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

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Vol. I

-----X  
THE PEOPLE :

Before:

vs

HON. OTTO A. ROSALSKY, J.,

GENEVIEVE NICODIMUS. :

and a Jury.

-----X  
Tried, New York, March 20th, etc., 1912.

Indicted for Murder in First degree.

Indictment filed January 24th, 1912.

A P P E A R A N C E S :

ASSISTANT DISTRICT ATTORNEY FRANK MOSS, for the People.

ABRAHAM LEVY, ESQ., for the Defense.

TRANSCRIPT OF TESTIMONY.

Frank S. Beard,  
Official Stenographer.

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OPENING ADDRESS FOR THE PEOPLE.

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of

ASSISTANT DISTRICT ATTORNEY FRANK MOSS.

Your Honor,

Mr. Foreman and gentlemen of the jury,

I shall not make a speech. My custom is to do very little speech making in the opening of a case. I do not like to promise too much, I do not like to inject color into the case at the beginning. I have never conceived it to be among the functions of this office, so far as the summing up is concerned, to begin a summing up until the evidence is in. I shall say just a few words in order that you may understand the nature of this case, and be able to put the witnesses in their proper relation to the case as they come before you.

Some suggestions concerning the nature of the defense were made in your presence and hearing on the examination of certain of the talesmen by the learned counsel for the defense, and there may be already in your mind some prejudice, perhaps something not amounting to a full prejudice, but some little actual feeling of bias may have crept in as to the nature of the defense, as to what may be supposed to be the character of the decedent, as the result of those suggestions. I objected to the questions when asked, and, as the Court ruled them out, I desisted

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from any remark on the subject at the time; but you will perceive and appreciate fully that it is your duty as jurymen to begin the trial of this very important case with your minds like white paper, free from any preconceived prejudice against the defendant and with no preconceived prejudice against the decedent; and you should not take for one atom of weight a statement made by counsel in his interrogatories to jurymen concerning the character of the decedent. I said at that time that the People did not admit the statements that were made against Frank J. Nicodemus, and that was all that was necessary for me to say then.

There are some things which to me are very sacred. One is the honor of a woman, another is the reputation of the dead, and perhaps, in a case like this, we should be particularly careful as regards the reputation of one who is gone, about whom a speech may be made, and concerning whom there is a temptation to make a speech, and who is not here to answer for himself.

It may be that the defense will bring to light matters that I know nothing about, but from what I know of the case or suppose I know of the case, in preparing it for trial, I believe I had a right to say that I denied the suggestions that were contained in the questions.

Now, to be perfectly true to the principle which I

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try to pursue in these trials, I should not say anything more about the character of the defendant or the reputation of the decedent, and I shall assume that your minds are perfectly clear and clean from any impression that might have been produced by the questions that were asked, and by the treatment by some newspapers of those matters, or they were asked.

So we start out with no word spoken concerning the character of the defendant, and with no notion concerning the character of the decedent. Anything that may have a bearing on the issues of this case on those subjects must be developed by evidence.

Now, as to the facts of the case. The defendant and the decedent were husband and wife. They were young people. The decedent was a young man employed in business, industrious, attending to his affairs, and living a decent life.

The situation when this young man, who was an Italian, married this girl, who is not an Italian, the situation in her home and among her people was such that, through precaution, they did not remain together in the home of the defendant, where they first attempted to live.

The summer came on, and the young man went away to the country for a short stay, and the young woman left her

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parents' home, and went some place in the City of New York, where she boarded or roomed. What transpired at that place, how she lived, what she did, I shall wait for the evidence to develop to you.

But, whatever it was, whatever the reasons were, when the young man came home and came to the house of his parents in the Bronx, and began to look about him, and learn to hear what was said to him, he determined to bring a suit for divorce against his wife.

He employed a lawyer. A summons and complaint were drawn, and, on the evening of the 2nd of October, the decedent Frank J. Nicodemus, with a young man who had lived in the house where the defendant was boarding, went together to serve the summons and complaint upon her.

Naturally, the summons and complaint would be served not by Nicodemus but by another person, but the presence of the young husband was a natural and ordinary arrangement, in order that there might be no misunderstanding as to the person who was served being the wife of Nicodemus. So Nicodemus and this young man went to serve the summons and complaint, and did serve it upon her; and at that time she expressed herself, and did such things as will be shown to you, to indicate her very great anger at the step that had been taken; and she, as the evidence will show, expressed herself as having a murderous inclination towards

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Nicodemus for having brought this action for divorce.

Young Nicodemus went to his father's house, where he had been staying, and remained there through the night, and prepared in the morning to go to his business.

The young woman called him up on the telephone. He had some conversation with her on the telephone, I think at her parents' house, and it was known to the mother and brother of Nicodemus that his wife was calling him upon the telephone; she was probably in the neighborhood.

There had been some conversation about the interview of the evening before, and so when young Nicodemus started to go to his work, his mother and brother very naturally followed him with their eyes from a window, that is, they looked out of a window, and they observed, and others observed, that the defendant accosted him on the street, and had a conversation with him, and drew a revolver, and shot him twice, and turned the weapon upon herself, and shot herself twice; and both of these young people, having been brought low by the contents of the one revolver, which was in her hand, were taken in the same wagon to the hospital. There they were treated for their wounds. She got well, and he died.

You can perceive that, if there were witnesses to such facts as I have stated to you, the Grand Jury had no alternative but to bring in the indictment which we are

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trying here, and the District Attorney has no alternative but to present it to a jury for trial. There was a killing, a killing by the defendant, a killing after a threat of killing, a killing which was observed by witnesses, and, sad, as the situation may be all around, it is a matter that can only be adjusted by the verdict of a jury.

Now, you have all said, substantially, that you would go into this trial as judges ought to. That last question which I put to each one of you is a searching question. I might have asked you twenty questions, one after the other, which would not have amounted to so much as the one question, "Would you be able to preserve your mental attitude, and conduct yourself throughout this trial as true judges should?"

Of course, judges have human sentiments and emotions, and, of course, all our actions contain a certain amount of sentiment, or else we would be simply unthinking, unfeeling machines. But, at the same time that we are acting as true judges, we should consider this case, not only with regard to its human interests, but with reference to its relation to the great community in which we live, its relation to peace, and sanctity of life and the supremacy of law, and you will find that sentiment, sympathy, which are ever present in all good people, must hold themselves back, while judgment and consideration of the proper issues

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involved in such a matter as this are given their proper place.

As I have said in almost every case that I have opened to a jury, the State desires only to present its case fairly, truly, squarely to a properly constituted jury, and to abide by their verdict.

It is undoubtedly a great injury to the State when an innocent person is convicted. It is an injury to the State when a guilty person gets away, and it is an injury to the State when an innocent person is convicted, and we do not come to this case in any bloodthirsty way. No one here is seeking for a record or a reputation. It would be very late in life, speaking for myself, to be looking now for a reputation. We simply want to do our duty, and I assure you, gentlemen, that it will not be any harder for any of you to do the sacred duty which is before you, than it will be for me to present what I deem to be the proper state of this case, and to present to you the interests of the People of the State of New York.

We are going, therefore, to take this case with great seriousness and great solemnity. Old friends must smile at each other, once in awhile, but we have started out upon as serious and solemn an undertaking as mortals ever undertake, and we are not going to be diverted, any

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of us, from the serious issues of the case by any thoughtlessness, or any temptation to get away from serious duty, by playfulness or anything of that sort.

I shall ask you, then, to weigh every bit of testimony, to consider every witness, to deal fairly. If the defendant is not an insane person, is not fairly to be excused for her act, why, then, she should be convicted, but conviction must rest upon testimony, and must rest upon solid judgment. If the evidence convinces you of her guilt, then I shall ask you to do what your judgment and conscience will tell you you ought to do.

We want a fair trial, a square trial, a just trial, and a brave trial.

MR. MOSS: Now, before I call any witness I want to ask counsel for the defendant whether the issue of insanity is tendered in this case.

MR. LEVY: Counsel declines to make any statement.

MR. MOSS: The only statement that appears on the plea is the general issue, not guilty, and I ask the question simply that I may be prepared for the evidence, and the course of procedure that is permitted to the People, if the mental state of the defendant is to be an issue. Counsel for the defendant declines to answer, declines to state whether insanity is an issue or not. I ask him in the same connection, and for the same pur-

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pose, I ask him if he will consent, if his client will consent, to allow an alienist selected by the District Attorney to interview and examine the defendant in his presence.

MR. LEVY: Wait a moment, Mr. Moss, please.

MR. MOSS: I have not finished my statement yet.

MR. LEVY: I know you haven't, and I want to prevent you from finishing it, because I think it is improper.

MR. MOSS: Under such proper regulation as may seem fit to him and to the Court.

MR. LEVY: And I object to the statement of the District Attorney, as absolutely improper.

THE COURT: Just a moment, Mr. Levy. There is no occasion for any excitement. In the cases of the People against Furlong, the People against Silverman, and many other cases of a similar character, it is held that physicians can examine a defendant, without consent. But, in view of the fact that the request comes from the District Attorney, the defendant's counsel need not make any reply thereto, and the jury must not take any unfavorable attitude toward the defendant because of the fact that the District Attorney has put the question to counsel for the defense.

MR. LEVY: I ask your Honor to state to the jury

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that they have no right to infer from the question of the learned District Attorney, or the inuendo therein contained, that there is any disposition on the part of the defendant to either decline an examination, or to decline to make a statement at this time with regard to the nature of her defense.

THE COURT: Yes, the motion is granted, and I so instruct the jury.

Gentlemen of the jury, a person charged with crime has a right, under our system of jurisprudence, to interpose no defense, if so advised by counsel, and the jury have no right to draw any unfavorable inference against the defendant. A defendant is not obliged to disclose the nature of his defense. Under the plea of not guilty, any issue that the defendant desires to present to a jury may be presented. That precise question was passed upon in the case of the People against McIlvaine, in the second McIlvaine case, that, under the plea of not guilty, any issue may be introduced.

MR. LEVY: Yes, sir, and the section of the Code also covers it, if your Honor please.

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## THE PEOPLE'S TESTIMONY.

JOHN RIEGELMAN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q. Dr. Riegelman, you are a Coroner's Physician in the County of New York? A. I am.

Q. And how long have you held that position? A. Fourteen years.

Q. Are you a physician and do you practise outside of your office? A. Yes, sir.

Q. And you have a general knowledge of the practise of your profession; have you? A. Yes, sir.

Q. When did you graduate? A. 1894.

Q. And have you practised in the City and County of New York mostly since that time? A. I have.

Q. And have you made very many autopsies of dead bodies, for the purpose of discovering the cause of death? A. I have.

Q. Can you state approximately how many such bodies you have examined? A. Well, over a thousand.

Q. And you have examined bodies upon which there were gunshot wounds? A. I have.

Q. And all kinds of wounds? A. I have.

Q. And have given your opinion, as an official connected with the Coroner's Department, as to the cause of death where you have examined? A. I have.

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Q And you have testified as a witness in court on many occasions, giving your opinion as to the cause of death, your opinion following the autopsy made by you; is that so? A I have.

Q Did you conduct an autopsy upon the body of a young man named Frank J. Nicodemus?

MR. LEVY: I object.

THE COURT: Sustained.

BY MR. MOSS:

Q Did you conduct an autopsy on the body of a young man at the Lebanon Hospital; was it not? A Yes, sir.

Q On what date? A On the 29th day of November, 1911. I performed an autopsy on the body of the young man.

MR. LEVY: Now, just answer the question, yes or no.

MR. MOSS: He said yes.

BY MR. MOSS:

Q And who identified that body to you?

MR. MOSS: One moment. I object.

THE COURT: Sustained.

BY MR. MOSS:

Q Who was present when you began the autopsy? A Officer Bernstein, the father of Frank Nicodemus --- I'll give you his name in a moment --- Ralph Nicodemus.

Q Is it not Rafael Nicodemus? A Yes, sir, Rafael Nico-

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demus. And George Nicodemus. They were there at the time I examined this body.

Q And did they see this body also? A They did.

Q They looked at the body, and you spoke to them, or they spoke to you concerning it? A Yes, sir.

Q And in conversation with them was a name mentioned as being the name of the deceased person?

MR. LEVY: I object to that, sir.

THE COURT: Sustained. The father may testify to that.

MR. MOSS: Has Officer Bernstein arrived? I called this witness rather out of the regular order, if your Honor please, because the officer had not arrived. Step aside, doctor. Call Rafaele Nicodemus.

R A F A E L E N I C O D E M U S, a witness called on behalf of the People, being duly sworn and examined through the Official Interpreter Mr. Moustaki, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Where do you live, Mr. Nicodemus? A 820 Dawson Street.

Q Borough of the Bronx, New York City? A Yes, sir.

Q Do you live there with your wife and children? A The whole family.

Q How long have you lived there? A January was one year.

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ago, I think.

Q Do you work? A I work in Brooklyn.

Q What is your business? A Chocolate maker.

Q Did you have a son named Frank J. Nicodemus? A Yes, sir.

Q Is your son alive or is he dead? A He is dead.

Q And did you see your son, Frank J. Nicodemus, on the 3rd day of October last? A I didn't see him in the morning because I went to work at half past five in the morning.

Q But did you see him on that day, later? A I saw him in the hospital at half past two in the afternoon.

Q What hospital? A In the Lebanon Hospital.

Q In the Lebanon Hospital, in the Borough of the Bronx?  
A Yes, sir; Jackson Avenue.

Q And where did you see him in the hospital? A In bed.

Q Was anything the matter with him?

MR. LEVY: Well, wait a moment. I object to that.

MR. MOSS: I withdraw the question.

BY MR. MOSS:

Q Did you observe anything about him as he was in bed there? A Yes, sir.

Q What? A (The witness weeps)

Q Come now, please answer.

THE INTERPRETER: The witness would like a glass of water.

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Mr. MOSS: Surely, get it for him. Perhaps he will be able to answer now.

(The question is repeated by the stenographer).

A I noticed him in bed. He had a wound on his stomach, and another one on his right arm. (The witness illustrates by pointing toward his stomach and toward his right arm).

Q And how old was your son at that time? A 26 years old.

Q When did you see your son the last time before you saw him in the hospital? A The night before, the night before he went to the hospital.

Q And where did you see him the night before he went to the hospital? A At home.

Q Did he have those wounds on him then? A No.

Q Did you talk with him in your home? Yes or no.

A Yes.

Q Had your son Frank been living at your home, just before the time you say you saw him at the hospital? A Yes, sir.

Q How long had he been living at your home? A Ever since he spent seven weeks in the country, ever since he came back from the country he lived in my house.

Q Do you remember what month he was away in the country?

A He went to the country at the end of July.

Q Yes. Then when he came back he came to your house; did

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he? A Yes, sir.

Q Was he married? A Yes, sir.

Q Did you know the young woman who was his wife? A I have seen her in my house.

Q Did you see her in court now? A Yes, sir.

Q Is it the defendant here? A Yes, sir, (indicating the defendant).

Q Now, when was it that you saw the defendant in your house? A Two weeks before my son came back from the country.

Q Then you saw her in your house when your son was not there; is that so? A Yes, sir.

Q And did you talk with her? A Yes, sir, a few words.

Q How long did she stay in your house at that time?

A She remained there three-quarters of an hour.

Q Did she eat anything in the house at that time? A I had just brought some fruit in the house, and I offered a portion to her.

Q Yes, did she take it? A Yes, sir.

Q Now, when you saw your son on October 3rd, in the Lebanon Hospital, was he alive? A Yes, sir.

Q And did you afterwards see him dead? A Yes, sir.

Q Did you see him dead there in the hospital? A Yes, sir, in the hospital.

Q Do you remember the date when you saw him dead in the hospital? A If I'm not mistaken, it was the day before Thanks-

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giving Day.

Q Well, did you see this doctor, Dr. Riegelman here (indicating), at the hospital? A I only saw in the cellar of the hospital the Coroner and the police.

Q Well, now, who is this gentleman here, standing (indicating Dr. Riegelman)? A If I'm not mistaken, I think he looks to me like being the doctor of the Coroner's office.

Q Yes. Well, what was being done at that time when you saw the Coroner? A They were looking at a corpse, and they addressed me as follows, and they said to me, "Do you recognize this man?"

Q And what did you say?

MR. LEVY: One moment. The defendant was not there.

I object.

THE COURT: Sustained.

MR. ROSS: Very well, if you insist upon it.

BY MR. ROSS:

Q Did you know that they were making an autopsy upon the body of your son?

MR. LEVY: I object to that.

MR. ROSS: Well, I suppose that, very technically, and very slightly, your objections are correct.

THE COURT: Yes. Sustained.

BY MR. ROSS:

Q Did you know what they were doing to the body of your son?

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there? A No, I don't, because I only made a declaration there, and then I went away.

Q I see. Was your son engaged in any business? A Yes, sir.

Q What was he doing? A A salesman in a house in Cedar Street, No. 5 Cedar Street.

Q Do you know the name of his employer? A If I'm not mistaken his name is Mr. Harris.

THE COURT: May I make a suggestion at this time, Mr. Moss?

MR. MOSS: Yes, sir, of course.

THE COURT: I presume that you will want to examine the doctor, and why not withdraw this witness and complete the examination of the doctor at this time, as he is a public official.

MR. LEVY: It will not avail any, your Honor, because the cross examination will necessarily be long.

MR. MOSS: Well, then, perhaps we might excuse him to report later this afternoon, as he is a public official and his time is very valuable.

MR. LEVY: Very well. At three o'clock.

MR. MOSS: Then, at three o'clock, Doctor, as far as I can tell now, we will reach you, and you may go now.

BY MR. MOSS:

Q How long was your son working for Harris? A About

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fourteen months.

Q And who else did he work for? A He worked at another place in lower Broadway. It was an insurance company.

Q Do you remember the name of the insurance company?

A The one that was burned down lately, the Equitable.

Q You mean the Equitable Life Assurance Company? A Yes, sir.

Q And how long had your son been engaged in working before he died, in different employments? A I couldn't tell you in all how long he worked, but I could mention the places where he has worked.

Q Yes, do so. A Equitable, Zimmerman, in Houston Street.

Q Pardon me. Was that a sausage factory? A Yes. But in the office, of course; not making sausages, but he was in the office, for clerical work.

Q He was doing clerical work? A Yes, sir. He worked also in 59th Street where they made automobiles; he was a salesman there. These are the principal places that I can remember.

Q Was his work salesman's work and clerical work?

A Yes, sir.

MR. MOSS: You may cross examine.

THE COURT: The recess hour has arrived.

Gentlemen of the jury, do not discuss this case among

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yourselves, nor permit any person to talk with you about it, nor form or express any opinion as to the guilt or innocence of the defendant, until the case is finally submitted to you.

This admonition must be repeated to you at the conclusion of every session, and it is important that you gentlemen should live up to the Court's admonition, for the reason that, if anybody speaks to you about the case, or gives you any evidence, in the absence of the defendant, it will necessitate the setting aside of your action.

And then again it is important that the minds of the jurors should be free from forming any conclusion. No juror has a right to form any conclusion until he enters the jury-room, after the case is submitted to the jury.

We will take a recess until three o'clock, in view of the fact that Mr. Moss is obliged to be engaged in another part of this building until three o'clock. Three o'clock will do, Mr. Moss, will it?

MR. MOSS: Yes, sir.

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After Recess.

THE COURT: Mr. Levy, I have received a communication from Mr. Moss, to the effect that his public engagement will continue for at least another hour, and, under the circumstances, therefore, I shall adjourn this case until to-morrow morning, at half past ten o'clock.

MR. LEVY: To which I consent, your Honor.

THE COURT: Gentlemen of the jury, do not discuss this case among yourselves, not permit any person to talk with you about it, nor form or express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you.

Be in your seats, to-morrow morning, at 10:30 o'clock.

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TRIAL RESUMED.

New York, March 22nd, 1912.

R A F A E L E N I C O D E M U S , on the stand:

MR. LEVY: May I request, at this time, your Honor,  
that all the witnesses leave the courtroom?

THE COURT: Yes, I so order.

CROSS EXAMINATION BY MR. LEVY:

Q You speak English, do you not, Mr. Nicodemus? A (No  
answer)

Q You understand me? You speak English; don't you?

A No.

Q How many years have you been in this country? A 21.

Q 21 years? A Yes, sir.

Q And you understand my questions; don't you? A I  
don't understand.

Q Well, we'll try to get along in English, and what you  
don't understand, you may ask to have interpreted; if you  
don't understand me, Mr. Nicodemus, you can ask the interpreter  
to tell you what I say, and when you can answer, answer in  
English. When was it that you first found out that your son  
was married? A (No answer)

THE INTERPRETER: He says, "I don't understand this

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question".

BY MR. LEVY:

Q Well, let me ask you, Mr. Nicodemus, did you ever talk to your daughter-in-law? A (No answer)

THE INTERPRETER: "I can't understand your question.

I only understand a few words of that question".

BY MR. LEVY:

Q And you say that you have been in this country 21 years; is that right? A (No answer)

Q Don't you understand that? A (No answer)

THE INTERPRETER: "It is true I have been here 21 years, but I have never practiced or studied English".

MR. LEVY: Well, we will not delay any further with that matter. To save time, we will go right along with you, Mr. Interpreter.

BY MR. LEVY:

Q Have you lived in the City of New York all these 21 years? A Always in New York.

Q And where was it that your son was born? A In Naples, Italy.

Q When was it that you first found out that your daughter --- that your son was married? A A few days after he was married, he came and told us about it, told our family about it.

Q Can you give me, as nearly as possible, the date of

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the month and the year when he told you that? A It was the end of March of last year, 1911.

Q And when was it that he first brought your daughter-in-law to your home? A He never brought his wife in our house.

Q How many times have you met his wife? A Only once, in my home.

Q Are you sure about that? A More than sure.

Q Did you ever go to Honey Island with your daughter-in-law? A No, sir.

Q Now, before your son married, was he regular in his return home, or was he in the practice of staying out different nights? A Before he got married he never was absent from the house.

Q He was at home every night? A Every night.

Q Early or late? A Sometimes he would come home the usual hour, ten o'clock. Sometimes he would go to the theatre, but, before going to the theatre, he would notify his mother that he would be late.

Q And you say that every time he went to the theatre, he would tell his mother? A Yes, he used to say, "Mamma, to-night I am going to the theatre, I'll be late".

Q Did you know how much he earned at the work in which he was engaged? A In the summer time, he would earn about \$15 a week and in the winter time he would make more than \$40 a

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week.

Q At what particular business? What business was that that he would earn those moneys in? A In the beer business, as a salesman, located at 5 and 7 Cedar Street.

Q Why did he earn less in the summer than during the winter? A In the summer time he would work indoors; in the office; in the winter time he would go outside as a salesman, and he would get besides his salary a commission.

Q Now, in the month of October of last year what were his hours of duty at his business? A He was working at the same place.

Q Well, what time did he have to go to work? A Nine o'clock in the morning or a quarter to nine, he would leave the house.

Q What time did he return on this night? A About half past six or six o'clock.

Q Now, do you know the name of the man for whom he worked at the time he was shot? A Mr. Harris; I think his name is Mr. Harris, at No. 5 and 7 Cedar Street.

BY THE COURT:

Q 5 and 7? A Yes, sir.

BY MR. LEVY:

Q Now, how long after your son was married was it that you were visited by your daughter-in-law? A The first time

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the defendant came to my house was the evening before the deceased came back from the country.

Q When was it that the deceased came back from the country? A In the middle of September; about the beginning of September.

Q That would be in the month of August then that your daughter-in-law visited your home? A Yes, sir; it was summer time.

Q Who brought her over to your house? A She came voluntarily herself.

Q Did she come with anyone? A She came alone.

Q Have you a daughter by the name of Mary? A Yes, sir.

Q Did she come with your daughter Mary? A No, she didn't come with my daughter.

Q Have you ever seen her in the company of your daughter Mary? A I never saw her in her company.

Q Did you hear that she had been visiting your daughter Mary, before she visited your home? A She would go every day there, she would go to Mary's house every day.

Q Then you did know that she was a constant visitor at your daughter's house, before she came to your house? A My own family told me so.

Q Now, what was the purpose or the object of her visit to you at your home; do you know? A She came there to visit my daughter.

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Q Did your daughter Mary live with you? A She lives a block away.

Q Well, I want to know whether you know the purpose, if there was any, of her visiting your home, on the occasion when you say you saw her there? A She came there to make inquiries as to when Frank was coming back from the country.

Q Did you talk with her? A Yes, sir.

Q And you understood what she said to you? A I didn't understand anything what she said, because I only speak a few words in English.

Q Was there anyone who translated what she said? A The husband of my daughter was acting as an interpreter.

Q And what is his name? A Dambrosi.

Q What was he said to you then, upon the occasion of that visit? A She came to tell me, and to tell us in the family that when Frank could come back from the country, they are going to take a house, and live happily together.

Q Did you know at that time that your son was separated from the defendant? A I did not.

Q Well, she was there about three-quarters of an hour. What was the subject of conversation, what was talked about?

A I don't think about family matters.

Q Now, I want you to tell me what you were talking about?

A I can't remember.

Q Did you have any complaint about your son? A No.

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Q Did she say that they were living happily together?

A We didn't speak on that subject at all.

Q Well, what did you mean, a few moments ago, when you said that she came there, and told you that as soon as Frank came back, they were going to take up house together, and live happily? A Because I thought when Frank comes back, he is going to get work, and earn good money, and then they could take a house and live very nice together.

Q That is, when he came back, he was going to get work; is that what was said? A He was then working.

Q Well, even what do you mean by saying that, when he came back he was going to get work? A I told her that because as I stated before Frank didn't earn so much in the summer time as he did in winter.

Q Well, what reason had you to tell her that he would get work, and he would earn more, and they could go together, and live happily? A Because I knew at the time that Frank was residing in the house with the defendant's mother, and that they didn't have a house of their own.

Q When did you two go to live in the house of his mother-in-law? A After they got married.

Q How long did they live together in the house of the mother-in-law? A All the time until he went to the country.

Q How long, how many weeks, months or days? A From the time they got married until he went to the country, a short

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time before.

Q Well, how long did he live there, how many months?

A I can't remember the months, but I can remember from the time he got married.

Q Well, can't you give me an idea as to whether he lived with his mother-in-law a month or six months? A I cannot, because I am liable to make a mistake; I'm not sure.

Q But can't you give me your best recollection of the time when he went to live with his mother-in-law? A What can I say, when I'm not sure?

Q Well, you surely must know how long your son was away from your house? A He has been absent from the time he got married, in the month of March.

Q Now, I want you to tell the gentlemen of this jury how many months he was away from your house, starting from the month of March? A From the month of March up until the end of July. But throughout that period he would call in our house, make different calls.

Q And after the end of July did he go to live in your house again? A He came there in our house, because he was sick.

Q Did he leave the quarters that he occupied in his mother-in-law's house, and go back and live in your house, and, if he did, when was that? A It was in the month of July, in the beginning of July.

Q In July? A Yes, sir.

Q And you say he was sick? A He was suffering with a carbuncle at the entrance of his rectum, and he had to have an operation.

Q And what was the name of the doctor who operated on him? A Dr. Alfieri.

Q And where is Dr. Alfieri's office? A In my own house.

Q What? A In my own house.

Q Was he operated on? A Yes, sir.

Q When? A I don't remember the exact date, but it was in the beginning of July.

Q Was it before or after he returned from the country? A Before going to the country.

Q Before going to the country? A Yes, sir.

Q Now, did your daughter-in-law, when she came to see you, tell you that she was not being supported by your son? A Yes.

Q Is that the reason, because she told you that she was not being supported by your son, that you said that upon his return from the country he would be earning more money, and then he would take up housekeeping?

Q Yes, sir. That is correct. The testimony was that she told him that she was going to have a house togeth-

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er, not that he told her.

THE COURT: Is not that correct, Mr. Levy?

MR. LEVY: If it is correct, I will amend my question. My recollection was the other way. I will ask him a question so as to clarify the situation.

BY MR. LEVY:

Q Did you say to your daughter-in-law on that occasion, that on your son's return from the country he would be earning more money, and they could take up house together? A Yes, I did.

Q And is the reason --- was the reason for your making that statement to your daughter-in-law the fact that she had complained to you that your son was not supporting her?

A No, not for that.

Q Not for that? A No, sir.

Q Now, did you know of your son's having any other sickness during the period of his married life? A No, he never suffered from another sickness.

Q Did you know of his consulting with other doctors, after he was married, for some sickness or illness? A That I don't know.

Q When did your son go to the country? A He went there because he goes there every year, and that was his annual vacation.

Q Did he go away every year for seven weeks? A No.

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Q Well, what was the reason for his going away to the country for seven weeks, last year? A Because the boss would allow him three weeks' usual vacation, and, as there wasn't a busy season, then he asked for three weeks more, and the boss granted him six weeks.

Q Did his wife go with him? A She refused to go.

Q How do you know that? A He himself told it at home that she refused.

Q Now, from the time he married his wife until the time that he got back to your home, in July, had he been in your home to sleep? A Sometimes he would come and sleep in our house, because he had to get up early to go to Jersey City, or Hoboken.

Q For what? A The business which he had to transact.

Q Well, how long during that time, from March up until the 1st of July, did he sleep in your home? A I can't remember how many times.

Q Well, can't you give me an idea of about how many times during those few months, March, April, May, June? A I can't remember.

Q Can you say that it was as many as ten or twenty times? A If I would say so, I would lie to you, because I can't tell you.

Q Can't you give me some idea of it, some approximation?

A I can't remember. Whatever I will say, it won't do, be-

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cause I can't remember.

Q And that's the best answer you can give? A That's the answer to that question.

Q And the reason that he slept, upon each of these occasions, at your home, was because he had to get up early in the morning to go either to Hoboken or Jersey City? A Yes, sir.

Q Did you live any nearer to Jersey City or Hoboken than did his mother-in-law? A Oh, the reason was --- the distance is actually the same --- but we woke him up, and they wouldn't wake him up.

Q Oh, he complained to you that his wife or mother-in-law would not wake him up? A Yes, he told us that different times; that when he wanted to get up early, his mother-in-law wouldn't wake him up.

Q Now, when he got married and went to live at his mother-in-law's house, did he take his clothes with him? A He did take his clothing.

Q All his clothes? A Not all.

Q Did he, as a matter of fact, take more than one suit with him? A He had the suit that he was wearing and an extra suit.

Q And an extra suit? A Yes, sir.

Q And the rest of his clothes he left home with you?

A A few clothing, because he didn't have an army of clothing.

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Q And about his underwear, did he take that away?

A Underwear, he only took two shirts and two underdrawers.

Q He took two suits of underwear? A Yes, sir.

Q Did he pack any trunk when he went away, or take only a grip? A He took a valise, but the valise is in our house now.

Q How did it get back into your house? A He brought it back there when he had to go to the country.

Q Well, did he live in your house any length of time after he returned, before he went to the country? A He stayed there about ten days; all the time that he wanted to cure himself.

Q What is that? A (Answer repeated) And that was the whole time he tried to cure himself.

Q Now, will you tell me while we are upon that subject, what was the nature of his sickness that he was trying to cure himself of, as you saw it; tell us what you saw him suffering from?

MR. MOSS: I object. It is not cross examination.

The counsel has the name of the physician, and the physician would be more competent to describe what the trouble was, if it becomes pertinent, than this witness is.

THE COURT: Is that line of testimony pertinent, Mr. Levy?

MR. LEVY: It will become exceedingly important.

THE COURT: It is within the discretion of the Court to allow matters of a defensive character, where the materiality does not clearly appear, and, the materiality not being apparent to the Court at this time, I will exclude it.

MR. LEVY: Will your Honor permit me, before your Honor finally rules, to disclose to you what I claim to be its importance and its materiality and its pertinency? I will do so as reservedly as I can.

THE COURT: Yes, you may do so. Step up here, Mr. Levy and Mr. Moss.

MR. LEVY: For the present, with your Honor's permission, that question is withdrawn.

BY MR. LEVY:

Q Did you say anything to the defendant upon the occasion of that visit concerning letting your son know about her visit to you? A Nothing at all.

Q Now, you spoke together for three-quarters of an hour. Is there any one other subject about which you spoke that you can bring back to your memory, to your mind, with her? A As I told you before, we only talked family matters.

Q Well, that's exactly what I want to know about, what family matters were spoken about between your daughter-in-law and yourself? A I can't remember what it was.

Q Well, now, let me see. Did you say anything to your

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daughter-in-law, the defendant, concerning the actions of your son Frank? A What should I tell her?

Q Did you say so her --- let me try to refresh your recollection --- did you say to her that you had to have a doctor in the house to examine him, but you didn't dare to let your son know that he was a doctor, because he was peculiar about money? A I never said that to her.

Q Did anybody else was present, your wife, or whoever was present at the time of her visit, say that? A I was there, my wife and my son-in-law, Sambrosi, the husband of my daughter.

Q Well, I want to know whether any person said anything about calling in a doctor to examine Frank, and of the desire of the family not to let know Frank that he was a physician, because Frank would resent that? A Not a member of the family said that, and, what is more, there was no necessity of saying a thing like that.

Q Exactly. I see. Now, did your daughter-in-law tell you about how she had been beaten by your son? A Nothing of the kind she said to me.

Q Did she tell you or the members of the family who were present on the occasion of that call that he had not alone beaten her, but that he had tried to force her to go upon the streets? A That is not true.

Q Well, she came over there alone. Did you expect her

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to call? A No.

Q Well, didn't she say what reason she had for calling upon you and your family? A That day that she came there, I was coming downstairs from the house with my daughter, and that was the reason she called.

Q Now, did you ever call upon the parents of the defendant? A I never went there.

Q Well, didn't you ever meet them? A Never.

Q Did you ever meet any of the relatives of the defendant? A I never met them; I don't know them.

Q When your son told you that he was married, did you inquire who it was that he married? A I told him, "I would like to know whom you married".

Q Well, did he give you the name of his wife, and the address of his wife's people? A He gave us the name and the address, where they lived.

Q And that was in the month of March? A About the end of March, or the beginning of April, when he gave us that address.

Q Now, she didn't call upon you until the month of August? A That's right.

Q And did you ever ask your son why he didn't bring his wife to see you and your wife? A Yes. He told us that, in the month of October, he was going to build a house --- I mean take a house --- and live together, and then he will introduce

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the whole family.

Q Now, then your son was married in March, and you didn't see her until August. Didn't you think it strange, that your son, having been married all these months, didn't bring his wife over to see you and his mother? A Because they were residing in the house of her mother.

Q Well, what do you mean by that? Is that the reason why he said he didn't bring his wife over to see you, to see his mother? A That's what I told you before. He was waiting until he opened a house of his own, and then he would give a little banquet, and have a little fun.

Q Didn't you ask your son to bring his wife over, so that you could see what kind of a woman she was? A I told him that, and he said, "Wait until the occasion presents itself, and then I will introduce her to you."

Q Didn't you take enough interest in the welfare of your son to try and see what kind of a woman he had married? A I know my son was all right, so I didn't insist on asking that.

Q Did you inquire where he had married and by whom he was married? A I didn't put this question.

Q Did you know before your son got married that he was going to be married? A I did not.

Q Did your son tell you that it was his intention to be married, and tell you when and where he was going to be married? A He didn't tell me that.

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Q Did you find any fault with his getting married without informing his parents? A As an Italian, I found fault with that, but here in America they don't do much about anything.

BY THE COURT:

Q What is that? A I say they don't make anything to do in America, they don't care about it, there is not much ado about it.

BY MR. IRVY:

Q Now, while your son lived at home did he contribute to the expenses of the family? A He was paying his board.

Q How much board did he pay? A \$27 a month.

Q And when did he stop paying his board? A When he went with his wife.

Q Did you say anything to him about his not earning enough money to get married; did you find fault about it?

A I told him that, but, after it was done, what could I do?

Q Now, when the defendant came into your house on the visit that you have told us about, did she introduce herself to you? A The little boy of mine came downstairs, and said, "There will be Gene coming downstairs right away, papa. she is the wife of Frank".

Q And when she came in did she introduce herself?

A She said, "How do you do". She said, "Good evening", and we sat her down, and we made her be seated on a sofa in the dining room. I offered her some fruit, and she ate a little bit of

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fruit there, and then she took some to bring to her home in a little basket.

Q Did she tell you that she had not received any money from your son, and that there were times when she was hungry for want of food? A She didn't mention anything of that, but I said to her, if, any time, she needed anything to let me know.

Q And isn't it the fact that when she told you that, that she didn't have money to buy food with, that you filled up a little basket with eatables for her, or your wife did?

A No, no.

Q Didn't she tell you that she had left her parents home because of Frank? A She didn't say anything about that.

Q Did you know that Frank had moved away from his mother-in-law's house before he came home to you, and had left his wife in a furnished room? A That I don't know. I always was under the impression he was with his mother-in-law.

Q Didn't your daughter Mary tell you that she had been over to see the defendant in that furnished room in which she lived, and came back and reported to you as to how your son had left the defendant in that room alone?

MR. DODD: I object, on the ground that it is incompetent testimony, and hearsay.

THE COURT: Sustained.

MR. DODD: I take an exception.

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BY MR. LEVY:

Q Did you get any information that your son had taken a furnished room to live in with your daughter-in-law?

MR. MOSS: The same objection.

THE COURT: He may answer that question yes or no.

A No.

BY MR. LEVY:

Q Does he say no to that? A Yes.

MR. LEVY: That's all.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q I think that you told Mr. Levy that your little boy came up to you and told you that "Gene", Frank's wife, was downstairs, is that so? A- Yes, sir.

Q How did the little child know her? A I made a mistake. I said, daughter. It is my son, my little son.

Q Well, how did your little son know her? A He has seen her and known her at his own sister's house, at my own daughter's house.

Q Yes, your daughter's house? A Yes, sir.

Q And the little boy's sister's house? A Yes, sir.

Q Now, had Gene called at your house while you were away? Were you informed of that? A My wife informed me that she called there nearly every day.

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Q So that "Gene" was well known in your household by your wife and children before you saw her; was she?

MR. LEVY: I object to the form of the question.

MR. MOSS: I withdraw it. Then I withdraw the question.

THE COURT: Yes.

BY MR. MOSS:

Q Were the calls that your daughter-in-law made at your house before you saw her yourself?

MR. LEVY: That is objectionable because it is hearsay.

MR. MOSS: All right, I withdraw it.

THE COURT: Yes, sustained.

BY MR. MOSS:

Q Did you ever see the defendant in a restaurant; did you ever see your daughter-in-law in a restaurant, in an Italian restaurant? A I didn't see her in any restaurant.

MR. LEVY: What is the answer?

THE INTERPRETER: "I didn't see her in any restaurant".

BY MR. MOSS:

Q Do you know where the defendant's father's house was? A I heard it said that she lived in 1,000 Grant Avenue, Bronx.

Q What is, the parents of the defendant; is that what

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you mean? A The mother.

MR. MOSS: Yes, that is all.

MR. LEVY: That is all.

THE SIXTH JUROR: Your Honor, there is a question that I want to ask.

THE COURT: You may ask him any proper question.

BY THE SIXTH JUROR:

Q Where did the young man board in the country, and how much board did he pay? A I don't know where he was boarding, but he was paying the board himself.

Q Did he contribute anything to his wife's support while he was away? A I don't know.

MR. LEVY: I will develop that later, at the right time, if I may say so now.

MR. MOSS: Yes, you may say so, and you may develop that later, if you can.

RE-CROSS EXAMINATION BY MR. LEVY:

Q Do you know where your son spent his seven weeks in the country? A Weehawken.

MR. LEVY: Weehawken. I have never heard that called the country before. Well, try again, Mr. Moustachi. Put that question again to him.

MR. MOSS: Yes, I think it is a mistranslation, through a misunderstanding of the witness.

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BY THE COURT:

Q How much railroad fare did it require to go to the place where your son spent his vacation in the country? A I don't know. He took the train in Hoboken.

BY MR. LEVY:

Q I think Lackawack is the name of the place; is it not? A Yes, I think that's the name.

Q And did he write to you and his mother when he was in Lackawack? A Yes, he wrote at different times.

MR. LEVY: That is all.

MR. MOSS: That is all.

JOHN RIEGELMAN, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. MOSS:

Q Will you please look at that young man? Is that George Nicodemus (indicating)? A Yes, sir.

Q And is that Officer Bernstein (indicating)? A Yes, sir.

Q Dr. Riegelman, you were asked, yesterday, about the performing of an autopsy upon the body of a person, and I ask you if the two individuals just pointed out to you, George Nicodemus and Officer Bernstein, were present at the time you began the autopsy? A They were.

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Q And the previous witness Rafaele Nicodemus, was he there also? A He was.

Q And was the body which was examined by you present, so that they saw it and you saw it, and it was identified to you by them? A It was.

Q And by what name was this body identified by you? A Francis J. Nicodemus.

Q Now, Doctor, will you please describe the body which you examined? First, in its general appearances? A It was the body of a young man, a man evidently under thirty, markedly emaciated, he was very thin, he was very cachectic; he had the appearance of one who had died of some lingering septic condition.

Q By septic you mean a condition of poisoning; do you not? A Yes, sir; a sort of blood poisoning. It is the same condition that results in cancer and tuberculosis cases and organic affections of all kinds.

Q Had the appearance of one who had been long sick, troubled with some severe illness? A Yes, sir.

Q Did you notice his height? A I didn't take accurate measurements, but he was not above the medium height, but, if anything, under it, an ordinary sized man, I would say, probably five foot, five or seven.

Q Now, you may state, Doctor, what you did in the performing of the autopsy, and state what you found?

MR. LEVY: I beg your pardon, Mr. Moss, if I interrupt you for a moment.

BY MR. LEVY:

Q Now, did you say it was? A I am only generalizing, Mr. Levy, you know. I will say that he was not a big man, I will say, but rather slightly shorter, perhaps, than a medium sized man; perhaps about a medium sized man.

Q Taller than Mr. Moss? A Well, I should think not, I would not think so; and he was a much slighter man in build than Mr. Moss.

MR. MOSS: And my height, I will say, if you want to know, Mr. Levy, is five feet six and a half, and I stand upon the crown of my foot.

MR. LEVY: And, of course, I didn't want my height to be accepted as a standard, for a moment.

BY MR. MOSS:

Q Now, Doctor, will you describe your autopsy and what you found as a result of it? A I made a careful examination of the external surface of the body, before making the internal examination, and I found in the median line, about here on my own body (illustrating), that he had a laparotomy incision, a partially healed laparotomy incision.

Q And will you please show that, the point at which you found that, on your own body? A About here (indicating).

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Q And when you say a laparotomy incision, you mean a surgical incision made for the purpose of exploring the abdomen? A Yes, sir, that's what I mean. That was partially healed up, and there was an opening in the upper part of <sup>it</sup> which communicated with the interior of the body, something that had remained open, for passing in a probe, or something of the kind. And also on the left side of the body, at the anterior axillary line, at the ninth rib, where I place my thumb, was another opening, which communicated with the interior of the body.

Q Can you describe that opening any better, Doctor?

A That was an opening, also the result of an operation. It was a partially healed incision.

Q Did you recognize both of those openings which you have described as surgical openings? A In a general way one would say they were surgical openings. They were clean cut openings, made with a sharp instrument.

Q And by exploring the inside of the body you could trace them? A Yes, trace the connection. There was also on the abdomen --- if I may consult my notes, I will be a little more accurate.

Q Certainly you may. A Two inches below the ensiform cartilage --- that is the lower end of the breast bone --- slightly to the right, there was a scar such as would be produced by a shot wound.

Q By a gunshot wound? A Well, a wound of a bullet, a single bullet; either a pistol or a rifle; a pistol wound.

Q I use the technical term, gunshot wound, not necessarily indicating a rifle wound, Doctor. A Yes, I understand.

Q And you would say I might say that I have seen that wound described, that the young man was shot, so that I know that you are not deceived, when I saw the scar at the autopsy.

Q Did you ever have the young man upon whose body the autopsy was performed, on the 3rd of October; did you?

A Yes, sir, I did.

Q And where did you see that young man, on the 3rd of October? A In the Emergency Ward of Lebanon Hospital.

Q And at the time you saw him in the emergency ward of Lebanon Hospital, on the 3rd of October, there was then a gunshot wound on his body, was there? A Yes, there was, a wound which corresponded to the scar which I have just described.

Q And when you conducted the autopsy, some time after, you saw the wound which was fresh when you first saw him in the emergency ward of Lebanon Hospital, on the 3rd of October? A Yes, sir. And I also found on the internal aspect of the right arm -- at this point (indicating) --

the wound, the wound above the internal condyle, on the arm, corresponding to the long axis of the arm, and about two inches above, vertically, to the long axis of the

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bone (indicating). Those were also healed.

Q And did you see those also on the third of October?

A I don't recall whether I saw those, but I knew they existed at that time. They were bandaged up. I don't recall them especially.

Q But did you know, on the third day of October, that he had a gunshot wound in his arm, at the point you have just described? A Yes, I did.

Q And you found the scars of something that had entered and passed through at that point; did you? A From the character of the scars evidently one was the point of entrance and the other point of exit.

Q Now, in dressing further the wound over the abdomen, over the gunshot wound on the abdomen, were you able to trace that wound back to the body? A No, sir, that was healed up, and that had no communication with the abdominal incision, with the laparotomy incision. The skin surface of the wound had closed, and the course of the wound had become more or less obliterated by the changes that had occurred, but I found the bullet that evidently entered there. Well, I could not say that I personally found it. I will withdraw that.

Q You did not personally find it? A No, sir.

Q Therefore that will be withdrawn. And you saw a bullet? A Yes, and I have a bullet, but I didn't remove it from

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Q Were you present when it was removed? A I was not.

Q Do you know who removed it? A Not except from the statement of the doctor.

MR. LEVY: I object.

MR. MOSS: Well, if your Honor please, I consent that that be stricken out, of course.

THE COURT: Yes, strike it out.

BY MR. MOSS:

Q Now, will you please tell us what your opinion was as to the cause of death, as a result of the autopsy that you made? However, describe first what you found when you made the autopsy? A I performed the usual autopsy, that is, I made an incision from the root of the neck to the lowermost portion of the abdomen, laying open the abdominal cavity, and removed the anterior surface of the chest, that is, the ribs, and the breast bone, and examined the internal organs.

Q State what you found about the internal organs, please? A As regards the abdomen, I traced this sinus, which communicated with the abdominal wound, through the abdominal cavity, what was left of the abdominal cavity --- through the diaphragm --- that is, the muscular wall which divides the abdomen from the chest --- and up into the left chest, where it emerged in this other incision that I have described previously, at the side of the ninth rib.

There was also a by-path communicating with this

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sinus which communicated with the stomach, so that this purulent tract also extended into the stomach. The abdominal cavity, which, normally, we might describe as a space occupied by the various organs which move freely in there, that is, the intestines, the liver, the stomach and so on, that freedom of movement had been entirely obliterated by adhesions. The entire abdominal cavity was bound together, everything in there was bound together. The liver, and stomach, and intestines were all matted into one mass, as the result of this long standing inflammatory condition that had existed there.

There were two openings in the stomach, one of them in the posterior wall, which had healed up, and the other in the anterior wall, which communicated with the sinus, which I described previously. Those had been produced by the bullet in its passage through the abdomen.

The chest, in the right chest, I found a large collection of fluid, serous fluid, and some adhesions.

The left chest had been practically wiped out by adhesions; there was no plural cavity on the left side. There was a scarred up lung, which was studded with small abscesses, and that was bound down and adherent to the chest wall.

Q And as you found, if I understand you correctly, a very general septic condition? A I found that all the organs showed evidence of a prolonged suppuration, of a prolonged and prolonged blood poisoning. The small abscesses in

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the lung were a direct extension of the poison absorbed from that sinus, running up through the lungs, and breaking it down, and forming a number of little abscesses all through the lung.

Q Did you form an opinion as to the cause of this septic condition from which you say he died? A I did.

Q What was the cause, in your opinion? A From the general marked emaciation, general markedly emaciated condition of the body, associated with a long standing suppuration along the tract of the sinus through the abdomen and chest, the multiple abscesses in the lung, and the obliterating peritonitis and pleuritis, it was very evident that the deceased had suffered from a prolonged pyaemia and toxemia which resulted in death.

Q And what was the cause of death, Doctor, in your opinion, as the result of your autopsy? A And the cause of death was septicemia, secondary to a pistol shot wound of the abdomen and chest.

Q And, in your opinion, the pistol shot wound which you have described and located was the cause in this individual of a septic condition, which progressed as you have described, and resulted in his death? A It was.

Q And will you please to enlighten the jury as to how a septic condition will follow a pistol shot wound? A Well,

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in the first place, a bullet in its course entering the body takes particles of clothing with it, and then, as long as it had gone through the abdominal wall, it penetrated the stomach. The stomach contains untold bacteria and food products of all kinds. These are allowed to escape into the peritoneal cavity, which is an air tight cavity, which is not supposed to come into contact with infections of any kind at all; and the bullet further in its passage up through the diaphragm and into the left chest, carried the contents of the stomach, as well as what it probably had on it before, up into the chest. So that the whole passage of this bullet, from the anterior abdominal wall to the skin of the anterior axillary line, at the ninth rib, was a conveyer of germs in its passage, and these germs naturally multiplied, and invaded the surrounding tissues, and were absorbed by the system, and formed a general blood poisoning.

Q You speak of many adhesions, by which the organs had grown together. Can you tell what was the cause of those adhesions? A They are nature's efforts to shut off an infection from the general system, nature throws up this barrier, trying to shut it off, and it is the result of an inflammation, an inflammatory process.

Q So, if I understand you correctly, the bullet entering the body, carrying with it such infections, such germs, as

it gathers from the clothing? A Yes, sir; and the air.

Q And then, penetrating the stomach, the intestines in the body, releases other matter which contains germs, and these germs are set loose in portions of the body that are not intended to receive them, and infection springs up from them, and then nature in fighting against the infection, produces the adhesions where the tissue has been torn, and you have, as a result, a condition which you have described? Is that the substance of your testimony? A Yes, sir, that is very correct.

MR. MOSS: I think you may examine.

BY MR. MOSS:

Q Oh, you say you have a bullet? A I have.

Q Produce it, please. A This is the bullet as it was handed to me by Mr. Daub, the superintendent of Lebanon Hospital. (Indicating an envelope)

Q Well, don't show it. If you are satisfied that it is there, let it remain; I am only going to have it marked for identification. A This is the original envelope in which it was (indicating), and I tore that open at the time of the inquest before the Coroner, and put it in another envelope.

Q And this you say was handed to you by Mr. Daub, the superintendent of Lebanon Hospital? A Yes, sir.

(It is marked People's Exhibit 1 for identification)

## CROSS EXAMINATION BY MR. LEVY:

Q Doctor, you said that you saw the decedent on the 3rd day of October of last year? A Yes, sir.

Q At the hospital? A In the emergency ward of the hospital.

Q And who was in attendance on him at the time? A Do you mean as a medical attendant?

Q Yes. A I really don't remember just which physician was in charge at Lebanon Hospital then. They change very often.

Q Did you see him more than once in his lifetime? A I don't believe I saw him again after that time. I may have, but I don't recall.

Q And how long did you have an opportunity to see him on the 3rd of October? A Oh, during a period of 15 or 20 minutes, while the Coroner and myself and a gentleman attached to the District Attorney's office were there.

Q Was he being operated upon at the time? A He was not. That was just after he came in.

Q Had he been bandaged at all? A He had a dressing on. That we moved slightly, and looked at the wounds, and placed them back.

Q Was he conscious? A He was. He was shocked, but conscious, so that he could talk.

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Q Just answer my question, please. Was he conscious?

A He was conscious, yes.

Q And the next time you saw him was when you performed your autopsy? A When I performed the autopsy, yes.

Q Now, Doctor, my information is that he was a tall man, taller than Mr. Bennett here. Now, try and see if you cannot recollect that that is the fact. A Well, I might state that probably I made a mistake in stating anything about his height at all, because I took no special measurements. But he was not an abnormally tall man, and he was not a short man.

Q I am not finding fault at all, Doctor, because I know how busy you are. A He was very slight, and very much emaciated. That's all I particularly recall.

Q I know that you cannot recall every circumstance, in the multiplicity of your official duties. Now, you say that he was emaciated? A Yes, sir.

Q And do you go so far as to say that that emaciation was due to the septic condition? A Positively, yes. I might state that I saw him --- if you wish me to state --- I saw him upon his admission to the hospital, and he was then a young man in good physical condition. He was not stout, but in good physical condition.

Q But you made no examination at that time? A Well, ocular examination, and examined the wounds.

Q And did you examine the other parts of his body, or

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merely the points of the entry and exit of the bullets? A Well, I had occasion to observe his general condition, he was undressed, and was lying on the bed, and we had his dressings off.

Q Doctor, did you see, or could you tell from what you found at the autopsy, whether or not the man had suffered from any constitutional disease? A Well, that depends upon what sort of constitutional disease you mean.

Q Any kind of constitutional disease? A Well, a blood disease, or a disease that would be manifested by some change in some special organ; which do you mean?

Q Well, first a blood disease? A You mean probably a specific disease; do you not?

Q Yes, that's what I mean. A Well, I couldn't tell in a gross way. There were no lesions of a specific disease in that case.

Q What lesions do you refer to, Doctor? A We have certain lesions produced by them, such as chronic nervous cases, which he didn't have. But a man may have specific disease in a latent way, which would not be shown by an autopsy.

Q For instance, just for the purpose of illustration, could you determine by the autopsy in such a case as this whether or not a man was tainted with syphilis? A You could not.

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Q You could not? A You could not tell, no, sir.

Q Did you examine his body for the purpose of finding whether there were any scars of other wounds, older than the wounds which were inflicted on the 3rd of October? A Well, if there had been any scar of any magnitude at all I would have seen them.

Q Did you give any attention as to whether there were any evidences of any scars at or near the genitals? A I did.

Q Now, do you recall that to mind, that you made that examination? A I always make a general examination of a body before doing an autopsy.

Q No, not what you always do, but did you do so in this case? A Well, that is included in that statement, this individual case.

Q And you found no scars? A I found no scars of any size. I will not state that he may not have had a scar the width of a hair, that I overlooked, but there was certainly no scar of any size.

Q Well, a scar, for instance, that will be left after a man had suffered with shankers, would that be visible?

A Well, a shanker would not leave a scar that would be permanent, though a shankeroid might.

Q Now, would you say, doctor, from the examination that you made that the septic condition could not have been prevented, and which septic condition subsequently resulted in

his death? A All precautions which medical knowledge of the present day know were taken in that case.

Q Well, how do you know that, Doctor? A Well, because he was in a reputable hospital, and handled by reputable physicians.

Q And you state that, Doctor, from the spirit of Free Masonry that exists between all reputable physicians; do you not? A No, sir, not at all. The same doctors that attended him attended Mrs. Nicodemus.

Q I am not finding any fault with that hospital, I assure you, because I happen to be very closely connected with that hospital. But I am simply asking, and trying to ascertain, whether or not the sepsis could not have been prevented, and I am reflecting upon no one connected with the hospital. A In his case it could not have been.

Q Why not, Doctor? A The results speak for themselves.

Q Now, you go so far as to say that particles of clothing were carried into the body by means of the bullet; do you not? Now, did you discover any such evidences of foreign substances injected into the body? A A bullet could not go through the clothing, without taking some infection from it into the body.

Q Have you ever known, Doctor, of instances of bullets entering the body clean, and passing out clean, and not carrying in their passage anything with them, such as a piece of cloth-

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ing? A I do not say that it carried in a piece of clothing, but that it probably carried germs from the clothing. But in some instances it does take in pieces of clothing with it, and in other cases it goes through clothing that contains germs.

Q And did your autopsy reveal that any foreign substance was carried into the body? A No, sir, didn't reveal that.

Q Now, did you know what operation had been performed upon him? A I did.

Q What operation had been performed upon him? A He had had an abdominal section performed.

Q How many? A I don't know how many he had.

Q Were you --- A I wasn't present when any of them were done.

Q Were you acquainted with the fact that he had refused, some time before his decease, that he had refused to permit another operation to be performed upon him? A That I know nothing of.

Q It becomes necessary sometimes, doesn't it, in cases of this kind, to perform several operations? A I believe several were performed upon this man.

Q The number you don't know? A No, I don't.

Q Did you, on the 3rd of October, also see the defendant? A I did.

Q And where did you see her? A I saw her also in the

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emergency ward in Lebanon Hospital, in another room adjoining.

Q Did you make any examination of the defendant? A In a general way I looked at her, and spoke to her, I believe, or several of our party did.

Q Did you make the same kind of an examination of the defendant as you did of the deceased? A I don't recollect whether I looked at the individual wound or not, but I remember that she had a wound on her abdomen somewhere, but I don't just recall seeing it, or whether I saw that there was a dressing there, and did not remove it.

Q Did you see whether or not she was suffering from any burns from any acid? A I don't recall. I have somewhat of a recollection that she did have some burns on her face or chin, or was it her arm?

Q Was it her chest? A Yes, I think it was the chest, but I don't state that of positive knowledge.

MR. MOSS: Now, then, stop please. And I move that that be stricken out, as not within the personal knowledge of the witness.

THE COURT: Yes, strike it out.

MR. LEVY: And I consent.

BY THE COURT:

Q Doctor, are you giving your best recollection? A Yes, sir, that is my best recollection. I was there in an unofficial way, that day, because, both were alive there then,

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and I went with the Coroner there.

MR. MOSS: We will have the doctors here, Mr. Levy, who attended both the defendant and the deceased in the hospital.

BY MR. LEVY:

Q Of course Mr. Moss is correct, doctor, and you are not allowed to testify as to anything but what you yourself recollect. A Well, I wouldn't care to testify to that then. I withdraw that.

Q And was the defendant conscious or unconscious when you saw her in the hospital? A Yes, she was conscious, I remember that distinctly.

Q Well, was she apparently in pain? A Well, she was shocked, of course, just as her husband was.

Q How long did you remain with her? A Just a few moments; not more than five or ten minutes.

Q Doctor, did you examine the glands of the deceased in the autopsy? A I had occasion to examine the location where his glands would be.

Q Including the lymphatic gland? A Yes.

Q What did you find? A He had no abnormal enlargement of any of his lymphatic glands. His glands were evidently and there, if they were enlarged I would have recognized it. A lymphatic gland in its normal condition cannot be felt. As soon as it can be felt to any extent it is then enlarged, and

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it is not normal. But a normal lymphatic gland cannot be felt in a general way. They were not enlarged.

Q Now, can you tell me what the condition of his blood vessels was? A I couldn't state anything positive about that.

Q You can't say whether they were normal or abnormal?

A They were not markedly abnormal. The larger vessel associated with the heart, that is, the aorta, that showed no evidences of degenerative change.

Q Now, how about the kidneys? A He had changes in the kidneys.

Q What changes did you find there? A The kidneys were somewhat enlarged, showing parenchymatitic degeneration.

Q Which means what, Doctor? A Which means that he had had for some time a change in the glands of the structure of his kidneys.

Q And would that indicate Bright's disease of the kidneys? A Yes, in a general way. Bright's disease is a general term. I might state that a man who had suffered from chronic suppuration as long as he had would be apt to develop that type of kidney.

Q And he might have had it prior to being wounded?

A Yes, he might have had.

Q Did you give any heed at all to the condition of his skin, Doctor? A Outside of noticing that he presented this

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condition of cachexia I did not.

Q Which means what? A That the skin was very sallow, pale, bloodless.

Q And was his skin spotted in any way? A No, it wasn't spotted in any way. You probably refer to pigmentary scars.

Q No, I do not. I refer to any spots of any kind. But, of course, they were pigmentary spots, I suppose; I would not call them scars? A Well, they are scars. They are the result of prior inflammation, which leaves these scars. These pigmentations are always the result of specific inflammation.

Q Well, but there could be pigmentation without the breaking of the skin; could there not? A Well, it would be a scar just the same. It is the result of inflammation, and the deposition into the tissues that result from it.

Q Could you determine, Doctor, from the autopsy on that unfortunate man, whether in his lifetime he had been addicted to the use of drugs or narcotics? A You could not, except that you might find some scars as the result of hypodermic abscesses. But those would be very small, and sometimes they disappear entirely after a lapse of years before death.

Q And so that a person could have been in his lifetime addicted to the injection of morphine hypodermically, and after death that practice would leave no scars whatever, the body would present no evidence of scars whatever? A Such a thing is possible.

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Q What did you find, Doctor, concerning his liver?  
Anything particular? A Nothing especially abnormal, except  
an inflammatory condition as the result of the wound.

Q Well, was it enlarged, his liver? A No, sir.

Q Or cirrlosed at all? A No, sir.

Q One more question, Doctor. According to your experience  
and based on your autopsy, and upon what you then observed,  
could you say with any certainty, that, at sometime during the  
life of the deceased, he had not been tainted with syphillis?  
A I couldn't say so.

Q You couldn't say so? A No.

MR. LEVY: That is all.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Doctor, I think that you told Mr. Levy that the defend-  
ant spoke in your hearing. Did she? A Yes, she did speak.

Q Do you remember what she said? A No. She didn't speak  
with me directly, but with some other members of the party.

MR. MOSS: Very well. That's all.

H E N R Y R O T H , of 409 East 140th Street, a witness called  
on behalf of the People, being duly sworn, testified as  
follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Are you a physician and surgeon connected with the

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Lebanon Hospital in the Borough of the Bronx? A I am.

Q How long have you been there in that capacity? A I have been connected with the institution for 19 years.

Q Yes. Will you keep up your voice so that all the jurors will hear you, please? Then you have been a practicing physician for at least that length of time? A Yes, sir.

Q And have you had experience in the hospital and elsewhere in the treatment of wounds, and gunshot wounds in particular? A I have.

Q Can you remember a patient who came into that hospital on the third day of October last, named Francis J. Nicodemus? A I do.

Q Was he under your care? A Yes, sir.

Q Did you receive him when he came in? A No, sir.

Q How soon did you see him after he came in; do you know? A Probably within an hour.

Q Now, Dr. Roth, I want you to describe in as simple language as you can, so that the jury may understand your testimony, what you observed about the man as he came in, and what was done for him and with him? Just trace him right along as he passed under your observation and care? A I found this patient in bed, and found that he had two wounds on the lower portion of his right arm (indicating), and that he had a wound on the front surface of his abdomen, and he presented evidence to lead me to believe that he had some injury within the abdomen, and

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consequently I advised him to be operated upon.

I saw him again within a few hours after that. He consented to be operated on. He was taken to the operating room. I operated upon him, opened the abdomen, and found that he had two injuries of his liver, he had two wounds in his stomach, he had a wound of the spleen, he had a perforation of the diaphragm leading into his chest. After repairing ---

Q Wait a minute. Did you find the cause of those wounds?

A I found, on the left side of his chest, underneath his skin, an object that I presumed was the cause of all these injuries.

Q Yes. Did you remove that? A Not at this time.

Q Well, did you at some time? A I did, subsequently.

Q And when you say you presumed it was the cause, was that your opinion from your examination of the man, and the removal of the object? A Yes, sir.

Q And what was the object you removed? A I removed a bullet.

Q And what did you do with that bullet? A I gave it to the house surgeon.

Q And who was that? A Dr. Bower.

Q Now, you have told the jury how you opened the body, and about these wounds that you found. Please proceed to tell the jury how you treated the man, and how he responded to the treatment, following him right along in the hospital.

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A After the operation his condition seemed to improve, but very shortly after that we found that the patient had considerable fever, and we sought the cause of that.

Q Well, just before that. I don't think that you have given to the jury quite sufficiently the operation. What did you do for him? What remedial steps did you take through this operation? A I repaired his wounds in his stomach, I attended to the wounds in his liver, and I made provision to remove any collection of fluid, blood or any other fluid, that might collect in the part of his abdomen which was the seat of the injury, and I applied the usual dressings, and put him to bed.

Q Did you make provision for each of the wounds that you have described? A I did, sir.

Q And having, as you say, repaired these different wounds, you mean that you applied to each one the treatment that, in your judgment as a physician, you believed should be applied? A Yes, sir.

Q And did you sew up the body then? A Yes, partly.

Q And you allowed for drainage? A Yes, sir.

Q And now you say some fever developed afterwards?

A Yes, sir.

Q Now, proceed from that point? A I proceeded to find out the cause of his fever, and suspected that he probably had

a collection of blood or some other fluid in his chest, and, therefore, made a puncture, and withdrew some fluid from the chest, which subsequently, at the second operation, I evacuated by means of another incision in the left side of his chest, removing at the same time a bullet; and, after evacuating the fluid that he had in his chest, I put in some tubes to drain it away from the cavity.

Q Now, proceed, please, and tell the jury of his history in the hospital. A In spite of this treatment he continued to have fever, and showed evidence of serious illness, and he continued in this condition until the time that I went off service in the hospital. My term of service ended on the 1st of November.

Q And you were followed by whom? A By Dr. Parker Syms, as the attending surgeon.

Q Now, during the time that you were there in the hospital, did he have your continual observation and care?

A He did.

Q And the remedies that you applied to his condition, were they in your judgment the proper remedies for that condition? A They were.

Q I infer from your testimony that you were not in the hospital when he died? A No, sir.

MR. MOORE: You may cross examine. Or, by the way, I have another question.

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BY MR. MOSS:

Q I wonder if you recognize this (indicating People's Exhibit 1 for identification)? A It may have been the same.

Q It may have been? A Yes, sir.

Q Now, do you mean to say that it presents to you the appearance that the bullet that you removed did present?

A Yes, sir, it does.

MR. MOSS: That's all.

EXAMINATION BY MR. LEVY:

Q Doctor, how many operations did you perform on him?

A Two.

Q And who, besides yourself, assisted? A The house physicians, Dr. Bower, Dr. Goodfriend, and probably one other gentleman whose name I don't recall.

Q The records of the hospital, I take it, are here?

A I don't know, sir.

MR. MOSS: Yes, I have them here.

MR. LEVY: May I have the use of them for a moment?

MR. MOSS: Certainly.

BY MR. LEVY:

Q Now, do you remember whether the deceased was a tall or short man, or can you give me an idea of what his height was? A He was neither very tall nor very short, judging from his position in bed. I never saw him out of bed.

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Q And his weight when he entered, what was it? A His weight may have been 150 pounds.

Q You were not there the time he died? A No, sir.

Q Doctor, did you also treat the defendant? A I did.

Q Do you recollect what time of the day it was that she was brought to the hospital? A In the forenoon.

Q How early in the day? A I didn't see her until about eleven o'clock.

Q You didn't see her until eleven o'clock? A About that.

Q Before you had been called upon to treat her, had she been under the treatment of anyone else? A Yes, sir.

Q Of whom? A Dr. Bower, the house surgeon.

Q Dr. Bower, the house surgeon? A Yes, sir.

Q And did you treat her from that day until you left the hospital? A Yes, sir.

Q Which you say was on the 1st of November? A The 1st of November, yes.

Q Or had she been discharged before the 1st of November?

A She may have been discharged the last day of October.

Q Now, to what condition did you find the defendant?

A I found that she had a wound on the left side of her chest.

Q A ball wound? A A bullet wound.

Q Describing, if you please, what you found so far as her

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condition presented itself to you? A She was in shock, showed symptoms of depression. In addition to that she had over her body some evidence of some irritation of the skin.

Q When you use the expression irritation of the skin, what do you mean? A She showed evidence of her skin having been injured in some way.

Q By a fluid? A By a fluid, or some physical body.

Q How large a surface of her body showed that condition? A She had a number of parts that showed this evidence of irritation, some on her chest and some on her arm.

Q And any on her limbs? A The upper limb, the arm. I don't believe that there were any on the lower limbs; at least I don't recall any.

Q Well, what space did you find was covered by that condition? A Several square inches.

Q Would you say that that condition was caused by any acid? A It may have been.

Q Such as carbolic, for instance? A It might have been, yes.

Q Were those parts blistered? A They were.

Q And wouldn't that condition, and wasn't the treatment given for those spots, the treatment given for burns usually? A Yes.

Q And who is credited of this, Doctor? A The applica-

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Q Of course you diagnosed it, you reached an opinion when you examined those spots. What was your opinion as to what they were? A That they were the result of some caustic fluid.

Q Now, with regard to the bullet wound from which she suffered. Describe the point of entry please, and, if there was an exit, the point of exit? A There was only a point of entrance.

Q Where was that? A On the lower portion of the chest, on the left side.

Q Will you indicate that upon your own body, Doctor? A About here (indicating), on the left side.

Q You would say under the heart; wouldn't you? A Yes, sir.

Q And on a line with which rib? A I don't recall that.

Q About? A Perhaps the seventh or eighth.

Q Perhaps the seventh or eighth? A Yes, sir.

Q What did you do in connection with that bullet wound?

A I applied a dressing, to protect it from any infection.

Q Did you probe? A I did not.

Q Was there need for probing? A We never do.

Q Why not, Doctor? A Because it is bad practice.

Q I am not a surgeon. I don't know. I am inquiring for my own information.

DR. MOSS: I think perhaps the doctor restricts

his answer to certain portions of the body. I merely make that suggestion to you, Mr. Levy.

MR. LEVY: Yes, a very proper suggestion is made by Mr. Moss.

BY MR. LEVY:

Q There are certain parts of the body where it is deemed unadvisable to probe, as into the vital organs, for instance?

A That is very true.

Q And because this wound was near a vital organ, no probe was used, is that so? A Yes, sir, that is the idea.

Q Are you able to say, Doctor, whether the bullet that entered the body was ever extracted? A It was extracted.

Q By whom, please? A Under my supervision, by the house surgeon.

Q And was it necessary to operate to do that? A Yes, sir.

Q What was the operation? A Under my supervision the house surgeon made an incision upon the right side of her back, and extracted a bullet from underneath her skin and muscles.

Q And from which part of the body was the bullet extracted? A In the right side of her back, in this region (indicating), down near the loin.

Q And will you point out with your left hand the point of entrance? A Yes, sir.

Q It entered there (indicating)? A Yes, sir.

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Q And was removed at the spot indicated by you with your right hand? A Yes, sir.

Q Well, if that bullet had passed through her body in that way, it must have passed through a few of her vital organs; isn't that so? A Not necessarily.

Q Could you say what organs had been affected, if any? A Judging from the symptoms that she presented, apparently none of the organs.

Q And what were those symptoms, Doctor, that she presented? A Evidence of shock, evidence of bleeding, evidence of some injury to some vital organ. If she had perforated her stomach, or any part of the intestines, she would have presented symptoms such as peritonitis, which were not present. If it had gone through her lungs, she might have expectorated some blood.

Q Now, Doctor, from the location of the wound and the direction in which the bullet passed, could you give your opinion as to the position in which the weapon must have been held as to have inflicted such a wound? A It must have been held probably in the left hand, pointing towards the front of the chest (indicating).

Q At the heart? A At the heart.

Q Are you able to say, Doctor, whether the young woman at the time of her admission to the hospital, and suffering from these wounds, was passing through her menstruation?

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A I don't recall that.

Q Well, could you, by referring to the hospital records, refresh your recollection, and state? A I might, yes.

Q Will you do so? Here are the records (indicating)?

A she was.

Q Can you inform us as to whether the menstruation continued, and how long she was in that condition? A I would have to look at the record.

Q Will you be good enough to do that, Doctor? A After looking over the usual number of days that menstruation lasts, I have found no record here stating that she stopped menstruating.

Q Well, perhaps we can assist you, Doctor, because I have had those records examined. You find that there is no record that she did stop menstruating? A Yes, sir.

Q Which would indicate, would it not, that she continued her menstruation? A No, not necessarily.

Q Well, if you will turn to the record of the 31st of October, doctor, perhaps that may assist you?

MR. MOSS: I think we have traveled pretty far out of the issues of the case, if your Honor please, in the subject which we are now discussing. I do not think it is proper cross examination, nor does it lead or seem to lead to any issue raised by the defense.

THE COURT: It is not apparent to the Court, the

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purpose of this line of evidence, Mr. Levy.

MR. LEVY: It is not possible for me to do everything at once. I had to put my case together, my defense, as one would put together a bit of mosaic work, and I can assure your Honor that the purpose of the question is pertinent, is material, and will be a matter of much importance.

MR. MOSS: Well, what I want to say, your Honor, is that, as the record now stands, we have simply a plea of not guilty. There is no issue tendered, affirmatively tendered, of insanity here, and it does not seem to me that, in the condition of the record, the subject now being inquired of is pertinent, even if we waive the objection that it is not proper cross examination.

MR. LEVY: I wish to direct your Honor's attention to your own words, yesterday, that, under the decision in the case of the People vs. McIlvaine, every issue is raised by the plea of not guilty.

THE COURT: That is true.

MR. LEVY: And, in addition to that, you will find a Section of the Code of Criminal procedure which allows any kind of proof to be given under a plea of not guilty.

THE COURT: But it must be made apparent to the Court, its materiality, and pertinency. It is purely within the discretion of the Court.

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MR. LEVY: But have I not the right to inquire of her physical condition, what it was, on the day of or on a day approximately near the day of the shooting, and I cannot do it all at once?

MR. MOSS: But the difficulty is that it goes far beyond the third day of October. Your Honor sees my position. I am only laboring to see what I have got to meet, the case that I have got to meet.

THE COURT: I will sustain the objection. You may recall the witness.

MR. LEVY: Well, I say with all deference to your Honor that by sustaining that objection, you are putting a hardship upon this young woman, and you are not affording her the opportunity to develop her case, piece by piece; and I am not in a position now to disclose to your Honor and to my learned opponent the purpose of this, but I assure your Honor and my learned opponent, as an officer of this court, that the matter which I now ask for is an entirely pertinent, and competent and important, and your Honor may accept my assurance of that.

THE COURT: You know that I have never doubted your word, Mr. Levy.

MR. MOSS: And in the same spirit that Mr. Levy is speaking, I say if this defendant has a defense, it

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is on the facts, and whether I know the facts now or later does not affect the case at all, but it may enable me to prepare myself to meet this testimony, and this failure to disclose the purpose in view now affects my ability to bring out, at the proper time, the sort of evidence that I may have to bring out, and it seems to me that in orderly practice, in fair practice, in the proper practice, that the People who are anxious for nothing but to bring out the truth in this case, should have a fair amount of warning, so that they may not be caught unawares by some theory that may be advanced, and it seems to me counsel loses nothing by opening his hand now.

MR. LEVY: May it please your Honor, my practice has been and will ever be as fair as the prosecution's. My position, however, is different than is that of the prosecution. In my case I am defending a life, and in the other case it is purely impersonal; there is not the element that goes to the prosecution that goes into the defense, where every issue presented by the State is to be met.

THE COURT: This defendant will receive every consideration that she is entitled to, and that the law permits. There are occasions when the Court may, in the exercise of his discretion, permit a witness called by the People to testify on matter of a defensive charac-

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ter, but, unless it is made clear to the Court, the nature of the evidence, it is sometimes better not to allow it. At this time, however, I shall not close the door to any legal evidence that the defendant may desire to offer.

MR. LEVY: When you come to charge the jury, if your Honor please, you will have to start out with the statement to the jury that every person intends the natural consequences of his act --- you will tell that to this jury. Now, that is one of the issues raised under this plea of not guilty, and by means of this evidence I propose to construct one of the links in the chain that will make up the evidence. I cannot do it at once, and, when I assure you that that is my purpose, you should encourage me in my efforts to place around this defendant every safeguard that my understanding and zealousness prompts me to present. Technically your Honor may be right, but it is within your discretion, and it is to that generous discretion that I appeal to you to allow me to go on.

THE COURT: Subject to your promise to connect, I shall allow the evidence. And the District Attorney will be good enough to make a memorandum at this time that, if it is not connected, I shall entertain a motion to strike it from the record.

MR. LEVY: I shall undoubtedly connect it, because

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as I say, it becomes a very important circumstance.

BY MR. LEVY:

Q Now, Doctor, looking over the records --- I had better put another question because you have probably forgotten the question I put to you before --- now, looking over the records of your hospital, what do you find to be the period during which the defendant menstruated? A Under date of October 31st I find a record here that the patient is menstruating.

Q And the month before that do you find a record that she was menstruating, do you not? A Yes, sir.

Q October 3rd? A Yes, sir.

Q And on October 5th you found her menstruating; did you not? A Yes, sir.

Q And there is no evidence, so far as your records show, nor which you can recollect, which would establish that she ceased menstruating between those two dates, to wit, the 3rd of October and the 31st of October, 1911? A Not according to these records.

Q Not according to these records? A No, sir.

Q In such a condition, Doctor, I take it, there is no effort made to check such a condition of prolonged menstruation --- there is no effort made, is there, to check the flow of the blood? A If we know that the menstruation is prolonged, we might make some effort to check it, because a menstruation lasting from the third until the 31st of October is an unusual

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length of time for a patient to menstruate.

Q Is there any evidence to show whether any remedy was given, or any effort made to check her condition of menstruation? A I don't believe the records show that.

Q Nor have you any personal, any individual independent recollection of any such thing having been done? A No, sir.

Q Now, Doctor, you told his Honor and the jury that she was suffering from the same kind of shock as her husband was upon her admission? A Yes, sir.

Q Can you, if you will, please, in more detail, describe her condition in that regard? A She looked pale and depressed and restless. Her pulse was rapid, and she showed the evidence of a recent injury.

Q Was she conscious when you saw her, Doctor? A She was.

Q And how did she show her depression? In what way, Doctor? You say she was depressed. A That is a very difficult thing to describe. It is something that the eye and the mind of one who is accustomed to see patients of this sort can recognize, but not necessarily describe very well.

Q Well, did she show her depression by any outward symptoms? A None.

Q You wouldn't say that she was clammy, would you? A She was restless.

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Q Restless? A Yes, sir.

Q And how did she manifest her restlessness? A By tossing about her bed.

Q And could you call to mind as to whether or not she at that time seemed delirious? A Not at all.

Q You can't call it to mind? A I don't think she was delirious.

Q She was not delirious? A No, sir.

Q Did you hear her cry out or call out for any one?  
A Not that I know of.

Q You don't recall that? A No, sir, not that I remember.

Q Did you have any conversation with her? A Simply to ask her if she had any pain.

Q Was there any time during your treatment of her, while she was under your care, Doctor, that she gave evidence of collapse? A Not to my recollection.

Q Not to your recollection? A No, sir.

MR. LEVY: That is all, Doctor.



RE DIRECT EXAMINATION BY MR. MOSS:

Q You spoke of certain blistered portions of the skin. Was there a collection of serum under the skin manifested?  
A I don't recollect that. I merely recall that it was red and irritated.

Q And so that when you say blistered, you don't mean necessarily to infer that the skin was blistered and that there was water under the skin? A No, sir.

Q Now, does this record of yours show that that woman menstruated from October 3rd to October 31st? A It does not.

Q All that you have found with reference to that subject are the entries of October 3rd, 5th and 31st, to which Mr. Levy called your attention? A Yes, sir.

Q And, if I understood your testimony correctly, you have no recollection that she was in that condition during that long period? A I have not.

Q And you don't find anything in the record to show that any remedial agencies were applied appropriate to any such conditions; do you? A No.

Q And would your best recollection be that she was not menstruating during that period? A Yes.

Q But only noticeably so on the day when it is entered?  
A On the days when it is recorded, she probably began to menstruate, it isn't customary to put in the date when she ceased to menstruate.

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Q And, if she continued to menstruate from the 3rd to the 31st of October, there probably would be some record of it in your hospital; would there not? A Yes, sir.

Q And have you told Mr. Levy everything that you observed about her appearance while she was in the hospital that would indicate delirium, loss of mind, loss of mental functions?

MR. LEVY: Wait a minute. I object to the question in that form.

THE COURT: I overrule the objection.

MR. LEVY: I object to the question as immaterial, irrelevant, incompetent, and on the ground that the question is bad in form, and because it calls for a conclusion.

THE COURT: This is brought out as a result of your examination.

MR. LEVY: I don't know anything about that, but this question is asked in this form, "Have you stated everything that would indicate delirium?"

MR. BOSS: Well, let us not have any further discussion about the form of the question. I will withdraw the question and put it in another way.

BY MR. BOSS:

Q Did you observe any delirium on the part of Mrs. Nico-

demus? A I did not.

Q Did you observe any loss of consciousness? A I did not, except at the time when she was under an anaesthetic.

Q Did you observe any abnormal nervous condition while she was under your observation?

MR. LEVY: I object to that question on the same ground, "abnormal nervous condition."

THE COURT: Yes, sustained.

MR. MOSS: well, to save any further discussion, I will withdraw the question, in the interest of saving time.

BY MR. MOSS:

Q Now, what did you observe about her nervous --- I won't say condition --- but about the nervous part of her organization?

MR. LEVY: I object to that, sir.

MR. MOSS: All right. Then I will withdraw it again.

BY MR. MOSS:

Q Now, did you observe anything about her nervous condition? A That she was restless, shortly after admission to the hospital, and for a number of days after that.

Q Well, what in your opinion was the occasion of that restlessness? A It was the restlessness that we find in persons mentally ill, or shortly after sustaining an injury.

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MR. MOSS: Yes, that is all.

RE CROSS EXAMINATION BY MR. LEVY:

Q Now, let me ask you one question, doctor. Now, don't you think, doctor, that a woman, assuming that the record only mentions the date when menstruation commenced, and you find a record showing that on the 3rd, 5th and 31st of October she is menstruating, and you told Mr. Moss that the entry is made when menstruation commences, as a rule, now, is it not rather abnormal for a woman to menstruate three times in a month?

A It would be abnormal, but that indicates to my mind only that she menstruated twice in a month; that she menstruated 28 days after she menstruated on the 3rd of October.

Q But we have a record of the 5th of October. What would that indicate? A That would indicate that she still menstruated on the 5th, following the 3rd, when she began to menstruate.

Q Well, but why make a record of the second day? A That's a record not made by myself.

Q Have you any knowledge of who made the record? A One of the nurses.

Q Do you know who the nurse was? A No, sir.

Q Could you by reference to those records of the hospital before you, tell me the name of the nurse? A I cannot, because we don't have a record of the nurse's name.

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Q Would you have such a record in the hospital there,  
doctor? A They may have a record as to who was on duty  
in that ward.

Q And on the given days? A On the given days, yes.

Q Well, the only thing that I want to demonstrate,  
and then I shall finish, is this: At the time of her admission  
to the hospital, she was menstruating? A She was.

MR. LEWY: That is all.

MR. MOSS: That is all.

THE COURT: We will take the adjournment now.

(The Court then admonished the jury in accordance  
with section 415 of the Code of Criminal Procedure, and  
took a recess until two o'clock).

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## After Recess.

J A C O B      B O W E R, of 968 Fox Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q You are a physician and surgeon attached to the Lebanon Hospital in the Borough of the Bronx, are you not?

A No, sir, not now. I was.

Q You were such on the 3rd of October last? A Yes, sir.

Q You attended a patient in that hospital named Francis J. Nicodemus; did you not? A Yes, sir.

Q And what was your official position in relation to the hospital then? A House surgeon.

Q And were you present when Dr. Roth examined him?

A Yes, sir.

Q Will you please state what his condition was when he came in, and please speak loud enough for all these gentlemen to hear you? A I saw Mr. Nicodemus, the first time, in the emergency ward of Lebanon Hospital, and, when I saw him first, he was standing up, and seemingly in pretty good condition, and I walked up to him and asked him what was the trouble, and he said, "I'm shot," and then sat down.

Q Yes. And did you find any wounds on him? A I did, yes.

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Q Describe them, please. A There was one wound which was on the right side of the chest, low down, and there was a wound on the right arm, two wounds on the right arm.

Q Yes. Was he undressed, did you have him undressed?

A I had him undressed.

Q And what did you do before Dr. Roth came? A I sent him up to the surgical ward, which is ward 3 of the hospital, and had him put to bed, and had him put to rest, and had the nurse take charge of him, take his pulse and temperature, and such things, and then simply waited.

Q And was he under your observation in the hospital for a length of time after he was admitted? A He was; yes.

Q And how late did you see him? A The last time I saw him was the last day of October.

Q And when you left the hospital; did you? A Yes; my service ended.

Q Were you present when the bullet was extracted from him? A Yes.

Q Did you have anything to do with the bullet? A I assisted Dr. Roth and Dr. Roth handed me the bullet.

Q Yes. And what did you do with the bullet. A I placed it in an envelope, and sealed it, and wrote his name on it, and handed it to Mr. Darr, the superintendent of the hospital.

Q Yes. Showing you this envelope (indicating), marked People's Republic of China for identification, is that the envelope to

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which you have referred? A Yes, sir, that's my handwriting.

Q And you say that you put the bullet in that envelope and sealed it? A Yes, sir.

Q This bullet produced this morning by Dr. Roth, can you recognize it? A No, sir.

Q Not by any mark? A No, sir, I didn't put any mark on it.

MR. MOSS: I may say, Mr. Levy, for the sake of the record that, when doctor --- however, I may be mistaken, and I will not state that.

MR. LEVY: Let me see the bullet for a moment, and I may economize time. No. Proceed.

BY MR. MOSS:

Q Will you state what treatment was given to Mr. Nicodemus while you were in the hospital? A Well, my treatment was the operation, of which he had two.

Q And was Dr. Roth present at the time? A Yes, sir.

Q And had charge of them? A Yes, sir.

MR. MOSS: You may cross examine.

CROSS EXAMINATION BY MR. LEVY:

Q How soon after the arrival of the patient at the hospital, was the operation performed first? A Well, ---

MR. MOSS: You can get it accurately, possibly, if you wish, from the record, Mr. Levy.

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MR. LEVY: Thank you, but I would like to have the recollection of the witness on the subject, if I can get it.

A If I remember right, he was operated on in the afternoon. He arrived in the morning, what time I can't tell. I don't remember.

Q Do you recollect what time it was that the patient was admitted to the hospital, about? A I think it was around ten o'clock; yes, it was around ten o'clock.

Q In the morning? A Yes, in the morning.

Q Were you in constant attendance there? A Yes, sir.

Q That morning? A Yes, sir.

Q Our information that the shooting took place some time after eight o'clock and before nine o'clock in the morning, does that agree with your recollection? A I don't ---

Q I mean, you don't know anything about that? A I can't remember that distinctly; no.

Q Now, the shooting took place in Stebbins Avenue.

That is not very far from the location of the hospital; is it? A No, sir.

Q You can't say with any accuracy when it was that the patient arrived at the hospital? A No, I can't.

Q Was, however, at the same time, was there another patient brought in this defendant? A Yes, sir.

Q At about the same time or at different times? A As

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far as I know at the same time.

Q. At the same time? A Yes, sir.

Q. And where was she taken to? A The emergency ward.

Q. Did you attend her? A I did, yes.

Q. Was she undressed? A No, she wasn't, except for her breast being bared, her chest.

Q. What did you find upon her? A Why, at that time I saw a wound, and besides that some red marks on the skin.

Q. Did you examine the red marks? A Yes, sir.

Q. And what was the result of your examination? A Well, my conclusion was that it was something that was due to an irritant of some kind, which kind I didn't know.

BY THE COURT:

Q. Due to what? A An irritant.

BY MR. LEVY:

Q. An acid? A Possibly.

Q. Can you describe those spots? A Why, I don't remember them very well.

Q. Well, try to describe them as accurately as possible.

A They were large red blotches.

Q. Burns? A No, not exactly. But they may have been burns.

Q. Where did you see them, on what part of the body?

A The breast and the right arm.

Q. Were they a number of spots scattered, or all concen-

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trated? A No, there was more than one spot.

Q About how many spots? Do you recall, doctor? A No, that I can't tell you.

Q Did they extend down on the body of the patient?

A There were some extending down to the lower part of the chest, and the abdomen.

Q Down to where? A Down to the belly.

Q Down to what? A Down to the abdomen.

Q Down to the abdomen? A Yes, sir.

Q Was there any opportunity afforded you to ascertain whether she had any spots on her lower limbs? A Yes, I looked, but there were none.

Q There were none? A No, sir.

Q Did you detect any odor? A I don't recollect that I did.

Q Such as, for instance, the odor of carbolic acid?

A No, not that I remember.

Q Not that you remember? A No, sir.

Q Did you notice whether or not any of her clothing bore any evidences --- A No, I didn't notice that.

Q Bore any evidences of discoloration or burning? A No, sir, I didn't.

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

Q Do you recollect what was done with the clothing that she wore on that day? A No, I don't.

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Q What is the usual procedure as to clothing, what is usually done? A Why, the nurses usually take charge of the clothing of a patient, and is taken to the office, and a receipt is given to the patient, and it is put in the safe, and it is put in the safe, --- the other property of the patient, -- if there are any valuables.

Q Is there anything in the records of the hospital to your knowledge to show what nurse took charge of the defendant's clothing on that day; is there anything on this record that has been produced here? A No, sir, nothing that I know of.

Q I notice that on this first page it reads ---

MR. MOSS: No, don't read it.

MR. LEVY: No, just the name.

BY MR. LEVY:

Q There is printed on this slip, "Head nurse" and evidently a name, M. Gobus, as I read it. What is that name?

A Gabrich.

Q A man or a woman? A A woman.

Q Is she still connected with the hospital? A Yes, she is.

Q Have you any knowledge or information as to whether or not the hospital still has in its possession the apparel which this young woman wore on that day? A That I don't know.

BY MR. MOSS:

Q You are not connected with the hospital now? A No,

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I'm not.

BY MR. LEVY:

Q Now, these red spots --- by the way, would you say that they were blistered? A I don't recollect.

Q Carbolic acid, as a general thing, does raise a blister; doesn't it? A Well, that is a pretty hard question.

Q You have seen carbolic acid burns; have you not?

A Yes, I have, lots of them.

Q And you have seen many that caused blisters? A Yes; but most of them that didn't cause blisters.

Q That didn't cause blisters? A Yes, sir.

Q Did the patient, the young woman, speak to you?

A She did.

Q Did she tell you she was in pain? A She didn't complain of pain.

Q What is that? A She didn't complain of pain.

Q Well, where was the wound upon her? A She had a small wound on the left side of the chest.

Q About what spot? Point it out on your own person.

A Low down, there (indicating).

Q Right under the heart? A Yes, sir.

Q That you indicate as the point of entrance? A Yes, sir.

Q A round perforation? A Just a round black mark.

Q Just a black mark. The usual mark that is left by the

entrance of a bullet; is that right? A Yes, sir.

Q Did you see whether or not there was a point of exit?

A Why, we looked for it.

Q And what did you find with regard to that? A We didn't find any.

Q Did you find any protrusion that would indicate the lodgment of any foreign substance? A No, sir.

Q Were you present at the operation upon her? A Yes, sir.

Q What did that operation consist of? A It consisted simply of making an incision in the right loin, low down in the back, on the right side, about three inches in length.

Q On the right side, you say? A Yes, sir.

Q On the lower right side? A Yes, sir.

Q On the right side how far down? A In the neighborhood of the tenth rib, which is nearly the lower part of the chest.

Q Well, to put it in plain English, just about her waistline? A Yes, sir.

Q Did you find anything there? A Yes, sir.

Q What did you find? A We found a bullet.

Q It had not made its exit? A It had not.

Q And was that bullet extracted? A It was; yes.

Q Was that bullet in appearance similar to the bullet which you saw extracted from the body of her husband? A That I couldn't say.

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Q What became of that bullet which was taken from her?

A I sealed it up in that envelope, and handed it to Mr. Daub,  
the superintendent of the hospital.

BY MR. LEVY:

Q Do you know whether that has been sent to the police  
or not?

MR. MOSS: I don't know, but I will inquire.

MR. LEVY: If you will, please.

MR. MOSS: It has not come into my possession; I  
have not had it.

BY MR. LEVY:

Q Well, you sealed it in a similar manner to the seal-  
ing of the other bullet? A Yes, sir.

Q Now, was there any exploration made by means of a  
probe, or anything of that sort? A No, sir.

Q You see, I am confining myself now to the condition of  
the young woman, not of the husband? A Yes, sir.

Q And that wound appeared to be near or close to some  
of her vital organs? A Yes, sir; and we never probe for a  
bullet in such a place.

Q And can you tell us anything as to the probable course  
of that bullet? A That's pretty near impossible to state.

Q Well, we start out with a wound under the heart on the  
left side, and we close with the extraction of a bullet near  
the tenth rib, near the waist line, on her right side. Would-

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n't you say then that the bullet took a diagonal course through her body? A It is pretty hard to state, because a bullet may run around a rib, or go right through. So it is impossible to state.

Q Well, in this case weren't you able to ascertain whether it ran around a rib or through the body? A No, we were not.

Q Well, if it ran around a rib, it was due to a deflection by a bone or a muscle or something of that kind, wasn't it? A Yes, sir.

Q She was under your daily observation, wasn't she? A Yes, sir.

Q And during all that time you administered to her? A Yes, sir.

Q Prescribed for her and attended to her? A Yes, sir.

Q Didn't she at any time while she was under your supervision and attendance, did she show any sign of collapse? A Well, on admission.

Q And what was her condition on admission? A She was in a condition of shock.

Q Now, how did she manifest that? A She had a rapid pulse, and feeble, and her skin was cold. That usually manifests shock.

Q Would you call that a condition of depression? A Well,

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it is pretty hard to define a condition of depression.

Q You say her skin was cold? A Yes, sir.

Q Would you say that it was clammy? A Well, a cold skin --- it is a question whether you call it clammy or not.

Q Well, clammy, I would say if she had moisture upon it.

A Well, I don't remember if she had any moisture or not, on it, but it was cold.

Q Did she bleed much? A No, she didn't.

Q Did she seem to have an internal hemorrhage? A Not that I could ascertain.

Q Well, did you regard her condition as serious? A We did, yes.

Q Did you think that there would be a recovery? A It is very hard to state that in a case that is not under observation long enough.

Q During the first week of her stay at the hospital, did you think that she would recover? A Yes, we did.

Q She rallied quickly; did she not? A She did, yes.

Q Now, then, Doctor, when she was admitted did you talk to her? A I did; yes.

Q Was she excited or was she calm? A Why, I should judge she was fairly calm.

Q Well, how would you describe that calmness? Was it a normal calmness or abnormal? A Well, it is pretty hard to

say.

Q Well, I know it is hard, and we depend upon you medical gentlemen to enlighten us. A Well, if you want me to give the conversation I can do that.

Q No, I want what you saw, the objective symptoms. You say she seemed to be calm, and I make a distinction in my own mind as to calmness and nervousness, or irritability, or fretfulness, and I want you to tell me what that calmness was. A Well, by calmness of her mind I mean that she was able to answer my questions, and answer them intelligently.

Q And what time of the day did you speak to her, what particular time? A Well, as far as I know, I spoke with her about five or six minutes after she came into the emergency ward of the hospital.

Q Can you repeat -- I withdraw that. Was she restless at all? A She was restless when she got in bed. She tossed about.

Q And how did she manifest her restlessness? A By tossing about.

Q Was she feverish at any time? A She was feverish.

Q At what time? A Early in her career in the hospital.

Q And for how long a time? A That I don't remember.

Q Did the color of her complexion change? A Yes, it did.

Q How soon after her admission to the hospital? A That

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I don't remember.

Q within a day? A That I can't say.

Q Can't you recall when the operation was performed upon her, how long after admittance? A No, I don't remember the date of the operation.

Q Now, the deceased was under your observation, then, from October 3rd until the time you left the hospital which was on the 31st of October? A Yes, sir.

Q And he was under your observation each day? A He was; yes.

Q Now, were you there at any time when he was visited by any person or persons? A Why, yes.

Q Who visited him there; do you recollect? A I recollect seeing his mother.

Q Yes. Anyone else? A And the other persons, I don't know.

Q Did you see any other women come there? A Not that I remember.

Q Do you recollect who it was that had charge of the ward in which he was lying? A I am not certain, but I think it was a nurse by the name of Miss Walkin.

Q Is she still connected with the hospital? A She is; yes.

Q Who was it that succeeded you? A Dr. Cohen.

Q What is his first name, please? A Samuel Cohen.

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MR. MOSS: He is here, Mr. Levy. I will call him next.

MR. LEVY: Thank you very much.

BY MR. LEVY:

Q And you were not in the hospital at the time of the death of the deceased? A No, sir.

Q Do you recollect whether during the time that the defendant was in the hospital, whether or not she suffered with any hemorrhages, other than any bleeding that came from the wounds inflicted upon herself? A Not that I can remember.

Q Do you remember any nose bleeds with which she suffered? A No, sir.

Q Who besides yourself and Dr. Roth made an examination of the young woman? A Dr. Goodfriend, Dr. Harry Goodfriend.

MR. LEVY: Is he here, Mr. Moss?

MR. MOSS: No, I have not subpoenaed him.

BY MR. LEVY:

Q Do you remember whether this young woman was menstruating when she got to the hospital? A That I don't recollect.

Q Would the hospital records refresh your recollection? A Yes, sir, they would.

Q Would you be kind enough to look at the hospital records, which are here, and start with the 3rd of October? A Yes, it is mentioned there.

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Q It is mentioned there that at the time of her admittance to the hospital she was menstruating? A Yes, sir, the day of admission.

Q Is it usual to make a record of the menstruation of a female patient? A The nurses always make a record.

Q The nurses always make a record? A Yes, sir; that is the nurse's record.

Q Can you by reference to the record there state what her pulse was upon her admittance? A According to the record here she had a pulse of 72.

Q Well, that is not very much above normal, is it?

A No, sir.

Q It is a pretty good pulse; is it not? A Yes, sir.

Q You would not regard that <sup>as</sup> at all abnormal? A No, sir.

Q And is there any record of what her respiration was on her admission? A A respiration of 20.

Q And that is normal, is it not? A Yes, sir.

Q Now, here in this case was a young woman who had evidently sustained some kind of injury, which brought out these irritated spots upon her breast, and had suffered a bullet wound below her heart, and she was in such a state of respiration and pulse as that which you have described; wasn't that condition abnormal under these circumstances? A May I be allowed an explanation?

Q Yes. A And that is just this, that the patient at

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the time this pulse and this temperature was taken, that was some time after I had seen her in the emergency ward.

Q And how long after, Doctor? A About half an hour.

Q Isn't it the first thing for a physician to do to take the pulse? A Yes, and that I did. But this is the record of the nurse of the ward to which she was transferred from the emergency ward.

Q Well, but I want to know her pulse at the time of admission? A It was rapid, I remember that.

Q And her respiration? A Well, we don't pay much attention to that at such times as that.

Q Well, was her appearance and condition when brought into the hospital, unusual in any way, so unusual as to have impressed you; or was it the usual condition of a person suffering from a gun shot wound? A Well, when I saw her she was lying on a table. She seemed to be fairly calm, except she asked me, "How is Frank?".

Q Is that all she said to you? A That is all she said to me at the time.

Q Did you know whom she meant when she spoke of Frank?

A I did at that time, yes.

Q You knew that it was her husband? A Yes, I knew that it was her husband.

Q And did you reassure her? A No, sir, I didn't.

Q What did you say to her, if anything? A I don't recall that I said anything to her.

Q Well, when she asked you, "How is Frank?", was that asked in a calm, matter of fact way, or in an excited manner?

A I didn't particularly notice.

Q Was it emotional? A I didn't particularly notice.

Q Now, let me get the time fixed in the record, and I will not burden you further, Doctor. How long was it after she was admitted to the hospital that she asked you, "How is Frank?"?

A Well, when I saw her, and between the time that I saw her first, when I entered the emergency ward, and the time I left it, was about 15 minutes, and it was within 15 minutes after I saw her first.

Q And then you would say it was within 15 minutes after she entered the hospital? A Yes, sir.

Q And does the record show at what time she was admitted to the hospital? You have the record there before you, Doctor? A The first record of the hour is ten a. m., October 3rd.

Q A little louder, Doctor. A The record of admission is ten a. m.

Q And those records are usually accurately kept? A Yes, sir.

Q And if that shows she was admitted at ten a. m., she was admitted at ten a. m.? A Well, except in this case, she

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was put in the emergency ward, first, and when we put a patient in the emergency ward, we don't consider her admitted.

Q Then you saw her for the first time 15 minutes after she was admitted to the hospital proper? A No, that I don't say. I saw her within a minute or two after she was admitted to the hospital.

Q How long she was in the emergency ward you don't know? A No, the minute a patient is admitted to the emergency ward, the bell rings for the house surgeon, and I responded immediately, and I was down there practically as soon as she was admitted to the hospital.

Q The only point in this inquiry is to ascertain how long it was after the husband had been shot --- that is the purpose of my inquiry --- how long it was afterwards that she asked you, "How is Frank?" A Well, I should judge it was certainly within 15 minutes after I saw her.

Q And you first saw her in the emergency ward? A Yes, sir.

Q Now, during her stay in the hospital, and the month that you attended upon her, did you talk with her? A I did; yes.

Q Did you talk with her about Frank? A No, sir.

Q Did she talk with you about Frank? A She did; yes.

Q What did she say about Frank? A She usually inquired about his health, his condition.

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Q Well, can't you use her words? Use them as best you recollect? A Well, I don't recollect how she put her words.

Q Well, did she seem to you to speak of him affectionately?

MR. MOSS: I object to that.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q Then I have got to get from you some sort of description of the manner in which she inquired concerning him. Now, will you please, Doctor, tell me what it was to the best of your recollection, and I don't expect you to be accurate, to the best of your recollection, what she did actually say?

A The best I can recollect, she asked, "How is Frank?"

Q And how frequently would she ask, "How is Frank?"

A That I don't remember.

Q Did you, upon any occasion, inform her as to Frank's condition? A I did, yes.

Q Did you tell her at any time that Frank wasn't improving, or was sinking? A That I don't remember.

Q Did you ever tell her that he was improving? A That I don't remember.

Q Did she ever express to you a desire to see her husband? A She did.

Q How many times? A I only recollect once.

Q And what did she say about that? A She asked me whether she could go down to the ward and see him, and I said, "We don't allow patients to go from one ward to another."

Q Did she tell you why she wanted to see him? A She did not.

Q she was then improving in condition? A She was, yes.

MR. LEVY: That is all, Doctor.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Just a word, Doctor. Do you recall any other conversation that you had with the defendant, on the day of her admission to the hospital? A Why, I asked her about the burns.

Q Yes. What did she say? A She told me that she had a bottle of carbolic acid in her breast, which broke. How it broke she didn't tell me.

Q Did you have any other conversation with her besides that? A I don't recollect.

Q And about how long after you first saw her did she tell you about the bottle of carbolic acid? A I don't remember just exactly, but it was while she was in the emergency ward; it was within 15 minutes.

Q So that within that 15 minutes you put that inquiry to her, and got that answer? A Yes, sir.

Q Now, your attention was called, and your recollection

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was refreshed by the record of the hospital, as to the matter of menstruation, and I ask you if, when you said that the record showed that she was menstruating upon the 3rd of October, didn't it show you that she was slightly menstruating on that day? A That is the nurse's word, yes.

Q Well, as to that does it refresh your recollection?

A Yes, sir.

Q And does the record of October 5th which I show you --- and which is the same to which you called Dr. Roth's attention, this morning, Mr. Levy --- does that show you that she was menstruating on the 5th of October? A Yes, sir.

Q Do you know why there was a record made of the fact ~~of~~ on the 3rd of October and also on the 5th of October? A It is customary in the hospital for each nurse to record the condition of the patient, and if she is menstruating to put down on that day, "Patient menstruating".

Q Put it down each day? A Yes, sir.

Q Well, isn't your recollection refreshed by this entry to the effect that upon the 5th day of October she was complaining of pains in the abdomen, and the entry of the menstruation was placed directly under the fact that she complained of pains in her abdomen? A That doesn't mean anything.

Q Doesn't it mean that the entry of the fact of menstruation there was an indication that the pains in the abdomen

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were to be explained upon that ground, not upon the ground of something connected with the wound? A Well, that's pretty hard to say.

Q You can't tell whether it was or not? A No, sir.

Q Especially if you didn't make the entry? A No, sir.

MR. MOSS: That is all.

MR. DEBY: Where is it, Mr. Moss?

MR. MOSS: There it is, and you may read the entire entry into the record, if you desire.

RE-CROSS EXAMINATION BY MR. DEBY:

Q Just a few questions, Doctor. So far as you know, Doctor, there is nothing in this record which would show when she stopped menstruating? A Well, say I illustrate on that point?

Q Yes, I am looking for information. A From the fact that the nurse of the ward, who is in charge, writes down when a patient is menstruating, and writes that down each day that she menstruates.

Q Well, you see that there are only three entries here, and one appears to have been on the 3rd, and another on the 5th and the third on the 1st of October, and do I understand you to mean that, because there is no entry in this record there of other dates in that month, that she was not menstruating on the other days? A Yes.

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Q. Then she might only have menstruated three times, or on three days, rather in that month; is that what you mean?

A. Yes, that is what it means.

Q. You would regard that as rather abnormal; wouldn't you?

A. Well, no, I wouldn't.

Q. You say, and then skip a day, and then skip 25 days; wouldn't that be rather abnormal? A. Well, the question is this, and I want exactly to follow the record stands.

Q. Well, I wish you would look at the record, and I point out to you specifically the three days, the 3rd, 5th and 8th of October.

THE COURT: Will you examine the nurse who attended the defendant?

MR. NAVY: I am not able to name any nurse who attended the young woman, but I am sure she was attended by a nurse who did as much as I can do for the defendant.

MR. MOSS: Of course, your Honor, all of this testimony would be technically objectionable, because the doctor does not know anything about it, but it is depending upon records and my mother.

THE COURT: All right, undoubtedly.

MR. MOSS: But, your Honor, it is worth, I have not any objection to it, it is for what it is worth.

MR. NAVY:

Q. You would regard that as rather abnormal, wouldn't you,

A. Well, that I couldn't say. I am not an expert as

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to that matter.

Q Now, doctor, did you do anything for these red spots that you found on her body? A Yes, I did.

Q What treatment did she receive? A She received an alcohol and boracic acid treatment, a wet dressing.

Q Now, isn't that the usual treatment for burns? A Well, there are a great many treatments for burns.

Q Well, the treatment for a burn produced by, say, carbolic acid? A Alcohol is a very favored treatment of burns of carbolic acid.

Q For carbolic acid? A Yes, sir.

Q And didn't you make a diagnosis as to what those spots were, or what they came from, or what caused them? A Yes, sir; I made a diagnosis that they were due to a burn, due to some caustic or acid.

Q Due to some caustic or acid? A Yes, sir.

MR. LEVY: That is sufficient, Doctor.

MR. MOSS: That is all, doctor.

SAMUEL COHEN, of 965 Simpson Street, a witness

called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Dr. Cohen, are you still connected with the Lebanon

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Hospital? A No, sir.

Q You were in the Lebanon Hospital while Francis J. Meehan was a patient there; were you not? A That is the husband?

Q Yes. A Yes, I was.

Q And you were there when he died, were you not? A Yes,

Q Did you see him when he was admitted? A No, sir.

Q When did you first see him? A I don't recollect when I first saw him, but I first took charge of him on November 1st, 1911.

Q Now, sir: Please raise your voice. It is rather hard to hear you down here.

BY MR. WOOD:

Q You first took charge of him on November 1st? A Yes, sir.

Q And then he was under your care and observation from that time to the time of his death; was he? A Yes, sir.

Q And did you record the fact of his death, did you pronounce him dead? A Yes, I did.

Q Perhaps your memorandum will refresh your recollection. A Yes, sir, I did.

Q And on what day did you pronounce him dead? A On the 1st of November.

Q And did you prescribe for him and treat him while

you were there? A Yes, sir, I did.

Q What, in your opinion, was the cause of his death?

MR. LEVY: Your Honor, I do not think that that question may be put properly to this witness, and I object to it, sir, as not competent.

MR. MOSS: Oh, I will not press the question, if you object. I withdraw it.

BY MR. MOSS:

Q What was the condition of the man so far as you observed it, before he died? A When I first took charge of him, the man was very seriously ill.

Q Yes, and in what way was he ill? A Well, his general condition was very poor, and then he had local wounds, which were of a rather serious nature.

Q What wounds did he have that you considered of a serious nature? A Why, he had a discharging wound in his abdomen, and he also had a wound, less serious than that, in the chest.

Q Yes. And you spoke of those as serious wounds?

A Yes, sir.

Q What do you mean by calling them serious wounds?

A Why, the wound in the abdomen communicated with the stomach, and in that respect I considered it serious.

Q Yes. And can you describe his condition in a medical



way, as you saw him on the first of November, and as he remained under your observation until the 29th when he died? Speaking now of his trouble, of his physical difficulty, what was it? You say he had some wounds, but please go beyond that. A He was suffering from some form of infection, and besides that, he had general weakening.

Q Yes. And what would you call the general condition which you illustrate by the word "infection"? Haven't you a term for that? A Well, it is very difficult to say, in this case, what the general term would be, because it was hard to say at that time whether it was a general infection, or whether it was only localized to some particular organ.

Q Well, was there a condition of blood poisoning?

A Well, there was a form of absorption of poison or poisons.

Q So that he was suffering from a poisoned condition, and you have described it as an infected condition, I believe?

A From an infected condition.

Q Such a condition as could result from a bullet wound?

A Yes, sir.

Q And what was the cause of his death, if you formed any opinion on the subject from your observation of him?

MR. LEVY: One moment. I made an objection to the same question before.

MR. MOSS: Well, I think now the question is pro-

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per.

BY THE COURT:

Q How many days did you treat the patient?

A I had him under observation for twenty-nine days.

Q Were you present at the time he was operated upon by Dr. Roth?

A I think I was; yes.

THE COURT: I overrule the objection.

MR. LEVY: Exception.

BY MR. MOSS:

Q And what is your answer, Doctor?

A Well, it is very hard to say just what the cause of death, what the immediate cause of death is.

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Q Were you present at the autopsy? A No, sir.

Q You did not then see the internal condition of the body? A No, sir.

Q But, from the external condition of the body, you don't go any further than you have testified? Is that the understanding? A Yes, sir.

Q But, so far as you have testified, was there, in your opinion, a cause for his death? A Well, there was a cause for his death.

Q Well, what was it? Now, pardon me, doctor. I will withdraw that question and put another one. Now, this man died and you certified to his death, pronounced him dead, and he had been under your care for 29 days, and you say that you believe that you were present when the operation was performed, and you say you have an opinion as to the cause of his death. Now, what was it? A Why, the man's illness had been serious enough to --- to put him into such a weakened condition that death was very soon brought on by any exciting cause.

Q What exciting cause did you discover? A The man was gradually becoming weaker and weaker, from inability to take nourishment, and his vital organs had very little nourishment to work upon.

Q Do you mean, in substance, that he faded out of life?

A I don't know what you mean by faded out.

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## CROSS EXAMINATION BY MR. LEVY:

Q Now, perhaps I can get at it. What did the man die of, doctor? A As I said before, it was very hard for me to say exactly what was the cause of his death.

Q Well, did he die of yellow fever, or collora morbus?

A No.

Q What did he die of? A He died as the result of the weakened condition in which he was.

Q Well, would you say inanition; is that the word that the doctors use? A You might apply that term to the heart.

Q Well, but is it so? It might be anything, you know.

A Well, inanition of his heart had something to do with his death, yes.

Q Now, doctor, this woman on trial here is charged with having caused his death, and this jury of twelve gentlemen have been selected to determine the cause of that unfortunate man's death, and we look to the attending physicians, who attended him during his life time, to get enlightenment. Now, can you tell these 12 gentlemen of what that man died? When I say of what, I mean by reason of what illness, sickness or disease?

MR. MOSS: or anything else?

BY MR. LEVY:

Q Or anything else? A As I said before, he died from the effects of the infected condition in which he had been,

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from the inanition, and, at the time of his death, he had signs which pointed to some failure of his respiratory system.

Q Well, if he had pneumonia, would he have shown the same symptoms, the same effect on the respiratory system?

A He might.

Q Well, would you say that he had died because of the fact that he had once been shot? A I can't say.

Q You don't ascribe his death to the fact that he had been shot; do you? A I believe I couldn't say that; I don't believe I could say that.

Q Well, when you say some infected condition, do you mean sepsis? A Yes, sir.

Q Well, sepsis means poisoning; does it not? A Yes, sir.

Q Blood poisoning? A Not necessarily.

Q Well, what does it mean? I am trying to get information. A Well, it means a poisoning either of some local part, some part of the body itself, or else a general poisoning of the whole body.

Q Well, did this man die of Sepsis? A He died ---

Q I don't hear you, sir. A He died partly of sepsis.

Q Partly of sepsis? A Yes, sir.

Q And was it the direct or a contributing cause of his death? A I can't answer that question.

Q You can't answer that? A No, sir.

Q Now, doctor --- we will continue with this subject in a moment --- I want to inquire whether you operated on the patient

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or assisted in any operation on him? A I assisted in an operation on him.

Q And whom did you assist? A I assisted Dr. Syms.

Q And what operation was performed upon the man?

A Why, it was --- I don't know whether you could call it an operation. It just consisted of exploring/wounds that he had.

Q That is not an operation; is it? A Well, you might call it an operation, and you might not.

Q Well, how many operations did you assist in the performance of? A One. Just one, if you call it an operation.

Q And at what time was that performed? A I don't remember exactly. It must have been about two weeks before he died.

Q And it was an exploration, you say? A Yes, sir.

Q For what purpose? A To determine whether he had a pocket of pus beneath the diaphragm.

Q Did you find a pocket of pus? A No, sir.

Q Did you make an effort to operate him at all after that? A I don't remember.

Q Do you remember that the head surgeon desired to perform another operation on the patient, and his refusal to submit to another operation? A I don't recollect.

Q Did you deem it advisable to have another operation on him? A I had no authority in expressing any such opinion

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in the hospital at any time.

Q Well, was it suggested? A I don't remember.

Q You remember, on occasion, the patient jumping out of his cot or bed, and running out of the ward? A In that same ward?

Q Well, any ward in the hospital in which he was. Do you remember his jumping out of his cot? A I don't understand the question. I beg your pardon.

(Question repeated by the stenographer).

A I do not.

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

Q Well, do you recollect whether the patient was conscious during all the treatment, or at any time unconscious?

A Why, during the time that I had charge of him, he was conscious, right along, except when he was asleep.

Q Speak up, please. A I say that, during the time that I had charge of him, he was conscious, as far as I can remember, except when he was asleep.

Q Did you have any talks with the deceased? A Yes, sir.

Q Did he ever express any desire to see his wife?

MR. MOSS: I object to the question.

THE COURT: Objection sustained.

MR. LEVY: Exception.

BY MR. LEVY:

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Q Doctor, you have been practising medicine and surgery how long? A For 21 months.

Q How many? A 21 months.

Q And were you permitted in that hospital to operate upon patients suffering with grievous wounds or illnesses? A Yes.

Q And that is nearly six months ago, and you were then practising 18 months; is that right? A It is less than that.

It is about five months.

Q Then you had been practising 15 or 16 months? A Yes, sir.

Q Now, who was it that kept the drainage open in the wounds of the patient? A Why, a man on the staff, under the supervision of the visiting physician or surgeon.

Q I know. But did you take any part in keeping the wounds clean? A Yes, sir.

Q And seeing that the drainage was open? A Yes, sir.

Q And in redressing the wounds? A Yes, sir.

Q And did you at that time consider yourself competent to do that, doctor? A Yes, sir.

Q Was it possible, do you think, that some infection might have gotten into that wound by reason of any improper dressing or neglectful dressing? A I'm not competent to say, because I was not present at the time of the operation --- I mean I didn't see the operation itself.

Q I am not talking about the operation. I am talking

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of the care, attention and attendance that was accorded to

and persons when you took charge? A No, it was impossible

Q Impossible? A Yes.

Q You are sure that your own war work that it was impossible for you to do anything for them? A Yes,

and we were made to the situation of the hospital. I was there for ten days but you had him in camp and did you do? A Yes, we treated the patients, the other patients, kept them as clean as we could, and treated the cases in which they were as freely as we could; and besides that we had the place as usually.

Q Now, Doctor, before you received that information, was your attention ever to any of these cases? A I don't remember.

Q Your assistance has not been requested or extended. You don't remember whether or not you were in contact with any of these cases? A I don't remember.

Q You don't remember? A I don't know. I can't say positively.

Q Now, Doctor, your memory is good, is it not? A Yes, and I am sure that I have never been in contact with any of these cases.

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Q Doctor, if that man died, did he die because the septic condition was not remedied, or did he die from a gunshot wound? A Well, if the gunshot was the cause of the septic condition ---

Q What? A If the gunshot wound was the cause of the septic condition, I would have to give one answer, and if it was not, another answer, and so I can't say as to that.

Q Now, you attended that patient for 29 days; did you not? A Yes, sir.

Q And you must not answer my questions by saying, "If the gunshot caused it," because I am trying to ascertain the facts from you. Is it or is it not your opinion that that poor fellow died because of a gunshot wound that he had received, or because of his having acquired septicemia? A (No answer)

Q And let me add, Doctor, before you answer, this; you had that man under observation for 29 days, and ---

MR. MOSE: One moment, I would like to have an answer to that question. The witness did not answer.

MR. LEVY: Yes, let him answer the first question.

I am only trying to make my question clearer.

BY MR. LEVY:

Q Now, do you understand the question? A Will you repeat it, please?

(The question is repeated by the stenographer.)

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A Well, my answer would be yes to both questions.

BY MR. LEVY:

Q To both? A Yes, sir.

Q Then he died of two causes? A Yes.

Q And which was the direct cause of his death? A Well, I can't say that either.

Q The main, the principal defect which you observed, and which induced death, was some difficulty with the respiratory organs; is that so? A Yes, sir.

Q Now, are you prepared to say that that man did not die of pneumonia? A Not of lobar pneumonia.

Q What? A No, I am not prepared to say.

Q And then he didn't have died of pneumonia? A Why, I am not prepared to say that either.

Q Well, did he die of tuberculosis? A I am not prepared to say that either.

Q You can't say that either? A No, sir.

MR. LEVY: Well, that is all, Doctor.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Doctor, were you ever on the witness stand before?

A Yes, sir.

Q When? A That's about eight months ago, I believe.

Q In a hospital case? A Yes, sir.

Q From what institution did you graduate? A From the

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College of Physicians and Surgeons, of Columbia University.

Q You had the regular course there, did you? A Yes, sir.

Q And did you become an interne in the Lebanon Hospital?

A Yes, sir.

Q And where are you now? A I am at 965 Simpson Street.

Q Practicing for yourself? A Practicing for myself.

Q Now, of course, you did not --- if I understood your testimony correctly --- you did not see this man when he was brought into the hospital? A No, sir.

Q If he was brought in on the third of October, you did not see him until the first of November, nearly a month after? A Yes, sir.

Q You understood that he had been in the hospital nearly a month before you got there? A Yes, sir.

Q And when you got there had the bullet wound more or less healed up, the outside of it? A Yes, sir.

Q So that you had to deal with a man whom you found in a certain condition, but whose first wounds you had never observed; is that so? A Yes, sir.

Q And you never had the privilege of seeing the condition of his organs by attending the autopsy; did you? A No, sir.

Q You have been trying to testify as to just what you really know, and not go beyond your own knowledge in the testimony you have been giving? A Yes, sir.

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Q And you found the man, if I understood you correctly, in a state of sepsis, if I use the right term, but you had no personal knowledge of what had caused the sepsis? A No, sir.

Q You did not treat him in the beginning? A No, sir.

Q And, from your answer to Mr. Levy, I understood you to say that there was a relation between the sepsis and the bullet wound that you saw? A Yes, sir.

Q But you hesitated to be more definite than you were because you didn't see him in the beginning; is that right?

A Yes, sir.

Q And you testified that you could not say positively that the death was not occasioned to some extent by pneumonia? In fact, that pneumonia frequently comes in cases of gunshot wounds? A Well, it depends upon where the gunshot wound is. It depends upon the location of the wound.

Q I am going to ask you that. (Question repeated) A Yes, sir.

Q Now, as to being outside and catching cold, but due to the fact that a gunshot wound has been made in an individual, and that at some time in his case, pneumonia developed; is that correct? A Well, there are a good many causes, factors, which will produce that condition.

Q Now, isn't it a fact that in hospitals many cases of pneumonia develop while the patient is in the hospital, following gunshot wounds? A Well, I haven't had experience as to

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that enough to say.

Q Now, you say that he had some difficulty with his respiratory organs, just before he died. Isn't it a fact that the immediate cause of a man's death is either that he stops breathing, or that his heart stops beating, or that his brain ceases to act?

MR. LEVY: I think the best part of that question is the first, that he stops breathing.

MR. MOSS: Oh, I think I am on solid ground all through the question.

BY MR. MOSS:

Q What is your answer to that, Doctor? A What is the question?

(Question repeated by the stenographer)

A Yes, sir.

Q Is it not recognized among physicians that there are three places where the fact of death may be found in the brain, the heart and the respiratory system? A Yes, sir.

Q And most people really die from lack of breath, don't they? A Well, that's another difficult question to answer.

Q That is a difficult question? A Yes, sir.

Q Now, the difficulty that this man had with his respiratory organs, was it any more than the usual difficulty which the people have in dying from lack of breath? A Yes, sir.

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Q Was it more than that? A Yes, sir.

Q How much more? A Why, a fair amount more.

Q Well, what do you mean by a fair amount? A I mean that he had a condition which physicians would call pulmonary oedema.

Q Due to the failure of the lungs to act, is that so?

A Yes, sir; and the heart.

Q Do you know what was the condition of his lungs as found at the autopsy? A Yes, in a general way, but only from what I have heard.

BY MR. LEVY:

Q Now, you say that this man had pulmonary oedema? A Yes, sir.

Q What does that mean? A That means an overfilling of the lung tissue with a certain amount of fluid.

Q Now, you treated that man for twenty-nine days. What did you treat him for? A I treated him for his general debility, for the wounds that he had; and we also tried to find, during that time, whether there were any other conditions that had not been found, and were contributing to make him so very sick.

Q Well, didn't I understand you to say that the wounds which he had suffered upon his body had healed? A Not entirely.

Q Was there any wound upon his abdomen? A Yes.

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Q Open? A Yes.

Q With a drainage tube in it? A Yes.

Q Now, did you treat him at all for septicemia? A Well, yes, we did treat him for that.

Q What treatment did you give him for septicemia?

A We gave him general nutritive, supporting treatment.

Q In plain English, nourishment? A Yes, sir.

Q Is that proper treatment for septicemia, for blood poisoning? A Yes, sir. And, besides that, we treated the local conditions.

Q I am not talking of the local conditions. A Well, the cause of his septicemia was apparently the local condition, and, if we get rid of the local condition we are taking away so much of the poison that is being absorbed from that spot.

Q Aren't there any drugs in the pharmacopoeia to administer for blood poisoning? A Why, yes, there are.

Q And what are they? A They are the sera.

Q Anything else? A That's all I can remember now.

Q Did you administer any such to him? A No, sir.

Q Why not? A Because we had no general sign of a general blood infection. Moreover, we had none of the bacteria which were in his body, and from which only you can make such a serum.

Q What are the objective symptoms by which you can determine that a man has septicemia? A I said at the beginning

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that he didn't have septicemia, but some kind of infection, as far as we could make out clinically.

Q Now, as a matter of fact, Doctor, is it not true that all that you did for that poor fellow was to keep the external part of the wounds clean; you washed and dressed him? A Yes, sir.

Q And then you gave him nourishment? A Yes, sir.

Q And that is all? A And stimulation.

Q Well, what kind of stimulation? A Cardiac stimulation.

Q Well, how would you give him that? A With drugs.

Q What kind of drugs? A Do you wish me to name the drugs?

Q Yes. A Strychnine, and ---

Q What did you give him? A I don't remember exactly.

It is probably on the chart here. If I remember right, strychnine is one of the drugs.

Q Well, what did you give him in order to aid him in drawing off the bacteria and germs which produced in that man's system the condition of sepsis? A Why, as I said, we tried to aid nature by keeping up his general health, his general condition, general strength, by giving him enough nourishment, as much as he could take, and then treating the local wounds, and treating other symptoms as they arose.

Q Well, now, after all, and I am through --- just one

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question --- after all, can you now, on oath, say what that poor man died from? A No, sir.

MR. LEVY: That is all.

BY MR. WOOD:

Q Doctor, just a question. I remember that you testified to Mr. Levy that you performed operations at the Lebanon Hospital. Did you perform any serious operations yourself, doctor? A Not alone.

Q How assisted; didn't you? A Yes, sir.

Q Who were the gentlemen who performed the operations there? A Dr. Syms and his assistants, and Dr. Keckels.

Q And I believe that you testified that even the exploration and the making of the wounds in this man was conducted by Dr. Syms? A Yes, sir.

Q And did he have his other assistants there? A Yes, sir.

Q And you assisted, also? A Yes, sir.

Q And Dr. Parker Syms is one of the prominent surgeons in the city, is he not?

MR. LEVY: Objected to.

THE COURT: Sustained.

Q And did you have other physicians at the Lebanon Hospital, did you yourself in general attendance upon the patients?

A Yes, the men on the staff.

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Q Who? A Dr. Goodfriend and Dr. Jacobstein. I said Goodfriend. I should have said Dr. Krulenstein, instead of Dr. Goodfriend.

Q And all that you observed about the patient, his temperature, his symptoms, the medicine administered, the enemas given, was written down upon the chart; was it not? A Yes, sir.

Q And did you supervise that chart as made by the nurse?

A Yes, sir.

Q And all the history of the patient was recorded on the charts, and presented to the supervising physicians and surgeons? A Yes, sir.

Q And who supervised the work that you have testified to while you were in the hospital, what physicians, who were they?

A Dr. Syms and Dr. Keckels.

Q And did Dr. Krulenstein have supervision of the record and the treatment too? A Well, no, sir, he was my assistant.

Q But as to his age, was he younger than you? A Why, I have no knowledge of that positively.

Q Well, but the general supervision of the work which you were doing there at the time was by ~~Dr.~~ Dr. Syms and his associates? A Yes, sir.

Q That is all.

A That is all.

HARRY BERNSTEIN, of the 17th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q. Mr. Bernstein, you are a police officer in the City of New York? A. Yes, sir.

Q. On October 3rd last, about nine o'clock in the morning, were you on duty? A. Yes, sir.

Q. Whereabouts? A. Longwood Avenue.

Q. In the Borough of the Bronx? A. Yes, sir.

Q. Did anything occur there that attracted your attention? A. Yes, sir.

Q. Tell us what it was? A. About nine a. m., on October 3rd, I was in front of Public School 39, Longwood Avenue and Kelly Street. After the children had got inside, and the door closed, I crossed to the south side of Longwood Avenue, and patrolled my post, going west. When I reached Dawson Street and Longwood Avenue, the deceased, Frank Nicodemus, and his brother was coming towards me; they were walking very fast, and I walked over and asked them what was the matter, and he said ---

MR. LEVY: I object.

MR. MOSS: No, you cannot tell the conversation.

THE COURT: No, do not state the conversation.

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BY MR. MOSS:

Q Do not state the conversation, but tell us what was done. You had this conversation, and what did you do? A Then a plumber's wagon drove up towards me, with the lady. Can I mention the name?

Q Yes. A With Mrs. Nicodemus.

Q The defendant here? A The defendant. She was lying on her back in the plumber's wagon with three or four young men in it. When they reached Longwood Avenue, a youngman by the name of Gurney, one of the witnesses here, handed me a revolver.

Q Now, officer, keep it out of sight. Is that the revolver (indicating)? A Yes, sir.

(It is marked People's Exhibit 2 for Identification).

BY MR. MOSS:

Q All right. You have seen the revolver and identified it. Proceed, please, and tell us what next happened. A And I placed Frank Nicodemus on the same wagon, intending to go to the hospital. The horse became unmanageable, and a butcher's wagon was passing at the time, and we placed the defendant and Frank Nicodemus in the butcher's wagon, and drove the two to Lebanon Hospital, and we arrived at the hospital, and the people at the hospital accepted both patients, and took them inside.

Q were you present at the same hospital on the 29th of

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November, 1911, when Coroner's Physician Riegelman made an autopsy on the body of the youngman? A Yes, sir.

Q Was that the same man that you took to the hospital, that you have just testified about? A Yes, sir.

MR. MOSS: You may cross examine.

CROSS EXAMINATION BY MR. LEVY:

Q How soon after nine o'clock was it that you saw Nicodemus for the first time? A At or about nine --- between nine and five minutes after nine, that morning. I left the school about nine o'clock.

Q Now, at what exact spot was it that you saw him?  
A Dawson and Longwood Avenue, in the center of the street.

Q Dawson and Longwood Avenue.

MR. MOSS: I now offer in evidence a diagram, entitled "Street diagram, showing Stebbins Avenue and Dawson Street, City, County and State of New York. Measured by Walter H. Volckenning," subject to any correction.

MR. LEVY: And drawn on the scale of an inch to 25 feet. We have no objection to this diagram going in evidence, subject to such corrections as may become necessary to make in it or upon it during the trial.

THE COURT: Received upon consent.

(It is marked People's Exhibit 3 in evidence).

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BY MR. LEVY:

Q Now, this is a diagram of, as you see, Stebbins Avenue, Dawson Street, and the angle formed by Dawson Street and Longwood Avenue, and I want you to look at it closely, so that you can have in mind the situation --- A Yes, sir.

Q In answering the questions that will be put to you?  
A Yes, sir.

Q Down here is the diagram of Hewitt Place (indicating), and here we have a section of Westchester Avenue. Now, have you got that clear in your mind? A Yes, sir.

Q Now, if you will be good enough to take my pencil, and put your initial "B" at the spot that you stood when you first saw Nicodemus approach you? A Here (indicating).

Q Now, then, will you be good enough to note on the diagram the spot that Nicodemus was at when you first saw him with his brother? A The same initial?

Q No, put "N" there, for Nicodemus? A Here, (indicating).

Q And you were distant from him about how far? A Ten to fifteen feet.

Q And he was in the middle of the street? A Yes, sir.

Q Was he approaching you rapidly or slowly? A Rapidly.

Q Would you say he was running or walking? A A fast walk.

Q A fast walk? A Yes, sir.

Q Was his brother walking as fast as he? A Yes; along-

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side of him.

Q When you first saw Nicodemus approaching you, did you see the wagon, which you say contained the defendant? A No, sir.

Q How much time elapsed from your first observation of Nicodemus, and your first observation of the wagon?

A About two minutes.

Q About two minutes? A Yes, sir.

Q Now, in which direction was the wagon going? A Going south.

Q South? A Yes, sir.

Q Along which avenue? A From the corner of Dawson, the north side of Dawson Street, south. It's very peculiar there. One side of it runs south, and then it cuts right into prospect Avenue.

Q Was it coming along Stebbins Avenue? A I didn't see it.

Q Well, you only saw it when it got into Dawson Street?

A Yes, sir.

Q At what spot? A The northwest corner.

Q Now, put an "X" at the spot where you first saw the wagon? A Right there (indicating).

MR. LEVY: Now, just a moment. With your Honor's indulgence, I would like to show this diagram to the jury now, so that they can follow the other questions

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which I have to put.

THE COURT: Yes, you may show it to the jury.

(Mr. Levy shows the diagram to the jury).

BY MR. LEVY:

Q Now, Officer, there was something about the appearance of Nicodemus, as he came near you, which indicated to you that there was something wrong; is that right? A Yes, sir.

Q Did you approach him or did he continue to approach towards you? A We both met in about the center of the street.

Q And you had some talk? You are not permitted to state what the talk was. A Yes, sir.

Q Did you speak to Nicodemus, the deceased, or his brother? A The deceased.

Q Did the brother take part in the conversation? A Not at that time, no, sir.

Q And in just about twl minutes thereafter, the wagon came along. A To the hospital?

Q No. You say it came along Dawson street first?  
A Yes, sir.

Q What was it? Was it an open wagon? A Yes, sir, like the open express wagon, with no top.

Q And you say there was a woman in the wagon? A Yes, sir, when it drove towards me, and it stopped.

Q And did you lift Nicodemus into the wagon, or did he climb into the wagon himself? A I helped him up, but he could

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climb in.

Q Did his brother get into the wagon? A Yes, sir.

Q And how many other persons got into the wagon? A Four or five young men.

Q Now, what kind of a wagon was it? A A plumber's wagon.

Q Do you know who the young men were? A Three of them. They are here in court.

Q What are their names? A Gurney, Schlack and George Nicodemus.

Q Yes. Anyone else? A I don't recall anybody else.

Q And were there then six or seven people, including the driver, in the wagon, and yourself? A No, sir, I wasn't in the wagon.

Q Now, there were the two wounded persons? A Yes, sir.

Q And three youngmen? A Yes, sir.

Q And the driver? A Yes, sir.

Q And what was the defendant's position in the wagon? Was she lying down or sitting? A Lying on her back, from the tailboard almost three quarters of the length of the wagon.

Q And where did Nicodemus place himself? A On the seat.

Q In front? A Yes, sir.

Q Sitting with the driver? A Yes, sir.

Q Did he sit there? A Yes, sir.

Q And where was his brother George? A Right behind him.

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Q In the wagon?

A Yes, sir.

Q And you?

A I didn't get on the wagon at the time.

Q And where were the three young men?

A They were standing right alongside of the defendant.

Q In the wagon?

A Yes, sir.

Q Now, Officer, when you first saw the defendant, did she have her eyes open?

A No, sir.

Q They were closed?

A Closed.

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Q Will you, as accurately as you can, give us the full detail, to the best of your recollection, of her appearance, when you saw her for the first time lying in that wagon?

A She was lying on her back, with her eyes closed, moaning "Frank". I asked her several questions, and she never answered.

Q Moaning "Frank"? A Yes, sir.

Q What have you to say about her complexion? A Pale.

Q Very pale? A Yes, sir.

Q Did you notice her hands? A I did not.

Q Whether they were open or clenched? A No, sir, I didn't.

Q Did you observe whether or not there was any odor of anything like carbolic acid about her? A No, sir.

Q You didn't smell any? A No, sir, I smelled something else.

Q What was it? A Burning cloth.

Q Burning cloth? A Smoking.

Q Did you try to ascertain where the smoke came from?

A Yes, sir.

Q Where did it come from? A From over her left breast (indicating).

Q Do you mean that her dress was burning? A Yes, sir; it was burning. It was smoldering at the time. I put

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that out.

Q Was she bleeding? A That I don't know.

Q Did you notice whether or not there were any burns upon her clothing? A I did not.

Q Was there any effort made by you, or by any other person in that party, at that time, to administer any kind of stimulant to the young woman? A No, sir.

Q Did she seem to you to be in pain? A I don't know.

Q Well, you have seen people in pain; haven't you?

A Yes, sir.

Q Now, you see, you have got to paint the picture for us, and tell us what took place there. Now, did she seem to you to be suffering pain? A Yes, sir.

Q It did seem so to you? A Yes, sir.

Q And how did she seem to show pain? A The way she was moaning.

Q Well, did she say "Frank" many times? A Yes, sir, very often, after we left that spot.

Q In what kind of tone did she say it? A Very low.

Q Can't you try to imitate it? Do the best you can?

A "Oh, Frank". That's the only two words she spoke.

Q Now, during all that time on the way to the hospital, did she open her eyes at all? A Yes, sir.

Q When? A When we got about half way, on Westchester Avenue, about 563rd Street.

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Q Now, before we get to that spot. As I understood you  
so say to Mr. Moss, the horse became restive? A Yes, sir.

Q And you found it necessary to get another wagon; is  
that right? A Yes, sir, that's right.

Q Was that the same kind of a wagon? A No, sir.

Q What kind of wagon was the second wagon? A A closed  
one, covered butcher's wagon, with a horse attached to  
the rear.

Q Was it as large as the plumber's wagon? A About the  
same size.

Q Was it covered over? A Yes, sir.

Q And you lifted her out of the wagon, did you? A Yes,  
sir.

Q Was she able to stand? A You see I didn't try to find  
out whether she could or not, because we had no time to lose.

Q But I mean at that particular moment. A Oh, no, she  
couldn't stand; no, sir.

Q Well, did she appear to you to be conscious or uncon-  
scious? A Partly unconscious.

Q And how was she assisted to get from one wagon to the  
other? A Well, I got hold of the lower part of her body,  
and the other young man got the head and back, and we raised  
her off the express wagon, and put her in the butcher's wagon.

Q And Nicodemus and the other young men got into the

other wagon, the same as before? A Yes, sir.

Q And what did you do? A I jumped into the wagon, and told the driver to hurry up to the Lebanon Hospital.

Q Now, where did you make the change of wagons? A Nearly the same spot, within a few feet of the same spot.

Q Now, where is Lebanon Hospital located? A Lebanon Hospital?

Q Yes. A Westchester Avenue and Caldwell.

Q Well, the object of that is to know about what distance you had to travel from the scene of the first meeting to the hospital. How far did you have to travel? A About eight blocks.

Q Eight city blocks? A Yes, good large blocks.

Q Did you have to cross any avenues to get there?

A No, sir.

Q Well, how much time was used up in making the trip?

A I should judge about five minutes, at the rate we were going.

Q You had him whip up his horse? A Oh, yes, we lost no time.

Q It looked like a bad case? A Yes, sir.

Q You were not so much concerned about the condition of Nicodemus as the condition of the young woman? A Yes, I thought she was pretty bad.

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Q Now, at what particular point was it of your trip she opened her eyes, for the first time? A About Westchester Avenue and 156th Street. That's about five blocks from there.

Q From where you started? A Yes, sir.

Q And then, when she opened her eyes, did she do anything or say anything? A No, sir.

Q Did she do anything at all? A No, sir.

Q Did she look around at all? A She was glaring up to the ceiling of the wagon (illustrating).

Q Now, that is what I want you to describe to his Honor and these gentlemen of the jury. What did you observe about her eyes at that time? A She had her eyes wide open, and was looking up to the ceiling of the wagon, and I spoke to her.

Q Yes. And what did you say to her? A And I tried to get her name, and asked her what the trouble was, and every question I put to her, she never answered; and the only thing she would say, after I asked her something, was she kept on meaning, "Frank, oh, Frank", and that is all I could get out of her.

Q Now, officer, it may become very important to know, hereafter, whether there was anything unusual about the appearance of her eyes upon that occasion when she first opened them. Perhaps you can help me get that information? A No, I never looked that far.

Q Were they staring, or did they look wild? I can't

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lead you at all.

MR. MOSS: Don't, then.

MR. LEVY: I will try not to.

BY MR. LEVY:

Q Well, perhaps you can describe that, Officer. A Well, the only way I can describe is that her eyes were wide open, and she was looking towards the ceiling of the wagon.

Q Did they look wild to you? A Well, I didn't pay that much attention to her, counsellor, because I wanted to get to the hospital as soon as possible. I was talking to the driver to hurry him.

Q Well, from where she laid did she have an opportunity to see her husband on the driver's seat? A No, sir.

Q Why not? A Because she would have to turn around, and stand up, if she wanted to see him.

Q Now, did she remain in that same position until you got to the hospital, or did she move her body in any way?

A No, sir, she didn't move her body at all. She remained in the same way we started with her.

Q Did you have occasion to put your hand on her at all, during that time? A No, sir.

Q I mean to feel her head, or her hand, or anything of that sort? A No, sir.

Q I don't know whether or not I asked you whether she was pale. A Yes, you did ask me that.

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Q And you said what? A She was pale, yes.

Q Very pale? A Very pale.

Q Well, now, would you say, Officer, that, while she was lying down on the floor of that wagon, that her body was rigid, stiff, or loose? A Loose.

Q Would you say, sir,

that she was limp?

A Yes, sir. That's what you mean her body was limp?

A Yes, sir. She had her arms outstretched

(illustrating). They were partly off the bottom of the wagon,

and one of her legs was half way up, half way up to the knee,

and she lay in that position (illustrating).

Q Did she make any effort to pull her arms in, during

that trip? A No, I don't think she did.

Q She was simply lying in one position, as you have illustrated? A Yes, sir.

Q- Was that the position she was placed in the wagon by the young men? A Yes, sir.

Q When they lifted her in? A Yes, sir.

Q She didn't take the position herself, but she was put in that position; wasn't that? A Yes, sir.

Q By you and the other young men? A Yes, sir.

Q Now, then, on that matter, and then I shall let you go. When you got to the hospital did you assist in lifting

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her from the wagon? A I did.

Q And who besides yourself assisted in that? A There were two or three orderlies in the hospital.

Q Did they put her on a stretcher, do you know? A No; on one of those movable stretchers like, with wheels on it.

Q And in what position was she placed? A Flat on her back.

Q Did she make any effort to assume a position herself, or did she lie as she was placed? A Lied there as we placed her there.

Q And did she say anything at all as she was being placed on the stretcher, or while she was lying on the stretcher?

A The same thing, she was moaning, "Oh, Frank", all the way in, until she got into the ward.

Q And were her eyes closed or open when she was placed upon the stretcher? A That I don't know; I don't remember that.

MR. LEVY: That is all, Officer.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q You spoke about some burned clothing. A Yes, sir.

Q Did you see what it was that caused that clothing to be scorched or burned? A Yes, sir.

Q What? A In my best judgment it was a pistol wound.

Q You saw what? A I saw the mark of a pistol bullet

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in the waist.

Q In the clothing? A Yes, sir.

Q And did you see it in the body also? A No, sir.

RE-CROSS EXAMINATION BY MR. LEVY:

Q I consider it my duty to ask this: Did you, Officer, testify whether you noticed that the deceased was wounded? That has not been brought out, I think. A The deceased?

Q Yes. A Yes.

Q Was he bleeding? A Very little.

Q Did you see where he was bleeding from? A Yes, sir.

Q Where? A A wound on the left side, near the abdomen.

Q Did you see whether or not his clothing was burning?

A And a wound at the right elbow, a pistol wound. That was also bleeding.

Q Did you see any burning clothing on him? A Yes.

Q The cloth of his clothes was burning? A Yes, sir.

Q At what spot? A The coat, on the left side, and also at the elbow, as if a bullet went through it.

Q I know that, but you have told us about the burning clothes of the defendant, and I want to know whether the clothes of the deceased showed that they were burning?

A Oh, not burning; no, sir.

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Q Smoking? A No, sir. It showed the bullet wound.

Q Well, do you understand my question? A What's that?

Q I want to know if there were any signs of smoke coming from the clothes of the deceased? A No, sir.

Q But there was a sign of smoke coming from the clothes of the defendant? A Yes, sir.

Q And did you put out any sparks or any fire? A Well, it wasn't any fire. It was as if it was smouldering, and I took it together, and tried to dry it up (illustrating), and nothing was coming from it.

Q One other question. Did you notice how the defendant was dressed? A Yes, sir.

Q How was she dressed? A She had a dark skirt on, what I mean, a black skirt and a shirt-waist.

Q A white shirt-waist? A Yes, sir.

Q Did she have a hat on? A No, sir.

Q Did she have anything like a wrap, or mantle or shawl or anything like that? A I didn't see that.

Q Did she have a coat? A (No answer)

Q If you don't recollect, I don't care about it. A I don't recollect about that, counselor.

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WILLIAM A. WITHALL, of 387 Broadway, Albany,  
a witness called on behalf of the People, being duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q How long have you been living in Albany, Mr. Withall?  
A Since January 28nd.

Q Where did you live before that? A 370 East 138th  
street.

Q In the Bronx Borough of the City of New York? A Yes,  
sir.

Q And did this defendant here, Mrs. Nicodemus, live in  
the same house where you lived? A No, sir.

Q Did you know her? A Yes, sir.

Q Did you know any persons who lived in the house with  
her? A Yes, sir.

Q You had conversations with her before you moved away  
from that place in the Bronx? A Yes, sir.

Q Now, on the evening of October 2nd, did you see this  
defendant, Mrs. Nicodemus? A Yes, sir.

Q Who was with you when you saw her? A Frank Nicodemus.

Q Frank Nicodemus, her husband? A Yes, sir.

Q And had you met Frank Nicodemus before that time?

A Yes, sir, I did.

Q And did you have at that time some paper to be served

upon Mrs. Nicodemus?

MR. LEVY: I object to that, sir, as immaterial, irrelevant and incompetent.

THE COURT: objection overruled.

MR. LEVY: Exception.

A Yes, sir.

BY MR. MOSS:

Q And where did you and Frank Nicodemus see the defendant while you saw that paper? A At 161st Street, between Park and Morris Avenue.

Q On the street? A On the street.

Q And what did you do with that paper at that time?

MR. LEVY: I object to it, sir, as immaterial, irrelevant and incompetent.

THE COURT: overruled.

MR. LEVY: Exception.

A Why, I handed it to Mrs. Nicodemus.

BY MR. MOSS:

Q You handed the paper which I have spoken of to Mrs. Nicodemus? A Yes, sir.

Q What did she do or say when you handed her that paper?

MR. LEVY: I object to that as immaterial, irrelevant and incompetent.

THE COURT: overruled.

MR. LEVY: Exception.

A She said that she didn't want it.

BY MR. MOSS:

Q Where was Frank prominent at that time? A Standing right on my side.

Q So that you three were close together? A Yes, sir.

Q And when she said she didn't want it, what happened next? A She threw it in the street.

Q Yes. Go on and tell everything that happened?

A And I picked it up again, and she walked across the street, and I walked after her, and handed it to her again.

Q Yes. And then her brother came.

Q What was her brother's name? A Why, I believe his name was Archie, or some name like that.

Q Yes. And what transpired then? A Why, he come running down --- she believed for help and he come running down from Morris Avenue, and she told us that I had no right to give her the paper and lots of other things she said.

Q Well, go ahead. Tell us all that she said. A And he said that he was going to lick Frank.

Q That is, Archie said that? A Yes, sir.

Q In his presence? A Yes, sir.

MR. LEW: Now, let us get this straight, Mr. Moss.

MR. MOSS: I will get it straight, Mr. Levy.

BY MR. MOSS:

Q Now, leave out what Archie said, for the present. But

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what else did Mrs. Nicodemus say? A Mrs. Nicodemus said for Archie to shoot us.

Q For Archie to shoot you? A Yes, sir.

Q You and Frank Nicodemus? A Yes, sir.

Q Now, just use her words. A She said, "Shoot them."

And then she says, "If you are afraid to shoot them, give me the gun and I will shoot them."

Q She said that to her brother Archie? A Yes, sir.  
And then Frank and I started away from there.

Q What he came out of the paper? A Why, Archie picked the paper up. She threw it away the second time and Archie picked it up and he lost it, and sent a young fellow back with the paper and handed it to Mrs. Nicodemus, and he opened it, and read it, and he said he didn't want it, and then handed it back to me.

THE COURT: And he told him he did not want it,

may be stated, yes.

BY MR. BOSS:

Q From whom had you received that paper which you handed to Mrs. Nicodemus?

MR. BOSS: I object to it as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. BOSS: Exception.

A Why, I am not a Christian.

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BY MR. MOSS:

Q. Who is Mr. Haberman?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A. He is a lawyer, on Broadway.

MR. LEVY: Will your Honor allow me to state the grounds of my objection?

THE COURT: Yes.

MR. LEVY: Does your Honor desire to hear argument on this kind of evidence, at this stage of the case?

THE COURT: Why, no. It is perfectly competent.

MR. LEVY: I except, if your Honor please.

BY MR. MOSS:

Q. And was the paper which you handed to Mrs. Nicodemus the same paper which you received from the lawyer, Mr. Haberman? A. Yes, sir.

Q. And did you go to deliver that paper to Mrs. Nicodemus under anybody's instructions?

MR. LEVY: Wait a moment. I object.

MR. MOSS: I withdraw it.

THE COURT: Yes. Sustained.

BY MR. MOSS:

Q. When did you receive that paper from Mr. Haberman?

A Why, the Saturday before.

Q Did you see Frank Nicodemus in the hospital? A I did.

Q On what date did you see him in the hospital first?

A On the 3rd of October.

Q On the 3rd of October? A Yes, sir.

Q That is, the very day after you had handed the paper to Mrs. Nicodemus? A Yes, sir.

Q Did you see the defendant in the same hospital on that day? A Yes, sir.

Q Did you hear her say anything? Just yes or no. A (No answer)

Q Well, if you don't remember. A I don't remember now if she said anything or not.

MR. MOSBY: You may cross examine.

MR. ZEVEY: Will your Honor take the recess at this time, please? I am pretty well worn out, and I have been under great strain, not only in this case, but in my office work, and the cross examination of this witness will be rather long.

THE COURT: You come from Albany, Mr. Witness?

THE WITNESS: Yes, sir.

THE COURT: Can you stay over until Monday?

THE WITNESS: Why, yes.

MR. MOSBY: Oh, if he can stay over until Monday, if

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your Honor please, we might as well adjourn now. I have no objection.

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Monday morning, March 25th, 1902, at 10:30 o'clock).

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## TRIAL RESUMED.

New York, March 25th, 1912.

W I L L I A M   A .   W H I T A L L , J R . ,   being cross examined,  
testified as follows:

## CROSS EXAMINATION BY MR. LEVY:

Q   How old are you?   A   19 years old.

Q   Speak up. What is that?   A   19.

Q   Born in New York?   A   No, sir.

Q   Where?   A   I was born in England.

Q   And you have lived in New York about how long?

A   Why, about 18 years.

Q   Where did you live last in the City of New York?

A   370-East 138th Street.

Q   With your parents?   A   I was boarding with my sister.

Q   What is her name?   A   Mrs. H. Burr.

Q   What is the H for?   A   Harvey.

Q   Is Mr. Burr there?   A   Yes, sir.

Q   And how long did you live with your sister?   A   About  
a year; since last March.

Q   And before living with your sister, with whom did you  
live?   A   My own mother.

Q   Where?   A   It was on Willis Avenue, between 136th and  
137th Street. I forget the number.

Q   How long did you live there?   A   Why, only a few months.

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Q Did you leave your mother's house or --- A No, my mother went to Connecticut.

Q And before living with your mother, with whom did you live? A Why, I always lived with my mother before that.

Q You said only three or four months? A Well, that was at that address.

Q And before that, where had you lived? A I had lived in Connecticut before that.

Q And for how long had you lived in Connecticut? A Oh, for about six years.

Q Have you worked during all this time? A Yes, sir.

Q At what have you worked? A Why, I have worked at printing and iron structural work.

Q Well, when was it that you worked last? A In New York here.

Q Yes. But where? A At 42nd Street,

Q For whom? A For Terry & Tench.

Q At what business? A Iron structural work.

Q Doing what? A Apprentice bridgeman.

Q Who was your foreman immediately over you? A I think he pronounced his name as Cowbridge.

Q And who gave you employment there, he or the firm?

A Why, he did.

Q And how long did you work there? A About seven months.

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Q And before that --- wait a minute. I withdraw that.  
When did you cease working there? A Around January 20th or  
21st.

Q Of this year? A Yes, sir.

Q And where did you go to work before you went to work  
for Terry & Tench? A I was working in 19th Street.

Q Where? A Between Sixth and Seventh Avenues.

Q For whom? A For Mr. Abrahams.

Q What business? A Printing.

Q Abrahams? A Abrahams.

Q And how long did you work there? A Oh, I only  
worked there several months.

Q Several months? A Yes, sir.

Q And did you leave there or were you discharged? A I  
left there.

Q Any other place that you worked at in New York City?  
A No, sir.

Q So that you account for about 14 months of actual  
work in New York City; is that right? A Yes, sir.

Q And how long have you been in New York altogether?  
A Why, I don't know exactly.

Q Well, about, about how many years? A Oh, I was only  
in New York a little over a year; the last time, since I come  
from Connecticut. Before that I lived, the rest of the time,

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in New York, except six years, and that six years I was in Connecticut.

Q Then, of the 19 years of your life, the 18 years that you have been in this country, you have spent 12 years in New York City? A Yes, sir.

Q Well, I am only concerned with your life after you were able to go to work. Now, did you work for anyone in Connecticut? A I did.

Q For whom? A I worked for Mr. Smith.

Q Smith? A Yes, sir.

Q And what business is Mr. Smith in? A He was in the confectionery and newsdealing business.

Q Where? A At New Britain, Connecticut.

Q And how long did you work for him? A Why, I only worked for him during the summer months, during the summer.

Q I take it that your mother is a poor woman? A Well, not exactly poor.

Q Well, does she require any assistance from you?

A Yes, sir.

Q And did you help, did you contribute towards her support?

A I did.

Q During one time that you worked for iron people, what were your earnings? A Why, \$2.50 to \$3.00 a day.

Q Can you give me the name of any other person in that concern to whom I can go, concerning your employment there?

A Why, the company right to the firm itself.



Q That's what I want to know. I can go to the firm directly? A Yes, sir.

Q And where is their office? In 42nd Street? A Why, in the Terminal Building, in 45th Street.

Q Now, did you ever live at 377 East 142nd Street?  
A No, sir.

Q Or 277? A No, sir.

Q And do you know any people who live there? A Yes, sir, I think I do.

Q Well, who do you know that lives there? A Mrs. Murphy and Mrs. McMullen.

Q Yes. Now, about your present situation? A How long have you been in Albany? A Since January 22nd.

Q And with whom do you live in Albany? A I live with my father.

Q In what place? A 387 Broadway.

Q What is that? A hotel? A It is a hotel, yes, sir.

Q What is the name of the hotel? A The Mansion House.

Q Near what street is that? A Why, it's near Hudson Avenue.

Q Are you working there? A I work for the railroad company.

Q Which railroad? A The New York Central.

Q What do you do? A Why, car inspecting, they call it;

working around the yards.

Q Does your father work there? A Yes, sir; he does.

Q For the same company? A Yes, sir; but he does different work.

Q I understand. Now, Mr. Whitall, did you know this defendant before the day that you went to serve the paper upon her? A I did.

Q For how long had you known her ~~xxx~~ before that day?

A Why, I should say about two months, two or three months. I don't know exactly how long I have known her.

Q And where was it that you first met her? A At that house in 142nd Street. I don't know exactly the address of it.

Q Who is the owner of the name of the person who owns or occupies the house? A Mrs. Murphy.

Q 277 West 142nd Street? A Yes, sir.

Q That is the same house in which Mrs. McMullen lives? A Yes, sir.

Q Were you living at that house? A No, sir.

Q Visiting there? A Yes, sir.

Q And whom were you visiting there? A Why, I visited Mrs. Murphy, and Mrs. McMullen.

Q Did you visit Mrs. Murphy or Mrs. McMullen? A Both.

Q How long had you known them? A Why, only a few months.

Q Mrs. Murphy is a widow; isn't she? A No, sir, not

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that I know of.

Q Does her husband live in the house there? A Yes, sir.

Q You don't visit him; do you? A Why, I see him and talk to him.

Q I know, but whom did you visit there? A Why, I went there just to spend my time. I didn't visit anybody in particular.

Q Well, how did you get to that house. Were you introduced into the house? A I was introduced to Mrs. Murphy.

Q By whom? A By my brother-in-law's brother's wife.

Q What is her name? A Mrs. Foster Burr.

Q And you visited Mrs. McMullen as well? A Yes, sir.

Q Is Mrs. McMullen a young woman? A Why, she's a middle aged woman, I should judge.

Q A widow? A Well, that I couldn't swear to. I don't know about that.

Q Well, how frequently would you visit that house?

A Oh, I used to be around there most every night.

Q Nearly every night? A Nearly every night.

Q What was your object in visiting there? A Well, it was some trouble that my brother-in-law's brother had that caused me to go there.

Q Well, did you have to go there every night? A No, I didn't have to go there, but I just went there as a mere pleasure; that's all.

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Q And what hours did you spend there every night?

A Well, anywhere from eight to twelve o'clock or one o'clock.

Q And that ran over a period of how long? A About seven months, I should say.

Q Now, will you please tell the jury why you visited those women every night for seven months? A Why, as I just said, a few minutes ago, that I merely visited there for the pleasure of going around there, to talk to Mrs. Murphy and Mrs. McMullen, because I had no other place to go.

Q Didn't you seek the company of any youngmen? A No, sir, I never do.

Q Or of young women? A No; I hadn't, at that time.

Q And the only explanation you can give of your going there every night was because it was a pleasure to you?

A Yes, sir.

Q Did you ever remain there over night? A No, sir.

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

Q Well, who besides these two ladies did you meet in that house? A Why, I met several other people, I don't know ---

Q What? A I met several other people there to.

Q Well, can you give me the names of several other people you met there? A I was introduced to one woman as Mrs. Doyle.

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Q Mrs. Doyle? A Yes, sir.

Q Is she a young woman, Mrs. Doyle? A I don't know.

She is about a middle aged woman, I should judge.

Q Did she live there alone? A No, she didn't live there alone.

Q Whom did she live with? A With her husband.

Q And who beside Mrs. Doyle there? A I don't quite remember who else was there.

Q Did you meet any of the men who constituted the male population of that house at any time? A Yes, sir.

Q Who? A I met Mr. Doyle.

Q Well, often? A Yes, once or twice a week, I should say. Q Well, did you meet a Mr. McMullen? A No, sir, I never met him.

Q Did you meet Mr. Murphy? A I have met Mr. Murphy.

Q How many times did you meet him during those seven months? A Why, I met him every night.

Q And was he there every night? A Yes, sir.

Q And all night? A Yes, so far as I know.

Q Well, where were you entertained in your visits?

A Why, sometimes I sat in the parlor, and sometimes in the kitchen and sometimes I sat on the front stoop.

Q Now, you say that you met Mr. Murphy every night?

A Yes, every night.

Q Did Mr. Murphy work in the night-time? A Why, I don't

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know whether he did or not.

Q Now, just think a moment. Didn't he work in the evenings and night-time? A No, not that I know of.

Q Are you prepared to stand by your statement that you met him almost every night, or do you want to change that?

A No, I don't want to change it.

Q Now, don't you know that it is a fact that Mr. Murphy worked every night and slept in the day-time? A No, sir, I don't.

Q You don't? A No, sir.

Q Now, were you ever in that house in the day-time?

A Yes, sir, I have been there twice, for a short while.

Q What was the object when of your calls in the day-time? A I went to find out something about this here brother-in-law's business of mine.

Q Would you tell us about that. What was it that you went there for? A Well, he left his wife, or he couldn't be found at home, and his wife came around to my sister's house, and asked me to go and help her, and by going there and helping her out, and looking for this here man, I was introduced to this Mr. Murphy.

Q Did you go to that house to find him in Mr. Murphy's house?

A No, sir, I didn't.

Q Did you go to find him by going there every night? A No, sir.

Q You didn't talk about your brother-in-law's brother every night you went there; did you? A No, sir.

Q You had other entertainment; didn't you? A Yes, sir.

Q And how long did Mrs. Burr remain living in that house? A No, she wasn't living in that house.

Q Didn't she ever live there? A Yes; boarded with Mrs. Murphy for some time.

Q How long? A I couldn't say.

Q And you went there to get information, you say?

A No, sir; it wasn't exactly to get information, but just to hear if they heard anything about him.

Q Well, how did you expect that Mrs. Murphy and Mrs. McMullen would know anything about your brother-in-law's brother?

A Because Mrs. Murphy was watching out and trying to find out about him, too.

Q Well, what reason was there, what cause was there, what interest was there, for Mrs. Murphy to watch out for him?

A Oh, I don't know, except as a mere friend, to help this woman out of her trouble.

Q What friend? A My brother-in-law's brother's wife, Mrs. Burr.

Q Well, was he a visitor at that house of Mrs. Murphy?

A Why, Mrs. Murphy knew him, but he wasn't a visitor there, that I know of.

Q Do you mean to say that it is the fact that that is the

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reason why you went there every blessed night for seven months? A Oh, no, I don't say that.

Q Well, why did you go there then? A Just to spend a pleasant evening.

MR. MOSS: I think he has told you several times,

Mr. Levy.

BY MR. LEVY:

Q What was your answer? A Just to spend a pleasant evening.

Q Now, that was a furnished room house; wasn't it?

A Yes, sir.

Q And they took lodgers there; did they not? A Yes, sir.

Q Now, did you ever meet the deceased there, in that house? A No, sir.

Q You never saw him there? A No, sir.

Q Did you know him in his lifetime? A Not in that house I didn't know him.

Q Did you know Frank Nicodemus in his lifetime? A I did.

Q And how long had you known him before his death?

A Oh, about a week or two. I wouldn't say exactly how long it was.

Q Now, you don't mean that; do you? You say that you knew him --- a week or two --- you say? A Yes, sir.



Q And he died nearly two months after he was shot. You mean a week or two before he was shot; don't you? A Yes, sir.

Q And where did you meet him? A 139th Street.

Q Where? A Near Third Avenue.

Q At what place? A At Mrs. Murphy's.

Q What? A At Mrs. Murphy's.

Q The same Mrs. Murphy that we have been talking about?

A Yes, sir.

Q And what was the number of the house? A Why, I don't know the number of the house. I forget it.

Q What street? A 139th Street.

Q Near what avenue? A Third Avenue.

Q And did you visit Mrs. Murphy at that house? Which house did you visit her at? A In both houses. She moved from 142nd Street to 139th Street.

Q And how often did you visit her at 142nd street?

A I should say about two months.

Q And then she moved to 139th Street? A Yes, sir.

Q And how long did you visit her there? A I don't quite remember how long it was that I visited her there.

Q Well, about how long? A I should say about three weeks or more. I can't say exactly.

Q Well, didn't Mrs. McMullen move with her to 139th Street? A Yes, sir.

Q Now, I asked you whether you had met the deceased in

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his lifetime and you said about a week or ten days before, or what did you say?

THE COURT: A week or two.

A A week or two before.

BY MR. LEVY:

Q And who introduced you to him? A Mrs. Murphy.

Q And was his wife there, the defendant, at that time?

A No, she wasn't there at that time.

Q The 139th Street house was also a furnished room house?

A Yes, sir.

Q Who was present when you were introduced to the deceased? A Why, Mrs. Murphy and her children.

Yes.

Q Now, when was it that you first met the defendant?

A It was in 142nd Street.

Q The month, if you please, as nearly as you can recollect? A It was either August or September, I won't say for sure. It was somewhere around there. I don't exactly know.

Q Did you see her before August? A Well, I don't know whether that was really the month I met her or not, I don't quite remember that now, but I never met her until I met her in 142nd Street.

Q Well, did you see her in the company of her husband at that place? A No, sir.

Q You swear to that? A I swear to that.

Q At no time? A At no time.

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Q Have you, upon any occasion, made affidavit to the following effect, that you were introduced to the defendant by Mrs. Margaret Murphy, the latter part of July, 1911; that you subsequently met her on several occasions and had conversations with her, and that she informed you that Frank Nicodemus were her husband? A Yes, I think I do remember that now.

Q Then you do remember it now? A Yes, now that you bring it back to me.

Q Then you did meet her on several occasions? A Yes, sir.

Q And then you want to change your statement? A Yes, as to that.

Q And then she informed you that Frank Nicodemus was her husband? A Yes, sir.

Mr.  
Q And then Mrs. Murphy didn't introduce you to Nicodemus and say that he was the defendant's husband? A That was a week or two before he was shot, I said, that Mrs. Murphy introduced him to me.

Q I ask you when you first met the deceased and you said about a week or two before he was shot; is that right? A Yes, sir.

Q And you also told me that Mrs. Murphy had introduced him? A Yes, sir.

Q Then that wasn't so? A Yes, it was so.

Q Didn't you make affidavit to the effect that the

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defendant had told you that he was her husband? A Yes, I said so.

Q Now, I want to know this. Do you know a lawyer by the name Haberman? A Yes, sir.

Q When did you first meet a lawyer by the name of Haberman? A Why, a week before October 2nd.

Q A week before the deceased was shot? A Yes, sir.

Q And where did you first meet that lawyer? A It was on Broadway. I forget what street. It was on the corner of some street, in some building.

Q And were you taken to him? A Yes, sir.

Q By whom? A By Mr. Frank Nicodemus.

Q Mr. Nicodemus asked you to go down and see his lawyer? A Yes, sir.

Q And you were given some kind of a paper, according to your former story, to serve upon --- without saying what the paper was --- to serve upon Mrs. Nicodemus, the defendant? A Yes, sir.

Q By whom? A By Mr. Haberman.

Q In whose presence? A In Mr. Nicodemus' presence.

Q And what day was it --- I think you have testified to the day, but repeat it, please --- that you first got that paper? A Why, it was the Saturday before the Tuesday he was shot.

Q And you claim that the deceased was shot on what day of

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the week? A (No answer)

Q How many days after you got the paper? A Why, I don't really remember how many days it was. I think it was on October 3rd, he was shot.

Q Yes, on October 3rd? A Yes, sir.

Q And you don't remember the day of the week that you made the service? A October 2nd, I made the service.

Q What day of the week? You got the paper on Saturday. Now, what day of the week was it that you served, as you claim you did, the paper? A Why, I think it was on Monday.

Q Monday? A Yes, sir.

Q Well, were you friendly with Mrs. Nicodemus, the deceased? A How do you mean, friendly?

Q Don't you understand what that means? A I wasn't any more friendly than just talk to him, if you call that friendly.

Q Your acquaintanceship with him, then, was only of short duration? A Yes, sir.

Q You were under no obligations to him? A No, sir.

Q And he was under none to you? A No, sir.

Q Well, did you become friends? A Why, I don't know whether you would call it friends by talking to him. I went to his house several times.

Q Well, during the two weeks preceding the time of the shooting, how many times did you meet him? A (No answer)

Q Every day? A No, sir, not every day.

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Q Well, how many times in a week? A Well, I should say three times in that week.

Q And where did you meet him? A At Mrs. Murphy's, in 139th Street.

Q And that time was the defendant living in that house? A Not at that time, but just before that she was.

Q And do you recollect when it was she lived in that house? A No, sir, I don't.

Q Well, how long before the shooting? A (No answer)

Q About how long? A Well, I should say about a week.

Q Did Nicodemus live in the house with Mrs. Murphy?

A No, sir.

Q At any time that you know of? A No, sir.

Q Did you see Mr. Nicodemus there, the deceased? Did you ever see him there in the night-time, in the evening?

A It was in the evening I met him there.

Q Did you see him there at any time that his wife was there? A No, sir.

Q Did you see his wife, the nights that you called at Mrs. Murphy's home? A Yes.

Q You saw the defendant there? A Yes, sir.

Q Every night? A Not every night, I wouldn't say; most every night, though.

Q And you saw her play with the children? A Sometimes I

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did; yes.

Q Mrs. Murphy had several children? A Yes, sir.

Q And when you visited there in the day-time, did Mrs. Nicodemus, the defendant, live there at that time? A Yes, sir, she was living there at that time.

Q And did you see her there? A I don't remember whether I did or not, now.

Q Now, was it at that time, at the time that Mrs. Nicodemus lived there, and just before the time that she left there, did you learn or did you know of, or did you witness any quarrel between the defendant and Mrs. Murphy? A No, sir, I did not.

Q Or misunderstanding? A No, sir.

Q Were you there upon any occasion when a policeman was called in? A No, sir.

Q Did you know about that? A I was told something about it.

Q When Mrs. Nicodemus wanted to take her trunk away from that house; was that right?

MR. MOSS: I object to that. That is mere hearsay, I submit.

THE COURT: Sustained.

MR. LEVY: Exception.

BY MR. LEVY:

Q You were not there at that time? A No, sir.

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Q Who told you about it? A Mrs. McMullen and Mrs. Murphy both.

Q Can you state from your observation and from what you heard, whether at that time Mrs. Murphy was friendly or unfriendly towards the defendant?

MR. MOSS: I object to that.

THE COURT: Sustained.

MR. LEVY: I except.

THE COURT: It is a matter of opinion based upon hearsay.

MR. LEVY: I will amend the question.

BY MR. LEVY:

Q Did you witness any unfriendly manifestations on the part of Mrs. Murphy towards the defendant at that time?

MR. MOSS: I object to that as immaterial, Mrs. Murphy's relations to this woman, the defendant. They do not appear to have any relation to the case now.

THE COURT: It does not appear at this time to the Court how Mrs. Murphy figures in the case, Mr. Levy.

MR. LEVY: Well, it is one of the circumstances that lead up to other matters, which I think will become of much importance.

THE COURT: But how Mrs. Murphy's unfriendliness towards the defendant is a matter involved in the issues here, I fail to see at this time. I sustain the objection.

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MR. LEVY: Well, I will except to your Honor's ruling.

BY MR. LEVY:

Q Now, you said in answer to some question put to you by me a few moments ago, that you visisted Nicodemus at his home? A Yes, sir.

Q Where was that? A I think the number was 830 Dawson Street. I wouldn't be sure.

Q The home of his father; you mean, don't you? A Yes, sir.

Q And how long before the shooting was it that you visited him there? A Why, a few days before.

Q After you had the paper in your possession to serve, or before? A I think I was there one night before I served the paper.

Q Then that must have been on a Sunday night, is that right, if you served the paper on Monday night? A I served the paper on Monday night, yes. I think it was one night before I had the paper given to me to serve.

Q And was that visit made by you at his request or of your own accord? A By his request. He invited me up to supper.

Q I see. He invited you to supper? A Yes, sir.

Q Now, I must again ask you the question, whether or not your relations proved to be friendly with him or unfriendly,

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or just neutral? A Just neutral.

Q you had no interest in him whatever? A No, sir.

Q Now, were you to be paid for serving that paper?

A No, sir.

Q Was there any special reason why you should have been picked out to make the service? A Why, I don't know; only that I knew the defendant.

Q What? A That's the only reason I can find for it, that I knew the defendant.

Q Well, there were other people that knew her? A Yes, there were other people.

Q Can't you give any explanation of why you were picked out especially? A No, sir, I can't.

Q You can't? A No, sir.

Q Did you entertain any friendly or unfriendly feelings towards this defendant? A No, sir, I didn't.

Q And you will say, with regard to your feelings toward her, that they were neutral? A Yes, sir.

Q Did you volunteer to serve the paper, or was it at his suggestion? A It was Mr. Haberman's suggestion.

Q But Mr. Haberman could not have suggested that, unless you had been taken to his office. I mean, before you went to the lawyer's office, who suggested that you be the one to make the service; you or he? A No one. It wasn't suggested to me at all.

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Q Did you know when you went down to Mr. Haberman's office why you were going there? A Yes, sir.

Q Did you know that you were to receive a paper to serve? A No, sir.

Q You didn't? A No, sir.

Q Now, did you know where the defendant lived at that time? A I didn't.

Q Did you make any inquiries as to where she lived at that time? A Yes, sir.

Q From whom? A I asked Mrs. Murphy, I think, if I'm not mistaken.

Q And were you informed? A And I was told where I might find her.

Q Where you told where her parents lived? A Not at that time, I wasn't.

Q Did the deceased tell you where her parents lived? A Yes; the night of October 2nd, he told me where her parents lived.

Q Not before? A No, sir.

Q When you received the paper in the office of the lawyer to serve, were you given any address of the defendant? A Yes, sir.

Q By whom? A By Mr. Haberman, I think it was.

Q And what address did you get? A It was the St. Mary's Hospital, in Jamaica, I think the address was, if I'm not mis-

taken.

Q Did they tell you that she was nursing or was a nurse there? A That she was nursed there, I think; that she was there as a patient.

Q That she was sick and in that hospital as a patient?

A Yes, sir.

Q And that was within three days of the time of the shooting; is that right? A Just about three days.

Q You didn't go over to that hospital to serve her; did you? A Yes.

Q But you didn't find her there? A No, sir.

Q On what day was it that you went to the hospital?

A Which hospital? St. Mary's Hospital?

Q Yes. The hospital of which you told me, St. Mary's, in Jamaica? A It was that Saturday that I received the papers that I went to Jamaica, to St. Mary's Hospital, that evening.

Q In the evening? A Yes, sir.

Q Did you find her there? A No, sir, I didn't.

Q Did you receive any information there as to where she was? A No, sir.

Q Did you report to any person that you had been to the hospital and couldn't find her there? A Why, I don't quite remember whether I reported that or not.

Q Well, when was it that you got the invitation to dine

with the deceased? A During the week before he was shot.

Q Before you got the paper? A Yes, sir, before I got the paper.

Q Was there any special reason why you should be invited?

A No, sir, not that I know of.

Q Did you go out with the deceased during that week?

A No, sir, I didn't go out with him.

Q Never went out with him during his lifetime? A No, sir.

Q Are you sure about that? A Well, I'll take that back. I went as far as the corner and had a drink with him.

Q No, I don't mean that. You ~~at~~ only went to the corner and had a drink with him? A Yes, sir.

Q And that was on what occasion? A On the first night I met him.

Q By the way, did you take a drink with him on the night you claim you served these papers? A I did.

Q Where? A At 161st Street, at the corner of Cortland Avenue, I think it was, if I'm not mistaken.

Q Was that before or after the service? A After the service.

Q Now, then, with regard to what happened on the night of the alleged service. Have you told the gentlemen of the jury all that happened on that night? A Yes, sir.

Q Everything? A Yes, sir.

Q There isn't anything that you want to add to that which you have said in answer to the question put to you by Mr. Moss as to what happened, that night? A Not that I know of.

Q Did you meet the deceased by appointment, to go and make the service or was your meeting with him accidental? A It was an appointment.

Q And when was the appointment made? A Monday evening, early in the evening.

Q Well, what time in the evening, about? A I should say between five and six.

Q Where was the appointment made? A Over the telephone.

Q Did he telephone to you or you to him? A I telephoned to him.

Q Did he request you to telephone to him? A No, sir.

Q Where did you telephone to? A To his home, or his father's home.

Q Has his father a telephone in that house? A Yes, sir.

Q Who suggested that you telephone to him? A Why, nobody.

Q You were anxious to make that service; weren't you?

A I wasn't exactly anxious, no. I wanted to get the papers off my hands, seeing that I was asked to serve them.

Q And you again repeat that you were not paid for your service in that respect? A No, sir.

Q And you met as a result of the telephone message at what

time? A Why, I don't know exactly at what time. It was in the early part of the evening, around six o'clock, between five and six.

Q Were you working on that day? A Yes, sir.

Q Where? A 42nd Street.

Q And what time did you quit work? A I quit about --- shortly after four, I think it was.

Q And in whose house did you eat your supper? A In my own home.

Q With your mother? A With my sister.

Q And where was it that you met the deceased that evening? A I was on Third Avenue, around 140th Street, or 141st Street. I don't know exactly which street it was.

Q And did you immediately go to where you had been informed the defendant was? A I did.

Q Where had you been informed the defendant was? A At Mrs. Gray's, at 140th Street, I believe it is.

Q Near which avenue? A Near Third Avenue.

Q Did you go to Mrs. Gray's? A Yes, sir, I did.

Q Did you find the defendant there? A No, sir.

Q Did you know that the defendant lived with her father and mother? A No, sir.

Q Weren't you informed as to that? A No, sir..

Q Did you ever hear the address 1000 Grant Avenue? A I might have heard it, but I didn't remember it, until that night

I was told by Mr. Nicodemus.

Q That she lived there? A Yes, sir.

Q That she lived at 1000 Grant Avenue? A Yes, sir.

Q Did he tell you that before or after you went to Mrs. Gray's house? A After I went to Mrs. Gray's.

Q Did you go then to 1000 Grant Avenue? A No, sir.

Q Where did you go? A We went to the deceased's house.

Q Where? A At Dawson Street, 830, I think the address was.

Q Oh, yes, to the deceased's house? A Yes, sir.

Q And then what did you do? A When we got there, we were informed ---

Q Now, I don't care about that. What did you do, not what was said? A Why I just went in.

Q Went into his house? A Yes, sir.

Q And from there where did you go? A We started for 1,000 Grant Avenue.

Q And what time of the evening was that? A I should judge about half past six or a quarter to seven; somewhere around there.

Q And is 1000 Grant Avenue very far from 830 Dawson Street, or 820 Dawson Street? A Well, I don't know what you call far. To me, it isn't.

Q Well, I want to know what distance you travelled, how many blocks? A Well, I couldn't say just how far it is.



Q Are you familiar with the Bronx in that neighborhood?

A Why, somewhat, I am.

Q And why did you go round in a roundabout way to Grant Avenue? A Because the trolley line runs that way, and we took the car.

Q Now, when you got to 1000 Grant Avenue, was it still light or dark? A It was dark.

Q That was what time at night? A Around seven or a little after seven; I wouldn't say exactly which.

Q Was the street illuminated, lit up? A Yes, sir; the lights were on, yes; I think there was a light on the corner.

Q And then did you go into 1000 Grant Avenue? A No, sir.

Q What happened? A We waited on the corner of 161st Street and Grant Avenue, for the defendant to come along.

Q She came along? Was she alone? A She was alone.

Q And was she fully dressed? A Yes, sir.

Q Did she have a hat on? A Yes, sir.

Q And in which direction was she going? A Towards 161st Street.

Q Who stopped her? A Mr. Nicodemus stopped her and spoke to her.

Q You stood by? A No, sir.

Q How far away did you stand? A Why, across the street I was.

Q Now, which is it? Did you stand by or across the street? A Yes, on the other side of the street I stood.

Q Sure about that now? A Yes, sir.

Q Were you to be called over to make the service or how were you to get the signal to make the service? A There was no signal, or anything. He only said he was going to talk to her for awhile, and then I was to come up and hand her the paper.

Q Now, how long did he talk with her? A Why, I don't know exactly how many minutes, or anything, but he walked ---

Q You can give me an idea of the time; can't you?

A (No answer)

Q Was it a half hour? A Why, I wouldn't say.

Q Nearly a half an hour? A Well, towards half an hour.

Q Towards half an hour? A Yes, sir.

Q Now, did you overhear any of the talk that was had between them? A No, sir, I didn't.

Q Nothing? A No, sir.

Q Did you see them close together? A I did.

Q Did you see the deceased either take the defendant's hand or put his hand upon her? A No, sir, I didn't.

Q At no time during that talk? A No, sir.

Q Well, when they were talking, were they standing still? A No, sir, they were walking.

Q Walking in which direction? A Towards Third Avenue.

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Q And did they walk during the whole of the conversation, or did they stand at any particular time? A They stopped several times, I think.

Q For a few minutes, or any length of time? A Just for a few seconds.

Q So that, practically, they kept walking during the entire conversation? A Yes, sir.

Q Now, if they walked, did they walk fast or slow?  
A Very slow.

Q They must have traveled some distance in that half hour? A About two blocks.

Q And you trailed behind? A Yes, sir.

Q On the opposite side of the street? A No, sir, on the same side of the street.

Q Oh, you crossed over? A Yes, sir.

Q And how far behind them did you follow? A Why, I should say from here to the wall back there (indicating the rear wall of the courtroom). I don't know exactly how far.

Q But not sufficiently near to overhear anything that was said? A No, sir.

Q Now, did it seem to you while they were talking that either the defendant was angry or that the deceased was angry?  
A No, sir, it was quite dark and I couldn't distinguish anything.

Q Well, they passed lights --- the street was illuminated?

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There are either gas or electric lights there; are there not?

A Well, I couldn't say whether they were angry or not. I couldn't see that.

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Q Well, did they show by the way they conducted themselves, by their actions or speeches, that they were angry, either or both of them? A Well, by the way they walked I judged that there was a few harsh words spoken.

Q Well, what gave you that impression? A Well, because they stopped for a few seconds, for a short time, now and then.

Q And did you see any motions of the hands at all?

A No, sir.

Q Are you sure about that? A I'm positive, yes.

Q Now, you said to Mr. Moss that the young woman cried for help. Do you remember saying that? A Yes.

Q When was it that she cried for help? A After I had served her with the papers.

Q What were the words she used in crying for help? A They were something like, "Archie, Archie, come and help me." I understood her to say that.

Q Was it, "Come and help me"? A I think that's what it was.

Q Did you see that woman struck? A No, sir.

Q At no time? A At no time.

Q And isn't it a fact that the cry came for help because

she had been struck? A I couldn't say about that.

Q Well, why can't you say as to that? A Because, when she cried for help, I wasn't close enough to her. She just hollered because we were there. I didn't see any blows struck, at any time.

Q Will you swear that there were no blows struck?

A I wouldn't swear that there wasn't any blows struck, but I will swear that I didn't see any.

Q Well, then, we will pass that for a moment. Now, what moment, what particular time was it that you came up and made the service? A It was Park Avenue, and 161st Street.

Q Did he signal to you to come along and make the service? A No, sir.

Q Well, how did you know that that was the time for you to do that? A I just judged that I ought to have went up at that time; that's all.

Q Well, something must have occurred that gave you the judgment that that was the opportune time? A No, sir, they were just standing there talking.

Q Well, why did you select that one moment more than any other moment while they were there? A Why, I don't know.

Q Wasn't it because their conversation became more animated and angry that you thought it time to step in?

A I didn't hear any language such as you have just talked about.

Q No, I didn't ask you that. Didn't the appearance of things indicate that they were getting very angry with each other at that time? A No, sir.

Q Well, why did you pick out that particular moment to make that service? A Why, I don't know why I picked it out.

Q Well, what was the first thing that was said when you approached the two? A Mr. Nicodemus introduced me to the defendant as his wife.

Q Well, you knew that; didn't you? A I knew it already, yes.

Q And she had told you that before that; hadn't she? A Yes, sir.

Q Well, what was the need of that ceremony, of that introduction? A I don't know.

Q Well, what was said when the introduction was made? What did you say? A Well, I said, "How do you do. I'm glad to meet you," such as anyone would say when introduced, and then I said --- I handed her the papers, and told her here was something that I was told to give her.

Q And did she remain of calm, or did she become excited? A Excited.

Q Well, how did she evince that she became excited? A By the way she talked.

Q But how, how? A Her voice seemed to shake.

Q Her voice seemed to shake? A Yes, sir.

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Q Was that all? A Yes, sir.

Q Did you notice her face? A No, sir.

Q Did you notice whether she was pale, or florid, or red?

A No, sir, I didn't.

Q Well, did she put her hand out to take what you had offered to her? A Yes, at first she did, and drew her hand back.

Q And did you see whether her hand trembled? A No, sir.

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Q Nothing of that sort? A No, sir.

Q And she took it? A Yes, sir. And I said, "Here is something that I was told to give you".

Q And was that all that you said? A Yes, sir. No, sir. It comes back to me now. I said, "Your husband is suing for absolute divorce".

Q Is that all you said? A Yes.

Q What did she say? A She said she didn't want them.

Q Well, give me her words, as nearly as you can? A She said, "I don't want them", and she dropped them in the street.

Q She said, "I don't want them", and dropped them in the street? A Yes, sir.

Q And the deceased remained right there, didn't he, when she said that? A No, sir; he started to walk away from us, and I started to follow him, and she went in the opposite direction and crossed the street.

Q She crossed the street? A Yes, sir.

Q Now, let's see. Let's get that story right. I want to get it exactly. You said to her, "Here is something that I have been asked to give to you. Your husband is suing you for an absolute divorce"? A Yes, sir.

Q And she said, "I don't want them", and dropped them on the ground? A Yes, sir.

Q And Nicodemus started to walk away on the same sidewalk with you? A Yes, sir.

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Q And she crossed the street? A Yes, sir.

Q And that is all that was said and done? A Yes, sir.

Q Now, did she cross the street? A Yes, sir.

Q The entire distance of it? A Yes, sir.

Q In which direction did you and Nicodemus go? A Why, we stopped, and looked around.

Q Yes? A And when we saw that she didn't pick the papers up, I said, "I had better pick them up, and give them to her again", and I picked up the papers and crossed the street in the same direction that the defendant went, and met her on the other side.

Q And did Nicodemus follow? A Yes, sir.

Q Now, then, from that moment on, tell me the exact words, if you can recollect, that were spoken by the defendant or any of you, the exact words. You crossed over to the other side, with Nicodemus? A Yes, sir.

Q Now, did you speak to her first? A I ---

Q Did you speak to her first? A Yes, sir.

Q What did you say? A I said, "Here, take these".

Q And what answer did she make to that? A She said, "I don't want them", and I laid them on her arm.

Q Yes. A She called for help.

Q Well, that's not what you told me a moment ago.

MR. GROSS: I object to that statement.

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THE COURT: Sustained.

BY MR. LEVY:

Q Didn't you tell me, a moment ago, that Nicodemus stood next to his wife, and that you didn't see any blows struck?

A Yes, sir.

Q But you couldn't swear that no blows were struck?

A Yes, sir.

Q And that you heard a cry for help, for Archie; is that right? A Why, the cry was for help, after I had served her with the papers.

BY THE COURT:

Q The first time, or the second time? A Both times.

BY MR. LEVY:

Q Now, let's get that right. Both occasions when you handed her the papers, on either side of the street, she cried for help? A Yes, sir.

Q Now, you understand that; do you not? A Yes, sir.

Q And that is correct; isn't it? A Yes, sir.

Q And what did she cry out when you first handed them to her? A "Archie, Archie, come and help me".

Q And Archie didn't come up? A No, sir.

Q And the next time, the second time, when you laid the papers on her arm, you say she again cried for help? A Yes, sir, she said, "Archie, Archie, come and help me".

Q And was she very much excited the second time? A Yes, sir.

Q More than on the other side of the street? A Yes, sir.

Q Did she tremble? A Yes; or acted and looked as if she was trembling.

Q And her voice was shaky you say? A Yes, sir.

Q Now, did Archie come? A Not right away. But she called again, and Archie came running from the ---

Q Now, what was the third call? A The same thing, "Come and help me".

Q And you mean to say that while you were standing on the other side of the street, to which the defendant had gone, that the deceased did not place his hands upon the defendant? A Why, I didn't see him do so.

Q But you were near enough to see that, weren't you? A Yes, sir.

Q Did you stand between them or alongside of them?

A I stood a little ahead of the deceased. He was a little in back of me.

Q Did you hear what he said to her? A Why, I don't remember what he said to her.

Q Why, you were near enough to her? A At least, I don't think he said anything to her, the second time.

Q Will you swear that he did not? A I don't think he

did.

Q Did you hear him say anything on the other side of the street, at the time of the first service? A No, sir.

Q Not a word? A No, sir.

Q Did she speak to him in your hearing? A No, sir.

Q What is that? A No, sir.

Q So that he said nothing upon either side of the street? A No, sir.

Q Well, how long did it take for Archie to come along?  
A A few seconds, I should judge.

Q And when you speak of Archie, to whom do you refer?  
A I think he was Archie Somerville.

Q The brother of the defendant? A Yes, sir.

Q Had you ever met him before? A No, sir.

Q Now, then, Archie came along, and you three were standing there? A Yes, sir.

Q At that time when Archie came along, where was the deceased? A She was on the same side of the street that I was.

Q And where was the defendant, Mrs. Nicodemus? A She was on the same side of the street, right near me.

Q Well, were you all together there? A We were all together for a few seconds.

Q For a few seconds? A Yes, sir.

Q And then what became of Mrs. Nicodemus? A She start-

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ed to walk towards Morris Avenue.

Q Walk or run? A Well, I would say walk.

Q Fast? A Well, that I couldn't say.

Q Well, she left the three of you standing together?

A Yes, sir.

Q But where were the papers? A They were on the ground.

Q Well, what happened? She got away; didn't she?

A After I served her the papers, she hollered for help.

Q You have told me that. She hollered, "Archie, Archie, come and help me"? A Yes, sir.

Q I know that. A Yes, sir.

Q You said that she said that three times? A Yes, sir.

Q And after she got away, you say she walked away?

A Yes, sir.

Q And you three men were standing together? A Yes, sir.

Q And the papers were on the ground, you say? A Yes, sir.

Q And she hadn't picked them up? A No, sir.

Q And then what happened? A Archie wanted to know what right we had to give her the papers.

Q Go on, go on, tell me all that happened. A And I told him it was none of his business, and Frank and I started away from him.

Q Yes. A And I told him that the best thing he could do would be to pick up the papers and give them to his sister, and he did pick them up.

Q Well, go on. Did anything else happen? A And then Frank and I walked away.

Q Well, now, when this conversation was had with the brother, did the deceased say anything? A Yes.

Q What did the deceased say to Archie? A He said he didn't want to fight.

Q What was that? A Archie asked him, --- told him if he was any kind of a man he would stand up and fight, and the deceased said that he didn't want to fight.

Q Is that all the conversation? A That's all at that time.

Q Was that said in an angry tone, or in a matter of fact way? A A matter of fact way.

Q Just as easily as I am talking to you now? A Yes, sir.

Q "If you were any kind of a man you would stand up and fight"? A Yes, sir. But Archie said in an excited tone.

Q And the deceased simply said, in a cool manner, "I don't want to fight"? A Yes, sir.

Q He remained cool and calm? A Yes, sir.

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Q And then he walked away? A Yes, sir.

Q Did you hear the defendant say anything to the deceased at that time, or was she away from the scene? A While we were together, she said something.

Q Well, was she away from the scene at the time this talk was had between Nicodemus and her brother? A Yes, sir.

Q Now, you told Mr. Moss that the defendant spoke to her brother? A Yes, sir.

Q Now, do I understand you to say that her brother came up --- I understood you to say that her brother came up before the defendant got away from the scene? A Yes, sir.

Q And how long was she there? A I couldn't say.

Q How long was she there? A I couldn't say.

Q Before she went away? A I don't remember how long she was there. I didn't take any particular notice of that.

Q Now, you told Mr. Moss that the defendant said, "That I had no right" --- I withdraw that. You said, in answer to Mr. Moss, that the defendant's brother Archie said that he was going to lick Frank? A Yes.

Q That was said in the presence of the defendant?

A Yes, sir.

Q In her presence? A Yes, sir.

Q And then he said he wanted him to stand up and fight, was that said in her presence? A No, sir.

Q That was another little conversation? A That was another little conversation.

Q When was it that Mrs. Nicodemus, the defendant, said to her brother, "Shoot them"? What particular time was that, what particular moment in that transaction? A Just as he came running up to us.

Q Well, what were the words that she used? Repeat them, please? A "Shoot them, shoot them, Archie".

Q Was that said excitedly? A Yes, that was said as though she meant it, very excitedly.

MR. LEVY: I move to strike that out, as if she meant it.

THE COURT: Motion granted.

MR. LEVY:

Q Now, was that all that she said? A She said, "I'll get you yet".

Q To whom did she say that? A To the deceased.

Q "I'll get you yet"? A Yes, sir.

Q You didn't tell Mr. Jones that, the other day. Now, what else? Let's see if we can't get the rest of the conversation? A That's all I remember her saying.

Q She said, "Shoot them", and turning to the deceased she said, "I'll get you yet"? A No. She said, "Shoot them", and Archie didn't shoot, and she said, "If you are afraid to shoot them, shoot me the first".



Q Did Archie have a gun? A No, sir, not that I know of.

Q Now, what I want to get clear is, at what particular point in that transaction she said to the deceased, "I'll get you yet"? A Just as we were about to leave, after she had dropped the papers on the floor --- on the ground --- the second time.

Q Now, you understand your answer; do you? A Yes, sir.

Q She said, "I'll get you yet"? A Yes, sir.

Q As she dropped the papers on the floor, or the sidewalk, the second time? A After she dropped the papers.

Q After Archie was there? A After Archie was there.

Q After she had asked Archie to shoot? A Yes, sir.

Q And after Archie had said to the deceased, "Stand up and fight"? A Yes, sir; that was all said in together.

Q And then she said, "I'll get you yet"? A Yes, sir.

Q And when that did she do? Did she go away? A Yes, sir.

Q And then you did see her go away? A Yes, sir.

Q And did you follow her with your eyes, did you look in the direction in which she went? A Just for a few moments I did.

Q And in which direction did she go? A Towards Morris Avenue.

Q Now, did you see any gun? A No, sir.

Q There wasn't any gun drawn? A No, sir.

Q Well, do you know why she wanted you shot? A I don't know whether she wanted me shot or not.

Q Are you sure that she said, "Shoot them"? A I understood her to say that.

Q Now, then, how long did you remain there after she had gone away, and the papers were picked up, as you say, by Archie --- A Yes, sir.

Q How long did you remain there? A Oh, I should say two or three minutes.

Q And in which direction did you go? A We crossed over to the side we had first served the papers, and started down towards Third Avenue.

Q Well, what became of Archie? A Why, when we got on the railroad bridge, the New York Central Railroad bridge there, Archie came running down.

Q Well, was it after you had taken your drink that he came running down? A No, sir; it was before we had taken the drink, I mean.

Q And when he came running down, what happened? A He wanted Frank to fight.

Q And Frank wouldn't fight? A No, sir, Frank wouldn't fight. And they were talking together. I didn't pay much

attention to the conversation.

Q And were you near enough to hear the conversation?

A Yes, I was near enough.

Q And you can't repeat it? A No, I don't know as I could repeat it.

Q You can't tell me any part of it at all? A They were talking about the papers, and he wanted to know what he was suing for, and Frank told him he was suing her for a divorce, I believe.

Q Well, don't believe. Tell us what you remember.

A Well, that's what I remember, then.

Q Anything else? A No, sir.

Q And how long were they talking together? A Only a few minutes. And then Frank invited us in to have a drink.

Q And you did go in to have a drink? A Yes, sir.

Q And, as I understand it, you and the deceased and the brother of this defendant, who had just been served with divorce papers, went in and had a drink? A Yes, sir.

Q In which saloon? A At 161st Street and Cortland Avenue.

Q And what was the idea of going in to take a drink?

A Why, I don't know.

Q Did Nicodemus say he didn't want to take a drink?

A Nicodemus invited us in.

Q Invited his brother-in-law in? A Yes.

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Q Well, were they friendly then? A They were talking together.

Q Apparently friendly? A They were talking about the case.

Q Did it seem to be a friendly talk? A Yes, sir, it seemed to be a friendly talk.

Q Yes, a friendly talk? A Yes.

Q Now, did you overhear what was said? A Only just what I have repeated.

Q Well, you have only told us one sentence, that he was suing his wife for a divorce. Didn't you hear any other conversation? A No, sir, I didn't pay any attention; I didn't want to hear any more.

Q Why didn't you want to hear any more? A Because I just done what I was asked to, and that's all, and they were talking as though they wanted to talk by themselves.

Q Well, wasn't there any part of the conversation that you heard there that you can repeat here? A No, sir.

Q Not another thing? A No, sir, not that I remember.

Q How long did you remain in the saloon? A I should judge about 15 minutes.

Q Well, then you must have taken more than one drink?

A Yes, sir, we had more than one drink.

Q And how many more drinks did you take? A Two or three; I don't remember for how many drinks it was.

Q Nicodemus treated? A Yes, sir.

Q And Archie Somerville treated? A Yes, sir, I think Archie did treat.

Q And you treated? A No, sir.

Q Well, about how many drinks did you have? A Well, I think it was two, if I am not mistaken; I don't remember exactly.

Q Of course, naturally, you stood together at the bar, didn't you? A No, sir, I stood a little way off from Archie and Nicodemus.

Q And how far away did you stand? A I should judge about a yard.

Q And then what happened? A Well, after we had the drinks we went out.

Q Who went out? A Archie and Nicodemus and myself.

Q And where did you go? A We went --- Frank and I were going to get a car, and we were waiting on the corner, and Archie started towards Morris Avenue, and while we were waiting for a car we happened to look towards Morris Avenue, and seen Archie and the defendant and some other young fellow coming towards the park that is between Morris Avenue and the railway there, at 161st Street, and they walked into the park, and this other young fellow ---

Q What is the defendant and her brother? A Yes, and some other young fellow. And this other young fellow, who

he was I don't know, come running down towards Frank and I, after Frank and I had started to walk, instead of waiting for the car, and he run up to us.

Q Who did? A This here young fellow, and said ---

Q Now, just wait a minute. Do you know who the young fellow was? A No, sir.

Q This was all after you had been into the saloon, and had gotten out? A Yes, sir.

Q Do you know who he was? A No, sir, I don't.

Q Well, how long were you together with that young fellow? A Only a few seconds.

Q He came running up to you? A Yes; he came running up to us, with a paper in his hand.

Q Well, wait a moment. Just wait a second. I don't want you to say what he said. But he had a paper in his hand? A Yes, sir.

Q And where was the defendant at that time? A Standing right at my side.

Q The defendant? A Oh, she was in this here park.

Q Could you see her? A Yes, you could distinguish her from ---

Q You are willing to swear that you saw her there?

A Well, I won't swear that it was really her, but ---

Q Well, we don't want any guesses, then, unless you can swear to it. You saw the figure of a

woman standing there? A Yes, sir.

Q And you saw Archie standing there in the park too, you say? A Yes, sir.

Q And could you swear that it was Archie? A Yes, I could swear to him.

Q And where were you standing? A A little ways from the corner.

Q What corner? A 161st Street and Cortland Avenue.

Q And after he had said something to you, or, rather, to the deceased, and the deceased had said something to him, he went away; did he? A Yes, sir.

Q And where did you go? A Frank and I --- just then a car came along, and Mr. Nicodemus and I got on the car.

Q Which car did you take, what line? A 161st Street crosstown, I think it was.

Q Going in which direction? A Toward Third Avenue.

Q And then where did you go? A Mr. Nicodemus ---

Q Don't tell us what he said; tell us where you went to? A We went to Mrs. Gray's.

Q And where did Mrs. Gray live? A At 140th Street.

Q And what Avenue? A Third.

Q And what time did you get to Mrs. Gray's? A Why, I don't know. I didn't look at my watch.

Q Can't you give us an idea? A No, I can't say exact-

Q I don't want the exact time, but about the time that you got to Mrs. Gray's? A Well, I couldn't say that.

Q Well, was it eight o'clock, or nine o'clock, or ten or eleven or twelve o'clock? A Well, we will say that it was about nine o'clock, or before.

Q That it was about nine o'clock, or before? A Yes, sir.

Q And who did you meet at Mrs. Gray's? A Mrs. Gray herself.

Q Anyone else? A And there was some man come to the door. I don't know who he was.

Q Did you go into Mrs. Gray's house? A No, I didn't.

Q Did he, the deceased? A No.

Q Was that the first time you had ever been to Mrs. Gray's house? A No, sir.

Q How many times had you been there before? A Why, I should say that was about the third time, I think.

Q The third time? A Yes, sir.

Q Then when was the time before that that you were there? A The first time?

Q Yes. A Do you want to know the first time?

Q Yes. A It was the Saturday that I had received the papers to come to the defendant.

Q Well, that was Saturday? A Yes, sir.

Q That was the first time? A Yes, sir.

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Q And the second time? A That was on Monday.

Q The day of the service? A Yes, sir.

Q And then it was Monday night? A Yes, sir.

Q And you made two visits to Mrs. Gray's house on that Monday? A Yes, sir.

Q Weren't you in Mrs. Gray's house a week before you ever got the papers to serve? A No, sir.

Q Now, stop and think. (Question repeated) A No, sir, I wasn't.

Q Did you go there at any time before the time that you got the papers for service, and represent to Mrs. Gray that you were connected with the Post Office? A That wasn't before I got the papers. That was after I had the papers.

Q What day did you get the papers? A On Saturday, the same day, that evening. No, I think it was Monday. I don't remember exactly what day it was.

Q And why did you represent that you came from the Post Office? A Because she wanted to find out what I wanted, and I didn't think it was my business to tell her.

Q Did you ask Mrs. Gray whether the defendant, Mrs. Nicodemus, lived there? A I did.

Q What did she say to you? A She said she was ---

MR. MOSS: I object to that. Mrs. Gray is not in the case yet.

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THE COURT: Sustained.

MR. LEVY: I take an exception.

BY MR. LEVY:

Q Did Mrs. Gray tell you that the defendant lived there, or didn't live there?

MR. MOSS: I object to that.

MR. LEVY: It is a part of the one transaction, your Honor.

MR. MOSS: Well, I withdraw the objection, if your Honor thinks it is material.

THE COURT: Yes, I will allow it. And I will allow the first question, as well.

MR. LEVY: Then the stenographer will kindly repeat the first of these questions that was excluded and is now allowed. I have forgotten it.

(The previous question is repeated by the stenographer.)

A Mrs. Gray said that she wasn't there, but her trunk was there.

BY MR. LEVY:

Q And that she was going to live there? A No, I don't remember her saying that.

Q Did she say she had taken a room, and was going to live there? A No, sir.

Q And how long were you talking there with Mrs. Gray?

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A A few minutes. I was standing at the door when I was talking to her.

Q And did the defendant come along about that time, after you had left 161st Street and Cortland Avenue, and had taken the car, and had gone over to Mrs. Gray's; did she?

A Yes, sir.

Q Now, what did you go over to Mrs. Gray for, after you served the papers? A I just went there because the deceased asked me to go.

Q Did he give you any reason for going there? A He said he wanted to see her trunk; that's what he told me; and Mrs. Gray wouldn't let him see the trunk.

Q Did Mrs. Gray have the privilege of refusing to let him look at his wife's trunk? A Yes, sir, she said so, at least.

Q And what else was said there by the deceased and Mrs. Gray?

MR. ROSE: That I object to.

THE COURT: What was said by the deceased and Mrs. Gray?

MR. LEVY: Yes, sir; and what did Mrs. Gray say in reply to the deceased.

THE COURT: I think the evidence is competent, and I shall allow it.

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A He said that he had a right to look in the trunk, as it was his wife's trunk.

BY MR. LEVY:

Q Go on, and give me the conversation. A And that's all I heard him saying.

Q How long did you stay there? A Only a few minutes.

Q Did you see the defendant coming along? A Yes, sir.

Q At that time? A Yes, sir.

Q Was she alone or was anyone with her? A She was with her brother and this other young fellow.

Q Well, now, what was said, if anything, between the defendant and the deceased then? A Why, I don't remember whether there was anything said between the defendant and the deceased.

Q Was there anything said by any one in the party within the hearing of the other? A Yes.

Q By whom? A I think it was the three men spoke, all at once.

Q The three men? A Yes, sir.

Q Which three men? A The man that was at Mrs. Gray's house, and the two young fellows that come with the defendant, and they spoke to Mr. Nicodemus, to get out of there, before they give him a licking.

Q Yes, who said that? A Why, ---

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Q I want you to be accurate about that. Who said that? A Well, now, I can't say that, because they all spoke together.

Q Did the defendant say anything? A No, sir. He says to me, "Come on".

Q No, no, the defendant, Mrs Nicodemus? A I don't remember what she said at all.

Q Did she say anything? A I don't remember.

Q Now, where was she at the time this talk was had?

A Right on the landing, in the hall.

Q And did you observe her condition at that time?

A No, sir, I did not.

Q And did you go away then? A Yes, sir, we went out.

Q And did you see what the defendant, Mrs. Nicodemus, did? A No, sir.

Q You did not see? A No, sir.

Q Now, did you hear her say anything at that time?

A No, sir.

Q Now, did you see the defendant after that day?

A Yes, sir.

Q Where? A At Lebanon Hospital.

Q Did she send for you? A No, sir.

Q Did you go to see her? A No, sir.

Q What day was it that you saw her at Lebanon Hospital?

A The 3rd of October.

Q At no time after that? A Yes, sir. If I can remember rightly, I think it was once.

Q What? A I think I saw her once after that.

Q Did she send for you? A No, sir.

Q Well, why did you go to the hospital to see her?

A I was looking for Mrs. McMullen, Mrs. Murphy and her daughter, who had been in to see the deceased, and ---

Q They were very friendly?

MR. MOSS: Had you finished your answer?

THE WITNESS: No, sir.

MR. LEVY: But he was going to state a conversation.

MR. MOSS: No, that is only your own imagination, Mr. Levy. I don't think he had an opportunity to complete his answer, and I think he should have.

THE COURT: Yes, he may complete his answer.

A Who were friendly?

BY MR. LEVY:

Q The deceased, Mrs. Murphy and Mrs. McMullen? A Why, I can't say about that.

Q Why, don't you know how many times Mrs. McMullen and Mrs. Murphy visited the deceased in the hospital? A No, sir, I don't.

Q How many times did you visit him? A I visited him

several times.

Q What do you mean by several, now? A Well, say five or six times.

Q And how many times do you say you called upon the defendant, Mrs. Nicodemus? A I saw her twice, if I am not mistaken.

Q Well, if you are not mistaken, you ought to remember that. How many times did you call upon her in that hospital? A Twice.

Q Twice after the 3rd of October? A Yes. No, once after the 3rd of October.

Q Are you sure now that you were not there several times? A Well, the best that I can remember is twice altogether.

Q Well, did she send for you? A No, sir.

Q Well, the second time was how long after she had shot herself? A That I don't know.

Q Well, after the 3rd of October, when was it that you visited there? A Well, I don't know how long a period it was, between the times I have seen her. I couldn't swear to that.

Q How long was it after the 3rd of October that you visited this woman in the hospital? A I said I didn't know.

Q Was it a year? A No, sir.

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Q Well, how long then? A It might have been a week.

Q Why did you go there? A Because I was looking for Mrs. Murphy and Mrs. McMullen --- they had just left the deceased, so I was told --- and I thought they were upstairs. <sup>that</sup>

MR. LEVY: And I move to strike/out, what he thought.

MR. MOSS: No, you asked him why, and brought out that answer.

THE COURT: I will permit it to stand, in view of your question.

MR. LEVY: I take an exception.

A And I thought that Mrs. Murphy and Mrs. McMullen and her daughter had gone upstairs to see the defendant, and I was looking for them when I passed the ward that the defendant was in, and she beckoned to me (illustrating), and I went in to her --- to see her.

BY MR. LEVY:

Q Now, that is true, isn't it? A Yes, sir; to the best of my knowledge it is true.

Q What do you mean by to the best of your knowledge it is true; what do you mean by that? A Why, the best I can remember. That's quite some time ago, and I haven't been thinking about it, or anything about it, since.

Q Now, do you want this jury to understand you as say-

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ing that this defendant, lying upon her cot in that hospital, saw you and beckoned to you to come in? A Yes, sir.

Q You want that to be understood? A Yes, sir. I think that's right.

Q And did you see any nurses around? A Well, I don't now quite remember whether there was any nurses around or not.

Q What? A Why, I don't quite remember now whether there was any nurses around or not. There was none around the bed anyway.

Q Well, then you can tell me how near the door was her cot, how far from the door it was placed? A Probably three yards from the door; maybe not as much as that.

Q How many beds were between the door and her cot, and her bed? A Well, that I don't remember, because I didn't notice.

Q Did she face the corridor as she was lying there? A She was sitting up.

Q Facing the corridor? A Yes, sir.

Q Now, how long were you there? A Why, I should say a few minutes; three to five minutes, say.

Q Yes. Well, were you looking for the brother of your brother-in-law there, as well? A No, sir, not at that time I wasn't.

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Q Well, did you ever go to the hospital to look for the brother of your brother-in-law? A No, sir.

Q But you know that you could find Mrs. Murphy and Mrs. McMullen there? A I was told that they had been there.

Q Well, will you tell me what you wanted to see Mrs. McMullen and Mrs. Murphy at the hospital for? A Well, because I was going home, and I lived in ~~xxx~~ <sup>their</sup> direction, and I thought it would be company home for myself, that's the only reason I went looking for Mrs. Murphy and Mrs. McMullen.

MR. LEVY: I think that will do.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q When you first ever saw the defendant, Mrs. Nicodemus, where did you see her? A At 142nd Street.

Q At Mrs. Murphy's house? A Mrs. Murphy's house.

Q And what name did she give you there?

MR. LEVY: Wait a moment. I object to that.

THE COURT: Overruled.

MR. LEVY: I object to it as immaterial, irrele-

vant and incompetent, and I except.

A I was introduced to her as Mrs. Nichols.

BY MR. MOSS:

Q Yes. And did you see Mrs. Nicodemus pass that house a number of times? A Yes, sir.

Q And did you see a man call upon her there?

MR. LEVY: Wait a minute, wait a minute. If I object to this question, your Honor, the impression may be conveyed that there is something that I wish to conceal. A question such as this is clearly wrong, and ought to be acted upon by the Court, with all due respect, without the intervention of counsel. It has no bearing on this matter whatever.

THE COURT: The question, standing by itself, is innocuous.

MR. LEVY: But there is an insinuation contained in the question, that we have to contend with.

THE COURT: I do not view it in that light, Mr. Levy.

MR. LEVY: Well, do you mean that it calls only for a categorical answer?

THE COURT: Yes.

MR. LEVY: Yes, sir, and that may be true as far as this one question is concerned.

THE COURT: Answer that yes or no.

A Yes.

BY MR. ROSS:

Q Now, who was he? A I later found out ---

MR. LEVY: I object to that.

THE COURT: Sustained.

Q No, not what you later found out. Who was he?

A Mr. Caruth.

BY MR. LEVY:

Q What name? A Robert Caruth, Jr.

BY MR. MOSS:

Q Mr. Levy asked you when you went down to Mr. Haberman's office, the lawyer's office, did you know why you were going there, and you said yes. Now, why were you going there?

A I was asked to go down there and tell what I had seen and heard at Mrs. Murphy's.

Q Yes, you went down to make a statement; did you?

A Yes, sir.

Q And did you make a statement to Mr. Haberman, the lawyer? A Yes, sir.

Q I think you told Mr. Levy that, when you went down to make the statement, you didn't know that you were going to be asked to serve the paper? A Yes, sir.

Q But, having made the statement, you were asked to serve the paper? A Yes, sir.

Q Did you know what that paper was? A Yes, sir.

Q What was the paper?

MR. LEVY: I object.

THE COURT: Sustained.

MR. MOSS: Well, have you the paper, Mr. Levy?

MR. LEVY: But why do you ask me about it?

MR. MOSS: Oh, I just ask you the ~~question~~. Have you the paper?

MR. LEVY: No, I haven't the paper. And why do you ask me? What reason have you?

MR. MOSS: Oh, you can't enter my mind to discover my reason. And I didn't speak to this young man when he left the stand on Friday.

MR. LEVY: No, and I didn't, either. Now, let us understand that. I never spoke to this young man in my life, and you may take my word of Honor for it, and you know that you can take that, Mr. Moss.

MR. MOSS: All right. Then will your Honor kindly direct the jury not to pay any attention when counsel forget themselves and speak to each other?

THE COURT: Yes, the jury will disregard the remarks of counsel on either side.

MR. LEVY: But wait a minute. It is a reflection upon me, that I spoke to this young man on Friday, after he left the stand.

MR. MOSS: But you have denied it, and your word is sufficient for me, Mr. Levy, and I have asked the Court to direct the jury to disregard the entire incident.

THE COURT: Yes, your word is sufficient, Mr.

Levy, and the incident is ended.

BY MR. MOSS:

Q Now, you said that you didn't find the defendant at St. Mary's Hospital? A Yes, sir.

Q Did you serve the paper upon her there? A No, sir.

Q Did you find that they knew her there? A No, sir, not at all.

RE-CROSS EXAMINATION BY MR. LEVY:

Q What had been your relations with Mrs. McMullen?

A Only as a friend; that's all.

Q Would you recognize the handwriting of the deceased, if you saw it? A No, sir, I don't think I would.

Q Was he ever known to you as Frank Nichols? A No, sir.

MR. LEVY: I ask that this envelope be marked for identification, unless you will concede that it is the defendant's handwriting, Mr. Moss.

MR. MOSS: No. It may be marked for identification.

(It is marked Defendant's Exhibit 1 for identification.)

BY MR. LEVY:

Q Now, the statement has been made here that I spoke to you on Friday, had said something to you on Friday. Have I

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ever spoken to you in my life? A No, sir.

Q Now, you went down with your testimony against this young woman; didn't you? A Yes, sir.

Q To swear away her character and her honor?

MR. MOSS: I object to that form.

MR. LEVY: I withdraw the form.

THE COURT: Sustained.

MR. LEVY: Then I will put the question in another way.

BY MR. LEVY:

Q To testify against her? A Yes, sir.

Q At whose request? A The deceased's request.

Q Only the deceased's request? A That's all.

Q Not Mrs. Murphy's? A No, sir.

Q Not your lady friend, Mrs. McMullen? A No, sir;  
and she wasn't my lady friend, if you please.

Q She wasn't your lady friend? A No, sir.

Q Well, you spent every night with her? A I spent every night in general conversation with Mrs. Murphy and Mrs. McMullen.

Q And chased around hospitals after her, didn't you?

A I didn't chase after her in any hospitals. Now, I want to be understood on that. That was a mere accident, the same as if you were in a hospital, and knew that some people living in the same direction that you lived were there, and you

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would look for them and go home with them, and you would do the same thing.

Q No, I wouldn't swear away a woman's honor. A No, sir, and I didn't do that neither. And I didn't chase around after Mrs. McMullen and Mrs. Murphy. I don't run after anybody. I just looked for them in the hospital to go home with them.

Q Now, are you through? A Yes.

Q Were you afraid to go home? A No, sir, I wasn't afraid to go home alone.

Q Is there a living person in New York with whom you associated of about your own age at about that time, during those months that you were spending your nights with those two women? A No, sir.

Q Did you know where Mr. McMullen worked --- Mrs. McMullen I mean? A No, sir.

Q Did you know whether she worked or not? A Oh, I knew where Mrs. McMullen worked, yes. I thought you said Mr. McMullen.

Q And you called down to take her home, at night; didn't you? A No, sir; she worked in a dancing academy, and, if I went down to the dancing academy, I would go home with her, but that didn't occur every evening.

Q Well, how often would you say? A Well, that I couldn't say.

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Q And what time of the night would you bring this lady home from the dancing academy, generally? A That would be after twelve o'clock. I think the time that she was through with her work at the dancing academy was twelve o'clock.

Q And then you would go home with her? A Yes; then I taken her home.

Q And you would go into the house? A Yes, sir; sometimes I would go into the house. I have been in the house, yes.

Q Yes, after twelve o'clock? A Yes, sir.

Q And you would stay until what time? A Why, I would stay half an hour or so.

Q That's all, eh? A Yes, sir.

Q And lunch together, eh? A Yes, sometimes.

Q And drink beer together? A Yes, sir, sometimes we would drink beer together.

Q Why, that woman is almost old enough to be your mother, isn't she? A I know she is.

Q And she has a child; hasn't she? A Yes, sir.

MR. LEVY: That will do.

MR. GREG: That will do.

WILLIAM D. DUB, of the Lebanon Hospital, Westchester and Childs Avenue, a witness called on behalf of the

People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Daub, you are the superintendent of the Lebanon Hospital; are you? A I am.

Q Did you have possession of this bullet which I show you (indicating People's Exhibit 1 for identification)? A I did.

Q From whom did you receive it? A From Dr. Bower.

Q And to whom did you give it? A I put it in the safe.

Q You put it in the safe? A Yes, sir.

Q And who brought it down from the safe? A I did.

Q You brought it down; did you? A Yes, sir.

Q So that it was produced from your possession? A Yes, sir; to Dr. Riegelman.

MR. MOSS: That's all.

MR. LEVY: No questions.

SAMUEL N. HABERMAN, of 1512 Bedford Avenue, Brooklyn, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Haberman, you are a lawyer? A Yes, sir.

Q And have an office in the City and County of New York? A Yes, sir.

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Q Where? A 336 Broadway.

Q Prior to the 2nd day of October, did you at your office see Frank J. Nicodemus, and William A. Withall, Jr.? A Yes, sir.

Q What day or date was that? A Well, I first saw Mr. Nicodemus on ---

Q Well, I am speaking of the time when they were together, the two, the last time before the 3rd of October? A On the 29th of September.

Q And upon that occasion did you give Mr. Withall any paper for service in an action? A I did.

Q And did you cause to be filed in the office of the County Clerk of New York County the original of which the paper which you gave Withall was a copy? A Yes, sir.

Q Is this the original paper (indicating)? A Yes, sir, this is the original.

Q You have never seen the copy since, have you? A I have not.

MR. MOSS: I offer this in evidence.

MR. LEVY: I object, as incompetent evidence, and immaterial and irrelevant.

THE COURT: Of course the contents is not competent or binding upon the defendant. But, as I understand, Mr. Moss wants to prove the fact that a proceeding was

instituted by the husband against the wife, but the contents certainly wouldn't be competent against the defendant.

MR. LEVY: Why, your Honor, it is incompetent in any phase of the case, unless the defendant herself makes it competent.

MR. MOSS: If your Honor is of the opinion that the contents is not competent, then I will not press the offer.

THE COURT: I think so. You cannot offer a pleading in a civil action in a criminal case.

MR. MOSS: The purpose that I had in offering this was simply to show what was in the paper that was served on the defendant. Of course we have accounted for the copy, the paper that was served on her. It has gone out of our possession. And this witness says it was a copy of this paper, and it is admissible only on that theory. But, if your Honor has any doubt upon it, I will not press the offer.

THE COURT: I have grave doubt about it. Unless it is the subject matter of a controversy, the pleadings in a civil action are not admissible in a criminal case, except for a perjury, but, of course, a fact might be established later that might make it material.

MR. LEVY: This is just for your Honor's recollection. Your Honor remembers a case that I tried several years ago, the case of the People against Schlessel, and the Court of Appeals reversed that case because certain papers like this were introduced.

THE COURT: No, not papers like this. I think the facts were different. You examined a defendant in that case, and the District Attorney, in cross examination, produced an involuntary petition in bankruptcy, and it was introduced and admitted in evidence and the Court of Appeals reversed that case. I sustain the objection.

MR. MOSS: You may cross examine.

CROSS EXAMINATION BY MR. LEVY:

Q Mr. Haberman, do you know the handwriting of the deceased? A I have seen the signature of the deceased. I don't know whether I would be able to tell it from a letter or not.

Q I show you Defendant's Exhibit 1 for Identification, and ask you whether you recognize the handwriting on that envelope?

MR. MOSS: I object unless the witness is better qualified as a judge of handwriting.

THE COURT: Yes, you had better qualify him first.

BY MR. LEVY:

Q Did you ever receive any letters from the deceased?

A No, sir.

Q Did you ever see him sign his name? A Yes.

Q Did you ever see him do any writing? A No, sir, nothing more than sign his name.

Q Then you don't feel competent to pass upon the genuineness of any handwriting that I show you, that is, to determine that it is the deceased's handwriting? A No, sir, I don't.

MR. LEVY: Then the offer is withdrawn.

BY MR. LEVY:

Q After you had been informed of the decease of your client, did you have any communication with the District Attorney's office? A I believe one of the Assistant District Attorneys ---

Q Yes or no, please? A I did.

Q In consequence of which, you delivered to the District Attorney, I understand, what information was in your possession concerning this case? A I did.

Q Did you give any papers to the District Attorney?

A I did.

Q What did they consist of --- not the contents of them--- but give their general descriptions? A A copy of pleadings.

Q Pleadings? A Yes. One or two postcards.

Q Yes. A receipts for money orders, sent by the deceased to the defendant, and I believe a letter, one letter.

MR. LEVY: May I ask my learned friend to let me look

at those?

MR. MOSS: Not at this time, Mr. Levy. I will let you have them during recess.

MR. LEVY: Then I would like to recall Mr. Haberman, later, if your Honor please, because I may want to interrogate him concerning these papers. There is no objection to that, is there?

MR. MOSS: Well, I will see. I simply want to consider the matter, and, so far as he is concerned, we can reach him at any time, he is within reach, and, if you desire me to recall him, I will. I want to examine the papers before I had them to you.

MR. LEVY: Then, may it be understood that Mr. Haberman leaves the stand now, with the privilege remaining to me to continue my cross examination later?

THE COURT: Yes.

EUGENE J. GORMIE, of 569 Cortland Avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q What is your business, Mr. Gormie? A Driver.

Q For whom? A The Reliant Express Company.

Q At 785 Westchester Avenue? A Yes, sir.

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Q Now, Mr. Gornie, on the morning of the 3rd day of October last, at about nine o'clock, where were you? A On 163rd Street and Stebbins Avenue.

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

Q And in the Borough of the Bronx? A Yes, sir.

Q And did anything occur that attracted your attention, and, if so, what was it? A It was first the report of a pistol.

Q You heard a pistol shot? A Yes, sir.

Q Then what did you do? A I looked over the fence, but didn't run then.

Q You looked over a fence? A Yes, sir, just looked over the fence.

Q And towards what point did you look? A Towards Longwood Avenue.

BY THE COURT:

Q What avenue? A Longwood Avenue.

BY MR. MOSS:

Q Looking from what avenue? A Stebbins Avenue.

Q Well, what did you see? Wait a minute. Did you look in the direction from which you thought you heard the shot?

A Yes, sir.

Q And then what did you see? A I saw the young couple. Mrs. Nicodemus was standing ----

Q Do you mean this woman here (indicating)? A Yes, sir,

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standing on the west side of Stebbins Avenue.

Q And you say you saw a couple. Was the other person there a young man? A Yes, sir. And the deceased was standing about ten or fifteen feet east from Mrs. Nicodemus.

Q That is, there was a distance of about ten or fifteen feet between them? A Yes, sir. with his hands up-raised (illustrating).

Q With his hands up in the air? A Yes, sir.

Q As high as his head, or above his head? A Above his head. And then I seen smoke coming from the direction of Mrs. Nicodemus, going in the direction of Mr. Nicodemus, and I didn't run then, but I heard a second shot, and then I run.

Q And when you heard the second shot, were you looking? A yes, sir, I was looking at them.

Q And where did that second shot come from? A From the same person, Mrs. Nicodemus.

Q From Mrs. Nicodemus, it was? A Yes, sir.

Q And were they still the same distance apart? Or had their positions changed at all? A No, sir, the same distance.

Q And what time intervened between the two shots? A Two seconds.

Q Now, will you illustrate, by clapping your hands? A That way (illustrating).

Q And you say you saw who fired the second shot? A Yes, sir; and I run then, and run until I got within about 150 feet,

the second lamp-post, and stopped, and I seen the gun in Mrs. Nicodemus' hand.

Q A revolver? A A revolver; yes.

Q And did you hear any shots, besides those two? A No, sir; not until I started running again.

Q Not until you started running again? A No, sir. And I was running in the direction of Mr. Nicodemus, and then, as I got even with Mrs. Nicodemus, I heard a third report, and that, s the report she had shot herself with.

Q Yes. A Well, then, I run to Mr. Nicodemus.

Q Now, wait a minute. You heard just one more shot?

A Yes, sir.

Q How many did that make altogether? A Three.

Q Did you see that third one fired? A No, I didn't see it.

Q Your eyes were on Mr. Nicodemus? A Yes, sir, on Mr. Nicodemus.

Q Yes. Go on. A And I run to him, and I asked him what was the matter.

THE COURT: No.

A (Answer continued) And he pointed to Mrs. Nicodemus, saying that she shot him.

BY MR. MOSS:

Q How far apart were they then? A About 25 feet. And I asked him where, and he pointed to his wrist and side --- I

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don't know just which side --- the right side, I think.

Q You are now putting your hand on your abdomen. A Right about here (indicating).

THE COURT: Of course, this statement is not competent, but no objection is made.

MR. MOSS: Yes, I asked it as being in the presence of the defendant, but perhaps 25 feet is too great a distance.

MR. LEVY: There is no serious objection made to this, if your Honor please.

THE COURT: The first declaration, that the defendant shot him, is admissible as a spontaneous declaration, but the further conversation the witness had with the deceased, in the absence of the defendant, is not competent.

MR. LEVY: As I understand it, it does not go beyond the designation of the wound. Is that so, Mr. Moss?

MR. MOSS: Yes.

MR. LEVY: Then I have no objection to that, your Honor.

BY MR. MOSS:

Q Now, you pointed just now to the front of the abdomen, on the left side? A Right here (indicating).

Q Well, a little towards the side of the body? A Yes, sir.

Q But it was on the left side and in the line of the abdomen? A Yes, sir.

MR. LEVY: Mr. Moss, I wish you would not lead him.

MR. MOSS: I am not leading him, but just trying to ascertain what he indicates before the jury.

BY MR. MOSS:

Q What occurred then. You were speaking about the pistol being in her hand. Did anything occur with reference to the pistol? A As I say, as I was going towards Mr. Nicodemus, I heard the third report.

Q But, about the pistol itself? A Well, then, I ran towards Mrs. Nicodemus. In the meantime he had walked towards the corner, and I run to her, and she was falling back, and, just as she got to the fence, she fell on a fellow's knees; and, while going to Mrs. Nicodemus, I come across the gun. It was then ~~about~~ eight feet from Mrs. Nicodemus.

Q And do you know whether the gun which you came upon, about eight feet from Mrs. Nicodemus, was the same gun that you saw in her hand? A Yes.

Q Did anyone else have a revolver or pistol or gun on that occasion? A No, sir.

Q Only the one that you have spoken of? A Yes, sir.

Q And what did you do with that revolver? A I picked it up and put it in my pocket.

Q I know. But after that what ~~did~~ did you do with it?

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A I held it in my hand.

Q Yes. A And put it in my pocket.

Q And did you give it to anybody? A And I give it to the officer, when I got on the corner.

Q To Officer Bernstein, the officer you have seen in court? A Yes, sir.

Q Can you recognize the revolver, People's Exhibit 2 for Identification, showing you the pistol which has already been identified by Officer Bernstein? A Yes, sir.

Q Is that it (indicating)? A Yes, sir.

MR. MOSS: Referring to People's Exhibit 2 for Identification. You may examine. That having been in the sight of the jury, Mr. Levy, perhaps we had better offer it in evidence now, the witness and Officer Bernstein having identified it.

MR. LEVY: I have no objection whatever, Mr. Moss.

THE COURT: Received without objection.

(It is marked People's Exhibit 2 in evidence).

BY MR. MOSS:

Q Did you see what was in the revolver, did you examine its contents? A No, sir, I didn't look at it.

Q Well, now, what occurred after that? A Well, then, a crowd gathered, and a wagon come and anchored right there.

Q A wagon anchored there? You mean a wagon stopped there; don't you? A Yes, a plumber's wagon. And I asked

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for the driver, and the driver was in the crowd, and he wouldn't answer, and so we put her on the wagon, any how, and drove up ---

Q And what became of Nicodemus? A He was up at the corner.

Q He ~~walk~~ had walked up to the corner? A Yes, sir. And we drove up as far as the corner. Coming towards us was Mr. Nicodemus and Officer Harry Bernstein and his brother, and he put Mr. Nicodemus up on the wagon also and we started going but the horse wouldn't go, he refused, and Mr. Officer Harry Bernstein, seeing another wagon coming up, changed the bodies into this other wagon, and, when I got on the corner, then I give him the gun. We put the two bodies in the new wagon, and Mr. Officer Harry Bernstein got on and George and myself and another fellow --- he was here as a witness --- and we drove off to the hospital.

MR. MOSS: You may cross examine.

CROSS EXAMINATION BY MR. LEVY:

Q Did I understand you to say that you only heard three shots fired? A Yes, sir.

Q Now, before we take up what you did see, I want you to tell me just at what spot you were standing when your attention was first attracted by the sound of a shot? A 163rd Street and Seventh Avenue.

Q Well, maybe you can tell us by looking at this diagram, Now, this purports to be a diagram of that scene, Mr. Gornie. You see this is Seventh Avenue, and this is Dorson Street, and this is Longwood Avenue (indicating) and down here is Hewitt Place, and these are vacant lots, with a rail fence on either side. Is that diagram clear to your mind now? A Yes, sir.

Q Now, will you please indicate on this diagram, just the spot that you were standing at the time that you heard the shot which attracted your attention. Take my pencil, and indicate it on the diagram. Remember that this is Stebbins Avenue (indicating), and this is the east side and this is the west side. Is that clear in your mind? Now, look at it closely, so that you will make no mistake about that. A Is that a lamp-post (indicating)?

Q Yes. And there is another lamp-post (indicating). There is the first one, near Dawson Street, and there is another one on the opposite side of the street, and here are two or three or four more (indicating). A I was standing at 163rd Street and Seventh Avenue, right here (indicating).

Q Well, now, on which side of the street; east or west side of the street? A On the west side.

Q On the sidewalk? A Yes, sir, on the sidewalk.

Q Now, will you take this pencil please, and put a "G" to indicate the spot that you were standing on, when your attention was first attracted by the sound of the shot? Is

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that clear to you? A Yes, sir.

Q Now, take the pencil, and mark the letter "G" wherever it happened, according to your best idea. No, that's the street, that's outside of the curb. Within that enclosure is the sidewalk (illustrating). Then, we will rub that out.

A Here (indicating).

Q Then that is where you were standing? A Yes, sir.

Q That is the difference of the entire block to Dawson Street; isn't it? A Yes, sir.

MR. LEVY: This witness indicates, gentlemen, the distance of an entire block from Dawson Street.

THE FOREMAN: Now, pardon me, Mr. Levy, but what is the length of that block, approximately? Some of those blocks up there are abnormally large.

MR. LEVY: Yes, we will measure it. I will borrow a rule from the Clerk, and measure it, or one of you gentlemen may measure it.

THE SECOND JUROR: I will measure it. I am accustomed to that sort of thing.

(The second juror measures).

THE SECOND JUROR: It's about three feet, or according to the scale of the diagram, about 300 feet.

MR. MOSS: Then, roughly speaking, it is the distance or length of an ordinary city block?

MR. LEVY: Yes.

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THE SIXTH JUROR: No, sir; it's about 900 feet. May I see that diagram?

MR. LEVY: Yes, that is so; it's drawn to the scale of an inch for every twenty-five feet, and that would be 36 times 25 feet.

THE SIXTH JUROR: Let me have the rule, and I will measure it. It's about 900 feet.

BY MR. LEVY:

Q Now, in order that this diagram may be properly understood, Mr. Gornie, I direct your attention to the fact that Dawson Street cuts off in a sort of angle, does it not to the south? A Yes, sir.

Q Now, if you stood on the sidewalk, on the corner of Westchester Avenue and Stebbins Avenue, and the deceased was on the corner of Longwood Avenue and Dawson Street, you would have to look across the lots in order to see him; wouldn't you? A No. When I stood at 163rd Street and Stebbins Avenue, he was near this second lamp-post (indicating).

MR. LEVY: The witness points to that which is marked "L.P." for lamp-post, in the middle of the diagram.

BY MR. LEVY:

Q Then when you first saw the deceased, <sup>he was</sup> in the middle of the block; do you mean that? A Yes, sir.

Q And in which direction was he facing? A Facing west

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of Stebbins Avenue.

MR. LEVY: I think we had better mark that exhibit with the letter "N".

BY MR. LEVY:

Q Do you say he was at this lamp-post; is that right?

A Yes, sir.

Q Shall I put an "N" there? A Yes, sir.

Q This is the spot where you first saw him? A Yes, sir.

Q And looking west? A Yes, sir.

MR. LEVY: It is my duty to show this to the jury again, your Honor. When the witness first saw the deceased, gentlemen, he says he was at that spot, marked by the letter "N", looking west, practically the middle of the block.

BY MR. LEVY:

Q Now, when he walked away, after you say he had been shot, in which direction did he walk? A Going up (indicating).

Q Towards Dawson Street? A Yes, sir, towards Dawson Street.

Q And when the wagon came along, was Mrs. Nicodemus, the defendant, lying on the ground, the first wagon? A She was on the fellow's knees.

Q On his knees? A Yes, sir.

Q And at what spot was she there? A She was on the west side of Seventh Avenue, right close to the fence.

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Q On the same side where the letter "N" has been marked, at which you saw the defendant Nicodemus; is it? A Yes, but west to him.

Q About how many feet west of him? A About eight feet.

Q Now, let's see. We will assume that this is Nicodemus, and she, Mrs. Nicodemus, was in front of you (indicating)?

A Yes, sir.

Q About five feet from him? A About eight feet.

Q Nearer to the fence? A Right close to the fence.

Q Right close to the fence? A Yes, sir.

(Mr. Levy shows the diagram to the jury).

BY MR. JURY:

Q Now, then, where was it that you saw Officer Bernstein?

A I saw him coming ---

Q Coming on a run? A No. Walking with Mr. Nicodemus, going towards where it had happened, but we met him and he stopped there, up here in Dawson Street --- well, about this lamp-post (indicating).

Q Now, he stopped at this lamp-post (indicating)?

A Yes, sir.

Q Bernstein? A Yes, sir.

Q Is that right? A Yes, sir.

Q With Nicodemus? A Yes, sir.

Q Now, where was the wagon? A The body of Mrs. Nicodemus was then on the plumber's wagon, driving towards Dawson Street,

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when we met Mr. Officer Harry Bernstein, and Mr. Nicodemus, coming in our direction. We had gone about as far as this lamp post when he stopped us (indicating).

Q Now, as I understand it, the officer took no part in the placing of the body of Mrs. Nicodemus in the first wagon?

A No, sir.

Q That was done by whom? A I did it.

Q Alone? A And the other witness; I don't know his name.

Q One of the other witnesses? A Yes, sir; Harry Schacht, I think it is.

MR. MOSS: Yes, Harry Schacht.

BY MR. LEVY:

Q There was no other policeman in sight? A No, sir.

Q And on your way down to Dawson Street you met the officer? A Yes, sir.

Q And was the body of Mrs. Nicodemus put in the wagon then? A No, sir, she was in the wagon then, and Mr. Nicodemus was with Mr. Harry Bernstein, the officer, on the sidewalk, and then he had put Mr. Nicodemus on the seat of the wagon, and he got on, and drove off as far as the corner of Dawson Street, here, and Seventh Avenue (indicating).

Q Now, just at that point. Was the deceased able to climb on the wagon, unassisted, or was he assisted by anybody?

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A He was assisted by the officer.

Q And sat with the driver? A Yes, sir.

Q On the front seat? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Now, was that a covered wagon? A No, open.

Q Open? A Yes, sir.

Q In what condition was Mrs. Nicodemus lying in the wagon? A Laying flat on her back.

THE COURT: We will suspend here.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock).

## After Recess.

EUGENE J. GORNIE, his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. LEVY:

Q Mr. Gornie, it becomes important to know how far away you were from Mrs. Nicodemus, the defendant, when your attention was first attracted to her. Now can you give an idea as to that? A About half a block.

Q Half a block? A Yes, sir.

Q Well, you know that's a very large block, that they measure it at about 900 feet, and you would say about 400 or 450 feet from where you were standing; would you? A About 450 feet.

Q What? A About 450 feet.

Q About 450 feet? A Yes, sir.

Q Now, at the time you first heard the shot, what were you doing there? A I was talking.

Q To whom? A To a girl friend.

Q A girl friend? A Yes, sir.

Q And then she must have seen what you saw? A She had just left me as I started running, she crossed the street.

Q Not in the direction in which Mr. and Mrs. Nicodemus were? A No, sir.

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Q But in another direction? A Yes, sir.

Q And as she left you, you heard the report of a shot?

A Yes, sir.

Q And immediately you turned your head? A Yes, sir.

Q In the direction from which the sound came; is that right? A Yes, sir.

Q Now, what was the very first thing that you saw, what was it that met your eye, as you turned in the direction from whence the report came? A Smoke.

Q Smoke? A Yes, sir.

Q And didn't you see a figure, a human being? A Mr. Nicodemus' hands up. (Illustrating)

Q Well, you saw a figure there? A Yes, sir.

Q One or more? Two, wasn't it? A Yes, sir.

Q Now, Mr. Gornie, will you describe please, what it was that met your view, called your attention, at that instant? That becomes very important, <sup>please</sup> and/try to be as accurate in detail as you can remember? A Well, I was standing there at that hour, that early hour, when that report came, and that report didn't sound right.

Q What? A Didn't sound proper, so early in the morning. And, turning, I saw Mr. Frank Nicodemus, kind of run back,

Q Backwards? Or run with his face in the direction which he was running? A He turned.

Q Well, that's what I want to get at. He turned what

way? In other words, I want to get from you--- and this is really not cross examination, but it is merely to get from you what you saw, Mr. Gornie, because you have no interest in this case, and, therefore, you can tell us exactly what took place, without any interest --- you heard a report; that was the first thing? A Yes, sir.

Q Now, then, tell these 12 gentlemen here, what is the very first thing that you saw. You heard a report and turned around and looked. Now, what did you see? A Just as I heard the report, I turned, and looked, and saw the hands of Mr. Nicodemus up above his head (illustrating), and smoke going going to the direction of Mr. Nicodemus, and then I knew right away that there was something funny.

Q Oh, no, leave out what you knew right away, and only tell us what you saw. Did you see the figure of the defendant at the same time, of this young woman (indicating the defendant)? A Yes, sir.

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

Q And was she facing Nicodemus? A Yes, sir.

Q And they were at a distance from each other of what?

A Eight feet, about.

Q Well, give me an idea. Are you good at measurements and distances? Well, whether you are or not, just give me an idea how far they were from each other. You tell me where

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to go to, when I walk away from you. Now, suppose you are Nicodemus and I am Mrs. Nicodemus, for the purpose of this illustration. A yes.

Q Now, tell me how far back from you I should go, so as to illustrate the distance that she was from him, and he was from his wife? A As far back as that table, (indicating the counsel table).

Q As far back as here (indicating)? A No, a little further.

Q Back as far as this table (indicating the counsel table)? A Yes, sir.

Q And you say she was facing him? A Yes, sir.

Q And he was facing her? A Yes, sir.

Q And his hands were up? A Yes, sir.

Q Is that right? A Yes, sir, (illustrating).

Q You didn't see him raise his hands? A No; his hands were up.

Q His hands were up when you got the first view of him; is that right? A Yes, sir.

Q And how high up were his hands? This way (illustrating)? A Yes, sir.

Q This way, as high up as that (illustrating)? A Yes, sir.

Q And at the same time, could your eye take in the position that she was in, or were your eyes centered upon him, and

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not upon her? A On both.

Q You could see both of them? A Yes, sir.

Q At the same time? A Yes, sir.

Q Now, what was her attitude or position at that time?

Take your time about it now, and don't hurry yourself, and just give me your best present recollection? A Can I stand up to show it to you?

Q Yes, you can illustrate that way. A Now, that's Mrs. Nicodemus, and this is Mr. Nicodemus (indicating).

Q Oh, you are the woman? A Yes, sir.

Q All right. A And you are Mr. Nicodemus.

Q And my hands are up like this (illustrating)?

A Yes; but I didn't see her hand up, though.

Q You didn't see her raise her hand? A No, sir.

Q Or point any pistol? A No, sir; not at the first shot.

Q Well, I'm talking of the first shot. You didn't see the aiming of any pistol? A No, sir.

Q All that you saw was smoke? A Yes; coming from her direction.

Q And you can't say whether the pistol was turned to herself or outward (illustrating)? A Oh, yes, I could.

Q One moment. Did you see the direction in which the pistol was pointed --- you saw no pistol at that time; did you?

A No, sir.

Q And you couldn't see in which direction the pistol was pointed, if there was a pistol; could you? A Why, no.

Q You couldn't? A No, sir.

Q You must remember, Mr. Gornie, you are to testify to what you saw, and not to what you believe would be the natural things to happen --- just what you saw? A Yes, sir.

Q And it is for the jury really to say what happened?

A Yes, sir.

THE COURT: Is the other question withdrawn?

MR. LEVY: Yes, the other question is withdrawn.

BY MR. LEVY:

Q Now, Mr. Gornie, you didn't see a pistol pointed at all? Let me get that clear on the record. Did you see at the first shot, a pistol pointed at any person? A No, sir.

Q Nor, in fact, did you see any pistol? A Yes.

Q At the first time, at the first shot, I mean? A No, not at the first time.

Q Well, we will get to the other part of it later. I'm talking now of the first time. Now, are you prepared to say but that the first shot, to say whether or not the first shot was not directed by the defendant against herself, or whether it was directed against her husband? Do you understand me?

A Yes.

Q Now, can you say one way or the other? A No, sir.

Q You can't? A No, sir.

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Q Now, as matter of fact, it appears --- it will appear, if it has not already appeared --- that there were four shots fired?

MR. MOSS: I object to that statement. There is no testimony before the Court to that effect.

THE COURT: Is the question completed?

MR. LEVY: No, sir, it is not completed.

MR. MOSS: Then I object to the statement.

MR. LEVY: And, if I make a misstatement, please correct me. You know you showed me four empty cartridges.

MR. MOSS: But the evidence doesn't disclose that four shots were fired. In other words, because there happened to be four empty cartridges, that does not necessarily prove that there four shots fired at that time. The only evidence from this witness, thus far, is that he heard three shots.

MR. LEVY: And that's the object of my present interrogation, to ascertain how many shots were fired.

BY MR. LEVY:

Q Now, you are sure that you heard only three shots?

A Yes, sir.

Q When you spoke about seeing smoke, that smoke ascended -- did it go up in the air? A No, sir; it was going out (illustrating).

Q Going outward? A Yes, sir.

Q Away from the defendant? A From Mrs. Nicodemus, yes.

Q And that is the smoke that you saw immediately after the first shot that you heard; is that right? A Yes, sir.

Q The next shot that you heard was in what time, how long after the first shot? A Three seconds.

Q Well, you are not accurate as to time; are you? They followed each other with rapidity; didn't they? A Yes, sir.

MR. LEVY: Now, let me take the revolver, if you please, Mr. Moss.

BY MR. LEVY:

Q Now, have you ever shot off a gun? A Yes, sir.

Q Now, that is empty; you need not be afraid. But point it down, just the same. Now, stand up, and illustrate to these twelve gentlemen the difference in time between the first and second shots that you heard. Do you know what I mean? Now, hold it down. I don't want to be a victim of "I thought it was unloaded." You illustrated to Mr. Moss by the clapping of your hands the difference in time. Now, I want to get that illustrated by means of this weapon, the same thing. Now, the first shot? A (The witness snaps the revolver).

Q Now, the second shot? A (The witness snaps the revolver).

Q So that they followed each other immediately; did they not? A Yes.

Q All right. Sit down again, please. So they followed each other immediately, didn't they? A Yes, sir.

Q And then there came a third shot? A No, sir.

Q Didn't you hear a third shot? The third shot was the one that you didn't see fired, wasn't it? You said you heard three shots? A Yes, but not immediately.

Q Don't you understand me, Gornie? A I understand you.

Q Well, when was the third shot fired? A About ten seconds afterwards.

Q Well, now, then, the first two shots that you heard were like that (indicating by snapping the pistol). Now, how long after that was the third shot fired? Now, stand up and illustrate, and point it down, please. A (The witness snaps the pistol twice, and, after a short interval of time, snaps it again.)

MR. LEVY: Well, that's hardly ten seconds.

MR. BOSS: Well, you must remember, Mr. Levy, that when witnesses are testifying the time seems long to them.

MR. LEVY: Yes, that is true. And your Honor recalls one occasion, I think, when I asked a witness to indicate the time that elapsed, and there was a clock on the wall behind me, and I turned suddenly and saw that his eyes were on the clock.

BY R. LEVY:

Q Now, when the third shot was fired, did you see the pistol? A Yes, sir.

Q In whose hands was it? A Mrs. Nicodemus.

Q Well, in which direction was it pointed? A Well, I could show it to you, if you would hand me the gun.

Q Take it, and illustrate. But point it down. A That way (illustrating).

Q Well, was it pointed at the deceased? A No, sir.

Q Was it pointed at her breast? A No, sir; just exactly like that (illustrating).

MR. MOSS: For the sake of the record, the witness turns his head, and the revolver is in a position across the front of the body.

MR. LEVY: That's right.

BY MR. LEVY:

Q And are you sure that she didn't point it at herself?

A No, sir.

Q Did you see the --- well, as far as you could hear ball the explosion of the, of the cartridge, I mean, did you see the fire or smoke coming from the weapon? A Smoke.

Q And in which direction did the smoke come? I am talking now of the third shot? A Coming right up (witness raises his hands towards his face).

Q And did you see anything go outward from the pistol?

A No, sir.

Q So that that shot differed from the first shot that you heard? A Yes, sir.

Q Or, rather, that you saw. In other words, the smoke didn't go outwardly? A No, sir.

Q Or, rather, from the weapon? A No, sir.

Q But went up? A Yes, sir, went up.

Q Now, after matter of fact, were you in such a position that you could see the front part of the body of the defendant at the time of the shooting of the third shot, or were you looking toward her back, or were you on her side, so that you could not see which way the pistol was pointed? A Well, I have to explain that in some way.

Q Well, take your time and think about it. You have got to tell these gentlemen what you saw, and don't hurry yourself, but explain it according to your best recollection.

A Will you turn that way (illustrating)?

Q Why, certainly. Put me in any position you desire. You were there, and we were not, and you have got to make it clear to us by a sort of picture what you saw. Now, what are you? Are you the man or the woman? A I am Mr. Frank Nicodemo.

Q You are the man? A Yes, sir.

Q And I am supposed to be the woman? A Yes, sir.

Q Now, put me in any position that you want? A Turn



around a little more. Exactly like you are now.

Q As I am now? A Yes, sir.

Q Then she wasn't facing him? A She was facing him.

Q But you are supposed to be the man? A I am myself.

I seen her while she was standing when she shot.

Q That's what I want you to tell us. How was she standing when she shot this pistol off, the third time. We are speaking now of the third shot. A That way, just the way I am standing now (illustrating).

Q I want you to show the positions of both Mr. Nicodemus and Mrs. Nicodemus. Now, what am I to be? A Mrs. Nicodemus.

Q And you are the man? A Yes, sir.

Q Now, show me the position in which she stood, and how he stood, and where you stood at the time of the firing of the third shot? A Like that way. (Illustrating)

Q Now, put yourself as he stood. A (The witness illustrates by holding his hands up).

Q Face to face; weren't they? A No, no; on the side. She was that way, right on the side, that way (illustrating by putting Mr. Levy in a position).

Q I think it would be better to illustrate this. Now, if you make yourself for the purpose of this illustration, the woman, and if you take the gun, and put me in the position that Nicodemus stood. A Then stand over here (indicating).

Q Over here? A Yes, sir.

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BY THE FOREMAN: Now, you had better take one of the officers, and that will help him.

BY MR. LEVY:

Q Now, put me in the position that Mr. Nicodemus was standing in, and then you assume the attitude of Mrs. Nicodemus, and the crier of the court here will be you? A Well, I am Nicodemus.

Q And I am the woman? A Yes, sir.

Q So that really the weapon was pointed to where you were standing? A Yes, sir.

Q And not towards Mr. Nicodemus? A Yes.

Q Now, are you sure that weapon was not directed towards the woman's own breast? A No, sir.

Q And when you heard the shot go off, your eye was fixed on the weapon, was it or was it not? A I saw it for a second, and my eyes were set on Mr. Nicodemus.

Q But it wasn't pointed at Nicodemus? A No, sir.

BY THE COURT:

Q At the time that you saw the defendant holding the revolver in the position that you now hold it, did you then hear the report of a pistol? A No, sir.

BY MR. LEVY:

Q Well, how long after she held it in that position did you hear the report? A About three seconds.

Q Well, did you see the position that the pistol was

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directed at the time of the explosion? A No, sir.

Q So that you don't know how it was pointed? A No, sir.

Q It might have been shifted in its position in that few seconds; it might have been shifted in its position in those few seconds; is that right? A Yes, sir.

Q Did you get an opportunity, while the woman was holding the weapon, to look at her, to look at her face? A No, sir.

Q Why? A Because I ran right to Mr. Nicodemus.

Q Why did you run to him? He didn't fall; did he?

A Naturally a man would run to a man.

Q Naturally a man would run to a man? A Yes.

Q You didn't see him fall? A No, sir.

Q You didn't see him stagger? A No, sir.

Q He stood erect all the time? A Yes, sir.

Q Did you see him drop his hands? A I heard him hollering, and he held his hands up all the time (illustrating).

Q When you say hollering, could you tell us anything that he hollered? A Yes; "help, help".

Q "Help, help"? A Yes, sir.

Q Well, did you see him drop his hands? A No, sir.

Q Now, when you started to run to him, you were away from him how far? A Well, I'll say about from here to that middle door there (indicating the side door of the courtroom).

MR. LEVY: I take it that cannot be more than thirty

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or forty feet, Mr. Moss?

MR. MOSS: About thirty-five feet, I should say.

It is just an estimate.

BY MR. LEVY:

Q According to the measurement of the diagram which is in evidence, and which you have marked, it would show that you were 450 feet away. How do you explain that?

MR. MOSS: Haven't you omitted something in that question, Mr. Levy?

BY MR. LEVY:

Q How about that, Mr. Gornie? A Well, that 400 feet is from 153rd Street to where I stopped running. I ran at the second shot, and stopped within 35 feet of Mr. Nicodemus.

Q Well, you don't mean to say that you could run a distance of 300 feet, taking the 150 feet off, if you like; that you could run that in one second? You would have to be a pretty good sprinter to do that. A Well, I did some running.

Q Now, you have measured off the time between the first and second shots, and I want to be very frank with you, Mr. Gornie. The object of these questions is not to mix you at all, but to show the impossibility of the human eye seeing these things with accuracy. In the first place, you were excited; in the second place, you were running; and in the third place, the thing happened so quickly that it was impossible for the human eye to see it all. After the first

shot you ~~ran~~, you say? A No, sir, I ran after the second shot.

Q Now, there, for instance, is the first shot (illustrating by clapping his hands)? A Yes, sir.

Q And there is the second shot (illustrating as before)? A Yes, sir.

Q And you started to run? A Yes, sir.

Q And you ran as fast as you were running? A Yes, sir.

Q Now, was it possible for you to run 300 feet or more before you heard the third shot? To be fair with you, you said it took about ten seconds between the second and third shots? A Yes, sir.

Q Could you run that distance in that time? A I don't know.

Q You don't know? A No.

Q Well, you were pretty excited; weren't you? A Yes.

Q And nervous, naturally? A Yes, sir.

Q And I want you, now, if you please, without wasting any more time about that, to get to what you did see. When you got the nearest to the actors in that tragedy, the first person that you got to in that unfortunate thing was the woman, wasn't it? (No answer)

Q You were nearest her first? A Yes, sir.

Q And you saw her sink down on ~~her~~ the knees of someone;

is that right? A Yes, sir.

Q And who was the person upon whose knees she sank?

A Sarcot.

Q One of the witnesses here? A Yes, sir.

Q Is he here? A Yes, sir.

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

Q Yes, he is here.

BY MR. LEVY:

Q And when you say upon his knees, was he seated or how, or was he crouched down? A Like that (illustrating).

Q Oh, what you mean is, as she sank down, he put himself in such a position as to receive her sinking body? A Yes, sir.

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

Q I see. Did you notice her face then? A Yes, sir.

Q Now, won't you tell the jury what you observed about her appearance, about her face, then, at that moment? A Well, all I could see was her hat was falling; it was on one side. (Illustrating)

Q Yes. A And her pocketbook was just leaving her hand (illustrating).

Q Yes. A That's all.

Q Well, now, you haven't described her face to me. I can't understand you. I must not suggest.

MR. BOSS: It is cross examination. You may lead him, Mr. Levy.

BY MR. LEVY:

Q Was she pale, was she trembling, were her eyes fixed?

A Staring.

Q Were they wide open? Just describe to me what you saw about her face. Her eyes, first? A Her eyes were staring.

Q Well, what does she tell me anything? A Rolling from one side to the other.

Q Are you sure about that? A Yes, sir.

Q You could see the whites of her eyes? A Yes, sir.

Q Which wasn't natural, was it? A No, sir. And meaning.

Q Yes, we'll get to that in a moment. Rolling from side to side, and you saw the whites of her eyes? A Yes, sir.

Q Did they seem to have a staring look to you? A Yes, sir.

Q Tell us that. Now, take your time about this. It is quite important, because we must know how this woman looked and acted upon that occasion. A (No answer)

Q Now, take your time about it. A I can't do it.

MR. ROSS: You have asked him to do what is impossible for a very wise man, sometimes, Mr. Levy.

BY MR. LEVY:

Q Well, we have it now that her eyes were rolling from side to side? A Yes, sir.

Q And the whites of the eyes you saw? A Yes, sir.

Q Now, don't be nervous about it, but just describe it.

A (No answer)

Q Well, illustrate, if you can't describe it in words.

A That way (illustrating with his eyes rolling from side to side).

Q Now, you have some kind of a description of the woman at that time. You noticed her eyes, you say, as you have just illustrated. A Yes, sir.

Q And her complexion, was it pale or red? A Pale.

Q Was she trembling? A No.

Q Now, you said something about moaning. Now, can you describe that any better? A Yes; I heard, "Ah, <sup>ah,</sup> ah", about three times.

Q "Ah"? A Yes, sir.

Q Well, when she sank into the man's lap did she seem to you to be conscious or unconscious? A Unconscious.

Q Unconscious? A Yes, sir.

Q How close to her did you get at that time? A This was all after I left Mr. Nicodemus.

Q You seem to say that you had gone away with Nicodemus three, and come back again? A Yes, sir, but it wasn't five minutes altogether.

Q In a very quick? A Yes, sir.



Q Things happened with such rapidity? A Yes, sir.

Q Now, did you get the odor of anything? A Yes.

Q Well, what did you detect the odor of? A Smoke.

Q Yes. Carbolic? A Yes.

Q You detected the odor of carbolic acid? A Yes, sir.

Q And where did the odor of the carbolic acid come from?

Which direction did it come from? A (No answer)

Q From the woman? A I know that.

Q Well, what do you know about that? A Because I burned myself.

Q Well, that's what I want, and what I am trying to get you to tell this jury.

MR. MOSS: No, you didn't ask that.

MR. LEVY: Well, I was afraid of leading.

MR. MOSS: You needn't be afraid of that, because I have told you you may lead. You have that right in cross-examination.

BY MR. LEVY:

Q Now, tell us about that. A Well, when I was lifting her off the sidewalk, and putting her on the wagon, why, when I got on the wagon, I started feeling itchy here (indicating the left wrist).

Q On the wrist? A Yes. And it's there yet (indicating). And, when I got to the hospital, some one says, "She

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had a bottle with her", and then I knew right away it was carbolic.

Q Well, aside from anything that was said, did you smell it? A Yes, sir.

Q You knew the odor of carbolic acid, don't you? A Yes, sir.

Q A drop of it got on you? A Yes, sir.

Q And where did the drop drop from that got on you; from her body? A I had my hand here on her back (illustrating).

Q Around her waist you mean? A Yes, sir.

Q Supporting her? A Yes, sir.

Q And did you feel any fluid, or any dampness? A No, sir.

Q Did that burn you? A Yes, sir.

Q It didn't leave any permanent scar or anything like that? A Certainly it did. I have got it here yet (indicating).

Q You have got it here yet? A Yes, sir.

Q And you jumped into the wagon with the other boys, helping the officer? A What wagon?

Q Which one? A The first one that came up, there was only two of us.

Q That was a butcher's wagon? A No, a plumber's wagon.

Q And the horse was restive? A Yes; he wouldn't go any further than Longwood Avenue.

Q And when you got there, what happened? A I met Officer Bernstein and Nicodemus.

Q You met Officer Bernstein and Nicodemus? A Yes, sir.

Q Now, that brings me to this question. Did you see any other person around there, outside of yourself, Schact, if that is his name --- A Yes, that's his name.

Q And the young man on whose lap she sat? A Yes, sir.

Q Who else did you see there? A George Nicodemus.

Q The brother of the deceased? A Yes, sir.

Q And at what particular spot was it that you saw him for the first time? A Loading Mr. Nicodemus towards Longwood Avenue.

Q Away from the wagon or towards the wagon? A (No answer)

Q Was he loading him away from the wagon or towards the wagon? A Away from where this thing had taken place.

Q What was the next thing that happened? A Well,

Q Well, he turned back; didn't he? Didn't George Nicodemus turn back with his brother? A No, sir.

Q Well, go on then and tell me. A Well, Officer

Harry Bernstein had charge of Nicodemus, and we put Mrs. Nicodemus on the plumber's wagon.

Q Well, what I want to find out -- do you understand me? Have you finished? A And Mr. Bernstein got on the wagon also, and the horse wouldn't go, and then we changed the bodies, and put them in a butcher's wagon.

Q Yes, that I know. But what I want to get at is this: The brother, George Nicodemus, at any time was he near the scene of the shooting? A (No answer).

Q The spot of the shooting? That's what I want to find out. A The only time I saw him was when he was leading his brother away from the accident, where it happened.

Q And that was on Longwood Avenue? A Going towards Longwood Avenue. It was on Stebbins Avenue.

Q Stebbins Avenue? A Yes, sir.

Q How far from Longwood Avenue? A About 45 feet from where it had taken place.

Q About 45 feet from where the shooting had taken place? A Yes, sir, leading his brother.

Q And I want to know when you first saw the brother George? A That's the only place I saw him.

Q Now, <sup>was</sup> it the distance of the length of this room, when you say it was 45 feet? A Yes, sir.

Q Or longer? A About the distance of this room, the length of this room.

MR. LEVY: I think that is about 45 feet.

THE FOREMAN: No, more; about sixty feet.

BY MR. LEVY:

Q Well, that was about the distance when you first saw the brother George leading his brother, the deceased? A Yes, sir.

Q When you lifted the woman into the plumber's wagon, which was the first wagon, was she conscious or unconscious?

A Unconscious.

Q Did you make any effort to speak to her? A No, sir.

Q Did you shake her or move her? A No, sir.

Q And when she was put in the wagon in what position was she put? I am talking of the plumber's wagon? A Flat on her back.

Q Speak up, speak up. A Flat on her back.

Q Did you notice whether her hands were open or clenched? A I didn't notice that; no, sir.

Q Did you see the revolver drop out of her hand?

A No, sir.

Q When she was lifted out of the plumber's wagon, and put into the butcher's wagon, was that a covered or an open wagon? A An open wagon.

Q And was the first one covered? A The first one was

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open, and the butcher wagon was covered, the second wagon, I mean.

Q In what position was she placed in that wagon, that second wagon? A The same way.

Q And who lifted her into that wagon? A I and Officer Bernstein and Samuel.

Q And was she conscious or unconscious when she was put in the second wagon? A Well, it appeared to me she was unconscious.

Q She appeared to you to be unconscious? A Yes, sir.

Q Did you look at her face? A Yes, sir.

Q You were in the wagon with her? A Yes, sir.

Q Now, tell me the appearance of her face when you put her in the second wagon, and while she was in the second wagon. Do the best you can? A Her face was to one side (illustrating).

Q Her face was twisted to one side, you mean? A Yes, sir, and all pale.

Q And her mouth, was it closed or open? A Closed.

Q Was she foaming at the mouth? A No, sir.

Q Stop a moment, and think now. Was there any foam coming from her mouth? A No, sir, I didn't notice that.

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

Q Now, you say her mouth was closed? A Yes, sir.

Q Did it seem to you that her teeth were clenched?

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A It seems to me as though they were.

Q Her teeth were clenched together? A Yes, sir.

Q Right? A Yes, sir.

Q She had clenched teeth? A Yes, sir.

Q And when she moaned she moaned through her teeth?

A She didn't moan on the wagon.

Q She didn't moan on the wagon? A No, sir.

Q Well, did she say anything on the wagon? A No, sir.

Q Did she say anything like, "Oh, Frank, oh, Frank"?

A Yes, sir.

Q That's what I want to get at, my boy. Did she do

so? A Yes, sir.

Q And when she said that she moaned, "Oh, Frank, oh, Frank"? A Yes, sir. She moaned after we had put her in the second wagon.

Q Now, when you put her in the second wagon were her eyes open or closed? A I didn't notice.

Q Well, didn't you --- you helped lift her up --- didn't you tell me whether her eyes were open or closed?

A Well, I didn't look at her face all the time there.

Q And you don't know whether her eyes were open or closed? A No, sir.

Q That's the best testimony you can give, is that a subject? A Yes, sir.

Q Now, did you, as matter of fact, see anything

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time while she was on the wagon with her eyes open? A (No answer)

Q Think about that. Did you see her while she was on the second wagon at any time with her eyes open? A Yes.

Q When? How far had you gone? A We had gone about two blocks.

Q And then what happened? A She looked up on the seat, looked up ahead, and she saw ---

Q She must have opened her eyes then to do that?  
A Yes. And she saw Mr. Nicodemus sitting on the seat, and hollered, "Oh, Frank".

Q Well, in order to see him sitting on the seat, she would have to look backwards; wouldn't she? Her head was towards him and she was lying flat on the wagon, and he was seated up with the driver; wasn't he? A Yes, sir.

Q And then, in order to see him, she would have had to look through the back of her head; wouldn't she? A (No answer.

Q Now, go back to that, and think whether it was seeing him that made her say that, or whether it came from her imagination, she prompting to say that? The back of her head was towards him; wasn't it? A Yes. But I'll tell you how that came about. I asked Mr. Frank Nicodemus who she was, and he said, "She's my wife", and immediately after

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that she said, "Oh, Frank, oh, Frank".

Q Well, you don't know whether she understood you or not, what you said? A Well, it looked to me like she did.

Q Well, but she could only hear his voice; couldn't she? A Yes, but she looked up there.

Q No. Wasn't she looking up towards the top of the wagon? A (No answer)

Q Now, let me make myself clear. Perhaps you don't understand me. A I understand you.

Q Now, just let me ask you this. She was placed on the flat of her back, with her head towards the front of the wagon? A Yes, sir.

Q And her husband was seated on the driver's seat in front; isn't that right? A Yes, sir.

Q And he was seated at an elevation above the flooring on which she was lying; isn't that right? A Yes, sir.

Q Now, in order to see a person in front of her, she would have to turn her head? A Yes, sir.

Q And how could she have possibly seen a person seated upon the seat in front and above her, without turning her head? A Well, her head was turned all the time (illustrating).

Q I want to make clear what I mean. Her head was

partly turned to the side? A Yes, sir.

Q Now, Officer Bernstein has testified that, in order to see who it was seated upon the driver's seat, if she wanted to see him, she would have to stand up, and turn around and look. Now, that is the object of my question, and I want to get your version of it. Is he right about that?

THE COURT: Well, he cannot characterize the witness's testimony.

BY MR. LEVY:

Q Well, what I mean is, what do you say about that?

A Well, I think he's right.

Q You think he is right? A Yes, sir.

Q That she could not have seen him unless she stood up and turned around? That's what he swore to. Now, what do you say about that? Take your time and think about it.

A Well, her eyes were cast upward, I know.

Q Yes, her eyes were fixed upon the ceiling, or, rather, the covering on the top of the wagon. That's what you mean; isn't it? Now, was it possible for the woman to have seen a person, whoever he was, who sat on the driver's seat, without getting up and turning around? A Well, it wasn't impossible.

Q It wasn't what? I don't hear you. A It wasn't

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impossible.

Q "It could have been done? A Yes, sir.

Q That's what you mean. A (No answer)

Q What do you think about it now? Give us your own version of it, in your own way, your own view. A Well, I think you are right. I think she would have to get up and turn around to see him sitting there.

Q So that you agree with the officer? A Yes, sir.

Q That it would be impossible for a person lying in the position that the defendant was lying, to see anybody sitting on the driver's seat, unless she got up and turned around? A Yes, sir.

Q That's right; isn't it? A Yes, sir.

Q But the man did speak; his voice was heard? A Yes, sir.

Q And then she moaned, "Oh, Frank, oh, Frank"?

A Yes, sir.

Q Now, when she was looking up towards the roof of that covering --- the roof of that wagon --- did you notice her eyes? A Yes, sir.

Q Well, now, won't you tell me what you observed about the eyes while she was looking up? A They rolled the same way as I said before, one side to the other.

Q Rolling around all the time? A From one side to the other; and that was all.

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Q All the time? A No, sir; just for that time (snapping his fingers).

Q Only for a second? A Yes, sir.

Q It was only when she heard his voice, if she did hear it, that she opened her eyes, and rolled them around, and said, "Oh, Frank, oh, Frank"? A Yes, sir.

Q And then closed her eyes? A Yes, sir.

Q Did she seem to you to be trembling? A No, sir.

Q She was lying perfectly passive and quiet? A (No answer)

Q Was she quiet or was she restless? A She was quiet.

Q Now, did she at any time --- I want you to pay heed to my question --- did she at any time, while she was lying in that wagon, move her body, or shift herself in any way, as a person would try to shift himself into a comfortable position; or did she lie perfectly passive, without any effort to move herself at all? A She moved there once; she moved her head over from one side to the other, like this (illustrating).

Q As if she were in pain?

THE COURT: How would he know?

MR. LEVY: Well, possibly he has seen someone in pain, as you and I have, your Honor. Pain has its

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distinctive marks and evidences, I submit.

A No, sir.

BY MR. LEVY:

Q She didn't move her hands or legs in the wagon; did she? A She moved her hand.

Q How? A She grabbed my leg.

Q When? A When I was standing in the wagon.

Q Now, illustrate that. While you were standing in the wagon? A Yes, sir.

Q And while the wagon was going? A Yes, sir.

Q And show me what she did? A She grabbed me that way (illustrating).

Q And how long did she hold you that way? A Oh, only that (snapping his fingers).

Q Just a second? A Yes, sir.

Q A sort of spasmodic clutch? A (No answer)

Q Do you know what that means? A Well, you'll have to give it to me simple.

Q Well, you know what a spasm is, don't you? A Yes, sir.

Q Well, it relates to that. Like a person in a spasm seizing something (illustrating)? A Yes, sir.

Q Did it seem to you like that? A Yes, sir.

Q Or as a person who has a sudden twinge, or pain, or agony, and grabs something (illustrating)? A Yes, sir.

Q Now, you went to that hospital at a pretty rapid gate, didn't you? A Yes, sir.

Q How long did it take you to drive from Longwood Avenue down to that hospital? A (No answer)

Q Well, about? A About six minutes.

Q And that is pretty good going; isn't it? A Yes, sir.

Q Now, how many blocks, about, is it? About eight blocks? A About eight blocks, yes.

Q Now, in regard to the hospital, did you see the woman lifted from the wagon? A Yes, sir.

Q Who lifted her from the wagon? A I just remember one, and that was ---

Q Well, you helped, didn't you? A Yes.

Q Who else? A A doctor, I guess.

Q Well, they sent out a sort of a stretcher, didn't they? A Yes, sir.

Q And she was lifted off the wagon onto the stretcher? A Yes, sir.

Q Now, what I want to know is, during the time she was moved from the wagon to the stretcher, did she open her eyes? A No, sir.

Q She was apparently, to you, unconscious? A Yes, sir.

Q Did she moan any? A No, sir.

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Q Was there any change in her appearance from the time that she was in the wagon until the time she was put on the stretcher at the hospital? A She didn't seem as pale.

Q Now, A No, sir.

Q Did ~~flush~~ had come into her face? A Yes, sir.

Q Anything else? A No, sir.

Q Of course, when she was taken into the hospital, you didn't go into the lobby and there; you didn't go into the hospital, did you? A I was in the lobby.

Q Did you didn't follow her into the emergency ward? A No, sir.

Q And the man was being removed from the wagon at the accident? A Yes, I know of; I didn't hear her.

Q Did you hear anything from the time that she fell upon the knee of the car, in Stebbins Avenue, until the time she disappeared from your view into the emergency ward of the hospital, more than you have told us? A No, sir.

Q Now, Mr. ~~guy~~ ~~ask~~ ask you. Did you see any of her clothing burning? A Why, yes, I saw her waist ~~burned~~ burned in the fire.

Q Burned? A Yes, sir.

Q Was it smoking or was the fire out? Did you see any smoke come from it that would indicate that the fire was ~~down~~ down? A It was out.

Q It was out? A Yes, sir.

Q But you did see --- what color was it, a light shirtwaist? A Yes, sir.

Q Yes, it was in summer, in October, it must have been. Well, what did the waist look like? A It was all blackened, like ink spots on it.

Q Powder marks? A Yes, sir.

Q And it was burning? A Yes, sir.

Q Any smoke coming from it? A No, sir; it was burned, but it wasn't burning just then.

Q And did you notice whether or not there was any fire upon the apparel of her husband, Frank Nicodemus? A No, sir.

Q You didn't see any fire burning upon him? A No, sir.

Q Or any smoke coming from him? A No, sir.

Q Now, Mr. Gornie, there was one other matter that I want to inquire about, and then I will let you go. You are quite sure that you saw the pistol in the defendant's hand? A Yes, sir.

Q Which hand? A This hand (indicating the right hand).

Q The right hand? A Yes, sir.

Q There could be no doubt in your mind about that?

A No, sir.

Q Now, think about it. A She had ~~the~~ a pocketbook in

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one hand, in her left hand, and the gun in her right hand.

Q I want to be fair with you, Mr. Gornie, and tell you that the defendant is a left handed person, and I want you to think about it, and take your time in thinking about it, and see if your recollection doesnot assure you that the weapon was held not in her right hand, but in her left hand?

A In her right hand.

Q You are satisfied as to that; are you? A Yes, sir.

Q Let me say, also to you, Mr. Gornie, that the evidence already in would indicate that the wound inflicted upon herself must have been inflicted by <sup>the</sup> left hand, by means of a left hand.

MR. MOSS: I object to that statement.

THE COURT: Sustained.

MR. LEVY: It was brought out by your own witness.

MR. MOSS: No, I don't take that view of it, and I wish to be understood as not conceding it.

MR. LEVY: Well, I take it from the testimony of Dr. Roth. When I asked him the question, how that weapon must have been held.

THE COURT: Here is his testimony transcribed, if you wish to see it.

MR. LEVY: Yes, sir, thank you. I can point it out.

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MR. MOSS: Yes, but he also said that there is nothing more uncertain, practically, than the course of a bullet entering the body. He said it might have gone around a rib, and have been deflected.

MR. LEVY: Yes, that is his testimony. But I would like to get this witness' s testimony as to what he believes he saw there, to the best of his recollection.

BY MR. LEVY:

Q You say you believe she held the weapon in her right hand. Now, think about it. A Yes, she did hold it in her right hand.

Q All right, we will let it go at that. You say that's your best recollection. Now, how far away from the deceased were you when you heard the cry, on his part, for help?

A When I heard him hollering for help?

Q Yes, you said you heard him holler for help?

A Why, I heard him until I got right on top of them.

Q Now, how far away were you from him when you heard him say help?

MR. MOSS: The first time?

MR. LEVY: The first time.

A About from here to that middle door (indicating the middle door of the courtroom.)

MR. LEVY: Well, about 35 feet again. We will

agree to that.

BY MR. LEVY:

Q You never testified to hearing him cry for help before; did you? A No, sir.

Q Neither at the Coroner's Court nor at the hospital?

A No, sir.

Q Or in making your statement to anybody, you never said anything about that before; did you? A Yes, sir, I did; to McDonald.

Q To whom? A To Assistant District Attorney McDonald.

Q But not at the Coroner's inquest; did you? A (No answer)

MR. MOSS: Was there any question asked him about that there?

MR. LEVY: No, there wasn't.

BY MR. LEVY:

Q Then your answer is that you were not asked anything about it, and you did testify to it; is that right? A Yes, sir.

Q The first time that you saw the brother, George Nicodemus, on the scene was after the shooting? A Yes, sir, after the shooting.

Q And when he was leading the deceased away from the scene? A Yes, sir.

Q You didn't see the brother at any time anywhere near

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the defendant or husband at the time of the shooting? A No, sir.

MR. LEVY: That's all.

RE DIRECT EXAMINATION BY MR. MOSS:

Q You told Mr. Levy that it seemed to you that her teeth were clenched. Where was she when you say it seemed to you that her teeth were clenched? A On the wagon, the first wagon.

Q Well, did you actually see her teeth, or were her lips over her teeth? A Her lips were tight.

Q Her lips were tight? A Yes, sir.

Q And from that you inferred that her teeth were clenched?

A Yes, sir.

Q You didn't actually see them? A No, sir.

Q No, in Mr. Levy's long and close cross examination, I don't think he asked you very much about the second shot. Did you see the revolver at the time the second shot went off?

A No, sir.

Q Where did you see the smoke from the second shot?

A I saw it coming from her direction.

Q You saw it coming from her direction? A Yes, sir.

Q And how soon after you heard this second shot, did you see the revolver in her hand? A Something like 15 seconds.

Q About 15 seconds afterwards? A Yes, sir.

## RE CROSS EXAMINATION BY MR. LEVY:

Q Now, there is one other thing that I want to ask you, Mr. Gornie. You testified to hearing three shots fired?

A Yes, sir.

Q Now, this woman was wounded, on that occasion, in some way; she got a bullet in her own body? A Yes, sir.

Q Now, what, according to your best understanding, based upon what you yourself saw, what shot was it, which shot was it, that wounded her? A Why, the last shot, the third shot.

Q And why do you base it on that, why do you make that statement, rather ---excuse me, based on what? A Well, when I stopped running, and I started again, I seen the gun in her hand, and I was on my way to Mr. Nicodemus when she made that third report.

Q Had you passed her? A No, sir, I hadn't.

Q Did you see her aim the pistol at anyone? A No, sir; I was looking at Mr. Nicodemus all the time when I heard this report.

Q But you told me you didn't see the smoke go away from her the third time. Am I right about that? A Yes, sir.

Q Did you see it go away from her? A I did not.

Q Which way did you see the smoke going? A Going up  
past her face (illustrating).

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Q The third time? A Yes, sir.

Q And how far were you away from Nicodemus then? About  
how many feet? 50 or 100? A About 20.

Q Which shot did you actually see aimed at the deceased,  
if you did see any shot aimed at the deceased? A I didn't  
see any shot aimed at him.

Q As matter of fact, you simply conjectured? You don't know whether, as matter of fact, whether the pistol was ever aimed at the deceased? A I'm just judging by the smoke, the direction it was going.

Q Yes, that's your deduction. But you don't know if from having actually seen it? You didn't see any shot actually discharged at the deceased? A No, sir.

S A M U E L N. H A B E R M A N, being recalled, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. LEVY:

Q You have in your hand there some papers that you turned over to the District Attorney's office; is that right?

A I look at them. I'll have to look at them.

MR. MOSS: He wants to look at them to make sure.

THE WITNESS: yes; that's correct.

BY MR. LEVY:

Q They are all the papers that you turned over? A Yes, sir.

MR. LEVY: May I be permitted, at this time, to examine those papers?

MR. MOSS: Not at this time, Mr. Levy.

MR. LEVY: Why, it seems to me, if your Honor please, that they should be just as much the property of the

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defendant as the property of the prosecution. If papers are delivered by an attorney to the District Attorney through the conditions presented in this case, it would seem to me that the opportunity for inspection should be given the defendant, the same freedom of copying them, and examining them, and so on, which would be accorded to the People. I may want to utilize some of the papers for the purpose of presenting the defendant's view of this case.

BY THE COURT:

Q Do these papers belong to the decedent? A With the exception of the pleadings, yes.

MR. MOSS: May I say that the envelope contains a copy of the complaint, and contains affidavits of witnesses who were to be witnesses in the action, in which the complaint appears to have been drawn, and contains two writings of the defendant herself, which, if used by the defendant, would, of course, be merely self-serving declarations, but which may be useful to the prosecution, as evidence, if she takes the stand; and for the reason that, so far as the only evidentiary papers in there are concerned, that is, her own writing, they are deemed necessary by the State for their use, and I do not care to communicate to Mr. Levy the nature of those papers which the defendant herself signed.

MR. LEVY: They can't be regarded, those papers re-

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ferred to by Mr. Moss ---

MR. MOSS: There are evidences in the hands of the District Attorney, and the District Attorney should not be required to expose his hand any more than the defendant is. When the District Attorney has sought to get the counsel for the defendant to say whether or not he is going to interpose a defense of insanity, he has declined to do it, and he is, of course, within his rights, and now, when the prosecution has evidence from the hands of the defendant, it is no more than right that the prosecution should not be compelled to show its hand.

THE COURT: In view of the facts ---

MR. LEVY: Will your Honor not hear me first?

THE COURT: Yes.

MR. LEVY: The District Attorney is not hedged in by any special divinity that I know of. I know of no rule that permits the District Attorney to have any more advantage than a person charged with crime. If certain papers were delivered by counsel for the deceased to the District Attorney, the professional privilege which attaches to them has been dissipated and removed. I am entitled, it seems to me, to examine any such papers or documents, in view of the peculiar circumstances of this case, with as much freedom of examination as is afforded to the District Attorney. It may be that I may want to interrogate this

witness with regard to these papers, which may go to the motive, if there be a motive, for the commissioner, or the alleged commission of this crime; and which may also go to the credibility of some of the witnesses who have already been called, and other witnesses who may be called. I should hope, in all fairness, that there should be accorded to the defense, the opportunity of examining the papers. I do not know whether I shall use them, but I do know that certain papers which were delivered to his counsel, the deceased, have been delivered to the District Attorney. This is the first information that I have had that there was some writings by the defendant. If there are some writings by the defendant, it cannot be contended that they are self-serving declarations, until an opportunity is given for an inspection of them.

THE COURT: I shall not require the District Attorney to show you the papers in the possession of his office. There is no rule of law which can compel the District Attorney to furnish counsel for the defense with papers in his possession; I know of no such rule. Even if they were papers belonging to the defendant, and the District Attorney had possession of them, the Court probably could not order permitting the inspection of those papers. These are papers which belonged to the deceased. There is no rule of law, Mr. Levy, which

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authorizes the Court to compel counsel for the People to furnish the counsel for the defense any evidence in his possession.

MR. LEVY: Your Honor, law is supposed to be common sense.

THE COURT: Well, that is a supposition.

MR. LEVY: Well, your Honor reads all the reports, I know.

THE COURT: I want to say, Mr. Levy, that the case of the United States against Wilson went very far on that subject. In the case of Wilson, the Government seized papers belonging to the defendant, and the motion was made to impound them in court, and the Federal Court declined to do so. Some judges are of the opinion that you cannot take property compulsorily from the defendant, and in the Statute of 1846, there is an express provision permitting it. I cannot require the District Attorney to give into the hands of the defense evidence which he has. If the District Attorney had inquired about it or exhibited to this witness any of the papers or documents, then you would have been entitled to see them.

MR. LEVY: What I want clearly on the record, may it please your Honor, is whether these papers are in the possession of the District Attorney or of the attorney of record in the case, who should have kept those papers.

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MR. MOSS: They are in the possession of the District Attorney. They are physically in the possession of Mr. Haberman now, but simply because I handed them to him.

MR. LEVY: Oh, well, that is not what I mean. I want to know who has the papers?

MR. MOSS: I have them.

MR. LEVY: The District Attorney has them?

MR. MOSS: Yes, sir.

MR. LEVY: Now, let me say, for the present, I will withhold my insistence upon getting those papers until I interrogate this witness.

BY MR. LEVY:

Q Mr. Haberman, beside the complaint in the action, which you appeared in as the attorney, which is ~~in~~ among the papers you hold in your hand, what other papers did you deliver to the District Attorney of New York County, and, if you don't recollect, you may open that envelope and look at the contents, and refresh your recollection? A Certain affidavits I drew.

Q Give me the names? A Of prospective witnesses.

Q Well, give me the names, please. If you don't recollect them, look at the papers and tell me. A An affidavit of Margaret Murphy, an affidavit of Harriet McMullen, and an affidavit of William A. Whitall, and an affidavit of Agnes Murphy.

Q And what besides those papers? A Some post-cards.

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Q Describe the postal cards a little more accurately?

MR. MOSS: I object to that, now. This is simply another way of getting a line for the defense on what I may have for the cross examination of the defendant. I object to that.

THE COURT: Sustained.

MR. LEVY: On what ground? Why should that be sustained? Haven't I the right to inquire as to what the papers are?

MR. MOSS: I object.

THE COURT: I sustain the objection.

MR. LEVY: I haven't any right to inquire as to the date of the postal card, and who sent it, and as to what he turned over to the District Attorney?

THE COURT: You may ask about those details.

BY MR. LEVY:

Q Now, then, give me the date of the first postal card, and to whom it was sent.

MR. MOSS: I object.

THE COURT: Well, this question calls for matters of detail.

MR. MOSS: I understand, but when the counsel has the date of the postal card and by whom sent, he has gone a considerable distance towards covering my position.

THE COURT: I shall allow the witness to give the

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dates of the postal cards.

BY MR. LEVY:

Q I can't see them from here, sir. So you can take them all out, and look at the dates? A I have one here dated September 12th, 1911.

THE COURT: Don't state by whom signed.

BY MR. LEVY:

Q Signed by whom?

MR. MOSS: Objected to.

THE COURT: Excluded.

BY MR. LEVY:

Q Postmarked from where?

MR. MOSS: I object.

THE COURT: He may state that.

A There is no post mark on it at all.

BY MR. LEVY:

Q Addressed to whom?

MR. MOSS: I object to that.

THE COURT: Sustained.

BY MR. LEVY:

Q And in whose writing?

MR. MOSS: I object to that.

THE COURT: Sustained.

MR. LEVY: Exception. I except to all your Honor's

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rulings on this subject.

THE COURT: Yes.

BY MR. LEVY:

Q Is that a plain or fancy postal card? A Illustrated post card.

Q Illustrating what place?

MR. MOSS: Oh, I object to that.

THE COURT: Sustained.

BY MR. LEVY:

Q Now, the other one. Give us the date of that. A All the post cards that I see is just this one (indicating).

Q Why, you turned over more than one postcard; did you?

A I think I did.

Q You turned over two, didn't you? A No; I said a few.

Q Well, one isn't a few. A To the best of my recollection it was a few. There appears to be only one here.

MR. LEVY: How about the others that constituted the few, Mr. Moss.

MR. MOSS: That's all I've seen, Mr. Levy.

MR. LEVY: Or that very able assistant, Mr. Zinn, or Mr. McDonald.

MR. McDONALD: That's all I got.

MR. ZINN: That's all I got.

BY MR. LEVY:

Q Then you may be mistaken as to the number of postcards

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