

Q And was it with reference to these matters that he said he had testified before the Curran Committee? A Yes, he said he testified before the Curran Committee for about two hours on one occasion, and some newspaper article appeared about it, and he was going to make answer to it.

Q Was that the memorandum that he made that he was looking for on this occasion of the homicide? A Yes, that was the memorandum.

THE COURT: Gentlemen of the jury, the court will take a recess until quarter after two. Meanwhile, be very careful not to discuss this case among yourselves, nor with anyone else, and you must keep your minds open on the question of the guilt or innocence of the defendant until you hear all that is to be said on both sides. You must not make up your minds on that until the case is submitted to you by the court.

Recess till a quarter past two.

(Recess till 2:15 P. M.)

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AFTER RECESS  
Trail resumed.

THE RON R. STRONG, resumes the stand and further  
testifies:

DIRECT EXAMINATION BY MR. WASSERVOGEL: (CONTINUED)

Q You know Officer William P. Martin, one of the witnesses who testified this morning? A I do.

Q Do you recall his having made a statement to you after the Coroner's inquest? A Yes. It was some time immediately after the inquest.

BY THE COURT:

Q The same day, you mean? A I believe it was the same day, that he came right over after he had taken the defendant back to the Tombs.

BY MR. WASSERVOGEL:

Q And this People's Exhibit 5, for identification, is this the statement he made at that time? A That is the statement, yes.

MR. WASSERVOGEL: I will offer it if you do not object.

MR. FUCHS: Let him read it.

MR. WASSERVOGEL: By consent it is read in evidence.

THE COURT: Let the record show.

THE WITNESS: (Reading the paper just referred to.)

"The People of the State of New York against James Purcell..

Officer William P. Martin says that on the twenty-first day of February 1913, he went over to take the defendant

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from the Tombs to the Coroner's Court, and the defendant said he was playing the insanity gag and was stalling them and telling them that he was receiving wireless messages. He asked me to do what I could for him. He also asked me how his wife felt about the case and if she was very sore about it. I told him she certainly was. He said that he thought she would be all right in a little while and would come around all right.

MR. WASSERVOGEL: Cross-examine, Mr. Fuchs.

CROSS EXAMINATION BY MR. FUCHS:

Q You are not sure that that was taken that very day, are you? A I am not positive about it, but the stenographer can tell you though, that took it.

THE COURT: Of course, the jury understand that those statements are not proper evidence against the defendant, and they would not have been received except by consent of defendant's counsel, and they are received merely to rebut the inference which defendant's counsel has sought to make by his cross-examination, that the statements were not made at that time.

Q Who was the stenographer who took it? A Nathan Burchell.

Q Will you see that he is here some time today? A I believe he is at Police Headquarters at the present time.

Q Well, he will be here? A I left word for him to come

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down and let me know the exact date that that was taken.

Q And he will have a way of ascertaining the date of this? There is nothing on here showing the date? A No, there is not.

Q You were present at the commission's hearing? A Yes.

Q Was there ever any testimony introduced there on behalf of the defendant, or by any of the doctors or anybody else that testified, saying anything about receiving wireless messages, to your knowledge? A I believe that there was some testimony introduced by the defendant or by one of the witnesses, stating that he had -- that there was some electricity over in the Tombs. I don't remember just the nature of the testimony.

Q You have the minutes. I wish that you would point out any one word in the entire testimony taken before that commission about wireless messages, if you can.

MR. WASSERVOGEL: I object to the question.

THE COURT: Well, that whole line is going too far. The only reason why this was received, why I did not exclude it, notwithstanding your consent to receive it, was to rebut any inference that might be drawn from the failure of this witness Martin to tell that story at the Coroner's Inquest. You asked him about that. Now, a failure to make an answer to a question which is not put is no contradiction. Do you understand? The jury will decide

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this case on the evidence given before it now; but it is proper on cross-examination, as I said this morning, to call the attention of a witness to any statement which differs from or appears to contradict the statement made here in court, and then it is a question for the jury to determine whether there is a contradiction or not and how much weight they will give that contradiction in determining the credibility of the witness. Do you understand?

MR. FUCHS: My proposition, your Honor, is simply this --

THE COURT: I know, but when you depart from the proper rules you are apt to go too far. Now, I think you are going too far.

MR. FUCHS: Am I going too far when I ask a witness who says he thinks there was some testimony about some electrical wires --

THE COURT: Well, it is not material whether it was ever said before the commission or not. The witness Martin did not control the commission, he could not go and testify. I don't think he testified at all.

MR. WASSERVOGEL: No, sir, he was not a witness.

MR. FUCHS: My point is that this occasion happened immediately --

THE COURT: Your point is entirely too speculative. You can let the fact go in evidence that Martin did not

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testify before the commission.

MR. WASSERVOGEL: That is conceded.

MR. FUCHS: That is not my point. My point is that there was not one bit of testimony shown that this witness had ever said anything about receiving wireless messages.

THE COURT: Then you may open up the speculation as to whether or not that was not rejected on some other plan deemed a better one. Don't you see, you will have endless speculation?

MR. FUCHS: I simply don't want to begin this proceeding with any innuendo that there was anything done here to manufacture anything.

THE COURT: Well, there has been none.

MR. FUCHS: I think that the statement of the officer creates an impression on this jury which I am allowed to overcome.

THE COURT: I have allowed you to overcome it by cross-examining him.

MR. FUCHS: Now I ask Mr. Strong whether there is one scintilla of evidence in that entire proceeding which is consistent with any such pretense?

THE COURT: Well, that is calling for his conclusion. We do not care for his opinion. The jury must determine whether there is any contradiction or not.

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That is the point I have been trying to make clear to you.

MR. FUCHS: I think I appreciate your Honor's point, but my point is simply this, --

THE COURT: You may ask him if Mr. Martin testified before the commission, to his knowledge.

MR. FUCHS: Mr. Martin has already testified he did not.

Q Has anybody testified -- if you have read the minutes, can you point out any bit of testimony before that commission where the defendant claims to have received wireless messages?

MR. WASSERVOGEL: I object to that.

THE COURT: Where any witness testified?

MR. FUCHS: Yes.

A I do not believe I can, because I have not read them.

Q Well, will you read them?

MR. WASSERVOGEL: It will take two or three hours to read these minutes. I object to the question. 254 pages.

THE COURT: Well, he said he cannot point it out, that he has not read the minutes.

Q You were present at several of the hearings, were you not? A Yes, but then I left for my vacation and somebody else took it up.

Q At any time you were present, was any such statement as that made on behalf of that defendant? A It was my recollection that something had been said about that, but I

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might be mistaken in that regard.

Q As to the question as to whether Martin told you that on the 21st of February, you are not sure about that?

A Yes, my recollection is clear that he did tell me about it right after the inquest.

Q You don't know whether it was the same day or not?

A The same day or the day following; at least within the week.

Q Within a week? A Surely.

Q When you spoke to Purcell it was a few hours after the commission of this crime, was it not? A I think it was within three hours, yes.

Q Did he impress you then as believing what he told you?

A Why, yes.

Q So that when you spoke to him his statements to you impressed you as being the truth, at least, that Purcell believed that what he was telling you was the truth? A Yes, he talked just the way anybody would talk.

Q Well, you believed he thought he was telling the truth? A Yes, I supposed so.

Q And there was no indication, as far as you know, that there was anything that he said that was not spontaneous, and that he did not say just exactly like a man who was sitting down to tell you any other story, as you just said?

A Why, he answered my questions promptly. I knew nothing,

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about the man.

Q In answer to the question about accusations of newspapers, as a matter of fact, that complaint was in answer to certain witnesses who appeared on the Curran Committee after he did, wasn't that the fact? A That was the fact. Mike Cruise and somebody else.

Q And a man named Creeden? A Yes, sir, that was the man.

Q And these papers he was searching for that night, he had made certain accusations, as I understand, against these men at the Curran Committee, accusing them of something?

A Well, I don't know what he did before the Curran Committee.

Q Didn't you question him about that? Didn't it come about that he was a witness for Assistant District Attorney Moss before the Curran Committee? A Yes.

Q Within a few days of this act? A That's it, yes.

Q And that these papers which he accused his wife of selling to the police consisted of an answer to certain witnesses who denied his accusations? A I think that was the substance of it.

Q And those papers, were they found? A Some papers were found relating to that subject, I believe, in his apartment.

Q So that his wife, therefore, did not sell them to the police? A No.

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Q As far as you know? A No.

THE COURT: You can ask his wife about that.

MR. FUCHS: Well, Mr. Strong, if he knows, I think might answer.

THE COURT: It is only hearsay, any knowledge he may have about it.

BY THE COURT:

Q You were not present at any time she sold anything to the police, were you? A No.

Q You never saw her? A No, sir.

BY MR. FUCHS:

Q Have you got those letters? A The statements are here.

Q So that you actually knew then that they were not in the possession of the police? A Well, all I knew is they were found in his apartment after the commission of the crime.

BY THE COURT:

Q Did you find them? A No, sir.

Q You didn't even know they were found? A Well, that is hearsay. I heard about it.

THE COURT: Just remember you must try this case by proper evidence. I will not allow any more hearsay. We must finish the case.

BY MR. FUCHS:

Q Who gave you those papers? A I believe they were mailed to me by Mr. Delaro, that same relative.

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Q His brother-in-law? A He mailed them.

BY THE COURT:

Q You received them by mail, did you? A I believe I did, yes, sir.

Q And there was a letter with them purporting to come from someone, is that it? A There was no letter with them. They were just addressed to me.

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MR. WASSERVOGEL: The five letters found in the defendant's apartment and marked People's Exhibits 6 to 10, inclusive, for identification, are now offered in evidence and you (turning to Mr. Fuchs) concede they were in the handwriting of the defendant.

MR. FUCHS: Yes.

(Received in evidence and marked in evidence People's Exhibits 6, 7, 8, 9 and 10.)

MR. WASSERVOGEL: Exhibit 6 is a letter to B. B. Delaro, who is a brother-in-law of the defendant. Is that correct?

MR. FUCHS: Yes.

MR. WASSERVOGEL: Exhibit 7 is a letter addressed to the District Attorney. Exhibit 8 is a letter addressed to Maggie Delaro, a sister-in-law of the defendant. Exhibit 9 is a letter addressed to Tammany Hall. Exhibit 10 is a letter addressed to Eugene McArdle, a brother-in-law of the defendant's, and a brother of his wife.

The letter addressed to the brother-in-law (People's Exhibit 6, reads as follows: (Mr. Wasservogel now reading)

"Feby 14/13

"Dear sir:

"When I called you on the telephone, you insisted your house was respectable. I knew that could not be possible.

"My wife told me that the man Gus Heuse whom she met

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in your house was your Manager and you verified it, when in fact he is an optical manufacturer in 33 W. 125<sup>th</sup> St. and has been taking your wife sister to restaurants and Hotels lately. After supposedly leaving your house she has come in to me with a number of black and blue marks on her arms and legs, and after leaving your house as it were last tuesday night she came home minus her hair barrett, which she did not recover till she went back after it the next day, and on her return home Wednesday night, placed it under our library table, and telling our child to look under the table for her barrett, laughingly declared that "You cant fool your Uncle Dudley."

"I only went to your house to verify my suspicions, when she returned here Tuesday Eve after leaving you 'Whore' House she was fucked sore and silly.

"Because you and your wife cant forget your past, it is your aim to force your conditions on others. I will save the child at least from certain ruin through your association.

"I told her five or six years ago that if I ever found her in the company of you or your wife I would brake her legs.

"I will save her soul.

Purcell."

The letter addressed to the District Attorney, (People's Exhibit 7) is as follows: (Mr. Wasservogel now

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reading:

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"To the Dist. Atty.

"This pair B. B. and Maggie Delaro met in the Haymarket and have for a hobby, the collection of female graft.

"I had an answer to Britton and Cruise written out, it is missing. I suspect my wife who gave some hint of beating it on the ground of nervousness due to my exposure, which nervousness was evidently manufactured at the Buckingham Palace.

Purcell."

MR. WASSERVOGEL: I prefer to have the jury read Exhibit 8, rather than that I should read it.

THE COURT: It has to be read, I suppose.

MR. WASSERVOGEL: (Now reading People's Exhibit 8)

"Feby 14"/13

"Maggie Delaro,

"I said you were a "whore". I apologize; such a person wouldnt take her sister in her house and let her get fucked in a bath tub.

Purcell."

The letter addressed to Tammany Hall (People's Exhibit 9) is as follows: (Mr. Wasservogel now reading:)

"Much obliged."

The letter addressed to Mr. Eugene McArdle (People's Exhibit No. 10 ) is as follows: (Mr. Wasservogel now

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reading!

Dear Sir:

Before I married Mamie (as you may have suspected at the time) I had been intimate with Maggie, consequently, when we started housekeeping in East 30<sup>th</sup> St, and Maggie visited us occasionally, Mamie asked my permission to allow Maggie to meet a young man at our house, as I was in doubt about the young man I refused, later Mamie wanted to have Maggie stay all night at our house and I insisted on getting your mother's permission, these incidents created some ill feeling against me on Maggie's part, as I refused to give Mamie any explanation, not wishing to tell her I knew her sister was wayward. On another occasion when Maggie stayed at the house, Mamie on arising went to the grocer, telling Maggie deliberately to come into the bed where the child and I were sleeping, to mind the baby, saying "Go in and lay down by the baby till I return, I came to the conclusion that this was not all well, and took advantage of the first opportunity to tell Maggie to remain away from the house, as often as Mamie would ask me why I was against her sister, I have not told her to this day.

"This feeling has been existing for years and at the time of the Dewey celebration I gave Mamie three tickets for seats in the stand at Madison Square and called at your mother's house to take Agnes, Mamie and your Mother.

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Mamie steadfastly refused to permit me to escort them over after explaining that there was a big crowd and it would be necessary to pass them through.

"I let them go alone but could not understand the reason why she refused to let me take them, and on their return, I asked them who they were with, as Martin Campbell and his family were there she supposed I knew and told me she met Maggie and her Husband, this gave me the impression that an appointment, was the reason that she had refused to let me take them over and we had some trouble. Later we agreed that Maggie should be permitted to come to see her, and as you know that she has made herself disagreeable in your house, she acted the same in mine and I told Mamie to tell her to call when I would be out, this continued the ill feeling and as I never told Mamie the real cause of our disagreement and the fact that she was telling Mamie anything disagreeable about me she could, made Mamie think I was unreasonable. Mamie has been visiting her for some time and although I had forgot any feeling against her and encouraged her to go and see her sister, she never let me know where she was going, on account of the suspicious manner of her actions I opened her pocketbook a few months ago and found a telephone number in it 4554 Harlem. I found this was the telephone number of August Neuse a manufacturer of optical appliances,

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she went pretty careful for awhile and I went to your house one night she thought I was at school and found her out, waited for her, and after telling me a few different stories, admitted being up to Maggie's. I said it was alright but could not understand the reason for the secrecy.

"I was still in doubt, and called up Maggie's Husband to find if she was there. He said she was, then as you know the child was hurried out Christmas, while I thought she should have been with us I charged her with being up there and as you know there was more trouble, when I called up Maggie's Husband He told me that the house was respectable and there was no need for secrecy. In the meantime I had this Neuse shadowed, and found that while I was waiting for Mamie in the house she was out with him, and some times when she was understood to be with me she was with him. I patched up the row after I discovered that this Neuse went up to Maggie's house, in order to make certain it was the same man. I asked Mamie if any men went up to Maggie's house and she said she met a man named Gus Neuse up there last fall, but he had not visited the place since.

"On last Saturday night this "Neuse" was in 38" St. to meet her again but getting suspicious he didn't go near her. I had a man from the Dist. Atty office with me who seen him, and Mamie although she had a flat of her own made

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some excuse that she would not be in immediately after business. On last Tuesday Evening, her usual night to go up to Maggie's, I asked her if there was to be any one up there and she said she did not know, on her return she said Gus Neuse was up there. By the way when I asked her a month ago who Gus Neuse was she said he was Ben's office Manager and when I visited Maggie's house Mamie had Ben verify the fact that this Gus Neuse was his manager although I went personally to his place and seen in his working clothes at 33 West 125<sup>th</sup> St.

"About a month ago Mamie had black and blue marks over her arms and legs but explained that she knocked herself against boxes, last Tuesday night when she returned home and went to bed, she seemed to be in terrible pain and exhausted, evidently from intercourses, as when I insisted on going near her she nearly screamed with pain.

"She also has a new black and blue mark on the back of her left leg.

"This is the kind of a joint Maggie runs.

"I address this to you in some justification to myself, not wishing your Mother to know the facts.

James Purcell."

MR. WASSERVOGEL: May I show this last letter to the

jury so they can see the handwriting?

THE COURT: Yes.

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(People's Exhibit 10 now handed to and passed around among the jurors.)

THE THIRD JUROR: Were these written all at the same time?

MR. WASSERVOGEL: Yes, sir.

MR. FUCHS: The understanding is that they were written five or six hours, or four or five hours before the commission of this crime.

THE COURT: But all written at the same time?

MR. FUCHS: Yes, sir--one right after the other, yes, sir.

MR. WASSERVOGEL: The People rest, your Honor.

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OPENING ADDRESS OF MR. FUCHS TO THE JURY IN BEHALF OF  
THE DEFENDANT.

MR. FUCHS: If your Honor please, and Gentlemen of the Jury: As intimated at the examination of you Gentlemen the defense is going to try to show that Purcell, who has been in the gambling business, began life in the ordinary way as an East Side boy, and that at a very early age, however, he became a boxer, a prize fighter, and in that connection was in certain company of boys who were not of the best in the City. That for a period he was in the Catholic Protectory and that the boxing game led him into the gambling line and he became a gambler and acquired a lot of money in that business, and for quite some time, at the time of his marriage and some time subsequent to that time, he was very well to do.

About a year ago, or maybe a little longer than that, Purcell lost all the money he had. In the meantime he had started in the saloon business and gave that up. So that he found himself absolutely broke, and he went to California a short time before the commission of this crime. While in California he tried to go to work in various things. He had been a man of great means, but he took a position there as dishwasher and was discharged from that because he was not competent. He became an agent for Collier's Weekly, and he lost that position. He became, I believe, a bartender and that only lasted a day or a half

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a day. So while out there he wrote certain letters to certain men here about the gambling situation and about the conspiracies that existed in the Police Department, and so forth, with the result that he was sent for here by some representative of the District Attorney's office and received \$115, I think, to come back.

He came back here to New York and then was engaged by the Society for the Suppression of Vice, to see what he could tell them about conditions. He accused some dozen or fifteen men of various things and gave his testimony to Mr. Moss, who was endeavoring to have him show other men where these various places were.

During that time (and this is important, because it was just previous to the commission of this crime) he was in the custody of some men who were called District Attorney men, but who were connected with the Society for the Suppression of Vice, and they took him around.

Just previous to this crime he was fearful that there were certain gangs, called, as I remember, the Gas House gang, going to do him certain injuries. He asked men whether he could get a license to carry a pistol, and whatever work he was in he always harped and spoke about this one thing, his wife, the infidelity of his wife.

He took this man who was assigned to him as an official, or on semi-official duty, trying to get gambling

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evidence and other things (which, by the way, they never got), he simply saying that he would not give up any gamblers, that he was against the Police Force and against this conspiracy, so he refused absolutely to the counsel for the Society and to the men to give any evidence against his old comrades, whom he said were trying to earn a living.

He then went with these people and asked this one man who was with him, Barthelson, to go and get into a taxicab with him and trail his wife. They did all of this trailing, with the usual result that there was absolutely no foundation for his suspicions. His wife, apparently, while he was in California, took a position and worked ten hours a day, showing, as we contend, that she was a decent woman and a faithful wife.

So far as the child is concerned we will show you that if there was any human being on earth that this defendant cared for and loved it was this child.

Before this crime was ever committed (and I want to say to you Gentlemen that it seemed an indication of our goodfaith to ask you to believe our theory of the case not on what happened subsequently--although we have evidence of that--but we ask you to take into consideration such evidence that there was no chance of being manufactured that existed previous to the commission of this crime, to prove our theory of this defendant's state of mind, being broke, and earning \$15 a week which he got

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from the Society for the Suppression of Vice, he went to a number of lawyers and tried to retain those lawyers to get the custody of that child. Offered to pay them money to get the custody of that child by habeas corpus proceedings on the ground that the people she was with were not the proper people to bring up that child, that her soul was being ruined, and that something had to be done to save it. He accused everybody. He accused his mother-in-law, whom he said in one statement which he wrote out two weeks before this crime was committed, was a bad woman, that she was a bad woman because the husband came up there one day and found sand in the bed--and made a number of statements, one after another, all before this thing.

He was told, of course, that he could not receive the child, that his wife was a decent woman, that she was working. But still laboring under this idea of his, that his wife was not-faithful, he went to other lawyers, which we will show and did not succeed in getting the child. We contend that the letters that he wrote just previous to the crime are very important. We consented, if the District Attorney did not put them in, that we would. We ask you to look at those letters and we ask you to judge this defendant upon any one statement he made, because we contend that his state of mind is such that he could not consistently make any one definite statement and

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stick to it. You will find that he gave five different reasons for the commission of this crime; and I ask you to take the reason that he stated before he committed the crime, and not after the crime, which seemed significant, and we will show that in that state of mind, not one of jealousy, but one of acting under a delusion not only that there were conspiracies against him, but that his wife was his enemy, that she was trying to deceive him, trying to sell and give his enemies his possessions, his papers which he was trying to help the State with--we ask you to take into consideration the fact that he appeared before the Curran Committee as a reformer; that a short time before this though he had been in the gambling business all his life; he had joined the Y. M. C. A., on his return from California. We will show you that everything he did just previous to this crime was not the normal act of a normal man, and when he committed this crime he was under a delusion: that his wife was against him, that everybody was against him, that his wife was unfaithful, that she was trying to do certain things, and we ask you to take those facts and put them together with what actually happened and then see whether the experts who testify are correct or incorrect.

We will produce experts who have examined him on a number of occasions, made physical examinations and we will ask you to take that testimony in the fair light of

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business men, of men who can weigh things, and unless an expert has a good reason disregard it.

Now, on the proposition of expert testimony we simply want to say, by way of introducing it, that I shall call all of the experts whether they are the experts retained by me--this man, as I tried to show towards the end of the time was broke, he had no money when he committed this crime, therefore he had the benefit of just one expert who was retained by the Society for him. The District Attorney retained an expert, and the Court, Judge Malone, retained an expert. Therefore, we have the expert engaged by the Court, the expert engaged by the District Attorney, an expert engaged by the Commission, and an expert engaged by me (a volunteer expert) and an expert engaged by the Society for the Suppression of Vice.

I will show you that the four experts outside of my own testified to this man's mental condition, and as you will see, they all give reasons and practically said that he was of unsound mind then, and they believed he is of unsound mind now.

Some experts testified, they will show you, that he is improving some.

My position is this: this defendant, if he is acquitted on the ground of insanity, would have to go to an asylum. If you find that he was insane then and insane

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now I cannot help it; he would have to go to an asylum, if he is not a safe man to have around New York. If you find, however, that he was insane at the time and sane now of course it is your duty to convict him, but I want to be fair with the jury, I want to give you everything, give you his acts before and after, so that you can determine. I am going to endeavor to call the very experts that were called by the District Attorney, and, as I stated, my own expert is the only expert who had some qualification as to the soundness of his mind. I am going to produce him here and he will say that in his opinion the man is of unsound mind, but that he knew the nature and quality of his act, but that he was acting under a delusion: knew that he had a gun--knew, maybe, in his own peculiar manner--and also knew that the act was wrong, but that he was not responsible. He did not have the ability to know the consequences of the act. So that I am going to lay before this jury everything that we can whether the person giving it was engaged by me or by anybody else. I am going to show that he had a disease and that that disease may have something to do with the act itself, or with his condition of mind and body, and that he had that disease for some time, and that some of the doctors believe that that disease is a progressive disease; and that it enfeebles the mind.

I am going to show that his statements, his exami-

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nations, where he seemed alert, and where his answers were given promptly, that they are confident in their belief that that is a part of his disease and that it is recognized so in every institution of insanity in the United States-- that those are earmarks of the very disease that he is suffering from, and still he cannot explain. He can sit down with you and tell you something that happened twenty years ago and still when he gets on the very point of the delusion he is unsound on that.

I will call Dr. Thompson. I might just say that so far as the verdict that we ask for on behalf of the defendant is concerned, when we get through with this case will under any circumstances be not guilty, either on the ground of insanity--and if he is found not guilty on the ground of insanity he will be sent to an institution. If you find he is of unsound mind and not able to take care of himself now I shall ask you to acquit him, but I shall ask you to be the entire judges of that.

GEORGE W. THOMPSON (142 East 30th street)  
called as a witness in behalf of defendant, being first duly affirmed, testifies as follows:

DIRECT EXAMINATION BY MR. FUCHS:

Q You are a physician? A Yes, sir.

Q Your office is at 132 East 30th street? A Yes, sir.

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Q Do you know the defendant? A I do.

Q How long have you known him? A I have known him eleven or twelve years.

Q During the week or previous to the week of February 14th, 1913, did you see the defendant? A Previous to 1913, yes.

Q Now, you remember the day of the commission of this act? A I do.

Q How soon before that did you see him and where? A Why, I think I saw him four or five days previous to that. I can't just recall just the day.

Q And at the time that you saw him did you have any conversation with him? A I did, yes.

Q Do you recall any of the conversations that you had with him? A Why, I can recall some of the things that we talked about, yes.

Q Before we get to that, you treated the defendant for certain diseases, did you not? A I did.

Q How long ago? A About 1904 and 1905. I treated him for pneumonia and pleurisy, and then in 1906 I treated him for syphilis.

Q As a result of that disease, Doctor, at some subsequent time to that did you perform an operation on him? A I did, yes.

Q What was that operation? A That operation was the resection of his ribs for tertiary syphilis, for gumma, which caused necrosis of the ribs.

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Q Was the operation made necessary by his disease? A The operation was a necessity on account of the effects of the disease.

Q Coming down to the time that you say you had a talk with him, can you remember the talk that you had with him at that time? A In a general way, yes.

Q Will you let us have that conversation, if you remember it? A It will be necessary for me to state that after he came back from the West that he took up a course in the Young Men's Christian Association of accountants, or something of that kind and he would always talk about that whenever he came in, about his success in his lessons, and so forth there, and seemed to become quite enthusiastic in that kind of work; and he also seemed to be somewhat enthusiastic that he had changed his course of life. That conversation was--

Q What date was that? When about was this? Several months before the commission-- A This was after he came back and always when he would come in after he came back from San Francisco and took up this course.

Q That was in 1912 and 1913? A That was 1912; the latter part of 1912.

Q During this time did he speak to you about his wife? A very often he would speak about his wife.

Q You state what he said in reference to that? A He always spoke in rather endearing terms of his wife, and in particular of his child.

Q Towards the four or five days previous to the commission

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19 of this act did you have any conversation with him? A I did.

Q And what was that conversation, if you remember? A I remember a conversation, the last conversation I had with him was over the phone.

Q What was that about? A He wanted to borrow some money.

Q Was there anything said there or done there that called to your attention particularly? A Yes.

Q What was it? A When he wanted to borrow the money I told him yes, and he seemed to be somewhat surprised to think that-- evidently by the way he muttered over the phone, that I would let him have the five dollars that he wanted, which I thought was rather peculiar at the time, because I don't think he ever asked me for any money.

MR. WASSERVOGEL: May we not have simply the conversations and let the jury judge?

MR. FUCHS: I consent to strike it out.

Q Let us have any conversation you had with him? A He called me up and asked me if I would lend him \$5. I told him yes. He says, "Wi-wi-wi-will you?" He said this in a surprised tone.

THE COURT: Leave out "In a surprised tone". Just say what he said, please.

A (Witness continuing) He says, "I won't come up after it, but I will send my brother Pete", and I says, "All right." He says, "Maybe you don't know which one I mean?" I says, "The brother that has been associated with you so much?" "No", he

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says, "I mean the chauffeur, do you remember him?", and I says, "No, I don't remember him", and I did not at the time. Then he came to my mind who it was. He says "I will send him up", and I says, "All right", and I let him have it. He sent him up and I let him have it.

Q When did you see him after that? A I saw him the day that he committed the crime. He sent for me.

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

Q Did he say anything to you then? A Yes, we had a conversation.

Q You had known him intimately, more or less? A Very intimately as a family physician would know his family.

Q I ask you, from the fourth or fifth day previous to this crime, and on the day of this crime, when you saw him, whether his actions, his conduct impressed you as different from his usual conduct? A A good deal different from what he usually would meet me.

Q Will you state to the court, tell the court on what you base that? A He seemed to be morose, seemed to be cast down, morose.

Q Was that so previous to the commission of the crime? A That was the time that I saw him in the Tombs.

Q And did he talk to you? A I did.

Q Can you remember the conversation? A Why, I can remember some of it. I can't remember it all in detail.

Q Well, will you let us have just what part that you remember?

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A That would be my conversation with him and his replies?

Q Yes. A I said to him, I says to him, "Jim, what in the world did you do this for?" I says, "To put everybody that is acquainted with you and your friends in a position where they cannot help you," or "in a hole", I said "Why did you do it?" He didn't make any particular or definite reply to that and seemed to drop his head like as though meditating in relation to it, and he said to me, well, he says, "It is done", like that, and the conversation ran in that way. He did not to show any great--

BY THE COURT:

Q Tell us something that he said. You are asked for a conversation, Doctor, and that means-- A Well, that was principally my conversation, Judge, just what I have stated in that reply, and his reply back in that manner.

BY MR. FUCHS:

Q Did you ask him at the time whether you could have his consent to speak of his particular disease to the District Attorney? A At that time particularly of his disease? A Yes.

Q Yes. A In the Tomba?

Q Yes. A No.

Q Didn't you ask him whether you could have his consent to testify? A That was at another time.

Q When was that, doctor? A Why, that must have been three or four weeks after the crime was committed. You have got the record of it because I went before the Assistant District

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Attorney Strong, and I told him the circumstances.

THE COURT: Just answer his questions, please.

Q Then at that time did you ask the defendant to give you his consent to speak to the District Attorney in reference to his particular disease? A I asked that the second time I saw him in the Tombs. At the second time I saw him in the Tombs I spoke to him. I says, "Now, the District Attorney has called me down to his office and he will want to know all about you." Now, I says, "I want you to consent to tell him about your sickness, about your disease, and so forth", and I drew up a little-- a few lines for him to sign, giving his consent.

Q Did he sign that? A He would not sign it.

Q And you had known him a good many years?

THE COURT: He has testified to that before.

Q Did you observe his actions on that day? A Why, yes, I observed his action on that day.

Q And from the actions that you observed will you state whether those actions to you seemed rational or irrational?

A I couldn't say that they were exactly irrational, no, I couldn't say that; and I couldn't say that they showed any great judgment exerted in relation to the matter.

Q Well, Doctor, the purpose of my calling you is to ask you to give a history of his constitution, his disease, and have you stated all the things you had found the matter with Purcell during your knowledge? A During the time that I have treated him.

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Q During your knowledge of him? A I know he has suffered from the effects of that disease very much. It undermined his health very much.

Q And how often did he have other illnesses, that you know of? A How often had he other illnesses, within your knowledge?

A He never has been a well man, never has been a well man. He has been a debilitated, run-down man, from the effects of his disease, or vocation, combined.

Q You knew of his occupation or vocation? A Yes, I know of it from general reputation and from my treatment.

Q Has he ever been cured of syphilis? A I don't believe that he ever has. That is my belief.

Q When was your last examination? A 1912. I could limit the date of that probably, right on my books.

Q How long have you been a physician? A Since 1885.

Q And practicing here? A Yes.

Q Do you consider that this disease of syphilis that he has is a progressive disease? A Undoubtedly it is, if it is not cured.

Q Did he speak to you about his child? A Yes, he spoke to me about his child.

THE COURT: At what time? Q About the month of February, 1913, before the commission of the crime? A Before the crime, yes. He spoke about his child several times--a good many times.

Q Do you recall any part of the conversation? A I do.

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Q Will you state whether in that conversation that there was anything said about the child which was detrimental to the child in every way? A Well, yes, there was.

Q What was it? A He said that he wanted the child to come up right, that he didn't want the child to associate with his wife's sister, and that on a Christmas Eve he went home and his daughter was away from him, and he thought it was rather strange, and afterwards he found that the child was up with the wife's sister, and it seemed to affect him a good deal, he commented upon it, that she was not there to greet him on a Christmas Eve, and he seemed to --- and he always talked about the welfare of his child, and in fact of his family.

Q Did he show feeling for the child?

Objected to. Objection sustained.

(Question withdrawn.)

Q State the conversation? A Yes, that is a conversation he had of expressing his good-will for his child, for the bringing of her up, and having her come up as she should be, and also about his family in every way.

Q Did he say anything to you in reference to the child being contaminated by outside influences? A By association.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You are not a specialist on nervous diseases or diseases of the mind? A No, sir, I am not.

Q You are a general practitioner? A I am a general practitioner.

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Q And you have known this defendant, I understand, since 1904? A How long have I known the defendant?

Q Yes. A I have known the defendant some eleven or twelve years.

Q Did you know him prior to his marriage? A Yes, sir, I knew him well. I knew him as a family physician and a patient.

Q Did you know him prior to his marriage? A No, no.

Q Did you know him prior to the birth of that child? A No.

Q How old about was the child when you first made his acquaintance, do you know? A Why, I don't think she could have been more than three or four years old.

Q And since that time you have been his friend? A Yes, sir, I have been his friend.

Q And you have met him frequently? A Frequently.

Q And it was on other occasions also that you loaned money to him, didn't you? A I have loaned money to him, I have.

Q So that it was nothing new for him to ring you up on this particular occasions when you offered to lend him five dollars? A Not at all, except I was surprised.

Q You were his friend and he knew he could come to you whenever he needed it? A And I had it, I would lend it to him.

Q Now, you say you saw the defendant a few days before the commission of this act by him? A I did, yes.

Q Did you see him at your office on that occasion? A Yes.

Q Did you treat him for this syphilitic condition? A No, I did not.

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Q When was it that you first observed that he had syphilis?

A It was about 1906. I could give you those dates if they were important. I can get them for you.

Q And he told you, didn't he, that he had communicated that disease to his wife? A He didn't say anything of the kind.

MR. FUCHS: I object to that.

THE COURT: Well, he has answered it.

MR. FUCHS: Exception.

A (Witness continuing) He came to me to be treated for the disease.

THE COURT: You brought out the part about the syphilis.

MR. FUCHS: I do not think it is a fair question.

THE COURT: I will allow it. We want all the conversations.

MR. FUCHS: Exception.

THE COURT: The answer is that he did not.

Q But subsequently the wife came to you as a patient, also, didn't she?

Objected to. Objection sustained.

MR. WASSERVOGEL: May I ask him whether the wife was ever his patient?

THE COURT: I think that is immaterial.

Q You continued to treat him for this syphilitic condition until when? A I treated him for that.

Q Until when? A I treated him for pneumonia and pleurisy.

Q No, I am talking about the syphilis? A I treated him in

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1906.

Q Until when? A Until long after he was operated upon.

Q You don't know when he was operated on? A I have told you 1909.

Q Well, I am asking the questions now because these gentlemen want to know. A I will tell it as many times as you want.

Q I don't want to ask you questions unnecessarily. A Oh, that is all right. I am here as your witness.

Q When did you hear for the first time of this shooting? A In the morning that it took place I read it in the paper. Wait, one moment. No, I heard it when I was on Second avenue, before I had read about it in the paper, that he had committed the crime.

Q On the occasion four or five days before this shooting, when he was at your office, did he say anything to you about his suspicions regarding his wife, that she was unfaithful to him, or anything about that? A No, he did not, not about her being unfaithful to him.

Q Never said anything about that to you? A Not about her being unfaithful to him, no.

Q You told Mr. Fuchs that on the occasion when you saw him in the Tomb he appeared different to you than when you saw him prior to the shooting, that he appeared morose? A Morose, and seemed to be morose and somewhat sullen.

Q Didn't you consider it natural for a man to be morose who had shot his own child? A Well--

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Q Did you consider that natural? A I should consider that so, yes.

Q You never considered this man to be insane prior to the occurrence of February 14th, did you? A Never considered him what?

Q Insane, or that his mind was unbalanced? A Well, I did consider that he was erratic. He was an egotist.

Q Answer my question. A What is it?

Q (Question repeated by stenographer as follows:) You never considered this man to be insane prior to the occurrence of February 14th, did you? A No, I couldn't say that I did, insane.

Q And when you were a witness before the commission that examined this defendant you were asked, "During the time you were treating the defendant, did you believe that his mind was unbalanced?", and you gave the answer, "No, I did not." That is correct, is it? A Well, I gave it to you now. Isn't that correct?

MR. WASSERVOGEL: That's all.

RE-DIRECT EXAMINATION BY MR. FUCHS:

Q When did you come to the conclusion that his mind was unbalanced?

THE COURT: He has not said so?

MR. FUCHS: Well, I mean if he did.

MR. WASSERVOGEL: I object to the form of his question, of course.

Q Do you believe that the defendant is of sound or unsound

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mind?

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Objected to. Objection sustained.

THE COURT: You have not qualified him as an expert.

MR. FUCHS: I do not intend to, but the district Attorney has opened the door as to his belief.

THE COURT: Well, I will sustain the objection to the question.

Q On the day that you saw him, the conversation that you had with, that you say took place four or five days, or three or four days before the occurrence, you said that you were not surprised at the loan-- at the request for that loan? A I was not surprised, no.

Q But was his manner of approaching you his normal manner?

A He seemed to be surprised by his answer that I would loan him, which made it to me somewhat surprising that he should be surprised.

Q On the day that you saw him in the Tombs, the day of the shooting, did you believe that he was of normal mind? A I do not consider that he was normal, I do not say so.

MR. WASSERVOGEL: Just a minute.

THE COURT: Objection sustained.

Q When the district Attorney asked you about your testimony before the Commission, what definite time did you mean when you stated there that he was of sound mind?

THE COURT: He said he had never considered him unbalanced.

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Q Well, when you stated you never considered him unbalanced when did that ---

BY THE COURT:

Q To what time did that refer? A That I believed he became unbalanced?

THE COURT: No.

BY MR. FUCHS:

Q What time did it occur that you considered him of unsound mind? A After the crime was committed, and I considered from the previous actions of the man that it amounted to insanity.

THE COURT: Strike that out as not responsive.

BY THE COURT:

Q To what time did you refer when you said that you never had considered him a man of unbalanced mind? A After the crime.

Q You always considered him normal until you heard he killed his child? A I never considered him what you would call an absolutely normal mind, an absolutely normal mind.

Q The question is what time did you have in mind when you made that answer that he was normal? A That says unsound.

Q What time did that refer to? A That time refers to his entire life since I have known him, almost.

BY MR. FUCHS:

Q You distinguish then between unsound and the normal mind, do you? A I consider an absolute difference between an unsound mind and a normal mind, and if you will allow me to make this expression--

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THE COURT: I will exclude that. His opinion is entirely immaterial. You have not qualified him as an expert.

MR. FUCHS: I do not intend to, your Honor.

THE COURT: Well, do not waste our time. You can ask that question as to the time that the opinion was formed, if you like.

Q Will you state what his physical condition was at about the 14th of February, 1913? A Very bad, very poor, far below a normal condition.

HUGO BARTHELSON, called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

(The witness states his address to be 50 Union Square).

DIRECT EXAMINATION BY MR. FUCHS:

Q What is your occupation? A I am a stenographer.

Q Where are you employed? A Society for the Prevention of Crime.

Q Do you know the defendant? A I do.

Q How long have you known him? A Over a year.

BY THE COURT:

Q How much longer than a year? A Well, I really only knew him about a year ago.

Q What do you mean by about a year ago -- eleven months or nine months? A I never spoke to him, although I had seen him previously. I probably spoke to him about a year and two months ago.

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BY MR. FUCHS:

Q So that you knew him in about the month of December, 1912 and January, 1913? A Yes, sir.

Q Were you with the defendant at any time approximately previous to the 14th day of February, 1913? A Yes, sir.

Q Do you know what days that you were with him? A Well, I was with him on the 7th day of February, which was a Friday. I met him at 150, at the corner of 23rd street and Eighth avenue. I took him down to the Criminal Courts Building, to Mr. Moss's office, and from Mr. Moss's office I accompanied the defendant and Mr. Moss to the Aldermanic Chamber where the Curran Committee was in session. The defendant gave some testimony there, and after that I was with him for probably two days; Not at night, though.

BY THE COURT:

Q That was the first time you met him? A No, sir.

Q You had met him previously to that? A Yes, sir, in the office of the Society.

BY MR. FUCHS:

Q In other words he was in your charge, as it were, during those days from the 7th, 8th and 9th of February? A Yes, sir.

Q Did that continue anytime after the 9th? A Well, I saw him-- the last time I saw him was on the evening of the 10th.

Q About what month? A About February, 1913.

Q At the time that you were with the defendant was it necessary or was it required of you, in your official duties, or semi-official duties to make notes of the various things

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that happened in connection with the defendant? A Each morning I made out a set of movements, and in those movements I set forth where I had been with the defendant.

Q And have you those movements with you at this time? A No, sir.

Q Did you make any other note of those movements? A On the morning after the defendant was reported to have murdered his daughter I made out a statement of those movements, of the movements from the time I met him previous to his testifying before the Aldermanic Committee until the last time I had seen him and been with him.

Q Was that report based on your notes? A Yes, sir.

Q Have you that with you? A Yes, sir.

Q Will you refer to it, please?

THE COURT: He has not stated he need refer to it yet.

MR. WASSERVOGEL: Please exhaust his recollection first.

THE COURT: He has answered every question you have asked him so far.

Q Can you state exactly what happened from the 7th of February, to the evening of the 10th?

THE COURT: What do you mean, what happened?

MR. FUCHS: To the defendant. I mean conversations you had with him, any actions you saw him do?

Q Now, will you state whether you can refer to that, without looking at that paper? A Well, I remember them quite

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well, without referring to this.

Q Well, let us have that? A After the defendant had testified before the Aldermanic Committee he accompanied me to the office of the Society for the prevention of Crime, at 50 Union Square. When he reached the office he walked up and down the office, and after we left the office I accompanied him to a laundry and from the laundry to a room which he had at 208 West 21st street. After that I brought him to my home and when he came to my home he asked me if I would go over and bring a note to his wife at 504 Third avenue. I brought the note to his wife and she accompanied me over to my home. I then after they had been at my home until probably ten or half past ten accompanied them to I think 21st street where I left them. The following morning I met Mr. Purcell at 950. I went with him to his room and later to an express office. His talk was always in connection with somebody doing him bodily harm. He spoke--

Q State what he said? A He spoke about the Gas House gang. He also said that there was no limit to what certain people would do in order to harm and injure him. I brought him back to his room, and then he asked me to go over to 504 Third avenue, and bring his daughter over.

Q These reason you went on these errands and left him at home, what was the reason of that?

Objected to. Objection sustained.

BY THE COURT:

Q You had him in your custody as a witness, didn't you?

A I had him in my custody because he showed a desire to have

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somebody with him continually.

Q He had not finished his testimony, had he? A Yes, sir.

Q Had he been cross examined? A No cross examination, no, sir.

Q So that the Committee was finished with him? A Yes, sir.

Q And he wanted you to be with him? A Yes, sir.

Q He was afraid? A Yes, sir.

BY MR. FUCHS:

Q Had you some authority in law? A No, sir.

Q You were an agent or something connected with this Society?

A Yes, sir. He also asked me if I had a gun with me, and he also expressed a desire to get a license to carry a gun.

Q When he said that, what did he say in connection with that-- anything? A He was always talking about the people who were going to injure him and do him bodily harm. I went over that saturday morning, which was the 8th, and brought his daughter over to his room at 208 or 210 West 21st street, and he had rented an apartment at 218.

I helped him move some of his baggage over there, and his daughter also helped him. After a while he showed me a pawn-ticket for five dollars, and he requested me to come out and get a suit of clothes which he had in pawn. I went over to Ninth avenue and got this suit of clothes out of pawn for him. When I came back he was in a highly nervous state.

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

THE COURT: Strike it out and the jury will disregard the statement.

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MR. FUGHS: Consented to.

A (Witness continuing) He was walking up and down the rooms of his apartment and put his hands to his head, and he spoke about some certain telephone message which he had received. He said that he had received word over the telephone that certain people connected with Mr. Michael Cruise was going to try and reach his wife on her way home from work.

Q Do you know who Michael Cruise was?

THE COURT: How is that material?

Q Go ahead. A He then suggested that we take a taxicab and go to 38th street and Eighth avenue and wait until his wife came out of the employee's entrance of Franklin Simons & Company. I told him I couldn't see any necessity of hiring a taxicab, I thought we could just ride there in the car and wait. He insisted on hiring a taxicab, so we got a taxicab at Herald Square and rode there.

Q What day was this? A This was on Saturday, February the 8th. We drove across from the employees' entrance on 38th street, west of Eighth avenue, of Franklin Simons & Company, and we were both seated in the taxicab. He said "Now, when my wife comes out I want you to follow her", and he says, "Be careful and see that nobody harms her in any way." And he says, "Also watch her and notice if anybody is following her, or speaks to her", and he says, "I will follow along in the taxicab after you", and he said, "If I should lose you I will meet you here at 36th street, just east of 51 xth avenue on 36th street."

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I saw his wife leave the place and I followed her home. Nobody spoke to her or met her or said anything to her.

Q Did you tell the defendant that? A I did. When I got to 36th street, just east of Sixth avenue, I saw a taxicab there and I went over and looked in the taxicab and I saw Mr. Purcell sitting in it. He was asleep. I gave him a nudge and he says, "Come on, we will drive down home." I said "What is the use of wasting money on taxicabs? We will take a car." So I went home with him.

I then went over to his wife's residence again and brought her over to the new apartment which they had rented in the Allaire, at I believe 218, and then I left them and went home.

The following morning I went around there and took him to church in 23rd street between Tenth and Eleventh avenues on the uptown side. I didn't see anything of him until the following Monday evening when I went over to meet him and he said that he wanted to go out, he says this being kept in was killing him, and he said he didn't care where he would go. So I walked him over to the office at 50 Union Square, and he said "There is absolutely no use of my going out and trying to get work, nobody will have me."

And after I took him to the office I stayed there a while and he said "Come on, let us go in some saloon." I said "What do you want to go in saloons for?" Well, he said, "I have not been out and I am accustomed to it, and I must

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have it." So I stopped in a few saloons and the defendant had some drinks of milk, and then I brought him back to his home. He insisted upon me staying with him for a while, and while I was there he asked me again, he says, "Can't you get me a license to carry a gun?" I said, "You are better off without a gun." I says, "There is no necessity for your having a gun. Nobody will harm you." He said, "Yes, they are after me every minute", and he said "They will get me."

Q Are you down to the 10th now? A That is the 10th. I left him then and that was the last time that I saw him.

Q Previous to that had you any social relationship with him. I mean, you didn't know him outside of work? A No, sir.

Q And your only knowledge of him, or his knowledge of you, was just your being in charge of him those few days? A Those few days.

Q When he testified before the Curran Committee he testified accusing certain men of certain acts, did he not? A Yes, sir.

Q Did he say to you who they were when he said "They would get me"? A He at times referred to the Gas House gang. He told me I didn't know how bad they were, and at other times he said, "they". I didn't know whom he referred to.

Q And before he came back from California and came in contact with your office you never knew him? A No, sir.

Q And from the day you left him on the 10th up to this time you have never seen him since? A No, sir.

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**CROSS EXAMINATION BY MR. WASSERVOGEL:**

Q When was it that he testified before the Curran Committee?

A He testified on Friday afternoon, February the 7th.

Q And the fact that he had testified and had made accusations against certain people was published in all the newspapers at that time? A Yes, sir.

Q Large headlines, were there not, about Purcell having appeared before the Curran Committee? A I believe there were.

BY THE COURT:

Q You saw them, didn't you, in the papers?

BY MR. WASSERVOGEL:

Q You saw them? A Yes; there were large headlines. It was on the front pages of all the papers, I know.

Q And it is frequently part of your duty, is it not, to bring witnesses into court, to testify? A No, sir.

Q To take care of them? A No, sir.

Q Haven't you done that before? A No, sir.

Q Is this the first time that you ever brought a witness before a court or a committee? A Yes, sir.

Q How long have you been with the Society? A Four years.

Q And you didn't think it strange however that he should be afraid of harm, having testified against these people? You didn't consider that strange? A I didn't consider that strange, no, sir.

MR. WASSERVOGEL: Of course not, that's all.

RE-DIRECT EXAMINATION BY MR. FUCHS:

Q Taking into consideration the defendant's movements in

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the taxicab, taking into consideration his movements during that time that you had him, could you say whether or not those acts were in your opinion the acts of a rational or irrational person? A Irrational.

MR. WASSERVOGEL: I ask that that be stricken out.  
The question was improper.

THE COURT: I will grant the motion to strike it out, and, of course, the jury will disregard it.

BY THE COURT:

Q You are not a doctor, are you? A No, sir.

Q You are a detective? A I am--

Q And a stenographer now? A Yes, sir.

Q You are an investigator? A Yes, sir.

Q But you have not had any investigations into mental conditions, have you? A No, sir.

Q Physical conditions you have been interested in? A No, sir.

THE COURT: You may ask him whether a certain act was rational or irrational in his opinion.

BY MR. FUCHS:

Q From your conversation and from your observation of his acts on the 7th, on the 8th, 9th and 10th days of February, what was your impression as to the defendant's acts, rational or irrational? A His acts were irrational.

BY MR. WASSERVOGEL:

Q When did you see him testify before the Curran Committee?

A The 7th day of February, 1913.

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Q You understood the question put to you by Mr. Tuchs, just now, did you not? A Yes, sir.

Q As to whether his acts on the 7th of February appeared to you to be rational or irrational? A Oh, on the 7th?

Q Yes. A Yes.

Q Appeared to be irrational? A Yes.

BY THE COURT:

Q He was rational on the 7th? A He was irrational from the 7th, 8th and 9th and 10th.

BY MR. WASSERVOGEL:

Q And the 7th is the day you took him down before the Curran Committee? A Yes, sir.

Q When you went into the Curran Committee with your witness did you tell anybody there that you were bringing in a person that appeared to you to be irrational? A I didn't bring him into the committee.

Q Well, did you take him down to the Curran Committee? A I accompanied him.

Q Then you did take him down? A I brought him to Mr. Moss.

Q I am not going to quibble with you and I don't want you to quibble with me: did you bring this man down to the place where the Curran Committee was holding its sessions? A Yes.

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

Q And that was on the 7th of February? A Yes, sir.

Q Did you tell any person down there that the man who was with you and was about to give testimony was in your opinion

irrational? A Up to that time none of his acts appeared to me to be irrational. It was after.

BY THE COURT:

Q Will you please answer the question yes or no? A No, sir.

Q He was the only witness you had charge of? A Yes, sir.

Q The only witness Mr. Moss examined? A The only one he examined.

Q And you did not tell Mr. Moss that this witness that he was to examine (to displace Mr. Buckner for the time being) had been acting irrational, did you? A No, sir.

Q And yet you thought so? A No, sir, not at that time.

Q Oh, you didn't think so? A Not at that time.

BY MR. WASSERVOGEL:

Q That was the 7th of February, wasn't it? A Yes, sir.

Q What time on that day was it, when you believed that his acts were irrational? A When he reached the office of the Society for the Prevention of Crime.

Q After he had given his testimony? A Yes, sir.

Q How long had he been with you that day? A I met him at 1:50 p. m., and left him at about eleven p. m. that night.

Q Did you speak to Mr. Moss that night? A No, sir.

Q Did you speak to Mr. Moss the next day? A No, sir.

Q Did you at any time after the 7th of February, speak to Mr. Moss about this man Purcell? A No, sir.

BY THE COURT:

Q Not to this day? A Not to this day, not about Mr. Purcell.

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BY MR. WASSERVOGEL:

Q You never told him that in your opinion he appeared irrational? A No, sir.

BY MR. FUCHS:

Q You do not mean that you did not report to him at all? Did you write a report to Mr. Moss at any time in reference to Purcell? A Yes, sir, I wrote out a report.

Q Have you that report with you? A Yes, sir.

Q Will you let me have it? A (Witness produces a paper).

Q In that report did you give the very acts that you spoke of here? A Yes, sir.

BY THE COURT:

Q When was that report made? A That report was written on the morning when I heard of the murdering of Mr. Purcell's daughter.

BY MR. FUCHS:

Q That was on the 14th? A 14th.

Q Made about four days after you had left him? A Yes, sir.

Q And sent to Mr. Moss? A It was sent to Mr. Moss.

Q Is that the original report? A This is the carbon copies.

BY MR. WASSERVOGEL:

Q Does the word "irrational" appear in that report? A No, sir.

Q It does not, in any place? A No, sir.

Q It is simply a history of what occurred? A Yes, sir.

Q Simply telling Mr. Moss that you had taken him to his

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home and had taken a ride with him in a taxicab? A Also of his actions.

MR. FUCHS: Why not read the report, if you are going to cross examine?

MR. WASSERVOGEL: Because it lumbers up the record and it is immaterial.

BY MR. FUCHS:

Q That report does state the facts that he feared the Gas House gang? A Yes, sir.

THE COURT: -- Well, he has stated that the man told him that. He has not been cross examined about those statements at all. Mr. Wasservogel did not ask him a word about the Gas House gang, or about the statement that he made to him.

M A X W E L L A R E N T (212 West 143rd street) called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. FUCHS:

Q What is your occupation? A Attorney at law.

Q Are you in an office at the present time? A I am.

Q Whose office? A The office of Jerome Wilzin, 35 Nassau street.

Q In the neighborhood of January 1913 did you see the defendant? A I did.

Q Where? A At your office.

Q Where was that? A 1 Liberty street--320 Broadway at the

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time.

Q Did you have a conversation with him? A I did.

Q And in that conversation did you ask the defendant to write out any statement? A I did.

Q What was the conversation in reference to that, that you had with the defendant? A Mr. Purcell came in to see you and in your absence I spoke to him. I asked him what he wanted to see you about, and he told me it was in reference to obtaining the custody of his child. He asked me what would be the procedure at the time, and I told him that it would be necessary, if it would be possible at all, to obtain the possession of the child, to sue out a writ of habeas corpus under the Domestic Relations Law, and under the circumstances I asked him to tell me all the facts that would make it possible for us to sue out the writ. He told me it would be quite a long statement, and then I told him to come again some other time with a statement prepared by which we could get the necessary facts to draw up an affidavit. He said he would do that, and in a few days he returned with a long statement setting forth all the facts that gave him a ground for bringing this action, for suing out this writ.

Q I show you what purports to be about seven or eight pages of written testimony and I ask you whether that is the statement that the defendant Purcell gave you? A Yes, that is the statement.

Q Is any part of that in your handwriting? A Why, I wrote

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his address on the back of the last sheet at the time.

Q As a result of this statement was the defendant told anything in reference to his child? A He was told that under the circumstances it might be possible to get out a writ.

Q And was it finally decided that he could not get a writ?

A You and I had a conversation on that subject. Yes, we decided he could not obtain it.

MR. FUCHS: I ask to mark it for identification for the time being.

(Marked for identification defendant's Exhibit B.)

Q Do you know whether or not this statement was in the handwriting of the defendant? A Yes, sir, he told me he wrote it out. As a matter of fact some of it was finished in our office.

MR. FUCHS: I ask that it be marked in evidence.

MR. WASSERVOGEL: I do not see any reason why the record should be encumbered by this. Why cannot the witness testify to what he told him? That would be just as well.

MR. FUCHS: All right.

Q If you have to use this, use it as a matter of refreshing your recollection. A Do you want me to state the nature of the conversation? Mr. Purcell at the first time I spoke to him told me that his sister-in-law, who was a woman of disreputable character--and he characterized her in various terms--had an influence over his child, an influence of such a nature that it

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was almost impossible for him at all at any time to even speak to the child--that she would run away when he saw her, and the child was almost all the time at the home of this sister. He said the influence under which the child was at the time was very harmful and he thought would be detrimental to her character. He said at the time he knew this woman to have been before marriage an inmate of a disorderly house and he said that he did not see why he could not have his own child. He said furthermore that his wife, who refused to live with him, he said, after--or, rather, much against his wish and desire, she worked in one of the department stores. I think--yes, as a matter of fact he said it was Sak's, and she gave no attention to the child at all, and the child was always at the sister's. The sister always took the child to some of her friends, and he said at the time that the friends were all of the nature and character the same as she was, and the places to which the child was taken were of ill-repute.

Q Did he say anything about his mother-in-law in that statement? A In this statement, yes. He has said something about his mother-in-law. He said all the members of his mother-in-law's family were of bad character, that most of them were always subject to taking liquor--

Q What is the general trend of the statement, that the child was being contaminated? A Being contaminated and her morals corrupted.

Q This was, you say, about the middle or end of January,

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1913? A Sometime between the second and third week of January, 1913.

Q And of course you have not been able to state everything that is in there (Exhibit B for identification)? A No, no.

Q That contains about eight pages of writing, on both sides? A Sixteen single pages; fifteen or sixteen sheets.

Q And he goes into other names and accuses other people?

A Yes, he intimates and accuses his wife of having relations with other men and he did not hesitate to say that this sister-in-law who had the custody of the child at most times continually did this.

Q And at this time his wife was actually employed, wasn't she, and working? A In Saks's department store.

Q You investigated all that? A I don't recall that I did, I will qualify that last statement. I investigated.

Q You say you want to qualify-- A I investigated everything except the statement that his wife worked in the department store.

THE COURT: His investigations are not proper evidence here. That's all.

(The Court now declares an adjournment to Thursday, January 15th, 1914, at 10:30 a. m., first duly admonishing the jury in accordance with law.)

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New York, January 15, 1914.

Trial resumed.

STAMUEL MARCUS, (1187 Lexington Avenue),  
called as a witness in behalf of the defendant, being  
first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. FUCHS:

Q What is your occupation? A Lawyer.

Q Where is your office? A 299 Broadway.

Q Are you a member of the firm of Moss, Marcus, Laimbeer  
& -- A Moss, Laimbeer, Marcus & Wells.

Q Have you any other position or occupation other than  
as an attorney? You are attorney for the Society for the  
Suppression of Vice? A Society for the Prevention of Crime.

Q And as such did you meet the defendant Purcell?

A I did.

Q When? A During the latter six months, five or six  
months, of 1912, and the beginning of 1913.

Q You met him about September, did you? A I don't re-  
member the month. August or September.

Q If you know, had he come back from California at that  
time?

BY THE COURT:

Q - Well, did you meet him in New York or California?

A I met him in New York.

BY MR. FUCHS:

Q Do you remember the occasion of your meeting him?

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A I do.

Q Do you remember just what took place at the time that you met him? Did you have any conversation with him?

MR. WASSERVOGEL: When?

Q In September, 1912. A In a general way, yes.

Q Will you give us the substance of the conversation that you had with him then?

MR. WASSERVOGEL: This is rather remote, your Honor.

THE COURT: Well, I will allow it.

A When I first saw him in 1912 I went over his history in New York, what he had been doing in New York and what he had been doing in California. In the beginning he did not seem to want to give me his confidence.

THE COURT: Well, strike that out. The question is to get the substance of the conversation.

Q Just give the substance of the conversation at that time, and you can go right ahead without any further questioning. A He wanted to know how I came in contact with him. He told me that he had written a letter to former District Attorney Philbin and he didn't know my connection with the matter.

Q At that time did he say anything to you in reference to his suspicions about several prominent men in New York?

A He did.

Q And those suspicions related to certain ideas he had

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as to their not being straight?

MR. WASSERVOGEL: I object. Let him tell the conversations and then the jury can judge.

THE COURT: Objection sustained.

Q In answer to my last question you said he did. Now, will you state those conversations? A Before he talked very much with me he expressed some suspicion with regard to District Attorney Whitman, Mr. Moss, one or two employees in the District Attorney's office, several men employed by the Society for the Prevention of Crime, various members of the police force, and several political leaders in New York.

Q So far as those connected with the District Attorney's office, Mr. Moss and Mr. Whitman and the members of your own Society were concerned, did you know whether or not his assertions were well founded? A I did not.

THE COURT: I sustain an objection to that.

MR. WASSERVOGEL: I object to any such question.

Q Well, that was at the outset? A Yes.

Q That was the first time you knew him then or had ever seen him, or when he came back from California?

THE COURT: He has not said anything about coming back from California. He said repeatedly he met him first about September 1st of last year. Please do not repeat that. You have asked him to give the conversation so far as he remembers it, that he had, and I wish you would

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hurry up.

Q Will you state now when your next conversation with him was had? A I had many conversations with him during the next six months; probably one every week.

Q Did he ever speak to you during those conversations, -- as I understand your relationship with him was entirely in reference to this kind of work? A Yes.

Q You were not a friend of his, social or otherwise?

A No.

Q Did he speak to you about his wife and child? A He did.

Q And tell us what he said in reference to his wife and child, and tell us when, if you can place the time. A Some time during the early part of my relations with him I asked him where he was living in New York and what he was doing. At that time he told me, I believe, he was boarding somewhere, that he was married and was not living with his wife. He said that he did not want his wife to know what he was doing, that he had told his wife that he was working as a canvasser for Collier's; that his wife was employed in a department store of Franklin Simon, and that she was helping him to get on his feet, that they were very contented and getting along very well. That was the substance of his conversation with me concerning his family relationship the first time I spoke about it, and that everything seemed to be pleasant at home.

Q Do you recall about the time of your conversation with

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him in reference to his family? A Perhaps two or three months afterwards he spoke again about his relationship with his family.

Q What was the substance of that conversation? A At that time he complained that his wife or his wife's family or someone prevented him from seeing his child, and he asked me what he could do about it and I advised him concerning it. He made the statement that he was not permitted to see the child, or when he came home the child was not there, and he thought that it was intentional. That was the substance of the first conversation concerning his child.

Q Did he speak on that subject again to you? A About perhaps two or three weeks afterwards.

Q What was the substance of that conversation? A At that time he expressed the fear that the child was meeting persons to whom he objected -- he believed that she was meeting people leading an immoral life and he feared that the association of the child with those persons was detrimental to the child.

Q To the child's character? A Yes. That was the substance.

BY THE NINTH JUROR:

Q About January, 1913, this second conversation?

A No.

Q That was September, and the second conversation was two

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or three months later? A It was perhaps two months before the shooting.

BY MR. FUCHS:

Q That would be in December, then? A December. I don't recall the date.

Q You were down approximately to December. Were there any conversations after that time? A Concerning the child?

Q The child and the wife. A The next time I saw him I asked him about his wife and child, and in substance in that conversation --

Q When was that? A That was perhaps two weeks after the second conversation.

Q That would bring you up to about the first of January? A I don't know whether it was December or January, but at that last conversation he had no complaints to make at all about his wife and child, and said that everything was very pleasant at home and he was contented and satisfied, and he spoke about furnishing a flat and living with his wife and child, and so on and so forth.

BY THE COURT:

Q Was he in the pay of the Society all this time? A Yes.

BY MR. FUCHS:

Q What was his salary? A \$15 per week.

Q Did you have any conversations with him in reference to getting evidence against certain gambling places? A I did.

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Q Did he get you evidence? A He did not.

Q What were his main complaints? What did he complain about most at that time?

THE COURT: He has not said he had any complaints.

Q Did he have any complaints?

MR. FUCHS: Well, he said he had them against certain citizens.

THE COURT: That was when he first met him.

Q During all this time did he complain about any particular body of men in the City of New York? A He had a general complaint against certain police officials and certain political leaders.

BY THE COURT:

Q You have heard other people criticize them, haven't you, Mr. Marcus? A I have.

BY MR. FUCHS:

Q Now, during the month of January, 1913 and February, 1913, did he make any request to you or to anybody that you know of about putting him under somebody's care or guard?

A I don't remember anything of that kind.

Q As a matter of fact, was he in care of one of the officers of your Society? A He was more or less with one of the agents, yes.

Q And was that because of an expression of fear on his part, if you know? A I really don't know.

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Q In all the cases of the prominent men that he mentioned, that he said were guilty of certain things, was there (speaking now of the men connected with your Society and with this office -- Mr. Whitman and Mr. Martin and the rest of them), at any time any proof brought forth to substantiate those statements? A Well, his statements about the men in the District Attorney's office is one of suspicion; and with regard to the --

Q Well, I asked you whether there was any proof to substantiate it? A I never saw any proof.

Q Since his arrest he has sent you a number of letters, has he not, Mr. Marcus? A I don't believe he sent me.

Q Well, I show you this letter and ask you whether that was received? A Yes, I guess that was received by me.

Q Will you look at the letter itself.

THE COURT: What is the date of that letter?

MR. FUCHS: March 27th.

THE COURT: It is rather remote, isn't it?

MR. FUCHS: It is about a month after the --

THE WITNESS: There is no date on the letter. The envelope is dated March 19th.

Q And your letter to me is dated March 27th, sending the letter? A Yes. I received this and sent it to you.

Q Do you know whether or not that is in the handwriting of the defendant? A I believe it is.

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MR. FUCHS: I ask that it be marked in evidence.

MR. WASSERVOGEL: It might well be a self-serving declaration.

THE COURT: I will exclude it. You have an exception. When was the killing?

MR. FUCHS: February 14th.

THE COURT: And this was received by him on the 27th of March.

THE WITNESS: No, sir.

MR. FUCHS: I received it the 27th from him.

THE WITNESS: The envelope is post-marked March 19th, 1913.

THE COURT: Well, that is more than a month after.

Q I show you another letter and ask you if you remember whether you received that, and when? A I remember this letter. I think I received this shortly after the shooting. I don't know the exact time.

THE COURT: Isn't there any envelope?

MR. FUCHS: I got it in a plain envelope.

THE COURT: Unless you can state the time I won't admit it.

THE WITNESS: May I see the envelope?

MR. FUCHS: I put them all in a plain envelope. I have not the envelope here.

THE COURT: Statements or declarations made by the

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defendant a month after the homicide will not be received in evidence.

THE WITNESS: I believe I received this within a week after the shooting.

MR. FUCHS: I ask you to give me an exception to your Honor's ruling.

THE COURT: Yes.

Q Is that in the handwriting of the defendant? A It is.

MR. FUCHS: I ask that that be marked in evidence.

MR. WASSERVOGEL: Same objection.

THE COURT: Well, a week. There is no positive testimony as to when it was received or how it was received.

MR. FUCHS: If your Honor pleases, there are a great many cases where the question of insanity is involved that hold that letters or documents or anything else written either before or after the crime by the defendant may be given such weight as those letters and the time in question may bring forth. It is not like a --

THE COURT: Within a reasonable time. I do not think a month is reasonable time.

MR. FUCHS: It is all a question, of course, for whatever credence is in it.

THE COURT: Well, I will exclude it. If you can connect this within a week after the killing, I will admit it, not otherwise; but there is no proof here that it

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was written --

Q Will you look at the letter or read such parts of it as you can glance over without taking too much time, and see if you can refresh your recollection as to when you received it? A I said I think I received it within a week after the shooting.

Q And your looking and reading the letter now confirms that belief? A The first part of the letter leads me to think I received it within a week after the shooting.

BY THE COURT:

Q How did you receive it? A I do not recall now how I received it. My best recollection is that I received it in the mail.

BY THE COURT:

Q You destroyed the envelope? A I probably sent it to Mr. Fuchs. Any letters I received from him I mailed to Mr. Fuchs.

THE COURT: I will allow this letter in evidence, on his testimony that he received it within a week.

(Received in evidence and marked Defendant's Exhibit C.)

Defendant's Exhibit C is now read to the jury by Mr. Kohn, of counsel for defendant.

MR. KOHN (Reading):

"Dear Sir:

"Mr. Fuchs was telling me you received a letter saying

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I was in a saloon drinking the night of Feb'y 13<sup>th</sup>, except with Holzer and Bartleson I was not in a saloon in a week. I drank milk with them and have not drank in months.

"I used to go into the corner of 21st & 7th Ave. "Caffenys" for a glass of milk sometimes. They never saw me drink liquor. I have yet to tell you a lie, and feel uncomfortable to think that I must let charges go undefended because of the nature of my plea.

"Mr. Fuchs tells me that this "DeLaro" would like to see me beat it. This is impossible as he knows I can prove the character of his wife.

"There should be about a dozen letters in possession of the police, which I received from my wife while in California. I believe she took some of them after our argument for possession of the child, because when she claimed I had not given her any money as usual I told her that I had her letter admitting the receipt of \$15 that I told Doctor Thompson to give her. She said nothing and when we made up and she came over to my room the following Sunday I missed the letter in that argument. DeLaro and his wife were behind her with a lawyer.

"My brother told me he was asked by Mr. Strong if he thought I was morally depraved, and on account of the run in friendship of Doctor Thompson, who has seen my wife recently I take it for granted that charges of this nature

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must have been made. My sister-in-law is capable alone of these inventions.

"If any man, woman or child in my neighborhood can so charge me, outside of my wife and her family, I say believe it. I can see now from my wife's letters to California the seeds of this conspiracy even planted at that time, when my wife in her letters of Love never failed to inject some phrase or paragraph concocted for the purpose of preventing me showing them, and when I took her to task could get no definite explanation, it is very plain now.

"These letters were filled with lies. She said Doctor Thompson only gave her \$5. I have his letter telling me \$15. She pretended that she never was out all summer, while in fact she was at Rockaway with her sister and her friend. She implored me to write daily, claiming it was so long to wait 5 days, but this was only to make sure I would not return unexpectedly.

"I have drank nothing since shortly after my arrival from California. I have smoked little and have worried much, realizing that my wife was being drawn away from me and the love of my child alienated.

"I have tried industriously this last year to better my condition and hope all my efforts will not be in vain, and be sent away as 'incurable' if that's the program.

? I would like to continue with my accountancy work with a

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view of future release.

"I seem to always fall in the path of suspense.

"There is no way I can learn the developments in the case, although I know what should show, and depend on you to not permit any important or degrading charges to be made without a chance for me to defend myself.

"My sudden appearance on the 'Curran Committee,' among other things affected my mind, I think, and being in the house alone so much. I gazed at the adjoining roofs and windows figuring how a stray bullet might be fired.

"The men put to escort me in and out, having to wait and telephone for them was not encouraging, and when they would go out, in their effort to charge a little expense money they would insist on paying for a drink, a cigar, a newspaper, a shine. They would make a man feel childish, or that it was his last day on earth. I would advise you to stop this; in future let a man buy his own stuff and he will have confidence in himself.

"This 'DeLaro' bunch too took pleasure in kidding my wife about the Curran Committee and drove her crazy.

"It would be a good idea to find out if Miss Murphy, 'Paddy Craggs' niece said anything to my wife about me beating a woman up at 'Wellbrock's Hotel' on 34th Street and 3rd Avenue, one night 3 or 4 years ago, for throwing a towel at my head. I plead guilty to this. Samuel Haas, a

painter of 2nd Avenue between 34th-5th Street can tell of this, and it will disprove my moral depravity.

"I can produce a thousand witnesses to prove I was more than particular morally. Political oppression alone is responsible for my condition.

"I also hope my wife has produced all my answers to her letters to California, as they will be to my credit. They wouldn't hesitate to take advantage of an insane person, and their various statements will show their calumny.

"We were of different tastes, but I never expected her to enter a conspiracy against me, her unfaithfulness would never cause me to act rashly, if sane, and if she would tell the truth now, I would be saved.

"There is a possible chance of her giving the papers I missed to Miss Murphy in return for the information about the woman at Wellbrooks, because my wife mentioned this woman's name, but I will let Sam Haas tell it. A reason that might have given them the idea of moral depravity is the fact that I never kissed the child on the mouth, because I was in syphilitic health.

"If it is not advisable to write these notes tell me, but I cannot keep still when I know the limits they will go, and must have someone outside to help me.

"Purcell."

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BY MR. FUCHS:

Q Do you remember before this time whether there were any conversations with Purcell which related to some of the matters which you received after the shooting?

THE COURT: I cannot understand that question.

(Question withdrawn.)

Q Do you remember any conversations before the crime was committed, before the 14th of February, that related to matters which were concerned in this letter just read in evidence? A Well, he spoke about his wife, and he spoke about Delaro. He spoke about Delaro's wife to me.

Q And were the same ideas expressed then, the same as he expressed after the shooting?

THE COURT: That is a conclusion. You can ask him what ideas he expressed then and let the jury determine whether they were the same or not. He may state the conversation and the jurors may decide on the facts and draw their own inferences from the testimony, and not be guided by the inferences of anybody else. You have exhausted the witness on that conversation. The witness may tell any other conversation he had with the defendant before the killing. Let him tell any conversation he had with the defendant before the killing, on any subject.

Q When the defendant came into your office --

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THE COURT: Do you wish him to tell it?

MR. FUCHS: I am leading up to it.

THE COURT: I put that question directly to him. Let him tell us all the conversations he had with him before the shooting. A It is quite an undertaking. I talked with him at least twenty-five or thirty different occasions, and it is impossible for me to remember everything that he said.

BY THE COURT:  
Q Well, tell us all that you can remember that he said.

A Starting from the beginning of my experiences?

Q You have given us a good deal about that from the beginning, down now and within a short while -- you came up to within a short time before the killing, as I understand it, didn't you?

MR. FUCHS: Yes, sir, in a general way.

A My recollection is that I testified my last conversation with him was concerning the pleasant relations that existed at that time between himself and his wife, everything had been straightened out.

BY MR. FUCHS:

Q When he came to your office, what was his attitude about holding conversations with you? What were his actions?

THE COURT: Say what he did.

Q Describe his actions. A He was reserved and suspicious and morose and inclined not to be talkative.

Q When he spoke to you did he look to see whether anybody

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else was around? A Oh, I can't say that he did, no.

BY THE COURT:

Q The information he gave you, if true, would be of great value to your Society, would it not? A Yes.

Q And would expose the person disclosing it to possible risk, isn't that so? A Yes.

Q A gambler had been killed in New York about that time for making disclosures of that kind? A He had.

Q Now, you deemed the information that he gave you (or your Society did) of sufficient value, and you attached sufficient weight to it, to put him on the payroll of the Society, didn't you? A I did.

Q And you kept him how long there? A Until the shooting.

Q Well, for six months? A About six months.

Q And he was on your payroll at the time of this shooting?

A He was.

BY MR. FUCHS:

Q So that after this man had been killed for giving out a statement --

THE COURT: To prevent him from giving out a statement.

Q (Continuing) Did Purcell ever speak to you about that? Did he speak to you about any gangs? A Yes, and he spoke about the Rosenthal murder.

BY THE COURT:

Q Well, didn't he express fear, that he might receive bod-

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ily harm for the aid he was giving your Society? A I don't believe he ever said that to me, in substance.

Q Well, what did he say on that subject? A I don't believe he ever expressed any fear about himself, so far as I can recollect.

Q Well, that is what we want to get. A I have no recollection now of his ever having expressed any fear concerning himself, concerning his statements regarding the police and so forth. He did express fear with regard to giving information concerning gamblers. He made that distinction.

Q You see, we are not investigating the truth of his charges now, the idea of counsel is to show his acts at that time, so that the jury may form some opinion as to his mental condition. You say that he did express fear about what might happen to him from gamblers, is that it? A Yes.

BY MR. FUCHS:

Q Did he always talk in low whispers to you? A He did.

Q Do you recall any conversation in reference to a "Dollar John" crowd that he had with you? A Yes, he spoke to me concerning --

THE COURT: Well, of course, all these questions are leading.

MR. FUCHS: Yes, sir, and I understand on a question of insanity it is allowed.

THE COURT: I think that you ought to exhaust the

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witness' recollection. Go on. You may ask any kind of a question, if you will only go on and get through with it.

Q Do you recall now having received a letter from him or having heard from him directly about a "Dollar John" crowd, and what they might do to him? A He spoke to me concerning "Dollar John" and what they were engaged in.

BY THE COURT:

Q Did you know what he meant by "Dollar John"? A Yes.

Q "Dollar John" is a gambler, isn't he? A Yes.

Q Or a reputed gambler? A A reputed gambler, maintains gambling houses.

Q And that comes under what you said, that he was afraid the gamblers might cause him harm on account of his disclosures? A He made no particular reference to "Dollar John" in that connection.

Q In what connection did he mention it? A The conversation concerning "Dollar John" was regarding his maintaining a gambling house and the possibility of getting evidence against him. He always took the position that he would not assist in getting evidence against gamblers.

BY MR. FUCHS:

Q What counsel for your Society and you said about the getting of evidence, Purcell refused to do? A He did. That is, he would not go into a gambling place and make a bet

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or gamble and tell us about it afterwards.

Q Mr. Barthelson was one of your agents? A Yes.

Q And Mr. Barthelson had charge of him a few days before the killing? A He was with Barthelson more or less.

Q And Barthelson was in a position therefore, even more intimately than you, to know of his acts and his utterances, and so forth, a few days before this killing?

THE COURT: That is a question for the jury to decide, isn't it?

Q If you know.

THE COURT: I will sustain an objection to that question.

MR. TUCHS: Well, that is all. Your witness.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say this man always spoke to you in whispers. He always speaks in a very low tone of voice anyway, doesn't he?

A I believe so. He talks in a low tone of voice.

Q You told us, I believe, that you first met this man in September, 1912. A Either in August or September.

Q And at that time he told you he had been a gambler, is that right? A Yes.

Q He had been a gambler almost all his life, isn't that what he told you? A That was the substance of it, yes.

Q Did he also at the same time tell you that he had been paying graft to certain parties in New York City? A He did.

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Q And you believed that he believed that what he was telling you was true? A I did.

Q Isn't that correct? A It is.

Q And thereupon you employed him, or, rather, your Society employed him as an investigator, is that right?

BY THE COURT:

Q Well, you employed him, didn't you? A He was employed.

BY MR. WASSERVOGEL:

Q You are the one that engaged him, aren't you, Mr. Marcus? A No.

Q Who engaged him? A My recollection is that it was done by the Executive Committee through a request from the District Attorney's office.

Q But who was the person in the Executive Committee that actually engaged this man, that is all we want to know? A I came in contact with him. The actual employment was made by the Executive Committee.

Q Won't you answer me, please?

BY THE COURT:

Q Don't you understand the question? A He wants to know who actually employed him.

Q How many men are on the Executive Committee? A Three.

Q Did they all speak to him? A That I don't recollect.

Q Who conveyed the information? A I first came in contact

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with him.

Q And you told him that he was employed? A No, I don't believe I did. It may have been someone else.

THE COURT: I do not see how it is important at all, who employed him. The Society employed him.

MR. WASSERVOGEL: It may be important, your Honor.

BY MR. WASSERVOGEL:

Q And he continued in your employ down to the time of the shooting? A He did.

Q When did you first hear of the shooting? The same day?

A The first notice I had was reading in the papers next day.

Q Between the time he was first employed until the day of the shooting, you had met him very frequently? A Yes, sir.

Q Almost every day in the week? A No.

Q Well, you saw him very frequently at your office? A At least once a week, sometimes oftener.

Q And the disclosures that he was to make were not against gamblers, were they, but against the police? A Against police and politicians.

Q But not against gamblers? A Not against gamblers.

Q He did not want to proceed against gamblers because he himself had been a gambler, wasn't that what he told you?

A That was the substance of his statement.

Q And this "Dollar John" was a friend of his -- had been a friend of his? A That I don't know.

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Q Did he tell you that too? A I don't believe so.

Q You were impressed with his truthfulness at all times, were you not? A I can't say that I was.

Q Didn't you bring him down to Mr. Moss? A I did not.

Q Who did? A He either saw Mr. Whitman or Mr. Moss or Mr. Rubin before he came to me.

Q Before he came to you? A Yes.

Q Well, the question now that I want you to answer is whether or not this man impressed you as a truthful person? That is the first question. A I would say in the beginning that I had a better impression of his truthfulness --

Q That is around September of 1912? A In the first three months of my dealings with him.

Q Well, you knew that he was about to appear as a witness before the Curran Committee? A I didn't know.

Q Didn't you know about that? A No, I didn't know that.

Q When did you first find out that he was to appear as a witness? A Probably a day or two before he did appear, perhaps a day before.

Q Then you did know before he appeared, that is all I am asking you? A Yes.

Q And you are an associate of Mr. Moss and have been for many years? A Yes.

Q Did you tell Mr. Moss that this man did not impress you at all times as being a truthful person? A I did not express

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my suspicion about him. I did not say he was untruthful.

Q You say you expressed your suspicions to Mr. Moss?

A Yes, that there was a lack of corroboration of some of his stories, and that there seemed to be some inconsistencies about his statements.

Q After the shooting it was you that retained Mr. Fuchs as counsel for him, wasn't it? A It was not.

Q Who was it? A I don't know.

Q You don't know that? A No, I believe it was Mr. Purcell himself.

Q Are you sure about that? A Absolutely certain about it.

Q Isn't it a fact that your Society retained this man, Mr. Fuchs, as counsel? A It is absolutely not a fact.

MR. WASSERVOGEL: I think that is all.

RE-DIRECT EXAMINATION BY MR. FUCHS:

Q The conversations with you in reference to his wife and to his child, taking them all in consideration, and his actions in connection therewith, did those actions impress you as being rational or irrational acts, and did the defendant impress you as being rational or irrational after the entire summing up of his relationship and his conversations with you in reference to his wife and child?

MR. WASSERVOGEL: That is objectionable. If there is any act.

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THE COURT: The last part of it. You may ask him whether his acts seemed to him rational or not.

THE WITNESS: With reference to which acts?

Q In reference to his conversations and acts in reference to his wife and child, that you came in contact with. A His statements to me concerning his relations with his wife and child and the parents from time to time made the impression on me that there was something wrong, and I felt that they were irrational.

Q You stated before that you never knew Purcell up to that time? A I did not, before I met him in August and September of 1912.

Q And he is not connected or related in any way with your Society or with anybody connected with your Society now -- he is not, in any way? A No.

RE-CROSS EXAMINATION BY MR. WASSERVOGEL:

Q This man was living apart from his wife and had been for some time, isn't that so? A His statements to me --

Q Won't you answer me, please? A I don't know who he was living with.

BY THE COURT:

Q What did he tell you? A That is all I can go by, what he told me. In the beginning of my relationship with him, perhaps for two or three months, if I recall, he was living in some room.

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Q Was he living with his wife or not? A He was living separate from his wife part of the time that I knew him.

BY MR. WASSERVOGEL:

Q And it was at that time that he was telling you things about his wife and about the child, wasn't it? A No, it was not. It was not until perhaps November or December, or some time in December that he first told me about his --

Q And at that time he was living apart from his wife, wasn't he? A I don't recall that now.

Q Well, you do know that there was a time when he told you that everything had been fixed up and that his relations with his wife and child were amicable? A Yes.

Q And that was the time when he hired this apartment in West 18th Street, the early part of February? A The statement to me was shortly before they got together.

Q And that was in the early part of February, wasn't it, a few days before the shooting? A The conversation with me was perhaps three weeks or a month before the shooting.

Q That is your best recollection? A That is the best of my recollection.

BY MR. FUCHS:

Q The only thing you did for Purcell, as I understand it, in reference to Mr. Wasservogel's question, is that you did get the Society to give a small check to one of the doctors in this case, isn't that so? A Yes.

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Q Or the Society did give a small check to retain one doctor? A Yes.

THE ELEVENTH JUROR: May I inquire when the defendant testified before the Curran Committee?

BY MR. WASSERVOGEL:

Q When was it that the defendant testified before the Curran Committee? A Well, it must have been within a week or two.

MR. FUCHS: 17th of February.

BY THE COURT:

Q One week before the killing, wasn't it? A Yes, sir.

Q You have often been consulted as an attorney about domestic relations, haven't you? A I have.

Q It is not an unusual thing for men to seek the custody of their children, is it? A No.

Q You do not consider that an irrational thing for a man to do? A Not to seek custody of his child, no; but the inconsistencies in his statements and his change of attitude made an impression on me.

Q In what particular? Haven't you known of people to be reconciled before in families -- husbands and wives, when they had been quarreling? A Yes.

Q You have known of other reconciliations? A Oh, yes.

Q Anything irrational in that? A Not necessarily in a reconciliation, no; but at one time he expressed the fear that

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the child was associated with people of an immoral character.

Q Is that an irrational act? A No. Then another time --

MR. FUCHS: I do not think the witness is through with his answer.

THE COURT: Go on.

A (Witness continuing) And another time he changed his attitude concerning that.

Q Well, does that seem to you to be irrational? A And together with his extreme amount of suspicion that he expressed, it made an impression of irrationality on me.

Q Haven't you known other husbands to suspect their wives? A I assume I have, yes.

Q Do you take divorce cases in your office? A No.

Q It is a pretty active business in New York, isn't it?

A (Continuing) Not if we can avoid it.

Q But it is a pretty active business in New York, isn't it? A It seems to be.

BY MR. FUCHS:

Q Did he ever at any time express any words of anger toward the child, to you? A No, nor toward his wife.

BY MR. WASSERVOGEL:

Q When for the first time did any acts of his appear irrational to you? A Probably after I knew him about three or four months. Three or four months after I first met him.

Q Did you ever tell Mr. Moss that any act of this man

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appeared irrational to you? A I don't believe I used the word "irrational."

Q You did not tell him that then, did you? A No. I told him what he had been doing.

BY MR. FUCHS:

Q And in substance did you tell --

THE COURT: Well, now, let him say what he told Mr. Moss, if he can remember it, and let the jury determine the substance of it.

BY THE COURT:

Q What did you tell Mr. Moss on that particular phase relating to the defendant?

THE COURT: That is the only question I will allow on that subject.

A I told Mr. Moss about his extreme suspicion of different people that he came in contact with, the suspicion of me, a suspicion of Mr. Moss. I don't recall now whether I told Mr. Moss about his trouble with his wife.

BY MR. FUCHS:

Q Did he have any suspicions about his mail, that he told you about? A He expressed suspicion about people tampering with his mail, the mail that came from our office.

Q And did you take that in consideration in your conclusion? A I did.

BY THE COURT

Q Well, all that intended to increase his importance in his

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own eyes, did it not? A I assume that it did.

Q If he was so hated and feared by lawbreakers whom you were endeavoring to suppress, why, it would make his services more valuable to you, would it not? A I don't believe I formed any particular conclusion about that.

Q This was a voluntary Society, was it not? A It is.

Q And supported by citizens who were anxious to retain law and order in the community? A It is.

Q And you know that you must fight fire with fire, you must get people who know about these things in order to put them down, isn't that so? A We were anxious to corroborate Mr. Purcell's story concerning his relations with the police.

Q And with the other people? A And with other people whom he mentioned.

Q Who were connected as go-betweens, according to the statement? A Exactly.

Q So that the more his testimony injured such people, why, the more valuable it would be to you, would it not? A The more we could get corroboration of his alleged dealings with corrupt officials, the more valuable it would be.

Q That is, his story alone would not be valuable, except as a "lead"? A Exactly. I didn't think his story was good for much unless it was corroborated. That was always my personal feeling about it.

Q Well, that is the personal feeling in all these matters, isn't it? A Exactly.

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ISIDORE WELLS, (268 Seventh Street), called as a witness in behalf of the defendant being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. FUCHS:

Q You are a member of the same firm that Mr. Marcus is? A I am.

Q How long have you known the defendant? A I think I met him for the first time in November of 1912.

Q And when was the first time, if you remember, that you spoke to him? A Why, I think he had called at the office a few times. We exchanged greetings, say "How do you do," or something like that, when he would ask me when Mr. Marcus would be in, or whether he might use one of the desks. That was about the extent of our conversation until the early part of January 1913. I think that was the only time that I had had any conversation with him.

Q What was that? A And that was accidental. I had occasion to send out about one hundred letters and we were all busy in the office at the time and he seemed to have nothing to do and I asked Mr. Marcus if he would not --

Q What was he doing at the time? A He had been waiting about two hours to see Mr. Marcus, and he got through with him in a very few minutes, and as he was leaving the office I suggested to Mr. Marcus that he ask Purcell if he would not help us out with those envelopes, I should think were about one hundred, and I gave him instructions as to how

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to address them.

Q What did you say to him and what did he say to you in reference to that? A I asked him if he would address these envelopes for me. He said he certainly would be very glad to do it, and I told him to be very careful because they were of more or less importance and I wanted him to be sure to be accurate, and I furnished him with a list of the names and addresses. I told him particularly, I recall "Wherever you see 'Honorable' in front of a man's name, and if you see nothing put 'Esquire'. Do not abbreviate, and be sure you put 'N. Y. City' at the end of it," because I do not believe in careless envelopes. And he sat down and I came in in a few minutes, he had finished I should say twenty or twenty-five of them and I don't think there was one in the lot in which the instructions were carried out; either the "Esquire" was left off or the initials were put down instead of the name or there was not "Street" put after it, and most of them did not have "N. Y. City". I corrected them, I went over the letters with him, and I told him what to do and he wrote a few more of them and they were as bad as the first and then I said that I thought I would have enough time to do that myself. That is about the only business that I ever had with Purcell.

Q Did you observe him around the office during the time that he came in there, waiting for Mr. Marcus? A Oh, yes, a great many times.

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Q What were his actions during that time, will you describe that? A Well, he would sit in the outer office for an hour or two hours sometimes if Mr. Marcus was not in. He always had a peculiar shake or twist of the head, he would go like this (indicating). He would ask somebody when Mr. Marcus would come in, and then if I happened to pass in the outer office he would ask me when he would come in. He would see Mr. Marcus. He would very often get into a corner of the room and he talked in a whisper. I don't think I would ever recall his voice if I heard it again. He would sometimes ask for paper and for permission to write at one of the desks, and he would sit there and write for a long time. I don't know what he would be writing for I paid no particular attention.

Q Shortly after his arrest did you receive any letters from him, or before his arrest did you receive any letters from him? A I received two letters at my house after his arrest. I don't know how he ever got my house address.

Q Did he refer to you as "Dear Friend" in those letters, if you remember? A I don't recall. It was something like that.

Q And you had never talked to him at all except on this one occasion that you state, that is the only time? A That is right.

Q That is the only time you ever talked with him? A Yes.

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## CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Your personal dealings with the defendant were limited to the one occasion when you had him address some envelopes?

A That is the only time.

Q And then he was only really doing what office boys do? A Well, sometimes what everybody has to do.

BY THE COURT:

Q Well, he was not a success as an addresser of envelopes was he? A He did not seem so to me.

MR. WASSERVOGEL: That is all.

PETER PHILIP PURCELL, (641 Sixth Avenue)

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

DIRECT EXAMINATION BY MR. FUCHS:

Q You are a brother of the defendant? A Yes, sir.

Q What is your occupation? A Chauffeur.

Q Will you tell us how many children were in your family?

A Seventeen, I believe.

Q Your mother gave birth to seventeen? A I believe so, yes, sir.

Q And which one of those seventeen was the defendant?

A About the sixteenth.

Q Did you have a brother by the name of John? A I did, yes, sir.

Q Is he alive or dead? A He is dead.

Q How many children are alive of the seventeen? A There

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are seven.

Q There are seven alive and ten dead? A Ten dead.

Q What did John die off? A John died of cirrhosis of the liver, I believe.

Q Where did he die? A He died in the hospital.

Q What hospital? A Bellevue, I believe it was.

Q Did you have an uncle by the name of Peter? A Yes.

Q Will you state what he died off? A I understand he committed suicide.

Q And did your father tell you that? A My parents told me that. That is where I got the information.

MR. WASSERVOGEL: We have not the parents here to examine. I do not think that<sup>it</sup>/is proper.

BY THE COURT:

Q Well, you do not know? A No, sir.

Q It was before you were born? A Before I was born, yes, sir.

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

THE COURT: Well, I will allow it in as a matter of family history.

Q You heard that in the family, that you had an uncle who committed suicide? A Yes.

BY MR. FUCHS:

Q Do you know whether your brother John was in the same pavilion at Wards Island? A The psychopathic ward of Bellevue hospital and from there was transferred to the island.

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Q Wards Island, for the insane? A Yes, I believe so.

BY THE COURT:

Q Well, do you know where he was transferred to? A He was transferred to the Island.

Q To the work house? A No, I can't say definitely.

Q Or to the hospital? A But his wife tells me he was transferred.

Q Never mind what she tells you; it is what you know.

A I don't know whether he was in the work house or in the insane pavilion.

BY MR. FUCHS:

Q Will you tell us, if you will, how soon after this act of the 14th of February did you see your brother, the defendant? A How soon afterwards?

Q Yes. A About two days.

Q How soon before that had you seen him? A One day.

Q Will you state just exactly what your conversation with him was on the day --

THE COURT: At which time?

Q I take it this is the 13th of February you are speaking about. A I understand, yes.

Q And what time of the day was it? A It was about 10 minutes after 9 in the evening.

Q And what was the occasion of your going -- where did you meet him? A At his own house.

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Q What was the occasion of your going there?

THE COURT: That is immaterial.

BY THE COURT:

Q You met him at his own house; where was that? A 218 West 21st Street.

Q And in his own apartment? A In his own apartment, yes, sir.

THE COURT: Now, you can exhaust the conversation if you like.

BY THE COURT:

Q Just state what you said to him and what he said to you at his house. A He spoke about my going to live with him.

Q Well, what did he say? A He spoke about the arrangements.

Q What did he say? Cannot you give us the words he used? A He said that as soon as he got the bed in for me to sleep in, that I could come down to the apartment.

Q What did you say to that? A I said, "All right." That was supposed to be the following day that I was to go down there; and he asked me how my business was; I told him fair, and --

Q What is your business? A Chauffeur. And we talked there about things in general, my business and health, and how he felt, and so on, like that, and I left there about 20 min-

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utes of 10.

Q Now, counsel desires you to state anything that he said to you that you can recall that night. A Why --

Q You have only given us the substance of what he said.

A When I left there he said, "Cheer up, everything will be all right, I guess, and come down tomorrow as soon as you can. I will have the bed here by that time, and you can go ahead and stay here."

BY MR. FUCHS:

Q Did he say anything to you about his connection with this committee? A In a general way he had, yes.

BY THE COURT:

Q You know what committee he means? A The Curran Committee, I understand.

BY MR. FUCHS:

Q What did he say about that? A He said that he expected to give more testimony and that they had taken pretty good care of him in a way, in fact, too much so, that it made him look as if he was babyish, it made him feel as if he was babyish, that he was getting all this attention.

Q Did he say anything about the man that was with him all the time? A Well, he spoke about somebody, some sort of a guide or guard or something like that. He didn't mention any name, he didn't say who it was, or anything like that.

BY THE COURT:

Q He told you he thought they were taking too good care of

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him? A They made him feel babyish, and he said that is the way he expressed it to me.

Q Didn't he express fear of these desperate people against whom he was testifying? A No, not to me, no; but his actions indicated altogether different.

Q He is asking you now about conversations, we are trying to find out everything that he said. A Well, he didn't express any fear.

BY MR. FUCHS:

Q Did he say anything to you about being confined there in the house all the time also? A He did say that. He was confined in the house alone.

THE COURT: Strike out that he was confined.

BY THE COURT:

Q You do not seem to understand that he wants conversations, anything the defendant said; don't you understand that?

BY MR. FUCHS:

Q Tell me what he said about his confinement, if anything?

A He mentioned the fact that he would not allow anybody --

BY THE COURT:

Q Cannot you give the words he used? A He said, "I do not allow anybody in here unless they can verify who they are." And "What other precautions do you take?"

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BY MR. FUCHS:

Q What else did he say on that point?

BY THE COURT:

Q Please, what did he say? I have told you now innumerable times to tell us what he said, not your own notion.

A He spoke about being in the house alone, not opening the door without verifying who was outside.

Q You have told us that. Was there anything else?

A That he would not ride in the elevator while there were strangers in it, or expose himself in any way where he thought there was danger. He would not ride in the elevator while there were strangers in it.

Q You mean the passenger elevator in this house he lived in? A Yes, sir, the passenger elevator.

Q Anything else? A That is all I can recollect on that particular evening.

BY MR. FUCHS:

Q What was his general attitude as to his actions during this time, if you recall? A His actions appeared to me that he was --

Q Tell us what they were. A They were really --

THE COURT: That is what he must say, what they seemed to him.

MR. FUCHS: Well, I thought he would give the details.

THE COURT: Well, tell us what he did. What did he

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do, if you want that.

A Well, on one particular occasion, this same night, the night before, he turned around and his shadow was on the curtain, the shadow of his body was on the curtain in the room, and on noticing it, I see him make a move as if to draw his shadow from that curtain, and I took that as an indication of fear.

THE COURT: Never mind what you took it for. What did he do?

BY MR. FUCHS:

Q At that time there was a man by the name of Captain Walsh that was giving some testimony before the District Attorney? A I understand yes.

Q Did he say anything to you about that, that night?

A He mentioned it. I don't know whether that night or the night previous.

Q Well, what did he say? A That Walsh was trying to poison him, I believe, by putting poison in his milk.

BY THE COURT:

Q What did he say? A He said that Walsh was trying to give it to him by poisoning his milk.

BY MR. FUCHS:

Q You saw him how soon after the crime, Mr. Purcell?

A Two days, I believe; two or three days after the crime.

Q Well, did you have any conversation with him? Where

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was this, in the Tomb? A In the Tomb.

Q Did you have any conversation with him there? A I did.

Q Will you tell us what that conversation was?

BY THE COURT:

Q Now, that means what did he say and what did you say?

A Well, he asked me first what I thought. I told him I was sorry the thing had happened. Then he went on to say that it had to happen.

BY MR. FUCHS:

Q Did you ask him why? A I asked him why and he started to give me reasons from one to another.

BY THE COURT:

Q Well, what did he say? A He told me he had to do it to save his child.

BY MR. FUCHS:

Q Did he say anything about anybody giving him anything?

A Not that I can recollect.

Q Did he say anything about anybody conspiring against him? A He did, yes.

Q What was that conversation? A That Delaro, his wife, were conspiring against him. Delaro and his wife.

Q Do you remember the conversation? A Why, it went to the effect, partially, that --

BY THE COURT:

Q Please give us the conversation, not the effect of it.

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You said you did remember it. A He spoke about his wife prostituting the morale of his child.

Q Is that the conspiracy you refer to between Delaro and his wife? A Yes.

Q To make a prostitute of his child? A Yes.

Q His wife and Delaro were conspiring to do that? A Yes, that the child going with its mother up to their place and seeing things which he regarded it as a conspiracy to prostitute his child.

BY MR. FUCHS:

Q And did he say anything else to you about any other conspiracy, that you remember? A Well, he has told about --

BY THE COURT:

Q He is speaking of a particular conversation in the Tombs. Will you please tell us all he said to you that day and all you said to him? A He spoke of me conspiring against him, he said I was working against him; he spoke of my brother conspiring against him; he spoke of my sister conspiring against him; he spoke about you conspiring against him.

Q What did he say? A He said you (Mr. Fuchs) were not giving him the proper defense; you were not taking the necessary moves to defend him properly and going about the case right, and that you were putting up false pleas and advising him wrongly, and in a way like that; and spoke about me not running around and doing what I could for him; and spoke about the

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sister being disinterested and not exerting their every effort, as it were, to do this, and so on like that.

Q That is what you mean by conspiring? Did he use the word "conspire"? A That is the way he used it.

Q He was complaining that you were not doing enough for him? A Yes, that is the idea.

BY MR. FUCHS:

Q You say he used the word "conspiracy" or "conspire"?

A He used the word, yes.

BY THE COURT:

Q This was the day after he killed his daughter? A A day or two, yes, sir.

BY MR. FUCHS:

Q Did you have other conversations with him a short time after that? A I did, yes, sir.

Q In the Tombs? A In the Tombs.

Q Were his conversations then along the same line? A All along the same line.

THE COURT: Let him state what they were, if he can remember. We do not want his opinions or conclusions. Any statements he ever made to you in the Tombs you can tell us.

A (Witness continuing) He told me to beware of Delaro, that Delaro was going to fix me the same as he fixed him. He told me that the physician at the Tombs, it appears they drew some blood from him, as I can gather from the conversation --

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BY THE COURT:

Q Well, did he say that they drew any blood from him?

A He said they drew blood from him. He said they operated. He didn't say they drew blood, he said they operated on his spine and if he was to die to have Dr. Thompson perform an autopsy on his body. And then he did not believe that the child was dead, that it was simply a frame-up to railroad him.

Q When did he tell you that? A Oh, I believe it was on the second or third visit, he and I had an argument; he asked me about where the child was buried, and I told him and he said he didn't believe it. He said he didn't believe the child was dead at all. He said it was simply a conspiracy to railroad him.

BY THE NINTH JUROR:

Q How soon after the 14th of February was this second or third visit? A About a week afterwards, I think.

BY MR. FUCHS:

Q Did he also write you about that incident of the tapping of his spine, and do you remember? A He did, yes.

Q And you were present at one of the commission's meetings, I believe? A I was, yes, sir.

Q Did he give you a paper there with those statements on?

A Yes, sir.

BY THE COURT:

Q How long was that after the --

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MR. FUCHS: April 28th.

THE COURT: Three months after? We will exclude any reference to that.

BY MR. FUCHS:

Q As a matter of fact, at that time Dr. Mabon did perform some sort of an operation or test on his spinal column?

THE COURT: Well, we will exclude that, anything done three months after.

MR. FUCHS: Exception.

THE COURT: The jury understands that these conversations are admitted for their consideration, to show the mental condition of the defendant at the time he committed the act, and what he said or did three months after the commission of the act would not be of any assistance to them at all.

MR. FUCHS: Your Honor will give me the benefit of an exception?

THE COURT: Yes.

MR. FUCHS: I think that is all.

THE COURT: I will allow anything within a reasonable time after.

MR. WASSERVOGEL: No cross-examination.

BY THE FOREMAN OF THE JURY:

Q You testified here that the first day you saw him in the Tombs he said he had to do it to save his child? A That is

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what he told me.

Q Do you mean he had to kill the child to save it? A He had to kill the child to save it.

FRANK WADE ROBERTSON (411 West End Avenue) called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. FUCHS:

Q Your occupation, please? A I am a physician.

Q How long have you been a physician, doctor? A I was graduated in the College of Physicians and Surgeons, which is the Medical Department of Columbia, in 1895.

Q And what has your practice consisted of? A I have made a specialty of nervous and mental diseases and their treatment and diagnosis.

Q And what institutions and colleges have you been connected with? A Well, I served as resident physician at the Pavilion for the Insane, as it was called then, at Bellevue Hospital (it is now called the psychopathic ward), from 1896 until April the 1st, 1900; and while there I had charge of the cases admitted there supposedly insane and it was my duty to treat them and enter the diagnosis of the case, as to the form of insanity which they had, if any, in the records of the ward, and discharge those who were not insane.

Q And what institution, if any, are you connected with at present? A I am an attending physician at Roosevelt Hos-

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pital, in the department of nervous and mental diseases.

And after leaving Bellevue, I might say, I went to Elmira as senior physician, and on August 1st, 1910 I was made acting superintendent there and subsequently superintendent, and had charge of that institution from April 1st until the 1st of December, 1903, when I resigned to take up practice in this city, and since that time I have given my attention to nervous and mental disorders. I was also attached to the staff of Cornell for a number of years, in the department of nervous diseases, as an assistant there.

Q And you have testified in a number of cases on the question of the sanity or insanity of a prisoner in court?

A I have, yes, sir.

Q And have you testified in behalf of the District Attorney and the various judges of this court, as a witness? A I have been employed by the District Attorney, yes, sir.

Q And also by the judges of this court? A I have, yes, sir.

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

Q When did you first see him, if you recall? A Well, he --

THE COURT: You may use your notes to refresh your memory. If you can testify from memory you should do so, but if you cannot, you may use any notes that you may have. This is a memorandum made by yourself, is it? (Referring to paper produced by witness.)

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THE WITNESS: Yes, sir. This part is, sir. I  
first saw Joseph Purcell on April 7th --

Q James Purcell? A James Joseph Purcell on April 7th,  
1913, and I also saw him on May 23rd, 1913, and I believe the  
second examination was made on April 2nd, 1913. I think May  
23rd, 1913 was my third examination.

BY THE COURT:

Q What is the first date again? A April 7th.

Q And the second? A April -- I beg your pardon -- the  
second.

Q Well, April 2nd is before April 7th, isn't it? A Yes,  
sir. I have made some error in this notation here. I ex-  
amined this man on April 7th there.

Q The first time? A Yes, sir, and I also examined him  
again, the date of which I am unable to state.

Q But subsequent to the 7th? A Yes, sir, and again on  
May 23rd. There were three examinations in all.

BY MR. FUCHS:

Q And then any time after that? A And I also saw him on  
January 13th and again on January the 14th.

BY THE COURT:

Q Of this year? A Of this year.

BY MR. FUCHS:

Q That is yesterday and the day before yesterday? A Yes,  
sir.

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Q At your first examination, doctor, will you state what conversations you had and what your examination consisted of?

A Why, my first examination, I had a general conversation with him

THE COURT: Will you state the conversation, doctor?

A (Witness continuing) The conversation? I asked him his name, his age, how long he had been there, and he said he had been there since the 14th of February, 1913.

BY THE COURT:

Q This was in the Tombs that you had this conversation?

A Yes, sir.

Q Tell us what you mean by "there," -- in the Tombs?

A Yes, sir, in the Tombs. And I asked him how he was getting along and he said very well, and I asked him a number of questions in reference to himself, and observed him and made a physical examination of him. There was nothing particularly marked except the right pupil did not respond to light as readily as the left. I made no notes of that examination, I am testifying from my best recollection. That is practically all I recall at that examination.

Q How long were you with him that time? A Why, my recollection is that I was there three-quarters to an hour.

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BY MR. FUCHS:

Q Were any other doctors with you at the time?

THE COURT: Doctors or persons.

A At one of these examinations --

BY THE COURT:

Q No, he is speaking about that examination. A I cannot testify definitely as to whether any other gentlemen were there or not at that first examination.

BY MR. FUCHS:

Q Do you remember whether Dr. Maguire, the Tombs physician, was with you at the time? A I think very likely he was.

THE COURT: Strike that out. He says he cannot recall.

THE WITNESS: Oh, I can refresh my memory on that.

THE COURT: All right. If you have any papers or documents that will refresh your memory you may use them.

A (Witness continuing) Mr. Emil Fuchs, the attorney, was there; Dr. Armstrong, Dr. Maguire and the apothecary.

BY THE COURT:

Q That is three other physicians and Mr. Fuchs? A Yes.

BY MR. FUCHS:

Q What did your examination consist of, doctor, in your second visit?

THE COURT: Have we finished the first?

THE WITNESS: Yes, sir.

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THE COURT: He has not told us anything about that at all. He only told us the conversation he had with the defendant.

THE WITNESS: I made the physical examination, and the only observation that I was able to make in his case as being different from the --

THE COURT: Well, you were not asked that. Just state what you did there.

Q What did you find? A I stated I found the right pupil did not react to light as readily as the left.

Q What is that indicative of? A Well, we find such conditions sometimes in paresis.

Q That is simply one of the indications or signs of that?

A Yes, sir.

Q At the subsequent examinations, was the same thing present? A No, sir. The last time I examined him, on May 23rd, his pupils reacted normally.

THE COURT: Why not take up the examinations in order, if you wish? Let him give all his examinations, all his conversations.

Q If you are through with your first one go to the second one without any further questioning. A The second examination was practically a repetition of the first examination. I talked with him about the details of the crime.

BY THE COURT:

Q Can you fix the date now? A No, sir, I am unable to.

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do so, I have lost the note.

BY MR. FUCHS:

Q Well, it was between the 7th day of April and the 23rd day of May? A It was.

Q Did you go into his history and question him about his trips to California and so forth? Do you recall? A I did. He stated that he went to California, that he stayed there about three months and then he came back, that while he was in California he worked as a dishwasher and odd jobs; that he came back here, that he was employed by the Society for the Prevention of Crime, and that is practically all I can remember of my conversation at that time.

BY THE COURT:

Q That is the second visit now? A Yes, sir.

BY MR. FUCHS:

Q Did he speak to you on either of those two times about his treatment in the Tombs? A More about that the last time.

Q You mean the third visit? A Yes, sir.

Q But during the first two visits, have you any notes that show just what he said about that, doctor? A No, sir. My recollection of that is not very clear, except that he was very suspicious that he had been doped; and he told me, I think it was my second interview with him that he saw a policeman standing outside the door of his cell, and I asked him what the policeman was there for, if he was a friend of his, if

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he recognized him, and he said No, and I said, "Do you think he is there to do you harm?" and he said, "Yes."

Q That was, you think, at your second interview? A I think that was the second interview. It is very difficult for me to separate these different statements that he made to me at the different interviews. It is so far back.

Q Will you go ahead now with the third visit? A Well, the third is May 23rd. He told me that he was mistaken in regard to -- this helps me somewhat to refresh my memory of the other interview. He told <sup>me</sup> he was mistaken regarding the views he held of his wife's infidelity and that the reasons for his thinking so do not now seem to be enough to warrant such an assumption. In answer to the question as to whether he remembered shooting, he said, "I decline to answer." He also thinks that his seeing the policeman near his cell in the Tombs was an imagination.

Q What other conversation did you have with him then, doctor? A Well, I had a very general conversation about the whole matter, but I cannot recall the details of it.

Q During these three times that you were with him, how long a time did you stay there? A Why, I could safely say an hour at each interview.

Q Now, we will come down to the fourth conversation, or the fourth examination which you say you held yesterday? A Yes, sir. No, the day before yesterday.

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Q Was there any physical examination that day? A No, sir.

Q Well, tell us what the physical examination consisted of.

A I said "You are James Purcell"? He said, "Yes." "How old are you?" He says "34." And he stated that he was married, that his daughter was 12 years of age at the time of her death. That he had gonorrhoea several times, first at 16 years. He stated that he had had syphilis at 26 years of age; that he was treated for 18 months. And he went to school till he was 15 years of age, that he went through arithmetic, that he was a good grammarian, but poor in geography. He attended St. Stephens Parochial School; that he went to church. That he went to work at 16; that he worked at the telephone in a pool room about six months; that he made a hand book for about six months; that he was connected with pool rooms for 15 years -- that he had two at one time. That he gave it up two years ago. That he was in the saloon business for a few months. That then he went to California about June, 1912, and was there until August, 1912; there about two months.

He worked at bartending, as a waiter, a dishwasher. That he went to work for the Society for the Prevention of Crime after the Rosenthal shooting. That he wrote to Philbin that he could give him valuable information, and he said, "I wrote to the District Attorney, giving valuable information."

About four months before the shooting he began to sus-

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pect his wife of infidelity. "I watched her and hired a fellow to follow her, named Chris Dowd."

A few days before the shooting he stated that he found some black and blue marks on his wife's person and he attributed them to immoral acts on her part. In other words, he said he thought she had been with a man and she had gotten these black and blue marks while with him.

He denied that he was addicted to drugs, and he stated that he had not drunk anything for several years prior to the shooting.

He also stated that his food was being drugged.

BY THE COURT:

Q When? A That his food had been drugged. He would not say when.

Q Did he say at home, or in the prison, or where? A I took it that he meant in the prison, since he had been in the Tombs, but I cannot state that, he would not tell me. And he said his reason for thinking that his food was drugged was that he was dopey. That was practically all of the examination the day before yesterday.

BY MR. FUCHS:

Q Will you go ahead with your examination, doctor? A And last night I had an interview with him from, well, approximately quarter of five, I should think, until a quarter after six, and these notes were made by a stenographer who was present

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at the time, and I would like, if your Honor please, to refresh my memory from them as I testify.

THE COURT: Certainly.

A (Witness continuing) I asked him his name and age and if married and so on, which he stated as he had previously done. He said he continued in the pool room business until 1912.

"Then what happened?" A "That was just before I went to California."

Q Did he tell you what date it was that he went into the pool room business? A My recollection is about when he was -- he told me, informed me that he worked at the telephone in a pool room first a couple of months. I said "Then what?" and he said, "I went to work in a pool room." "How long?" "A couple of months, and then I opened a pool room." I said, "How old were you then?" He said, "About 16." And I said, "You opened a pool room when you were 16 years old?" and he said, "Yes." I said, "Where did you get the money?" He said, "I got it from Joe Gleason." "Were they friends of yours?" and he said, "Yes, they were in the business and also friends." I said, "How long did you run this pool room?" He said, "I done business for them for a couple of years." "The pool room was theirs and you managed it?" He said, "Yes." I said, "Did they pay you a salary?" He said, "Salary and commission."

I said, "What did you do after that?" "I continued in the business for some time. for them or others, and some-

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times for myself." "How many years?" He said, "About 15 years." "Until when?" He said, "Until 1912." "Then what happened?" He said, "That was just before I went to California." And I said, "Did the business fail, or did you give it up?" "I gave it up. It didn't pay." "Do you recall when that was?" "It was in April, 1912." And I said, "What did you do then?" He said, "I went to San Francisco."

And then he stated, as he had previously, that he worked as a waiter and barkeeper and so on and was there about three months and came back here.

I said, "When?" He said, "September, 1912." I said, "Then what did you do?" and he said, "I went to work for the Society for the Prevention of Crime." "What did you do for them?" "Nothing much; just being held as a witness in the graft investigation, in case they wanted me." I said, "You testified in some of their cases?" "No, only before the Curran Committee." "How many days did you testify there?" "Once." "Is that all the real work you did for the Society?" "Yes."

Then I said, "When did you testify before the Curran Committee?" "February 7th, 1913." "You got enough money to enable you to live?" "Yes."

"When was it you got in trouble?" "February 14th, 1913." "What is the nature of the trouble?" "The shooting." "Whom did you shoot?" "I shot the child." "And attempted to

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shoot your wife"? "Yes." "Had you been drinking for a month before this shooting"? "No, I had not drunk in three months before that."

I said, "Did you drink a good deal"? He said, "Years ago." "When did you stop"? "1907." "What caused you to stop"? "I found out that I had that disease." "You never drank much since then"? "No."

I said, "Did you ever take any drugs"? "No, not that I know of." I said, "You would know it"? He said, "I don't think so. I didn't do it willingly." I said, "What do you mean by that"? He said, "If I ever bought any and put it in my mouth, I never took it willingly, or from anyone willingly." I said, "You mean you had drugs administered to you when you were not willing to take them"? "Yes, that might be." "That is what I said when I came in." I said, "That is what I want you to tell me." He said, "I told you several times, and several doctors came in about being drugged and then I requested the statement." "Why did you request it"? "I felt like it." "Wasn't your first statement true"? "What is the difference? That doesn't make any difference. What is the use of my saying I took drugs, what is the use of my saying I made various statements? I am not going to talk myself into jail; I am not going to say anything that you may testify against me and do me harm."

"Why do you think I will testify against you"? "You

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may say if we stay here ten years I am bound to change it. If you were up there for eleven months they would make you say lots of things."

BY THE COURT:

Q His attorney was present at this interview, was he?

A Yes, sir, he sat there. I did the talking.

Q But the attorney sat there with you? A Yes, sir, a part of the time.

Q I merely wanted to understand that it was not a private interview between you and him? A Yes, sir.

Q He knew you were there at the request of his attorney?

A Yes.

Q The attorney brought you over? A Yes, sir. (Now continuing with main answer.) "Why do you think I will testify against you?" "You may." I said, "They couldn't make me." He said, "They would do it to you quicker than they would to me. They just keep you till you do it. I got cold sitting talking to you in that room for a couple of hours." He meant the preceding day. It was cold, (and after coughing), and I said, "I am not to blame for that." He said, "Neither am I. All I have got to do is to take me down here any time and send me back."

I said, "Why do you tell so many stories about this matter?" "I am trying to be agreeable." "Why do you want to be?" "The doctors who come in here and visit us." I said, "I

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would like to get one story from you that you would stick to."

He said, "You got three or four stories from me."

"But they were all different." "I told everybody the same story in the beginning, then I retracted and then I reiterated them." "Why do you retract?" "Because I have nothing else to do, it is amusement to me. I go along and wait for one proceeding to come to a head and then it is dropped and something else is taken up."

"What else?" "More examinations." "What do you think of the objects of these examinations?" "I can't see it at all." "What do you mean?" He said, "I mean I can't see anything in it. I am not being advised, I am just being talked to."

"Do you want me to advise you?" "I don't, no. Mr. Fuchs is my lawyer and is not advising me, just lets me talk to the doctors."

"Have you any idea in mind that Mr. Fuchs is not doing everything he should do?" "I am just waiting. I think all must be settled some time. There is nothing in that talking to the doctors."

"You are the interested party?" "I know I am the principal and have least to say. I am up here eleven months without a suit of clothes and the price of a meal."

"Do you expect to be paid for working here?" "Not working. I can get money if I get to my friends." "Where

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are they"? "That has nothing to do with you, none of your business, that has nothing to do with it."

"You seem to be cross tonight, Purcell"? "I am not. I am tired and the trial is on. Let it go on." "Are you not interested how it turns out"? "Yes, sure, very much so. What is the use of my talking? I have had about twenty-five examinations by doctors. I have had four or five, and there are about seven or eight doctors and four or five trained doctors, visitors."

"You say you had not been drinking or taking any drugs before the shooting"? "That's what I said." "What had you been doing two weeks preceding the shooting"? "I was in the employ of the Society for the Prevention of Crime."

"Had you been worrying very much during those two weeks"? "Yes." "What about"? "All that is covered in the statement about what I done before I went on the Curran Committee." "I don't know anything about it." "Well, I told you you have that." "Tell me what you were worrying about." He said, "What is the use, I don't know what I am talking for. You cannot tell the jury what I was worrying about. Mr. Fuchs has all that stuff."

"Have you heard the testimony of Barthelson"? "Yes." "Why did you tell this man Barthelson to follow your wife on the 7th, 8th, 9th and 10th of February"? He said, "I told him that I suspected her of taking those papers I was writing."

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"Why did you want him to follow her, to see if she met anyone?"

"Whom did you think she was going to meet, man or woman?"

"It didn't make any difference. It was in reference to those papers at the Curran Committee."

"You told him to see if she met any man and if she went out with him?" "No, I did not."

I said, "What are you laughing at?" "I am laughing at Barthelson."

He just sat back in his chair and laughed heartily.

I said, "Why?" "I wanted to see that no one harms her."

"Did you not say that?" He said, "I did not want her to meet anyone." "Did you not say that to Barthelson?" He said, "Yes, sure."

"What is there to laugh at?" "Well, I didn't say that to him." "Well, what are you laughing at?" (He kept laughing as though it was all a huge joke.) He said, "I just felt like it."

I said, "I don't think a man who was on trial for life would feel like laughing." He said, "Well, it is not a joke." "Well, you laugh as though it was a joke." (No answer.)

And I said, "When did you begin to feel suspicious of your wife?" He said, "When I got out of bed that morning, the morning of the 14th." And I said, "Had you been suspicious of her before that time," and he said, "No." "Were you suspicious that she was going with another man?" He said, "No, I

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never thought anything until I woke up that morning." "What did you do then?" "Just what I wrote in the letter about my conclusions."

"Tell me your conclusions." "Just those in the letters, that is good enough for me. I will take a chance on that." "What do you mean by that?" He said, "Let them take and what I thought that night. the letters and see my intentions, / What I am now does not make any difference, I am not committing any crime now."

I said, "In those letters you stated that you suspected that your wife met men and went out with them? What were your suspicions at that time?" "Yes, when I got out of bed I wrote down just what I thought."

"What made you suspicious of your wife?" He said, "That is all in the record and testimony. I will not tell you because I am not going to waste any time, I do not feel like it. I am not going to work over there all day and then come here."

I said, "You are the most interested party?" He said, "I am not going to be punished until I am convicted." I said, "This is not punishment." He said, "Yes, it is. I am here eleven months without a trial."

And I said, "Let me ask you this. Did you intend to kill your wife and the child?" He said, "Surely, what do you think I shot at them for?"

I said, "Well, you told me yesterday that your wife es-

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escaped after you shot her, then you shot the child?" He said, "Yes." I said, "Did the child say anything to you?" He said, "Yes, I told you yesterday." I said, "What did she say?" He said, "Don't you remember what I told you yesterday?" She said, "What is the matter, papa?"

And I said, "What are you laughing at?" He said, "I am going to laugh all I want to. I have to laugh."

After he spoke about what his child said, after he shot her the second time, he laughed again. I said, "When did she say that to you?" He said, "After I shot at her." I said, "The first time?" He said, "The second time."

I said, "Have you felt badly about this at all?" He said, "Yes, sure." I said, "When?" He said, "All the time." I said, "You do not feel too bad to laugh about it?" He said, "That is all right. I am not supposed to feel that way all the time." I said, "If I shot my child I don't think I would want to laugh for quite some time. What do you think about it?" He said, "I don't know. Two different people, that's all."

I said, "Why did you shoot the child?" He said, "To save her soul; I said in the letters."

I said, "Why did you think she was going to lose her soul?" He said, "On account of her associates. What is the difference, let the jury decide upon my conditions at the time of the crime, that is what concerns them. It does not make any

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difference whether I am insane now, is that they are not affected."

I said, "Why do you think your wife an improper person to bring up the child"? He said, "Just what I said in the letters, because I thought she was unfaithful and kept bad company."

I said, "Had you any reason for thinking she was unfaithful"? He said, "Only what I stated at the time." I said, "What was that"? He said, "I told you that time and time and I am sick and I am not going to stay here and work myself to death. I am in no shape and I ain't supposed to do this unless I feel like it."

I said, "You told me about a policeman being outside of your cell door; when was that"? He said, "I never told you anything of that kind." I said, "Don't you remember telling me that a policeman was outside of the cell door"? He said, "I never told you, and that is going enough, and I am not going to hurt myself trying to remember."

I said, "Do you remember telling me that some of the food you got contained drugs"? He said, "Yes, sure." I said, "When was that"? He said, "I told you at one of your examinations." I said, "Do you still think your food is drugged"? He said, "I can't say." I said, "You thought so then"? He said, "That has nothing to do with it." I said, "What object would they have in putting drugs in your food"?

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He said, "I don't know unless they are all crazy too." I said, "You don't suppose the keepers here in the Tomb are crazy"? He said, "Well, there is some question about it at that." I said, "If you get poison in your food, was it poison or just drugs"? He said, "Either one wouldn't make any difference." I said, "If you get drugs in your food, wouldn't the other men get the same"? He said, "No, they would not." I said, "It all comes from the same pan." He said, "It can be put in without giving it to each one." I said, "How can you tell"? He says, "Put it in the other hands." I said, "Don't the keepers give you the food"? He said, "No, the runners, the prisoners." I said, "Do you think they would want to drug you"? He said, "They might for a steak or a beef stew."

I said, "Do you recall telling me something when I saw you, that you had changed your mind about your wife being unfaithful to you and felt that you had made a mistake in killing the child to save her soul"? He said, "Yes, sure, I told you that, but those statements were all retracted."

"Well," I said, "which way do you feel now -- that you were right or wrong"? He says, "Wrong, of course." I said, "Why do you feel that way now? You told me that you thought you had done right to kill her to save her soul." He said, "No, I didn't tell you anything of the kind." I said, "I remember distinctly you said no." "That is left for anybody

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to figure. Whether I thought I was right or not, I did it to save her soul."

And I said, "Do you think you were crazy at the time you shot your daughter?" He said, "I know I was crazy."

I said, "Do you think you are crazy now?" He said, "Yes, sure." I said, "Why do you think so?" He said, "Because I stand for so much coming down here and talking to doctors so often, and other things."

I said, "Have you many enemies?" He said, "I don't know, I can't remember that." I said, "Do you think Mr. Fuchs here has done all that he can to aid your case?" He says, "Yes, sure."

I said, "But you said a few minutes ago that you only saw him a few times." He said, "That is the way I feel. What do I want to see doctors? I can't see doctors for other purposes when I want to." I said, "Do you want to see doctors?" He said, "Yes, I asked Maguire to send for Dr. McGowan some day."

I said, "Who is the man that you were suspicious of in connection with your wife, what was his name?" He says, "Neuse." I said, "What made you suspicious of him?" He said, "We talked about him up there and saying that he was Delaro's manager."

I said, "Delaro was your brother-in-law?" He said, "Yes." I said, "Do you think that your sister-in-law would

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allow anything improper to go on in her house and let your wife be party to any improper proceeding"? He said, "I don't know whether she would or not." I said, "Do you like your sister-in-law"? He said, "Yes, sure." I said, "Is she a respectable woman"? He said, "I suppose so." I said, "Do you think she is"? He said, "Yes." I said, "Do you think she would allow anything to go on in her house that is improper"? He said, "No." I said, "Why should you be suspicious when your wife was at your sister-in-law's house"? He said, "Because I was insane. That is simple enough, is it not?" I could not reason."

I said, "Well, don't you think you can reason now"? and he said, "Yes, sure." "Well," I said, "could you not reason then"? and he said, "No."

I said, "You said you were insane only a few moments ago"? He said, "Yes, I must be." I said, "How can you reason now"? He said, "Well, because I am talking to you, that is the worst kind of insanity. You are only trying to make me tired."

I said, "You are tired now"? He said, "Yes, I am tired, I will not talk any more." I said, "What makes you so tired"? He said, "Being over in the court. I am stiff and all exhausted."

I said, "When you testified before the commission proceeding, you testified then that you were sane, did you not"? He said, "I don't think they asked me that question".

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"Well," I said, "if it should appear in your testimony that you said that, would it make you feel that it was true?" He said, "Yes, I suppose so. I don't suppose they would put it down unless I said so."

I said, "Who is this man Thomas -- a friend of yours?" He said, "I thought this Delaro was Thomas." I said, "When did you think Delaro was Thomas?" He said, "The day I came down to the District Attorney's office and a few days after that."

I says, "Was Thomas a smooth-faced man?" He said, "Yes." I says, "Was Delaro?" He says, "No, I thought he simply raised a moustache after that."

I said, "What was there about Thomas you did not like?" He said, "Nothing." I said, "Did you not make charges against Thomas?" He said, "I requested them." I said, "When did you make those charges?" He said, "I will not answer any more questions." I said, "Why?" He said, "Because I am not used to it. I am <sup>not</sup> going to go upstairs and get sick and not be able to show up tomorrow just on your account and break up the whole thing."

I said, "You would think it was a bull fight or a prize fight and you were working the whole show." He said, "No, I do not." I said, "Well, do you realize that I am trying to find out your mental condition, to testify in court?" He said, "I know, but after you are through the judge will tell the jury

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to disregard your testimony. That is the rule of law."

"Well," I said, "the judge cannot do that." He said, "He did that with Schmidt. They do it all the time, and do it with every insanity case."

I says, "Why"? He said, "Because they judge for themselves. It has nothing to do with it." I said, "Do you think the judge had a grudge against Schmidt"? He said, "I didn't care whether he did or not. He had a grudge against all the alienists." I said, "Well, why should he have"? He said, "I don't know. I know he did it. He told the jury to disregard the testimony of the alienists." I said, "He did"? He said, "Yes." I said, "Why"? He said, "Because it was not good." I said, "Do you think the judge will tell the jury to disregard the testimony of the alienists in your case"? He said, "I think so." I said, "Why do you feel that way"? He said, "Because if one judge can the other can."

"Well," I said, "do you think there will be two judges there"? He said, "There was only one there today." I said, "What do you mean by the other judge"? He said, "Judge Fawcett, in the Schmidt case." Then I said, "Does it bother you to remember the circumstances connected with the shooting"? He said, "Yes, surely." I said, "You told me yesterday very clearly about them." He said, "Yes." I said, "How is it that you remember them sometimes and not other times"? He said, "I can remember them, but I am not delighted at rumors of them."

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I said, "Do you remember saying about having heard about Dr. Maguire years ago?" He said, "But that is all before the commission." I said, "What did you mean by that?" "I had no meaning at all."

I said, "Do you say that you had heard of Dr. Maguire 30 years ago and that he would be here as Tombs physician?" He said, "Yes, I said that."

"Well," I said, "when?" He said, "Several months ago." I said, "Do you still believe it?" He said, "No, I don't."

"Well," I said, "what caused you to change your mind?" He said, "Because I don't believe it any more."

"Well," I said, "do you still feel that your wife and sister-in-law would have had a bad influence on the child if they had brought her up?" He said, "No." I said, "But you did feel that way at the time?" He said, "Yes." I said, "What caused you to change your mind?" He said, "I just did not believe it any longer." I said, "What caused you to feel that way at that time?" He said, "Insanity."

"Well," I said, "didn't you have any reason for it?" He said, "No."

I said, "You complained about your lawyers not doing anything for you, did you not?" He said, "What do you mean?" I said, "They didn't take enough interest in your case and they didn't come around to see you oftener." He said, "I said that."

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I said, "How do you feel about it"? He said, "I feel the same way, that they did not come around often enough and the case was not disposed of quickly enough."

I said, "Have you ever heard your daughter talk to you since you have been here"? He said, "No." I said, "Has she ever appeared to you"? He said, "No." I said, "And you told me yesterday you wrote two or three letters at the house and they were found by the police"? He said, "Yes." I said, "What time did you write those letters"? He said, "About 3 o'clock." I said, "What time did the shooting occur"? He said, "About 6:30 or 7."

I said, "As soon as you finished writing the letters, did you intend to shoot your wife and daughter"? He said, "Yes." I said, "Why the delay"? He said, "I changed my mind again."

"Well," I said, "after you wrote the letters did you go right over and wake your wife and tell her you were going to shoot her"? He said, "Yes." I said, "What did she say"? He said, "She asked me to give her a chance." I said, "What did you say to her"? He said, "I will give you a chance. She begged me to get her a drink of water and I got it and she got it and we got up and talked."

I said, "What did you talk about"? He said, "We talked about the missing papers." I said, "Did you think she took the papers"? He said, "No, why should I think that"? I said,

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"Why were you going to shoot her"? He said, "Because she took them." I said, "You said a moment ago that you did not think she took them"? He said, "No, I didn't think she took them." I said, "Why were you going to shoot her"? He said, "Because I did think so at that time."

I said, "What caused you to change your mind"? He said, "The District Attorney has them. They were found in the apartment." I said, "You told me yesterday that you shot the child in order to save her soul from the bad influences of your wife." He said, "Yes, that is what I said."

I said, "Now you say you shot her because you thought she took the papers"? He said, "No, she did not take the papers." I said, "Well, you say you did not think she took the papers"? He said, "No, not the child. You asked me before why I shot the child."

Then he laughed and laughed several times. I said, "Why did you shoot your wife"? He said, "I told you because she took the papers."

I said, "It is a huge joke (still laughing)." He said, "Sure." I said, "Why did you shoot your wife"? He said, "Because I was crazy." I said, "I want your reason." He said, "I have no reason."

I said, "You started to tell me a few minutes ago, but we have not got it clear. What is the reason"? He says, "Because I thought she took the papers." I said, "Well, why do you

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tell all these stories"? He said, "I might as well talk."

I said, "Which is the truth"? He said, "It doesn't make any difference which is the truth, they have it in writing."

I said, "In the letters you stated that you killed the child because you did not want her to be contaminated by associating with your wife and sister-in-law"? He said, "Yes, that's right."

I said, "Then after you killed the child, did you change your mind"? He said, "No, after I killed the child I went to the station house."

I said, "What caused you to wait three hours after you wrote those letters"? He said, "I changed my mind."

I said, "Changed your mind about everything. Did you tell your wife you were going to kill her"? He said, "Yes, sure."

I said, "What did she say"? He says, "She denied it."

I said, "Denied what"? He said, "Well, that she had been unfaithful, therefore there was no reason for killing. If she had confessed, it would have been different."

I said, "What would you have done if she had confessed"? He said, "Just what I told her."

I said, "What did you tell her"? He said, "I would let her go."

"After you shot and missed your wife, you knew you had not killed her, why did you shoot the child then"? He said,

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"I wrote in the letters my reason -- to save her soul."

I said "From what?" He said, "From hell."

I said, "Why did you think she was going to lose her soul?" He said, "I will not answer any more questions. I am going upstairs, I don't want to be burlesqueing. I am not paying you, so you may as well quit; you are not doing anything for me."

"Well, " I said, "Purcell, what made you suspect your wife?" He said, "I will not answer any more questions. You can tell that in court."

"Well," I said, "tell me what grounds you had for suspecting your wife of infidelity?" He said, "Simply that we were talking about this Neuse."

I said, "Why?" He said, "Because she spoke of this man usually."

I said, "You got suspicious?" He said, "There was no reason, it was just insanity. You asked me to answer the question, and it was insanity and nothing else."

I said, "Did you find a telephone number?" He said "Yes, half of a number."

I said, "Then you looked it up and found whose telephone it was?" He said, "Yes."

I said, "The same man you were talking about, Neuse," and I said, "How did you trace up that number?" He said, "I heard his name, and getting the last numbers."

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I said, "Did you look in the telephone book to see if his name was listed"? He said, "Yes, the tail end of the number appeared."

I said, "You felt that your wife was calling him up on the telephone"? He said, "Yes, I had that in my mind."

I said, "How do you feel about it now -- that you are right or wrong"? He said, "She should not testify that I was wrong."

"Well," I said, "she told you before the shooting that you were wrong." He said, "Yes, then I shot her."

I said, "Why did you not believe it then"? He said, "Because I was insane."

I said, "Did you find some tooth picks with Lorber's name on them"? He said, "That was several months ago."

I said, "What did you think about those"? He said, "It made me suspicious."

And I said, "She was going to dinner with someone; you thought she was going to dinner with someone. There is nothing wrong in a woman going to dinner with a man, is there"? He said, "That has nothing to do with you, that is sure."

I said, "Did that make you suspicious of her"? He said, "It helped. All those things helped."

I might say here that I made a physical examination of him at this time and I didn't find anything particularly marked. His pupillary reflexes appeared to be practically normal.

I said, "Since you have been in the Tombs, have you been an-

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noyed by anyone"? He said, "Only by doctors." (Laughing.)

I said, "Laughing again"? He said, "Yes."

I said, "Have they treated you well here"? He said, "No, of course not, when they bring in doctors every few days."

I said, "You have plenty to eat"? He said, "No."

I said, "Are they against you here"? I think he said no. There is a misprint in this quotation.

I said, "Did you ever hear your name called out here sometimes by someone"? He said, "Yes."

I said, "Did you ever see the person who called you"? He said, "No, not all the time."

I said, "Who was it that called you"? He said, "Someone up in the next tier."

I said, "Someone that you knew"? He said, "No. I might lose sight of one who called me when I looked up."

I said, "What did they want"? He said, "I don't know."

I said, "Would you answer? What did they say"? He said, "They said nothing."

I said, "Did you answer them when they called"? He said, "Sometimes I would look up and not locate them."

I said, "Why should they want to give you drugs in your food"? He said, "I don't know."

I said, "Do you think they do"? He said, "No, I don't think they do."

I said, "You told me a little while ago you thought that there was something in your food." He said, "Well, that is not

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said, "I don't suppose they would have reason to do it."

I said, "You told Dr. Mabon that they had a bellows outside of your room and filled your room with gas; do you remember that?" He said, "Yes, sure."

I said, "Did you tell him that?" He said, "Yes."

I said, "What did you mean by that?" He said, "They killed bed bugs that way."

I said, "But they did not do that when the men were in the room?" He said, "But they leave it in there and it almost puts you to sleep after that."

I said, "You mean they use this to put you to sleep?" He said, "I don't know what they mean."

I said, "What did you mean when you told Dr. Mabon they put this gas into your room?" He said, "I just told him that they put the bug killer in there to make me sleepy."

I said, "Were you there then?" He said, "I would be there soon after they put it in there."

I said, "How soon?" He said, "After they put it in at 10 to 4. I will be there about 4 or later."

I said, "Do you feel that someone was trying to make you unconscious?" He said, "Yes, I thought so."

I said, "Why should they be trying to make you unconscious?" He said, "To make me dopey."

Q I said, "Why do they want to do that? What was their object?" He said, "To have some fun."

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I said, "I won't bother you any more." He said, "I am tired at that."

BY MR. FUCHS:

Q During the time that you were at the commission meeting, doctor, did you also see Purcell there then? A Yes, sir.

Q Did you have him under observation while you were in the room? A I didn't pay much attention to him, Mr. Fuchs. My recollection is he was there, but I did not give him any attention, at that time.

Q Then your judgment on this matter would have to be confined to your five different examinations in the Tombs? A Yes.

Q Beginning about the 7th day of April.

MR. WASSERVOGEL: The 2nd.

THE COURT: Well, he was not sure.

A I have made some mistake in my dates here and it is confused.

BY THE COURT:

Q You withdrew the remark about the 2nd of April, as I understood your testimony, is that right? A I think there was an error, your Honor. I think April 7th was the first.

BY MR. FUCHS:

Q At the commission hearing you said the 7th, so I suppose that is it?

THE COURT: Proceed.

Q As a result of those examinations, your observations

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and your conversations with him, will you tell us, doctor, what, if anything, the defendant was suffering from at the time of your examinations? A You mean the form of --

Q Well, I don't want to qualify it. I just asked you that question as an expert, and I would simply like to have you give to this court and jury your reasons for anything you know as an expert; say beginning with the 7th day of April, will you tell us what conclusions you came to and why you came to those conclusions? A Well, as a result of these various examinations and the conversations with Purcell, I formed the conclusion that he was of unsound mind.

Q Did you come to the conclusion that he was of unsound mind on the 14th day of February, 1913? A I did.

Q Can you give to this court and jury your reasons for your conclusion, please? A Well, because I felt that at the time he did this shooting he was laboring under a delusion.

Q What was that delusion, doctor? Did you say a delusion or delusions? A Well, delusions.

Q And do you feel that acting under that delusion he was not of sound mind when he committed the act? A I do. I may also add, as a result of his delusions and his general mental condition.

Q Did you take into consideration in your finding the history of his past life? A Oh, yes.

Q The work that he did? A I tried to take everything

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into consideration that I have learned about him from my conversations.

Q Did you take into consideration his disease also? A Yes.

THE COURT: He says he took everything into account.

Q Laboring under this delusion, doctor, do you think that he knew the nature and quality of the act that he committed?

MR. WASSERVOGEL: You are asking for his opinion, aren't you?

THE COURT: Yes, he is asking him for his opinion.

(Question withdrawn.)

Q Laboring under that delusion --

THE COURT: Why not put a plain question to him? He says he was laboring under a delusion.

Q Laboring under that delusion --

THE COURT: Do you mean the doctor or the defendant is laboring under a delusion? Now, put the question. Who, laboring under the delusion?

MR. FUCHS: The defendant.

THE COURT: Well, say so. I suggested that you made an error in your question. But if you put it in that form make it plain what you mean.

Q The defendant, laboring under the delusion that you referred to, did he know, in your opinion, the nature and quality of the act in a sane manner?

THE COURT: Strike out the last part of it.

MR. FUCHS: Well, give your answer with that stricken

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out.

A Not in the sense that a perfectly normal individual would.

Q Do you believe that on the 14th day of February, 1913, he was sane or insane? A On the 14th day of February I believe he was insane.

Q Do you think that the defendant constitutes what is known in your line as a constitutionally inferior human being?

A I do.

Q Will you kindly explain to the jury, if you will, what that means? A Well, my understanding in Purcell's case of his constitutional inferiority is that his emotional processes do not balance his intellectual processes, and I consider that he shows his constitutional inferiority also by confusion, by delusion, by hallucinations, by episodes (that is, of violence), and by what I call the paranoid trend of his ideas, his morbid suspicions and distrust.

Q Would you say that the disease that you speak of is a progressive one, doctor? A Well, I think constitutional inferiority, as far as that goes, is not a recoverable condition.

Q Would you say that a person who was constitutionally inferior with a paranoid trend is insane? A I would, decidedly.

Q And you consider the defendant in that condition? A I do.

Q And you consider him to have been in that condition on the 14th of February, 1913? A I do. I might say that I think the paranoideal part of this may perhaps improve under treatment, but the constitutional inferiority part of his

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trouble, that part will remain permanently.

Q If it should be shown by the course of the various examinations that Purcell's mental condition may have improved somewhat, does that indicate anything to you? A Why, it simply confirms my opinion in regard to him. As a matter of fact, I recall that his condition did improve. That is, I am a little hazy on my dates, when I saw him, but in my mind I recall the fact that at a subsequent date, perhaps the second or third time I saw him, he was very much better than the first time I examined him, that is, he was clearer, less hazy and less confused, and if I might say, more sensible in his conversation and more so than he was at the fourth and fifth examination.

Q But you do not consider that he is permanently in any way cured? A Oh, no, I think he is as bad now as he was at the first examination, and the improvement confirmed me in my opinion and made me feel more certain of my diagnosis in his case - the fact that after he had been in the Tombs for a period of time where he could not get any alcohol and drugs, if he had been taking them (which he denies), and living a regular life and going to bed at a regular hour and getting a reasonable amount of sleep and so on, the fact that he did improve agreed perfectly with my feeling in regard to his condition and with what I would have expected under the circumstances.

Q Do you consider the fact that, for instance, he had two ribs removed, that that had any bearing at all on his condition?

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A I don't think much about that. If he had syphilis and he got up an inflammatory condition of his ribs, they might be removed, and I don't think much about that in connection with the case.

THE COURT: In view of the fact that the doctor's testimony as to what was said by the defendant yesterday was admitted, I will admit the conversation, or the alleged conversation that you asked the doctor about, so you can recall him at 2 o'clock; and the letter that he wrote in April you may offer.

(The Court now declares a recess till 2 P. M., first duly admonishing the jury, in accordance with law.)

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After Recess, Trial Resumed.

FRANK WADE ROBERTSON, resumes the stand and further testifies:

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You told us this morning that you saw the defendant on five separate occasions; that was correct, wasn't it? A I did, yes, sir.

Q And on the first occasion you simply made a physical examination of the defendant? A Well, I didn't intend to convey that impression.

Q Well, that is the impression that I got; if I was wrong please correct me. A I conversed with him to a very considerable extent at each and every time because I wanted to get as clear an insight as I could into the situation.

BY THE COURT:

Q What did you do the first time? A I asked him questions in reference to his condition before the time and at the time of the crime and the incidents that had occurred since that time until the time I saw him.

Q You have not any memorandum of that? A No, sir.

BY MR. WASSERVOGEL:

Q Tell us the extent of your physical examination of the defendant? A I examined his pupils as to whether they reacted to light and to accommodation, and my recollection is that the right pupil reacted more slowly to light than the left. I also examined his reflexes, and they were practically normal; possibly

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a little exaggerated, but of no consequence. There was no ankle clonus, there was no marked tremor of the facial muscles. That is my best recollection.

Q That is all you did with reference to the physical examination, was it? A That is practically all, yes, sir.

Q And the only thing abnormal that you noticed was the right pupil of the eye, that that did not-- A Did not respond to the light quite so quickly as the left pupil.

Q Nothing extraordinary about that, was there? A Nothing that I gave very much thought to. I did question in my mind as to whether there was a possibility of this man having paresis, general paresis, but there was nothing else particularly to bolster up that impression, so it left my mind.

Q So that you never came to any such conclusion, that is, that he had paresis? A No, sir, I never had the conclusion that he had paresis.

Q This peculiarity that you noticed about his right eye, isn't that characteristic of syphilis, Doctor? A Why, I presume you could have that in a syphilitic condition. There are a number of things that might give you that condition.

Q As a matter of fact, you found that that condition was improved? A I did.

Q Disappeared the very next time that you saw him? A Well, either that or the third time. It disappeared anyway.

Q Within a short time after your first visit? A Comparatively

so.

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5 Q The second time that you visited him was also over at the 198  
Tombs, was it not? A It was.

Q And on that occasion I think he told you that he believed  
a police officer was outside? A He did, outside of the cell.

Q You did not go outside to see whether a police officer  
was there, did you? A No, sir, I could not have.

Q You made no examination? A I could not have.

Q Well, you did not? A No, sir.

BY THE COURT:

Q Did you or did you not? A No, sir.

BY MR. WASSERVOGEL:

Q On the third visit you tell us that he told you that he  
had been mistaken about his wife's infidelity, is that correct?

A yes, sir.

Q You never made any investigations yourself as to the  
statements made by him regarding his wife? A I did, as far as I  
I was able.

Q What investigations did you make? A It happened that --

Q What investigations did you make? A I conversed with his  
wife.

Q Outside of that you made no investigation? A It was not  
possible, sir.

BY THE COURT:

Q Well, did you make it? A No, sir.

BY MR. WASSERVOGEL:

Q On your first visit to the Tombs, and your first interview  
with the defendant, did he laugh while talking to you? A I can-

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not state definitely, but my best recollection is that at each and every one of the interviews he did laugh without, it seems to me, any sufficient reason.

Q And it was always with reference to some question you put to him? A Not exactly; there would be--

Q What do you mean? A There would be times between questions when I would be thinking of something that I wished to ask him about, and he would smile.

Q The first time that you went over to the Tombs, did you go there alone, or were you accompanied with some one? A Well, I think I must have been accompanied by his counsel.

Q Mr. Fuchs? A Yes, sir.

Q Who introduced you to him as an alienist, hired in his behalf, in the defendant's behalf? A Well, I don't recall the way of the introduction.

Q Well, that is the substance of the introduction, wasn't it? A I think he said he could talk freely with me.

Q And after the first interview when you called there the second time, of course the defendant knew whom you were? A I assume he did. I told him who I was.

Q Well, he addressed you by name? A I told him who I was.

Q Sir? A I don't recall that he addressed me first. I said to him, "I am Dr. Robertson, and I am here to examine you."

Q The second interview, you were also accompanied by Mr. Fuchs, were you? A I couldn't say.

Q You did not go over there alone, did you? A I am rather

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of the impression that arrangements had made that I would be permitted to see him, but I hardly think Mr. Fuchs was there that time.

Q But this last time, on the 13th of January, and also on the next day, the 14th of January, Mr. Fuchs was present? A On the 13th he was not; on yesterday he was.

Q On each occasion a stenographer was present? A No, sir, only the last time, yesterday.

Q And that stenographer was taking down everything which you said and that the defendant said? A Yes, sir.

Q The stenographer was right in the view of the defendant where he could see him? A The stenographer sat next to the defendant.

Q On each occasion when you saw the defendant he appeared to be better than on the last previous time that you saw him, isn't that correct? A The 23rd he was very considerably improved over when I first saw him.

Q By the 23rd you mean the 23rd of April? A May, I think.

Q 23rd of May? A Yes, sir.

Q And the first time was April 7th? A Yes, sir.

Q So on the 23rd of May he seemed considerably improved?

A Yes, sir, he seemed better.

Q And on the next visit that you made over at the Tombs? A The next visit was January the 13th, the day before yesterday.

Q And he seemed improved then, didn't he? A No, I don't consider he was as well as he was in May.

Q And how did you find him yesterday? A Well, he was about

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the same, as I recall his condition at the first interview. I think perhaps he answered questions more quickly than he did at my first interview.

Q Well, he answered questions intelligently, didn't he, apparently so? A Well, he answered them more slowly the first time.

Q More slowly the first time? A Yes, that is my best recollection.

Q That is the only thing you noticed about his method of answering your questions? A Yes, that is, in comparison.

Q Is your opinion regarding the defendant's mental condition the same to-day as it was when you testified before the commission? A Substantially so.

Q Do you recall having said before the Commission, "I should not want to go further than to classify the defendant as a constitutional inferior. I would want to stop there." Do you remember saying that? A Yes, sir.

Q Your opinion is the same to-day? A Well, it is stronger to-day than it was then, because I will be very frank with you--

Q I mean you have to stop there, you cannot go any further than to say he is a constitutional inferior? A Oh, yes, I can, decidedly.

Q Has your opinion changed? A It is stronger than it was then.

Q You said-- A Well, in that sense it is changed, yes.

Q You said when you were examined before the commission "I should not want to go further than to classify the defendant

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7 as a constitutional inferior. I would want to stop there.\* 202

Now, do you want to go further at this time? A I am testifying further, perchance.

THE NINTH JUROR: What date was that?

THE WITNESS: I think it was July.

THE COURT: Mr. Wasservogel will find the date.

MR. WASSERVOGEL: On the 7th of July, 1913.

Q Now, what do you say, Doctor? A I say that I am not going further than the opinion that I had in my mind, but I may be going further as far as my testimony goes.

Q We are only asking you about your opinion, you are testifying here as an expert, as an alienist? A My opinion is the same as it is now, but I was not so sure of my ground as I am now, and I was not under oath, to swear so strictly in the matter as I feel inclined to do now. I have had more chance to observe this man, there has been a very considerable lapse of time since July, and I feel very much more strongly entrenched in my opinion of the man than I did then.

Q You still cannot go further than to say he is a constitutional inferior? A Oh, yes.

Q How much further will you go? A Well, I will say he is a constitutional inferior, with a paranoid trend.

Q What do you mean by that? A Well, I mean in addition to being constitutionally inferior his delusions and so on are of the paranoid type.

Q What do you mean by the paranoid type? A Well, I mean

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that they pursue in a general way one particular line of thought, suspicion, and--well, suspicions.

Q He was not suspicious of his wife here recently when you interviewed him, was he? A Well, he said he was not one moment--

Q You believe that he believed what he said to be true, didn't you? A I think he evaded--or, did not evade, but I don't think he stated truthfully his feelings.

Q Cannot you answer my question? A Well, I say no, to that.

Q Counsel asked you whether in your opinion this man knew the nature and quality of his act, and I believe that you said he did not. Do you mean to say, Doctor, that this man did not know that he had fired a shot at his wife, and that he had shot his daughter? A Why, he probably knew that he fired a shot, he probably knew that he had a gun.

Q Well, that is the nature of the act, isn't it? A That is the nature of the act, but it is not the knowledge which a sane man has, it is a different kind of knowledge.

Q Are you talking of medical insanity, or insanity as it is known in law?

MR. FUCHS: I object to that, if your Honor please.

Objection overruled. Exception.

A Why, I am talking of insanity as it is known in law. The question whether this man is crazy or not, and I am doing the best I can to develop--

BY THE COURT:

Q Take that one question: what do you mean by the nature of

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the act? A The thing which he was doing.

Q Well, what was that? A The taking of the gun and the shooting of the persons.

Q He shot three times at his daughter? A Yes, sir.

Q And then went around to the police station and said that he had shot her? A He did, yes, sir.

Q Now, the question asked you is, do you say in your opinion that he did not know the nature of the act he did when he pulled that trigger three times at that lump on the bed, as he said? A It was an insane knowledge of the act. It was not the knowledge which you or I or a sane person would have, it was not the same knowledge.

BY MR. WASSERVOGEL:

Q Can you tell us precisely what form of insanity in your opinion this man was suffering from on the 14th of February, 1913? A Why, I consider that he was what we would class as a case of constitutional inferiority, with a paranoid trend.

Q Will you define to this jury, please, the meaning of the words "Constitutionally inferior"? A Why, one who occupies, we may say, the border line between the imbecils on one hand and an insane person on the other -- or, rather, a sane person on the other.

Q Is constitutional inferiority a form of insanity? A Not by itself particularly. I think a man may be constitutionally inferior and yet not be insane necessarily. It is a relative term.

Q You cannot refer to a single authority that classes con-

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stitutional inferiority as insanity, can you?

MR. FUCHS: I object to it, in view of the answer.

Objection overruled. Exception.

THE COURT: This is testing the general competency of the witness.

A Constitutional inferiority alone, I would not want to say that I could point to a text book which would call it insanity.

Q That constitutional inferiority is a type of insanity?

A I say that it need not necessarily be a type of insanity.

BY THE COURT:

Q The question is to name some standard work in which it is referred to as a type of insanity? A No, sir.

Q you cannot do that? A No, sir.

MR. FUCHS: We do not claim that it is.

THE COURT: He has been asked that. On re-direct examination you may ask him. This is cross examination as to the classification of the witness.

BY MR. WASSERVOGEL:

Q Assuming, Doctor, that the defendant purchased a pistol and cartridges in another state the day before the crime, and that with this weapon he shot at his wife and afterwards killed his daughter, did these acts indicate an intelligent premeditation of the crime, or were they the acts of an irresponsible lunatic, or one irresponsible by reason of constitutional inferiority? Do you understand that question? A Yes, sir.

Q Answer it, please. A It would not necessarily indicate

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that the man was sane.

Q What would it indicate? A Why, he might be insane or he might be sane and do that very thing.

Q That is the best answer you can give to that question?

A Yes, sir, that is the best answer.

Q Is constitutional inferiority as progressive or a stationary disease? A Well, it might be either one. It might reach a certain degree and stop there, or it might continue, and it would depend somewhat as to the character of the inferiority whether it was a case of arrested development, that is if a man-- as a child develops to a certain degree and thereafter certain mental qualities do not develop, and he stays in an undeveloped state--

Q In this particular case you found that the man, the defendant, answered your questions much more intelligently on the third and fourth visits than on the first visit, is that what you want to tell us? A Yes, sir.

Q So that you did find improvement? A I don't want to say intelligently.

Q More readily, willyou put it that way? A More readily. There was not a delay between my asking the question and his reply, that is the point.

Q And in your opinion constitutional inferiority (see whether I got your definition correctly) is one who occupies the border line between an imbecile and a sane person, is that what you said? A Who occupies--yes, practically. Who occupies the

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space between an imbecile and a sane person.

BY THE COURT:

Q How would you define an imbecile? A Well, there are various degrees.

Q Well, the term you have in mind when you use it? A A person who is not of average normal intelligence.

BY MR. WASSERVOGEL:

Q Well, a great many persons are not of average normal intelligence and still know the nature and quality of their acts, and know when they do wrong and when they do right? A In the legal sense, yes, sir.

Q How did you come to the conclusion that this defendant was a constitutional inferior? A Well, because I felt that he was not possessed of the average degree of intelligence.

Q Did you ever hear of the Benay-Semon test? A Yes.

Q Did you apply that test? A I did not.

Q You were guided entirely in reaching your opinion by what the defendant told you, isn't that so? A By what he told me very largely, and by my experience with these cases. I had a very considerable experience with these men, I have spent a good many years with them.

Q Well, outside of what the defendant told you, Doctor, what other evidence of insanity did you observe? A Well, his actions, you mean?

Q I am asking you, you are the expert? A His actions were one thing; his manner ---

Q What were his actions? A Well, his laughing, his silly,

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frivolous way when I asked him what his daughter said when he shot her, after he had shot her the second time, what she said, and she said "Papa, what are you doing?", and then he laughed as if it were a huge joke.

Q You have been on the witness stand now for several hours to-day? A Yes, sir.

Q You have observed the defendant in this court room, have you? A I see him here.

Q Have you seen him act that way in court at any time to-day or yesterday? A I have been so busy, sir, that I have not looked at him more than twice.

Q Well, at either of the time when you did look at him did you see him act that way? A No, sir.

Q Isn't it possible, Doctor, that the greatest part of the declarations of the defendant could have been fabrications?

THE COURT: What declarations?

Q Declarations by the defendant to you? A Why, I suppose that is possible.

Q No question about that? He might have lied to you?

A Yes, but in the essential things I think I would have caught him at it.

Q You think you would? A I am pretty certain I would have, sir.

Q How often have you been a witness in cases of this kind?

A Oh, a good many times, a great many times.

Q In this building? A Yes.

Q Can you refer me to any cases outside of the O'Donnell

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case? A Yes, I testified in the Bongiorno case, and I don't 209  
recall--quite a number of others at different times.

Q That is the only one that you can think of now? A Yes. I  
I have sat on commissions a great many times here.

Q What did you do to ascertain whether this defendant was  
shamming or not? A Well, sir, I used the experiences that I  
have obtained in twelve or fifteen years very active work.

Q How did you use that experience? A I would like to answer  
a little more fully. My experience in that has been rather  
unique. Since you ask me I would like to tell you. At Elmira--

Q I want to know what you did? A I would like to explain.

THE COURT: You have told us all about your experiences  
before. Now please tell us how you used your experience,  
what act you did while examining this defendant? A I took him  
over the ground a number of times, the same ground, and compared  
his answers in my mind as well as I could with the previous  
answers which he gave and I observed him very carefully, and I  
examined him a number of times and at very considerable length  
and I used every power that I had in regard to his shamming.  
I am frank to say that I had that particular thought in my mind  
constantly, that he might be shamming, and I used every power  
that I had to protect myself, because I wanted to be sure that  
I was right.

Q What specific tests did you employ? Will you tell us that  
doctor? A Why, I don't think there are any specific tests  
that one can employ, further than their intelligence and their

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keenness and shrewdness and matching your wits against the man 21  
and your experience.

BY THE COURT:

Q Then you did not employ any, is that it? A The comparison, comparing the different stories which he told me, and the different statements which he made, your Honor.

Q He asked you for a specific test. Can't you give a name of any test? There are tests of insanity, aren't there? A I don't know of any.

Q Well, the district Attorney named one? A Well, the Benay-Semon?

Q Yes. A That is just a test to determine--

Q Well, that is a test, that is a name. Do you know what he means by it? A I do.

Q You did not employ that? A I did not. It fails in many cases.

Q Did you employ any test you can give a name to? A No, sir.

Q That is what the word specific means. A No, sir.

Q But you did use your own intelligence and your own best knowledge to guard against a shamming on his part? A I did, sir, from the very first.

THE COURT: The district Attorney is entitled to categorical answers to categorical questions.

THE WITNESS: I did not quite understand it, your Honor.

BY MR. WASSERVOGEL:

Q In regard to the so-called delusions of persecution and

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18 the delusional fear of bodily harm, were not those ideas justified 211  
by the fact that he squealed on certain lawless persons in the  
community? A Well, I don't recall that I testified particularly  
in regard to his bodily harm.

Q I am asking you? A But the other delusions--

Q (Question repeated by stenographer as follows:) In re-  
gard to the so-called delusion of persecution and the delu-  
sional fear of bodily harm, were not those ideas justified by  
the fact that he had squealed on certain lawless persons in  
the community? A Not to the extent to which he went, in my  
opinion.

BY THE COURT:

Q Well, to what extent would they be justified? A Well,  
his delusions of persecution extended to so many different  
unconnected persons and things.

Q Well, who were the persons and what were the things? A  
His delusion of persecution, as I recall it, in regard to his  
food, poison being put in his food.

Q Who had the motive to put anything in his food, did he  
say? A I don't think he stated definitely.

Q Well, did you inquire? A I don't recall that I did.

Q His daughter could not put it in, she was dead, wasn't  
she? A She was dead.

Q Did he think his wife was putting it in? A He didn't  
so state. I believe I asked him if he thought the officers  
were putting it in and he said no.

Q Don't you understand that it is in evidence here that he

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had made certain charges against the police and certain people in connection with the police, about the grafting? A Yes, sir.

Q You understand what the term "grafting" meant? A Yes, sir.

Q And the question the District Attorney asked you is, assuming those statements to be true, that he had exposed lawless men to the possibility of punishment and imprisonment, wasn't he justified and wouldn't a sane man be justified in entertaining fear of possible harm? A I don't think so.

Q Or is the fear that a man would entertain under such circumstances in New York County proof of insanity? A Not to the extent to which he feared, your Honor.

Q Well, please tell us to what extent? A Well, I don't think he stated this to me, but I understand that he was afraid and was timid.

Q Don't you know that it was openly stated that a gambler was shot dead? A Yes, sir.

Q And that a police lieutenant had been convicted of conspiring with murderers to kill him? A Yes, sir.

Q To stop him from testifying against them? A Yes, sir.

Well, now, don't you suppose the defendant knew that, as a gambler? A Yes, sir, very likely.

Well, would the fact that he feared when he was making disclosures--would that be proof of insanity on his part? That is the question? A Why, no, sir, not in that sense I don't think it would. He might have a certain amount of fear.

Q Now, he asked you what conclusion ---

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MR. FUCHS: If your Honor please--

THE COURT: I want questions--

MR. FUCHS: The only proof here, your Honor, with reference to his testimony is that he told Mr. Martin his suspicions against Mr. Whitman, Mr. Moss and about myself.

THE COURT: Oh, no, but he went on the stand and testified before the Curran Committee, that has been referred to, and he accused men, whose names have been mentioned as being engaged in illegal practices concerning gambling and graft--

THE WITNESS: I don't know much about that your Honor, about that part, because I did not question him in regard to that.

Q Well, that was the question that I understand the district Attorney to put, and you know you must answer his questions? A I will try to, sir. I am very anxious to.

BY MR. WASSERVOGEL:

Q Then you did not take that delusion at all into consideration in reaching an opinion as to the defendant's mental condition? A I did, because I tried to consider all these things, and I also considered the fact that he had been running a book and a pool room and one thing or another, and he probably was apprehensive and fearful that the police might close him up or something, and he was in that frame of mind when he might be suspicious; I considered all those things.

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Q What do you mean by telling the Court one minute that you did not have the things in mind, and the next minute telling us that you did, Doctor? A Well, I don't know that I have stated that. I certainly had no such intention.

MR. FUGHS: I don't think he said that.

THE COURT: That is for the jury to determine.

BY THE COURT:

Q Did you say to me that you did not take those things into consideration? A Why, I did not intend to, your Honor.

THE COURT: Perhaps the stenographer can find that.

THE STENOGRAPHER: (Reading) "The Court: Oh, no, but he went on the stand and testified before the Curran Committee, that has been referred to, and he accused men whose names have been mentioned as being engaged in illegal practices concerning gambling and graft.

"THE WITNESS: I don't know much about that your Honor, about that part because I did not question him in regard to that."

THE WITNESS: That is right. I did not consider that part so much as I did the fact that he had been running poolrooms and things of that sort, which I felt must necessarily have brought him in conflict with the police, and I did consider that he felt apprehensive in his mind from those things.

BY MR. WASSERVOGEL:

Q You didn't know when he ran poolrooms? You made no investi-

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gation as to that, did you? A I took his statement for it. 21D

Q Did he tell you when he had been engaged in running a poolroom? A I believe he said he had been engaged in those things until a couple of years before the shooting. That is my best recollection.

Q Why should he have any fear on that score, if he had not been engaged in running a poolroom for some years? A Well, the feeling might proceed--there might have been some old scores of some kind, which I know nothing about.

Q But you say that he feared the police might close him up, isn't that what you said? A Yes.

Q Why should he have fear on that subject if he hadn't been running poolrooms for three or four years? A Well, he would not at that time, except the old fear he had when in that business.

Q Why should he fear that the police would close up his place if he had not been running a poolroom for three or four years? A Oh, he would not, naturally.

Q You also speak of the delusion of jealousy which he displayed towards his wife? A Yes, sir.

Q Was the jealousy entirely irrational and delusional, or was it an ordinary form of jealousy, perhaps partly justified by facts? A Well, it was a delusion of jealousy and also infidelity which went a great deal further than mere jealousy.

Q Is a jealousy that leads to homicide presumably illusionary and insane simply because it leads to homicide? A Not necessarily.

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4 Q Isn't insane jealousy, Doctor, almost always confined to 216  
chronic alcoholics? A Well, delusions of infidelity are usually  
confined to alcoholics. That is very common. I would not say  
confined to them, but that it is a very common occurrence  
among them.

Q Do you know whether this defendant was an alcoholic or  
not? A Why, from my observation of him, and the statements  
he made to me I should conclude that he was not?

Q Was not an alcoholic? A Not in any alcoholic or post al-  
coholic condition. I would further judge from his general  
appearance, and so on that at some time he had probably drank  
to excess, but not--

Q Some years prior to this occasion? A Yes, I should  
suppose it might have been probable.

Q In the case of this defendant was not the murder of the  
child practically due to the husband's jealousy of the wife?  
Isn't that about what it amounts to? A Well, that is a very  
difficult thing to say. I could not say yes to that, because  
he stated to me that he killed his daughter to save her soul from  
hell.

Q See whether you can answer this question: would you say  
that the idea of the defendant that his wife had turned his  
daughter against him was an insane delusion that rendered the  
defendant irresponsible for his acts? A Why I would not  
say that single thing would be sufficient.

Q Is it rational or logical, Doctor, to assume that the

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defendant did not know that a defense of insanity was his only possible defense?

Objected to. Objection overruled. Exception.

A Why, I do not think he is in condition to appreciate whether it was or not.

BY THE COURT:

Q Isn't that question capable of answer by yes or no? A Well, I should say no, then, your Honor.

Q (Question repeated by stenographer as follows:) Is it rational or logical, Doctor, to assume that the defendant did not know that a defense of insanity was his only possible defense? A I answer that no.

BY MR. WASSERVOGEL:

Q Did you see a letter which the defendant wrote to a Mr. Marcus, a lawyer connected with the Society for the Prevention of Crime, in this City, within a week after the shooting? A I cannot say, unless you can tell me some of the substance.

Q Were you in court when such a letter was read this morning? A I don't think I was.

Q Well, I won't bother with that then. Isn't it rational and logical to assume that the defendant has acted on this theory regarding the defense of insanity ever since the homicide?

A Why, I don't think he has.

Q Well, he told you at first that he was insane at the time of the commission of the crime, and upon your subsequent visits at the Tombs, he told you he believed himself to be sane.

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Now, didn't he? A I don't recall that he told me at my first visit that he was insane at the time of the crime.

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Q When did he first, for the first time, tell you that?

A I recall distinctly that he told me last night that he was insane at the time of the crime.

Q You do recall that? A Yes, sir.

Q And that he is sane now? A Well, he said both. I think he said he is insane now and he is sane now.

Q The last thing he told you is that he is sane? That is what you testified to this morning, didn't you? A I believe so.

Q Have not the declarations of the defendant in the several examination to which he has been subjected since the homicide (especially his declaration that he was insane at the time he committed the crime and is now recovering) shown that he has a clear and intelligent appreciation of his situation which is inconsistent with the theory that he is actually irresponsible for his acts? Do you understand that question?

THE COURT: Read it, Mr. Stenographer, please.

Q (Question repeated by stenographer) A No, sir, I don't think it does.

Q You don't think so? A No, sir.

Q In arriving at a conclusion as to the defendant's mental conclusion, Doctor, especially on the question of whether he knew the nature and quality of his act, did you take into consideration the fact that immediately after the shooting the

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defendant went over to a police station and gave himself up and told the lieutenant in charge "I have shot my wife and daughter.

Q And you did not consider that the act of an insane person, did you? A Why, it is exactly what an insane man might do.

Q Or what a sane person might do? A Yes, or a sane person might do.

MR. WASSERVOGEL: Yes, of course, that is all.

BY THE COURT: Did it show that he knew that the act was right or the act was wrong, or did it indicate anything to you? A I could not form an opinion from it, your Honor. I could not form an opinion from that single act.

Q Well, if the act was right, what occasion was there to go to the police station? A It is difficult for me to say unless he went there to tell them what he had done. He might have had that in mind.

Q Do men go to the police station to tell them the good things they do? A The police station is a haven of refuge in case of any one in trouble, or fire, or accident, or anything.

RE-DIRECT EXAMINATION BY MR. FUCHS:

Q Assuming that the defendant did go to the station house, you feel that in your opinion the defendant knew what he was doing, but that he was doing it under the delusion which you say he was suffering from? A Why, I cannot get away from the fact that he knew in a way what he was doing, but he did not know it in the way in which the normal man knows it, and he did these things, while he was obsessed with these ideas and delusions. An insane man will keep a set of books in an asylum

as a sane man would, he will perform many acts. In all the 220 State Hospitals a great deal of work is done by the insane patients, strange as it may seem and yet many times they do not do the things in just the way that the sane man would do them, yet they accomplish the work.

Q Would you say, Doctor, that a person in his condition can do everything else as a normal person might, unless he is affected by a delusion? A Why, I don't think he would do anything just as a normal person would, on account of his inability.

Q How do you reconcile the fact that his letters are in good handwriting, and that they are apparently in good English? A Well, there is no trouble about that. A man may be very much affected and write a letter which is fairly intelligent, and in many cases, if he did not touch on the field of his delusions, you would not suspect from reading the letter that there was a thing wrong with him. Patients in the State Hospitals write letters home to their friends which seem and do appear to be perfectly rational, absolutely so, there is no question about it.

Q Is there anything inconsistent with your theory of the defendant being insane from the fact that he sat down with Mr. Strong, whom he knew was an assistant District Attorney and was to prosecute him, and told him the stories that Mr. Strong has testified to here, to the effect that he killed his child--

BY THE COURT: Q Do you know what Mr. Strong testified to? A I do not, your Honor.

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BY MR. FUCHS:

Q To the effect that he had killed his child and described just what he did and also stated several things to him which could be used against him and which were used against him, which would show that he committed the crime-- would the fact that he sat down and told these things, would that dispel your notion of his insanity? A It would not change my opinion.

Q Do you add anything to it? A I am rather inclined to think he might be more loquacious than if he were sane.

Q In your examination he has had good days and bad days?

A He has appeared at sometimes to be better than at other times.

Q Isn't that so in most cases where a man is insane? A Well, in these particular cases they have episodes, and they have periods when they are perhaps more depressed and more quiet, and at other times more excited.

Q The question was asked by Mr. Wasservogel on the proposition that he was shamming? A Yes, sir.

Q You were connected with Elmira Reformatory, were you not?

A Yes, sir.

Q And what were your duties there? A Well, while I was senior physician my duties were particularly at that time to make a very careful analysis of the population. There had been so much criticism of their having insane cases there and select out those who were insane and take the proper steps to have them transferred to the Matteawan State Hospital, and I did

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make such very careful analysis and the peculiar part of it all was that a great many of the men there were very anxious to leave the reformatory and go to Matteawan, because it was so much easier for them in Matteawan than it was in Elmira, they were very anxious to go there, so they did all sorts of stunts and tricks and shammed all kinds of things, and we had, to make sure, as many as forty or fifty men at one time locked up who were all shamming insanity in the hopes that they would get by us and be transferred to Matteawan.

Q But the pistrict Attorney spoke of tests. Every practical test that you have known by experience you applied to this defendant in determining whether he was shamming or not? A I used all the skill I possessed.

Q You did not make up your mind whether the defendant was shamming or not until your examinations and when you appeared before the commission you at that time had come to that decision, had you not, that he was not shamming? A I did not care to go on record the first or the second time I saw him, I was very slow in making up my mind because I wanted to be very cautious in what I said about it, and I don't think I made up my mind until after the last examination.

Q I want to read you and ask you whether this is the question and answer which was had at the commission, and to which Mr. Wasservogel referred, "Why do you think he will be worse, if you found him better on your last examination? A Because I consider him to be a constitutionally inferior case. Further than that

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28 I think that there is some degenerative process at work. I do 225  
not expect any further improvement. I am very much inclined to  
disregard what appears to be the improvement on May 23rd. I  
should be afraid to accept it as a basis on which to form an  
opinion." A Yes.

Q That is as to his improvement? A Yes, sir.

Q And since that time, your subsequent examination after  
May 23rd, has that been confirmed by those examinations? A Yes,  
I do not think he is as well as when I saw him in May. I did  
not put much stress on that apparent improvement. I didn't know  
just what to ascribe it to. I thought perhaps it was the regu-  
lar life in the Tombs, and so on.

Q Is it possible, Doctor, for a man who has used alcohol  
for a great many years, and used it to some extent, to still  
have these delusional qualities that you spoke of as the defend-  
ant having and not drink for several years? A Why, yes.

Q I mean, that there is no rule which says that a man must  
have been drinking for several years past in order to have  
them? A I did not consider that alcohol was an element in  
the case, because it did not appear that he had been drinking  
to any great extent in recent years; no evidence to show that.  
In my examination of him I did not find anything to confirm  
that opinion.

Q In a great many of these cases is it your experience that  
drink is an element in it at all? A Well, a man who is a  
constitutional inferior does not stand alcohol well at all. It

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is a good deal like hitting a package of dynamite with a sledge hammer.

Q Did I understand you right when you said that a constitutional inferiority may not of itself be a disease, or may not constitute insanity, but that constitutional inferiority with a paranoid trend does in your opinion constitute insanity?

A You are correct, sir.

Q You have talked with some of the experts in this case who were retained by the People and by the court--Dr. Gregory? A Yes, sir, I have talked with Dr. Gregory.

Q And Dr. Mabon? A And I talked with Dr. Mabon.

MR. WASSERVOGEL: He cannot testify to a conversation he had with a man who is not here.

MR. FUCHS: I asked if he spoke to him.

THE COURT: He said yes.

Q Did you talk to Dr. Mabon, who was retained in this case by the District Attorney? A Yes, I talked to Dr. Mabon.

Q You also talked to Dr. Maguire, the Tombs physician?

A Yes, sir.

Q Dr. Maguire was present, was he, Doctor, at one of the first times that you saw the defendant? A I think he was.

Q Don't you remember referring to your notes and doesn't that refresh your recollection as to whether Dr. Maguire was present? A I think I can tell you.

MR. WASSERVOGEL: We will concede that he was.

Q Dr. Maguire is the Tombs physician? A He is.

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Q Do you know a Dr. Lichtenstein? A Yes, sir.

Q He is one of the Tombs physicians also? A Yes, sir.

Q Was he present at your examination yesterday? A Part of the time.

Q About half of it? A I should think so, yes.

Q When you speak of tests to the District Attorney, you now say that you applied every possible test within your ability to ascertain whether the statements made by the defendant and all the other statements that you ascertained were made in good faith and were genuine? A I did.

RE-CROSS EXAMINATION BY MR. WASSERVOGEL:

Q But give us a single test you applied when you were up in the Elmira Reformatory and these boys were shamming up there? A That is a very difficult thing to do. There is no rule.

Q Well, you are the expert. A There is no rule by which you can tell whether a man is insane or not insane.

Q In answer to a question put to you by counsel you just stated that you did apply certain tests? A Yes, my tests on my experience.

Q In this case and up in Elmira? A Yes, sir.

Q Can you mention to describe to these gentlemen a single test that you made when you were up at Elmira? A Well, it is a very difficult thing to do. I cannot describe any particular thing which you use as a test to tell whether a man is insane or not, because there isn't any such thing.

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Q Shamming, is the question. A Well, shamming, there is <sup>226</sup> no such rule by which you can determine whether a man is shamming.

Q You did not mean to answer yes, did you? A Yes, sir, I did.

Q What did you do? A The test is my experience and knowledge of these cases; that is the only test I know of.

Q How did you use your experience? A By asking questions and by observing them and talking with them, and at night watching them. That is practically all I can say.

Q That is what you did? A Yes.

Q You do not mean to tell us that this man is suffering from delusions now because he used to drink three or four years ago,

A No, sir, I have not any such thought.

Q Then the alcoholic condition which prevailed three or four years ago has nothing to do with his present mental condition, has it? A I didn't consider that the alcohol, as I said, was a factor in this case. If he drank heavily years ago, it don't help him any, but I did not see any reason to conclude that the alcohol was a particular factor.

Q It had nothing to do with this case? A I won't say that, but I laid no particular stress on it.

Q You laid no stress on it, did you? A I considered the fact that he had probably used alcohol to excess years ago.

Q And that he had not been drinking for at least three or four years? A Yes, I considered that also.

Q Assume that this defendant was in the custody of a police officer a week after this occurrence and told the police officer

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that he was playing the insanity gag and was stalling the authorities and telling them that he was receiving wireless messages, and that he asked the police officer to do what he could for him, and that he also asked the officer how the defendant's wife felt about the case, and if she was very sore about it and that the officer replied that she certainly was, and that the defendant then said that he thought she would be all right in a little while and would come around all right, would that change your opinion in any way on the question of whether he was shamming or not? A Not at all, because I have seen insane men who did sham.

Q You say that would not change your opinion, although these statements were made within a week after the occurrence?

A Not in view of what I have learned from my examination and conversation with this man, and knowledge of his present condition.

BY MR. FUCHS:

Q In all your conversations and talks with the defendant did he ever say anything to you about receiving wireless messages?

A I don't think he did. I have no recollection of it.

Q Have you any note, or anything else, which would show anything of that sort? A I am reasonable sure that I have not.

Q Supposing that he did say to the officer, supposing he said to the officer the very statement that was read, what would your opinion be about the state of his mind, knowing that he was the officer that arrested him, the week after the com-

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33 mission of this crime? A Well, it would be in consonance with 225  
the other things he has said and done in my presence.

BY MR. WASSERVOGEL:

Q You have been on the stand now for a little over an hour.  
Have you observed the defendant at all? A Why, I don't think  
so, except when you called my attention to him.

Q And those times when I did call your attention to him,  
you did not see him laugh, did you? A No, sir.

BY MR. FUCHS:

Q Do you think that you could make up your mind as to  
the state of mind of this defendant, or any other defendant  
by sitting in a witness chair and testifying, or sitting  
around the room and observing the defendant, without knowing  
his history and without having consulted with him time and again  
and observing him.

Q How is that question material? He does know his history  
and has consulted with him time and again.

MR. FUCHS : In view of the question of the District  
Attorney I would like to have an answer.

A I wouldn't think of trying to form a conclusion in a case of  
this character by any such observation.

BY THE COURT:

Q From merely sitting on the stand and looking at him?

A No, sir.

Q Counsel said without knowing his history, without having  
examined him previously, would you undertake to express any

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opinion by merely gazing at him from that stand? A I certainly would not, your Honor.

Q But if you knew his history and did examine him as carefully as you did, could you learn anything by observing him from the stand while you were talking about him? A I don't believe I could, your Honor.

THE COURT: That is the question you wanted, wasn't it?

MR. FUCHS: Yes, sir.

BY MR. FUCHS:

Q Is there anything consistent or inconsistent with your notion, you presuming that the defendant sat as he is sitting now, in this court room -- would that change your opinion of his condition any, as you see him sitting now, as the district attorney has tried to call to your attention? A Your observation would be negative, as he sits now. Of course, if he should rise up, tear his hair out and wave his arms and raise a commotion, your observation would be of some additional value.

BY THE COURT:

Q That is, if it were a genuine outbreak? A Yes, sir.

Q But not if it were mere shamming? A Well, that would have to be determined.

BY MR. FUCHS:

Q During your examinations the defendant has never had violent outbreaks or hair pulling commotions? A No, sir.

BY THE COURT:

Q You have confined yourself to the laughing? A Yes, sir--

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when there was nothing to laugh at.

BY MR. FUCHS:

Q Did you take into consideration in your conclusions in determining the constitutional inferiority and so forth the fact that the defendant had gone to California, after having had these poolroom experiences and there taken a job as a dishwasher and as a bartender and as an agent for Collier's, all in a period of two or three months, and lost every one of those positions within two or three days after he took them? A I don't know as I considered the fact that he lost the positions right away one right after the other. I knew he did several things in California, barkeeping, dishwashing, and so on.

Q And that he did not continue at those things? A I realized the fact that in two or three months he did several different things.

Q Assume, Doctor, if you will, the fact that the defendant was in a poolroom business, that he owned a house, that he owned a saloon, that he had a great deal of money, and that within the last eighteen months or two years previous to the commission of this crime he was broke and went to California and there could not keep a position more than a day or two, that it was inferior work, and assuming that he was discharged from all these positions--

MR. WASSERVOGEL: There is no proof of that your Honor, that he was discharged at any time at all when he was in California.

THE COURT: There is no such testimony.

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MR. WASSERVOGEL: That is an improper question.

MR. FUCHS: I am asking him to assume it, I will connect it.

MR. WASSERVOGEL: To assume a thing that is not in evidence.

MR. FUCHS: All right, that is all, Doctor.

THE COURT: Do you wish to recall the brother of the defendant now to testify to that conversation?

MR. FUCHS: I will, your Honor, but I am trying to get his acts in the Tombs in just now, if I can.

EUGENE J. KEARNEY (318 First avenue) called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. FUCHS:

Q What is your occupation? A Keeper in the city Prison.

Q How long have you been a keeper? A Since September the 19th, 1912.

Q Did you have charge of the defendant? A I did.

Q When, day or night? A In the daytime from the 14th of February till the 3rd of July, and from the 2nd of November till the present time.

Q Will you please state what you observed about the defendant on the 14th day of February, or shortly thereafter? A When the defendant--

Q What he said to you, and just what he did? A On the 14th day of December, and the days thereafter --

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Q 14th day of February? A Or February, rather, and up to the time that I left there in July I had James Purcell under my care, and on several occasions--

BY THE COURT:

Q The question is what did he say to you and what did you see him do? A He wanted the door sealed up.

Q What did he say to you? A He said there were people trying to poison him.

BY MR FUCHS:

Q When was this, how long after the 14th of February? A Month of February and in March and in the month of April.

Q And tell us what he said? A He refused to take his food and said that it was poisoned, he was afraid of its being poisoned. I asked him why he thought so. I said, "You know very well nobody can give you anything in there." Well, he said, "They are trying to frame me, they are trying to frame me up, and they want to get me out of the way. I have been up against this before." I said "You are foolish to talk that way, nobody can do anything to you here, that is what we are here for, to look out for you and give you an even break." He said, "That is all right, but they come in here, they are in here on the floor now, four or five of them in here on the floor now about to give it to me whenever they gat a chance," and for that reason he wouldn't come out of the cell, and on numerous occasions we had to go in the cell on the morning and drag him out, and it got so bad that I reported the matter to Dr. Maguire, and Dr. Maguire told the warden that he would have --

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MR. WASSERVOGEL: Just a minute. Just what you know and nothing else.

Q What was done as the result of what you told pr. Maguire?

A He exercised after the regular hour so that he would not be mixing with the other men.

BY THE COURT:

Q How did he live if he would not eat? A He wouldn't eat unless I took the receptacle in, that the food is taken from the kitchen to the different tiers in, and stood there and watched the men pour it out and then prove to him there was nothing wrong with the food.

Q And then he did eat? A He would eat then, only then.

BY MR. FUCHS: Did he at other times leave his food untouched?

A He would not touch it at all.

Q Q Did he ever complain about his head to you? A He complained about headaches as one of his reasons for not getting out of bed.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Did he say anything about wireless messages? A He said there was a dictagraph in the cell.

Q Oh, dictagraph was what he used? A He said there was a dictagraph in the cell.

MR. FUCHS: I object to the qualification by the District Attorney.

THE COURT: I didn't hear any.

MR. FUCHS: I heard it.

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THE COURT: The jury will hear this case and the evidence given by the witnesses that testify under oath, and they will disregard statements whether made by the district Attorney or the defendant's counsel or any one else.

MR. WASSERVOGEL: The stenographer may read it, if there is any doubt about the remark.

THE COURT: Well, the jury will disregard the remark. They know that they are to decide this case on the evidence. They will keep the law in mind and decide the case on the evidence and on nothing else, and they will decide what witnesses they will believe and what weight they will give to the testimony of every witness. That is their province, and they will do that, I am quite sure.

Q You have been handling, taking care of prisoners over there in the Tombs for some time, haven't you? A Yes, sir.

Q And you have taken care of a great many in your time?

A Yes, sir.

Q Where a prisoner talks the way this defendant talks, isn't it customary to send him to the psychopathic ward at Bellevue for observation? A Not necessarily.

Q That is usually done, isn't it? A No, sir.

Q Very frequently done, isn't it? A In very, very rare cases, except by an order from the Court.

Q Wasn't it done in the case of Gorgonia, two or three weeks ago? A That has to be done by an order from the court, if a man is violent.

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Q And that order of the court is obtained by the Warden of the Tombs or at his request? A I think it takes the Commissioner--

Q Well, the commissioner. The warden reports to the commissioner, and the commissioner applies to the Court? A Yes.

Q And the man is sent to Bellevue for observation? A If he is violent, yes.

Q This man was never sent to Bellevue for observation, was he? A No, he never was.

RE-DIRECT EXAMINATION BY MR. FUCHS:

Q You have had a great deal of experience with this class of cases, have you not? A Some, yes.

Q Did you know the defendant before he came to the Tombs?

A I didn't know him personally, but I heard about him.

Q Did you ever speak to him before in your life? A No, not that I remember.

Q Did you have any interest in him? A None whatsoever, simply as a prisoner.

Q And you have seen men in the Tombs of all kinds and descriptions have you not? A Yes, sir.

Q Do you think you could tell from your experience whether the defendant was shamming these things?

MR. WASSERVOGEL: That is objected to.

THE COURT: Do you want to make him an expert?

MR. FUCHS: Well, there is a lot of inference here and I am trying to bring out everything I can.

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THE COURT: I will sustain the objection. I do not think we have reached the point when a Tomba keeper can qualify as an expert on insanity. You may ask him the questions you ask any lay witness, and only those.

MR. FUCHS: I ask your Honor to give me the benefit of an exception.

THE COURT: Certainly.

HARRIS E. MERESESS, (250 West 104th street) called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. FUCHS:

Q You are a physician? A Yes, sir.

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

Q What is your present occupation? A I am in private practice in the city of New York, and also on the staff of Sing Sing Prison.

Q What has been your experience, what kind of practice have you had? A I was in the State service, connected with the staff of the Manhattan State Hospital, Ward's Island, and also at the Hudson River State Hospital at Poughkeepsie, covering a period of approximately four years.

Q And all that time did you come in contact with cases of mental disorders? A During that time, connected with those hospitals, yes.

Q And those institutions were for that purpose, were they not? A Yes.

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Q Institutions for insane persons? A Insane asylums.

Q What other institutions or colleges have you been connected with? A Why, General Hospital, St. Peters Hospital, Albany.

Q When did you first see the defendant? A Either the 18th or 19th of February, 1913.

Q Did you take any notes at that time, Doctor? A Yes, sir.

Q And when did you see him after that? A Either the latter part of April, or early in May.

Q How often have you seen him altogether? A Four times.

Q That is not counting the times that you saw him while attending the commission? A Four times that I have examined him.

Q Will you state what your examination consisted of, and your conversation with him before you give us your conclusion, start with the examination on the 18th or 19th of February, which is four or five days after this crime? A Yes. At that time I made a mental and physical examination, it probably consumed an hour and a half. The physical examination was directed towards the condition of the nervous system as shown by the condition of reflexes, the eyes and tremors; I found that the knee reflexes were exaggerated. There was a slight inequality of pupils and a sluggish reaction. There was also a slight tremor of the tongue present. There was nothing in the heart or lungs that indicated any other disease.

There was a scar on his body with a history that it was subsequent to an operation for the removal of a syphilitic gumma of the ribs.

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In my introductory questions I kept rather closely to a history of his physical condition. He voluntarily stated that he had suffered from a syphilitic infection, and I interrogated him closely on that account as I gained an impression that syphilis might have had something to do with his general--might have some influence on his general--might have some influence on his general condition.

In taking up the mental examination he responded rather slowly, but in a coherent fashion, his narrative was clear. His attitude was one of uniform depression. There was no defect of memory or grasp.

At times when any reference was made directly to this crime, there was a slight emotional reaction, but not consistent with the general situation. He stated of his misfortunes, of his loss of positions, of his inability to gain a livelihood, of going to California to start life anew, of his non-success there, his return to New York City, his association with the district Attorney's office, the fact that he had given evidence before the Curran Committee, the fact that on account of his inability to provide for his wife and child that they had turned against him, that he was sensitive that this had caused him to become very much despressed. That in addition the fact that he had given definite information against people had satisfied him that he was in danger of receiving bodily harm.

He presented many ideas of a delusional character; some were direct, the majority of them were vague and indefinite.

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Some one was going to poison him. Upon being questioned, "Who was going to poison you?" "Why, they are going to poison me." "To whom do you refer by 'they'?" "Well, I know."

Upon the occasion of my first visit to him, when accompanied by Mr. Fuchs, the counsel returned to the Tombs to meet me and came upstairs. Upon our leaving the defendant called Mr. Fuchs, and I went with him and the defendant at that time exhibited a marked effect of fear. He asked Mr. Fuchs if he would provide somebody to remain with him, that somebody had yelled in his cell that they were going to get him, and that he felt that he would not remain on the tier that he was on. He stated definitely that he had heard some individual yell.

The officer who was present at that time was questioned and stated definitely that there had been no --

MR. WASSERVOGEL: Just a minute as to what the officer stated.

THE COURT: Strike out what the officer said.

Q Go ahead from that point, Doctor. A Well, an effort was made to determine--

THE COURT: Strike that out. Just tell what this defendant said to you, or you said to him, or whatever he said in your presence and hearing.

A (Witness continuing) He stated that he was satisfied that his enemies were present on the floor and they were desirous of harming him, and also stated that he had not seen them but he had heard them, and knew that they were there.

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BY THE COURT:

Q Anything else? A I think that's all.

BY MR. FUCHS:

Q Did you ask him about his family at all? A I went into the family history. He stated that a brother of his had been an inmate of Ward's Island. He stated that his father was alcoholic, and gave the history of the suicide of an uncle.

Q Have you given us, Doctor, the substance of the conversation you had with him during your four visits? A Well, the substance of those conversations.

THE COURT: Well, you may refresh his memory, if you wish. He has exhausted his recollection, he says now.

Q Well, doctor, you do not recall just now anything further. Did you observe him during that time? A Yes, sir.

Q How long had you been with him on each of these occasions, if you remember? A Well, it was about an hour and a half upon the first occasion.

Q On each occasion? A On the first occasion.

Q How long? A Probably three quarters of an hour, on the occasion of my second visit, and probably a half an hour on the latter two.

BY THE COURT:

Q When was the last? A I saw him last night.

Q Last night? A Yes, sir.

Q With Dr. Robertson? A Yes, sir.

BY MR. FUCHS:

Q You did not remain for the examination of Dr. Robertson

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last night, did you? A Not entirely.

Q You just stayed there and talked generally with the defendant? A I talked with him when he came down first.

Q Without taking any notes at that time? A Yes.

Q You could not examine his eyes? A Yes.

Q What was the condition of his knee jerks, if you remember in your physical examination? A They were increased.

Q What did that indicate, if anything? A Well, at that time--

THE COURT: When was this examination?

MR. FUCHS: This was on the 19th of February, 1913.

A (Witness continuing) With a history of syphilis I suspected that it was a case of paresis, and the exaggerated reflexes will not control diagnoses. Exaggerated reflexes, however may occur in any nervous condition, that is, in a great many nervous conditions.

BY THE COURT:

Q Did you diagnosis it finally as paresis or not? A The diagnosis of paresis was discarded.

BY MR. FUCHS:

Q From your physical examination, from the history of the case as you perceived it, from your knowledge of the defendant, was he of sound or unsound mind on the 14th day of February, 1913? A He was of unsound mind.

Q As a matter of fact you feel that he in some degree may have known the nature and quality of his act? A Yes, he knew he had--

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Q Will you state in what degree that is so, whether at that time he knew the nature and quality of his act as a sane or insane person? A (No answer).

Q Or was it based on a delusion? A Exactly it was based on a delusion.

Q Will you explain that to us, please. A He knew that he had a revolver, he knew undoubtedly what would happen, if he pulled the trigger, yet he would have had to have that knowledge unless he was in a delirium, but the process--

Q Assuming that he was not in a delirium? A He would have to have the knowledge of the physical properties of a revolver being held in his hand.

Q Is that the knowledge of a sane or insane man? A In his case it was the knowledge of an insane man.

Q Caused by his delusional trend, is that right? A His mental condition prevented him from the exercise of correct judgment or correct reasoning.

Q In your experience at Sing Sing you have a great many patients known as constitutional inferiors, have you not? A A very large percentage.

Q Constitutional inferiority as I understand it, is not itself insanity? It is not of itself an insane disease? A It is regarded by some as a definite grouping of insanity.

Q What has the defendant, in your opinion? A He suffers from constitutional inferiority.

Q With anything else? A With a -- to the best of my opinion

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and belief the act of the defendant occurred during a violent episode in a constitutionally inferior individual that is characterized by a definite delusional formation.

Q Do you know any technical name for a test to be applied to anybody, to scrutinize whether he is truthful or untruthful, or whether he is shamming or not shamming in cases of this sort? Do you know any technical medical test? A No definite technical medical test to find out if a man is malingering, but that has some reference to a physical condition. I do not know of any term directed technically to a determination of a mental case.

Q In such cases do you use your experience and best judgment in determining whether a man is shamming insanity? A That and a concealed observation. If a man is under observation without his knowledge.

Q Applying all the tests that you know, Doctor, applying all your experience in the various institutions that you have been connected with, and your experience in Sing Sing, is it your belief that the defendant was shamming any acts while you were with him? A I am satisfied that he was not.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Was this defendant ever under observation by you without his knowledge? A No, sir.

BY THE COURT:

Q Or of any one else that you know of? A No, sir.

BY MR. WASSERVOGEL:

Q On each of the occasions when you spoke to him he

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answered you intelligently? A Yes, sir.

Q And, as you told us, in a coherent manner? A Yes.

Q But slowly. We all talk slowly at times, I notice you do, and I do myself. A At the first visit there was a definite depression, and he was in a listless, rather disinterested manner. There was some--naturally, his story was--

Q Does not the fact that a man sometimes hesitates in giving answers show that he is on his guard? A Naturally, there was no hesitation, however.

Q Well, that is what you told us. I thought I understood you to say that he hesitated? A I said he talked in a slow manner, his narrative.

Q That in itself indicated nothing to you at all, did it? A Why, no.

Q Of course-- A He was voluble.

Q You said something about delusions that this defendant had. You came to that conclusion from certain things that he told you. Did you ever make an investigation of the matters that he told you to see whether there was any basis for them? You can answer that yes or no? A Yes, to the best of my ability.

Q You did make such investigations? A Yes.

Q What did you do? A Why, regarding the statement that some one was out on the floor in the Tombs and was trying to harm him, was going to harm him, that some one had yelled in his cell definitely, on a certain afternoon, the cell hall was practically deserted, and an inquiry from the officer showed