

**START**

276

**CASE**

I N D E X.

Names.	Direct.	Gross.	Re-D.	Re-C.
Examination of Jurors	2			
Benjamin Sobersheim.	3	4		
* Clinton Wilson.	9			
Francis O'Toole.	10	11		
William H. T. North.	13			
Rudolph Zimmerman.	14	15		
Charles Bergansky.	15			
* Charles V. Hoffman.	17			
William Otto.	18	19		
Thomas McGee.	20	21		
James A. Ullman.	22	23		
Anton Kovotny.	24			
Clarence J. MacSymon.	25	26		
* Joseph Veit.	28	29		
William Seton.	29	30		
William Phillips.	31	31		
Louis Seilenson.	33	33		
Nathan Mayer.	33	34		
John L. Stothers.	36	37		
* William A. Kalleher.	38			
William B. Mulford.	38	39		
Silas D. Souder.	40			
Emil A. Georgi.	41			
Christopher Kyle.	42	43		
* Frank C. Rose.	44	45		
* Adolph E. Kahn.	45	46		
Victor M. Verner.	47			
John T. Harrold.	48	48		
* Frederick C. Winchester.	50	50		
Joseph A. Thorn.	54			
William A. Merritt.	54	55		
* James Duff.	56	57		
* Albert E. Singleton.	58	59		
* John P. Dowd.	61			
James Jacobs.	62	63		
* Dana J. McCarthy.	64			
John P. King.	65	66		
Lewis S. Crane.	67			
* Adolph Herman.	68	69		
Frank H. Partridge.	71			
Henry C. Macbrayer.				
Thomas Reilly.				

Re-D. Re-G.

INDEX, Continued.

Names.	Direct.	Cross.	Re-D.	Re-G.
Solomon B. Cohen.	72			
Nathan Glassheim.	73			
John Campbell.	74	74		
Opening for the People.	76			
Emanuel Rosenthal.	81	100	118	119
Dennis J. Lyons.	125	134	144	

INDEX.  
(Continued)

Names.	Direct.	Cross.	Re-D.	Re-G.
William F. Delaney.				
Louisa Moran.	150	154	158	160
William F. Delaney, recalled.	161	179		
William Hawes.	180	183		
Thomas F. Walsh.	185			
William F. Delaney, recalled.	191			
Louis Ferrajolo.	192		194	
Hamilton Williams.	194	208	220	
Antonio Duoca.	229	232		
William E. Petty.	233	261	280	

CASE #276

CASE #276

CASE #276



I N D E X.  
(Continued)

Names.	Direct.	Cross.	Re-D.	Re-C.
William E. Petty, recalled.	284			
Albert T. Weston.	285	283		
William F. Delaney, recalled.	284			
Summing Up for the Defense.	288			
Summing Up for the People.	325			
The Court's Charge.	368			

THE COURT: Challenge sustained.

OLINTON WILSON, being duly sworn and examined as to his qualifications as a juror, testified as follows:

THE COURT: I desire to say, before the examination of jurors, in this or any other case, that jurors who come here to be examined must remember that they are here under a solemn oath to tell the truth, and that if they think that, by merely stating that they have scruples against capital punishment, which are born at that moment, they can escape service, it will be regarded certainly as an evasion. An honest conscientious scruple against capital punishment should well be regarded as properly sustaining a challenge to a juror. But, when such scruples absolutely do not exist except for the moment, I say that anyone that states that he has them, and has them conscientiously, deceives himself at least.

Direct Examination:

BY MR. LeBARRIER:

Q Mr. Wilson, have you any conscientious scruples in a case — against the death penalty in a case where — A I have not.

Q Where the evidence doubt, of the degree? A No degree? A No I understand you scruples? A Did you ever hear A Theatrical. Q And where do you BY MR. LEVY: Q Whereabouts in Tr BY MR. LeBARRIER: Q Did you ever hear nothing of it; n Q It is alleged the April, 1901, at New York, by the defense that you have not Q Do you know of an and impartial jur at all. MR. LeBARRIER: Cross-Exam BY MR. LEVY: Q You have said th

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CASE #276

Q Where the evidence would satisfy you, beyond a reasonable doubt, of the defendant's guilt, of murder in the first degree? A No, sir.

Q I understand you to say that you have no such conscientious scruples? A None whatever.

Q Did you ever hear — what is your business, may I ask?

A Theatrical.

Q And where do you reside? A Tremont.

BY MR. LEVY:

Q Whereabouts in Tremont? A 18 and 18 Washington Avenue.

BY MR. LEHARRIER:

Q Did you ever hear of the case of Andrea Guoco? A I know nothing of it; never have read it or have heard of it.

Q It is alleged that this killing occurred on the 6th of April, 1901, at No. 88 Rivington Street, in the City of New York, by the defendant shooting the deceased. Do you say that you have not heard of that case? A No, sir.

Q Do you know of any reason why you could not act as a fair and impartial juror in the trial of this case? A None at all.

MR. LEHARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q You have said that you are in the theatrical business, Mr.

CASE #276

Wilson? A Yes, sir.

Q In what capacity? A Well, in the general agency business, located at Thirty-seventh Street and Broadway.

Q Are you connected with any partnership there? A No, sir.

Q Thirty-seventh Street and Broadway? A Yes, sir; room 10. I am associated a great deal with the Managers' Association.

Q That is to say, you provide employment — A An intelligence office.

Q And usually very intelligent. Now, Mr. Wilson, how long have you been a resident of New York City? A Since 1878.

Q Have you ever served as a juror in a capital case before?

A Never.

Q Ever drawn upon such a case? A Never.

Q Ever serve in a criminal court in any other term than this?

A No, sir.

Q But during this term of court you have served in one case?

A Yes, sir, in one, a homicide.

Q And of course you paid heed to the instructions of the Court in that case as to the law? A Yes, sir, as to the law.

Q And as to your duties as a juror? A Yes, sir.

Q So that you are perfectly familiar with what is expected of you, if you are called and accepted as a juror in a capital

CASE #276

case? A I am.

Q You understand, of course, that the jury are the judges of the facts in the case? A I understand that, sir.

Q And that you are to take the law from the Court without question, and follow the law as the Court declares it?

A Yes, sir.

Q And are not to set up your own opinion on the subject at all? A No, sir.

Q Now, in this case, Mr. Wilson — I shall be very brief, because it is my desire to get a jury as speedily as possible — this case is founded in the main upon circumstantial evidence. You know what circumstantial evidence is, generally?

A Yes, sir.

Q I do not mean that you should give me a legal definition of it, but you know generally what is meant? A Yes, sir.

Q No eye-witnesses to the transaction? A Yes, sir.

Q Well, in a case of this character you will give such weight to circumstantial evidence as his Honor, the Judge, instructs you that it is entitled to receive, will you?

A Yes, sir.

Q You have heard it stated also that the defendant is entitled to the benefit of a reasonable doubt, if such exists in the case? A Yes, sir; that has been charged to the jury by the Court.

Q And you would follow that instruction carefully? A Yes, sir.

Q The defendant at the bar is an Italian. Have you any prejudice against him or his race? A None whatever. I never had any associations with the race whatever.

Q My purpose in asking that is to get a juror that shall be thoroughly unbiased. A I am thoroughly unbiased.

Q Now, Mr. Wilson, have you any acquaintanceship with anyone in the District Attorney's office? A Except meeting them as a juror here, District Attorney Walsh and his assistant, Mr. Train.

Q Well, but not outside of the court? A No, sir.

Q Not in a personal way? A No, sir; that is the only manner and the only connection whatever.

Q Are you a married man? A Yes, sir, I am.

Q If it should be shown in this case that this defendant is a married man, and that he had been living or having association with the deceased, a woman, in notorious and open adultery, would you be prejudiced against him because of that fact?

MR. LEHANNIER: That is objected to.

THE COURT: Objection sustained.

MR. LEVY: Your Honor will kindly give me an exception?

THE COURT: Certainly.



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CASE #276

BY MR. LEVY:

Q You would have no prejudice against the defendant, if it were shown that he were an adulterer?

MR. LeBARRIER: That is objected to. It is assuming here a state of facts entirely uncalled for, and the District Attorney objects.

MR. LEVY: Well, this is the situation, your Honor —

MR. LeBARRIER: I object to any statement.

MR. LEVY: Then I press my question, if I cannot make any statement.

THE COURT: I will sustain the objection.

MR. LEVY: Your Honor will kindly give me an exception.

BY MR. LEVY:

Q Do you know Dr. Hamilton Williams? A I do not.

Q Who was at one time or I think is now connected with the Coroner's Office? A I don't know him.

Q Do you know Detective Sergeant Lyons? A I do not.

Q Or Officer Lyons? A I do not.

Q Or Officer Walsh, a police officer? A No, sir.

Q Or a man by the name of Emanuel Rosenthal? A I do not.

Q You, if chosen in this case, will fully appreciate the responsibility that will be placed in your keeping in the disposition of this case, will you? A I will be as careful as I possibly can be.

CASE #276

MR. LEVY: I believe you will, Mr. Wilson, and you are perfectly acceptable to me.

MR. LeBARRIER: HE is acceptable to the People.

THE COURT: Take the first seat.

(The juror is sworn.)

FRANCIS O'TOOLE, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty in a case where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt?

A No.

Q Where do you live? A My place of business is at 585 Lexington Avenue.

Q What is your business? A Harness maker.

Q Have you ever served as a juror in a criminal case? A No, sir, except as I have served in this court, but not for capital cases.

Q Not for capital cases? A No, sir.

Q Have you ever heard of the case of the People against Andrew Dubois? A No, sir, except what I have heard here.

Q Do you know of any reason why you should not act as a fair

CASE #276

and impartial juror? A No, sir.

MR. LeBARBIER: Challenge withdrawn.

MR. LEVY: We will challenge peremptorily, Mr. O'Toole.

WILLIAM H. T. NORTH, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Mr. North, have you any conscientious scruples against the infliction of the death penalty in a case where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt? A No.

Q Eh? A No, sir.

Q Where do you live? A 1826 Southern Boulevard.

Q What is your business? A Contractor.

Q A little louder, if you please. A Contractor.

Q Have you ever served as a juror in a capital case? A No, sir.

Q You have served as a juror in ordinary criminal cases?

A In this term.

Q Other than as stated by me here this morning, have you ever heard anything about the case at bar? A No, sir.

Q Do you know of any reason why you should not act as a fair

and impartial juror here? A No.

Q In the trial of this case? A I do not.

MR. LeBARBIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Mr. North, you said that you were a contractor. Are you in business with anyone, or alone? A With my brother.

Q What is the firm name? A North Brothers.

Q Contractors in what line? A Excavating and cellar work.

Q Are you married? A No.

Q 1826 Southern Boulevard? A Yes, sir.

Q And with whom do you live there? A That is my place of business.

Q And where is your place of residence? A 596-1/2 East One Hundred and Forty-third street.

Q With whom do you live there? A In apartments.

Q Do you live alone, or board there? A Board there.

Q Board there? A Yes, sir.

Q You have not heard anything of this case? A No, sir.

Q Nor read of it? A Not to my recollection.

Q You heard Mr. LeBarbier state the facts of the case, didn't you? A I did.

Q And you cannot bring to mind any recollection of it?

A No.

11

18

Q Are you prejudiced against Italians? A Not particularly.

Q What is that? A No. I don't think I am.

Q Well, you ought to know. Mr. North. If you have any kind of prejudice against them it would be proper for you to state it. A Well, perhaps I don't understand just what you mean.

Q Well, the defendant at the bar is an Italian, and some of the witnesses will be Italians. Now, have you any prejudice against them on account of their race? A Well, I don't think that the race is as good as some other races, but I don't know that I have any particular prejudice against this one Italian.

Q I did not quite hear what you said, sir. A Well, I don't think that the race is as good as some other races, but I don't know that I have any particular prejudice against this one Italian.

Q Well, would the belief that they are not as good as some other races, would that belief operate to the detriment of this defendant? A No.

Q You could set that aside, do you think? A Certainly.

Q And decide this case upon the evidence only? A Yes, sir, certainly.

Q Without regard to the race of the defendant at all?

15

A Yes, sir.

Q Would you do that? A Certainly.

Q You are quite sure about that? A Yes, sir, I am quite sure about that.

Q Do you have any Italians in your employ? A I have.

Q Did you ever have any trouble with Italians in your employ? I don't care to know what, but any kind of difficulty with them? A How do you mean? In a quarrelsome way?

Q Yes. A No, I don't remember any; not that I remember.

MR. LEVY: I think we will excuse Mr. North. Challenged peremptorily.

RUDOLPH ZIMMERMAN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Mr. Zimmerman, have you any conscientious scruples against the infliction of the death penalty in a case where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt? A No, sir.

Q You have not? A No, sir.

Q Where do you reside? A 519 Union avenue.

Q What is your business? A Wholesale druggist.

Q Have you ever

A No, sir.

Q You have served

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MR. LEVY:

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Direct Examination

BY MR. LeBARRIER:

Q Have you any

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A No.

Q You have no

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Q Retired?

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Q Do you know



Q Have you ever served as a juror in a capital case?

A No, sir.

Q You have served in ordinary criminal cases? A Yes, sir.

Q Other than stated here in court, have you ---

MR. LEVY: Don't waste time, Mr. LeBarbier. I challenge this gentleman peremptorily.

CHARLES SERGANSKY, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty in a case where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt?

A No.

Q You have no conscientious scruples? A No.

Q Where do you reside? A 1652 Madison Avenue.

Q What is your business? A I am at present out of business.

Q Retired? A Yes, sir.

Q Have you ever heard of this case, the People against Andrea Cucco, charged with homicide? A No, sir.

Q Do you know of any reason why you should not act as a fair

and impartial juror in the trial of this case? A No.

MR. LeBARBIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Mr. Sergansky, I have been counsel for your brother, haven't I? A Yes, sir.

Q Would that fact operate to make you an unfair juror, or would you be fair notwithstanding that? Would you be fair independent of that? A Yes, sir.

Q And endeavor to decide this case on the evidence, irrespective of the fact that I have been your brother's lawyer?

A No, sir.

Q This man is an Italian, Mr. Sergansky. Would you have any prejudice against him because of his race? A No, sir.

Q You would try this case fairly, and give him the benefit of the reasonable doubt in the case, if there by any, would you? A Yes, sir.

MR. LeBARBIER: Challenged peremptorily by the People.

CHARLES V. HOFFMAN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty in a case where the evidence satisfied you beyond a reasonable doubt of the defendant's guilt?

A No.

Q Where do you reside, Mr. Hoffman? A 245 West Seventy-fourth street.

Q Your business is — A Broker.

Q Where is your office? A 44 New street.

Q Have you ever heard of the case of the People against Andrea Cuccoo? A No.

Q Do you know anybody connected with the case? A I know the prisoner's counsel I have known him for over twenty years.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No, sir.

Q Would that fact in any way tend to cause you prejudice one way or the other? A No, I don't think that it would.

Q Or favor in any way? A No, sir, I guess not.

Q If accepted as a juror in this case you would proceed solely upon the evidence adduced here before the Court and before you twelve gentlemen? A Yes, sir.

Q So that that would not weigh at all in your mind? A No.

MR. LeBARRIER: Challenge withdrawn.

MR. LEVY: I have no questions. I accept Mr. Hoffman.

A I have known him twenty years.

BY MR. LeBARRIER:

Q Do you know Mr. Levy very well? A Well, we were boys together, clerks, over twenty years ago.

Q Your relations lately have not been intimate with him?

A No.

Q If I accept you I may feel safe and secure that that will in no way enter one way or the other by way of favor or prejudice in your mind? A No, sir.

MR. LEVY: If you have any doubt whatever, Mr. LeBarbier—

MR. LeBARRIER: No, I have not. I will accept the gentleman.

(The juror is sworn.)

WILLIAM OTTO, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Mr. Otto, have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q In a case where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt? A (No answer).

Q Do you know what that means? A Yes, sir; reasonable

CASE #276

CASE #276

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CASE #276

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Q What have I said, Mr. Otto?

THE COURT: Well, say it over again. Read the question again.

(It is repeated by the stenographer.)

THE COURT: Well, he has answered it already.

MR. LeBARBIER: Challenged peremptorily.

THOMAS H. MCGEE, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Mr. McGee, have you any conscientious scruples against the infliction of the death penalty? A No.

Q Where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt, that is, of the crime of murder in the first degree, would you have any conscientious scruples in bringing in that verdict? A No.

Q What is your business? A I am a trained nurse and keep a nurses' agency.

Q Where is it? A 144 East Thirty-second street.

Q Have you ever heard of this case? A No, sir, I don't remember.

Q Do you know of any reason why you should not act as a fair

CASE #276

and impartial juror in the trial of this case? A None at all.

MR. LeBARBIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Have you any prejudice against Italians? A No, sir.

Q Do you know anyone in the District Attorney's office?

A I do not.

Q Have you ever served as a juror before in the trial of a capital case? A No.

Q You have served in other criminal cases? A Yes, sir.

Q And are generally familiar with your duties as a juror?

A Yes, sir.

Q This case will be founded mainly upon circumstantial evidence. You have a fair idea of what is meant by circumstantial evidence? A I have.

Q And you have no prejudice against circumstantial evidence, as such? A None whatever.

Q None whatever? A No, sir.

Q Are you a married man, Mr. McGee? A Yes, sir.

Q Family? A No.

Q And you reside at 144 East Thirty-second street? A Yes, sir, living there sixteen years.

Q You would be fully alive to the responsibility which would

CASE #276

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BY MR. LeBARBIER

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A Yes.

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CASE #276

be placed upon you if you were taken as a juror in this case? A Yes, sir.

Q And you would weigh the evidence carefully and conscientiously? A Yes, sir.

Q If there were a doubt in your mind on the evidence you would give the defendant the benefit of it? A I would.

Q May I be permitted to inquire how old you are, sir?

A Fifty-one.

Q And you have been in the business that you are now engaged in how long? A All my life.

Q And you have lived in New York City how long? A Twenty-seven years.

MR. LEVY: Challenged peremptorily.

JAMES A. ULLMAN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q Where the evidence would satisfy you beyond a reasonable doubt of the defendant's guilt of the crime of murder in the first degree, would you have conscientious scruples against bringing in such a verdict? A No, sir.

CASE #276

Q Where do you live? A 24 Hamilton Terrace.

Q What is your business? A Printing inks.

Q Did you ever hear of the case of the People against Andrea Quoco? A Not to my recollection.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No, sir.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Where is Hamilton Terrace, if you please? A Washington Heights.

Q Are you a married man, Mr. Ullman? A Yes, sir.

Q Where is your place of business? A One Hundred and Forty-sixth street and Park avenue.

Q And what is the name of your firm? A Sigmund Ullman Company.

Q May I inquire your age, sir? A Thirty-one.

Q Have you ever served as a juror in the trial of a capital case before? A No, sir.

Q Have you served in the trial of other criminal cases? A Only in this court, this term.

Q Only in this court, this term? A Yes, sir.

Q You have heard the rules of law in regard to the privileges enjoyed by the defendant, the presumption of innocence and

CASE #276

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CASE #276

the reasonable doubt fully explained by the Court? A Yes, sir.

Q And if you were chosen in this case you would fully appreciate the importance of carefully sifting the evidence, conscientiously sifting the evidence and rendering a verdict upon the evidence only? A Yes, sir.

Q Have you any prejudice against Italians? A No.

Q Have you any acquaintance with any person in the District Attorney's office? A None.

Q Do you know Dr. Hamilton Williams? A No, sir.

Q Have you any prejudice against circumstantial evidence, as such? A No, sir.

Q You would give circumstantial evidence the degree of weight and consideration that his Honor would instruct you that it was entitled to receive? A Yes, sir.

MR. LEVY: Mr. Ullman is satisfactory to the defense.

MR. LeBARRIER: Challenged peremptorily by the People.

ANTON NOVOTNY, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q What is your business? A Watchmaker.

Q Where do you reside? A 106 Greenwich street.

CASE #276

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q Where the evidence would satisfy you beyond a reasonable doubt of the guilt of the defendant of that degree of murder, that is, murder in the first degree, do I understand you to say that you would have no conscientious scruples in bringing in a verdict to that effect? A No, sir.

Q Did you ever hear of this case? A No, sir.

Q Do you know of any reason why you should not act as a fair and impartial juror? A No, sir.

Q Have you ever served in the trial of a capital case?

A No, sir.

Q Wh? A No, sir.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Mr. Novotny, how long have you been in this country?

A Thirty-four years.

Q What is that? A Thirty-four years.

Q Do you understand English fully? A Not ---

MR. LEVY: Excused by consent, subject to your Honor's approval.

MR. LeBARRIER: On account of his English, your Honor.

THE COURT: Excused. What is the matter with his Eng-

CASE #276

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CASE #276

lish?

MR. LeBARBIER: He says he does not understand it very fully.

THE COURT: I think he understands it well enough.

However, I will permit him to be excused.

CLARENCE J. MACSYMON, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty in a case where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt?

A I have.

Q Have you entertained those scruples for some time?

A I have.

Q Are they such as would preclude you from acting as a fair and impartial juror in the trial of a capital case? A I am afraid so.

MR. LeBARBIER: I submit the challenge, if your Honor please.

THE COURT: I sustain the challenge.

CASE #276

JOSEPH VEIT, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q That is to say, in a case where the evidence would satisfy you beyond a reasonable doubt of the defendant's guilt?

A No, sir.

Q Where do you reside? A 454 St. Nicholas avenue.

Q What is your business? A Manufacturer.

Q Of what? A Of machinery.

Q Did you ever hear of this case, the People against Andrea Quacco? A No, sir.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No, sir.

MR. LeBARBIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Where is your factory, Mr. Veit? A Philadelphia.

Q Whatabouts, please? A 904 Quarry street.

Q Warren street? A Quarry street.

Q And your New York office is where? A 11 Broadway.

CASE #276



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CASE #276

- Q Are you in business alone, or have you a firm? A No, sir; it is a company.
- Q What is the name, please? A The Tieder-Heyne Developing Company, and also the Adams Top Cutting Machine Company.
- Q Now, Mr. Veit, you are a married man, I suppose? A Yes, sir.
- Q And you have lived in New York City how long, please?
- A Twenty years.
- Q You have not heard of this case before? A No, sir.
- Q Have you read about it at all in any way? A I don't remember that I did.
- Q And you have no acquaintanceship with anyone connected with the case, so far as you know? A Not as far as I know of.
- Q Or in the District Attorney's office? A No, sir.
- Q Where did you say your New York office is? A 11 Broadway.
- Q 11 Broadway? A Yes, sir.
- Q Have you ever served as a juror in a capital case before?
- A No, sir.
- Q Or in any criminal case, other than during this term of the court? A No, sir.
- Q Well, you did serve in some cases this month, I suppose?
- A Yes, sir.
- Q And you are pretty familiar with your duties as a juror.

CASE #276

- are you? A I think I am, yes.
- Q You know what your duty to the defendant is? A Yes, sir.
- Q That he is entitled to the benefit of a reasonable doubt on the evidence, if any there is? A Yes, sir.
- Q And you will give him the benefit of it if you are taken in this case? A I will.
- Q And you also understand that the burden of proving the case is upon the prosecution; that the defendant need not prove himself innocent, but that they must prove him guilty; do you understand that? A I do understand that.
- Q And you have no prejudice against circumstantial evidence?
- A No, sir.
- Q Have you any prejudice against Italians? A No, sir.
- Q If you are chosen as a juror in this case, Mr. Veit, you will appreciate the responsibility that will be rested upon you as a juror in the trial of a case involving the life of a man? A Yes, sir.

MR. LEVY: I accept the gentleman.

MR. LEBAZIER: I accept the gentleman.

(The juror is sworn.)

WILLIAM SETON, being duly sworn and examined as to his qualifications as a juror, testified as follows:  
Direct Examination:

CASE #276

BY MR. LEVY

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CASE #276

BY MR. LeBARBIER:

- Q Mr. Seton, have you any conscientious scruples against the infliction of the death penalty in a case where the evidence satisfies you beyond a reasonable doubt of the defendant's guilt? A I have not.
- Q What is your business, Mr. Seton? A Student of natural history.
- Q And where do you reside? A 160 West Ninety-fifth street.
- Q Have you ever heard of this case of the People against Andrea Guoco? A I have not.
- Q Do you know of any reason why you could not act as a fair and impartial juror in the trial of this case? A I do not.

MR. LeBARBIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

- Q Have you had any experience as a juror, Mr. Seton? A I have.
- Q In capital cases? A I have not.
- Q And I take it that you have not any prejudice of any kind against anyone? A No, sir, I have not.
- Q And not at all against this man because of his race? A I have not.
- Q And you will weigh the evidence in this case and render an

CASE #276

impartial verdict on the evidence? A Yes, sir.

- Q Will you not? A Yes, sir.
- Q Having due regard for the importance of the case? A Yes, sir.
- Q May I inquire how old you are? A Sixty-two.
- Q I did not get your business, Mr. Seton? A Student of natural history.
- Q Has that always been your business? A Not always, no, sir.
- Q May I take the liberty of inquiring what your business has been? A Well, I have been a student of psychology a good deal, and now I call myself a paleontologist.

MR. LEVY: We excuse Mr. Seton. Challenged peremptorily.

WILLIAM PHILLIPS, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

- Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.
- Q That is to say, in a case where the evidence would satisfy you beyond a reasonable doubt of the defendant's guilt?

CASE #276

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CASE #276

A No, sir.

Q Where do you reside? A 19 East Ninety-eighth street.

Q What is your business? A Tobacco salesman.

Q Did you ever hear of this case? A No, sir.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No, sir.

Q Have you ever sat as a juror in a capital case? A No, sir.

Q Other than at this term, have you ever served as a juror?

A This term only.

Q Have you served in any case? A Yes, sir.

Q What did you say your name was? A William Phillips.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Where are you employed, Mr. Phillips? A 208 Pearl street.

Q What is the name of the firm? A J. & S. Abrahams.

Q Leaf tobacco? A Yes, sir.

Q You are familiar with the duties of a juror? A Yes, sir.

Q And if you are chosen in this case you will appreciate the importance of it? A Yes, sir.

Q And the serious duty that you have to perform? A Yes, sir.

CASE #276

Q Are you married, Mr. Phillips? A No, sir.

Q With whom do you live? A My parents.

Q Where? A 19 East Ninety-eighth street.

Q Will you give the defendant the benefit of a reasonable doubt, if any there be, in the case? A I will, sir.

MR. LEVY: We accept Mr. Phillips.

MR. LeBARRIER: Challenged peremptorily by the People.

LOUIS BEILENSEN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No.

Q Did you ever hear of this case? A No.

Q Where do you reside? A 2154 Third avenue.

Q What is your business? A Jeweler.

Q Jeweler? A Yes, sir.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Mr. Beilenson, have you ever heard of this case at all?

CASE #276



A No, sir.

Q Or read of it? A No; that is, I don't remember reading about it.

Q Did you hear Mr. LeBarbier explain what the case was about?

A Yes, sir.

Q And that does not refresh your recollection as to having heard or read about it at all? A Not in the slightest.

Q You are a married man, Mr. Beilenson? A I am, sir.

Q And you are near One Hundred and Nineteenth street?

A Between One Hundred and Seventeenth and One Hundred and Eighteenth streets.

Q Yes. I thought I had seen your face there before. A So have I yours.

Q You are a neighbor of mine? A Yes, sir.

Q Would you try this case and give the evidence proper consideration, Mr. Beilenson? A Yes, sir.

Q And you will appreciate the importance of the case?

A Yes, sir.

Q And the responsibility that would be vested in you, if accepted as a juror? A Yes, sir.

MR. LEVY: We will accept Mr. Beilenson.

MR. LeBARBIER: Challenged peremptorily by the People.

NATHAN MAYER, being duly sworn and examined as to

his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Mr. Mayer, have you any conscientious scruples against the infliction of the death penalty? A I have not.

Q Did you ever hear of this case, the People against Andrea Cucco? A Not to my knowledge.

Q Where do you reside? A 262 Greene street.

Q And what is your business? A Tobacconist.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A I do not.

MR. LeBARBIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q May I inquire your age, Mr. Mayer? A Sixty-nine, sir.

MR. LEVY: Will your Honor permit us to excuse this juror by consent?

THE COURT: Yes.

JOHN L. STOTHERS, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Have you any objection to the death penalty?

Q Where do you live?

Q What is your business?

Q Did you ever hear of this case, the People against Andrea Cucco?

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case?

Q Have you ever heard of this case?

Q But you have heard of this case during the trial of the People against Andrea Cucco?

Cross-Examination:

BY MR. LEVY:

Q Your address is 262 Greene street?

Q And you are a tobacconist?

Q For yourself?

Q No firm?

Q Do you reside at 262 Greene street?

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CASE #276

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q Where do you live? A 508 West One Hundred and Eighth street.

Q What is your business? A Painting.

Q Did you ever hear or read of the case of the People against Andrea Cubo? A I did not.

Q Do you know of any reason why you should not act as a fair and impartial juror in this case? A I do not.

Q Have you ever served as a juror in a capital case? A I have not.

Q But you have acquired some experience as a juror in this court during this term? A Yes, sir.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Your address again, please? A 508 West One Hundred and Eighth street.

Q And you are in business as a painter? A Yes, sir.

Q For yourself? A Yes, sir.

Q No firm? A No, sir.

Q Do you reside there also at that same address? A Yes, sir.

CASE #276

Q You heard Mr. LeBarbier explain the nature of this case, did you? A I did.

Q And you did not have any recollection of ever having read or heard of it at all? A I never heard or read of it at all.

Q Have you any prejudice against Italians? A No.

Q If you are chosen in this case will you give to the evidence careful and conscientious consideration and render a true verdict upon the evidence? A Yes, sir.

Q You will take the law from his Honor the Judge? A Yes, sir.

Q And you will not attempt to set up your own opinion against the declared law, as laid down by his Honor? A No.

Q Have you ever served in a capital case before? A Never.

Q Have you ever served in a criminal case before? A In this court.

Q And you are pretty familiar with your duties as a juror, are you? A I am.

Q Were you born in New York City? A In New York State.

Q And you have lived up in the Bronx how many years?

A That is not in the Bronx.

Q One Hundred and Eighty-fifth street? A Yes.

Q Oh, yes. You don't know my brother, LeBarbier, do you? A No, sir, I do not.

CASE #276

Q He lives somewhere up around there. A Well, I don't know him.

MR. LEVY: We will excuse Mr. Stothers. Challenged peremptorily.

WILLIAM A. KELLEHER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q Did you ever hear of this case, the People against Andrea Cucco? A No, sir, I did not.

Q Have you ever served as a juror in the trial of a capital case? A No, sir.

Q But you have served in the trial of ordinary criminal cases? A Yes, sir, in this Part and in Part IV.

Q And therefore you know what the duties of a juror are?

A Yes, sir.

Q Where do you reside? A 453 West Fiftieth street.

Q What is your business? A Liquor business.

Q And do you know of any reason why you should not act as a fair and impartial juror in the trial of this case?

A No, sir.

Q Are you acquainted with anybody connected with this case?

A Not as I know of.

Q Do you know Mr. Levy? A No, sir.

Q Of his partner, Mr. Unger? A No, sir.

MR. LeBARBIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Kelleher is the name? A Yes, sir, that is right.

Q And where is your place of business? A 845 and 847 Eleventh avenue.

Q Have you any acquaintanceship with any of the gentlemen in the District Attorney's office? A No, sir, only through the Part here, just seeing them here.

Q I mean any personal acquaintance? A No, sir.

Q Have you any prejudice against Italians? A No, sir.

Q Married man, Mr. Kelleher? A Single.

Q And may I inquire your age? A Twenty-six.

Q You reside with whom? A My parents.

Q I have no doubt, if you are taken in this case, that you will conscientiously endeavor to perform your full duty?

A Yes, sir.

Q If there be a reasonable doubt on the evidence in this case you will give the benefit of that to the prisoner?

CASE #276

CASE #276

CASE #276



A Yes, sir.

MR. LEVY: Mr. Kelleher is satisfactory.

(The juror is sworn.)

WILLIAM B. MULFORD, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A I have.

Q Have you entertained those scruples for some time?

A Always.

MR. LeBARRIER: I submit the challenge, may it please the Court.

THE COURT: Challenge sustained.

SILAS B. SOUBERN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A None whatever.

Q What is your business? A Fire insurance manager.

Q Where do you reside? A 207 West Eighty-fifth street.

Q Did you ever hear of the case of the People against Andrea Quoco? A Never before this morning.

Q Do you know of any reason why you should not act as a fair and impartial juror in this case? A I don't think that I would be affected, but I think it fair to state that in my business I don't insure Italians, as a rule, especially those whose names end with "o."

Q Yes. A Those are my instructions to my agents.

Q Those are instructions that you received from the company?

A Those are my instructions, from experience.

Q Well, would that have any weight with you at all, by way of prejudice or favor, in the trial of this case? A Not on the facts.

Q You would be guided by the facts, would you? A I would.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q Well, those instructions that you give to your men, Mr.

Soubert, were engendered by prejudices that you have against Italians? A By experience.

Q By a prejudice which has been engendered by experience with them? A No, not by prejudice, but by experience in the

way of fires.

Q Well, I would

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BY MR. LeBARRIER

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CASE #276

way of fires.

Q Well, I would like to get the trend of your mind in asking whether or not any bias exists in your mind as against the Italian race. A Well, in my experience as a fire insurance manager, which covers about twelve years, I have found that Italians whose names end with "i" generally come from North Italy and are a pretty good class, and those ending with "a" from Middle Italy, and those with "o" generally from Sicily or Southern Italy, and my experience has not been favorable with those whose names end with "e". They are not of a class that I care to insure.

MR. LEVY: Well, I think we will economize time by submitting a challenge.

THE COURT: I will sustain the challenge.

EMIL A. GEORGI, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LEBLANC:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.  
Q Other than as stated here in court have you ever heard anything about this case? A No, sir.  
Q Do you know anybody connected with the defense, or with the

CASE #276

firm of Levy & Unger? A No, sir.

Q Or anybody connected with the District Attorney's office?

A Only what I see here, during this term, sir.

Q What is your business? A Upholsterer.

Q Where do you reside? A 64 East One Hundred and Sixty-second street.

Q And where is your place of business? A Forty-first street and Lexington avenue.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A I do not.

MR. LEBLANC: Challenge withdrawn.

MR. LEVY: Challenged peremptorily by the defense.

CHRISTOPHER KYLE, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LEBLANC:

Q Mr. Kyle, have you any conscientious scruples against the infliction of the death penalty? A I have very serious doubts as to the utility of it as a deterrent.  
Q That is to say, you do not believe in the punishment?  
A I do not for that reason.

CASE #276

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CASE #276

Q Eh? A On that account.

Q You do not believe that there is the right to take human life; is that what you mean? A I think society would have the right to take it if there was any use in it, but I do not think there is any use in it. I do not believe that it deters. I know that such a barbarous country as Russia — or barbarous as we think it — has abolished capital punishment since —

BY THE COURT:

Q Well, would the fact that you think it wise to abolish capital punishment affect you in the consideration of the evidence and in coming to a conclusion on the evidence as to the guilt or innocence of the defendant, when you know that the death penalty would follow your verdict?

MR. LeBARRIER: Excused by consent, your Honor.

FRANK C. ROSE, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q What is your business? A Confidential clerk.

Q For whom? A The Lackawanna Railroad.

CASE #276

Q Where do you reside? A 345 West Fifthteenth street.

Q You never heard of this case, did you? A No, sir.

Q Do you know anybody connected with it? A No, sir.

Q Do you know Mr. Levy? A No, sir.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No, sir.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination:

BY MR. LEVY:

Q How do you spell your name? A R-o-s-e.

Q Were you born in New York City, Mr. Rose? A Yes, sir.

Q May I take the liberty of inquiring how old you are?

A Twenty-eight years old.

Q Are you married? A Yes, sir.

Q And how long, may I inquire, have you been connected with the Lackawanna Railroad? A For fourteen years.

Q Now, you would try this case with a due regard for the interests of the People as well as the defendant, will you?

A Yes, sir.

Q And you will conscientiously examine the evidence?

A Yes, sir.

Q And take the law from the Judge? A Yes, sir.

Q And you will not set up your own opinion on the law, but will follow the law as his Honor declares it? A Yes, sir.

CASE #276

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CASE #276

Q With a due regard for the importance of the case and the seriousness of your responsibility as a juror? A Yes, sir.

MR. LEVY: I will accept Mr. Rose.

MR. LeBARRIER: He is satisfactory to the People.

(The juror is sworn.)

ADOLPH E. KAHN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q What is your business? A I am an optician.

Q Where do you reside? A 211 West Eighty-fifth street.

Q Where is your place of business? A 129 Broadway.

Q Other than as stated here in court, have you ever heard of this case of the People against Andrea Cucco? A I have not.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A I know of none.

MR. LeBARRIER: Challenge withdrawn.

Cross-Examination

CASE #276

BY MR. LEVY:

Q Have you ever served as a juror in a capital case before, Mr. Kahn? A I have not.

Q Do you know anyone in the District Attorney's office?

A What is that, sir?

Q Do you know anyone in the District Attorney's office? A I do not.

Q Have you any prejudice against Italians? A I have not.

Q You will endeavor to perform your duty conscientiously in this case, if taken as a juror? A I would, sir.

Q By way of rendering a verdict carefully and conscientiously on the evidence? A Yes, sir.

MR. LEVY: We will accept Mr. Kahn.

(The juror is sworn.)

VICTOR M. WERNER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q What is your business? A Barber.

Q Where do you reside? A 2441 Third Avenue.

CASE #276

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Q Did you ever hear of this case of the People against Andrea Cucco? A No, sir.

Q Have you ever served as a juror in a capital case? A No, sir.

Q In ordinary criminal cases you have, though? A Yes, sir, right here in this term.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No, sir.

Cross-Examination:

BY MR. LEVY:

Q 2441 Third avenue? A Yes, sir.

Q That is near One Hundred and Twenty-fourth street? A Right on the corner.

Q Where is your shop? A Next to Mr. Golders's real estate office.

Q And you live there as well? A Yes, sir.

Q And this defendant is an Italian, Mr. Werner. Have you any prejudice against him on that account? A A little.

Q Naturally. There is a considerable feeling among the barbers against the Italians, because of the encroachments they have been making into your business? A Yes, sir.

Q Now, do you believe that you would carry that feeling into the jury box, now, frankly? A I think I would.

Q You would not want to serve in a case where it would prej-

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udice the defendant, would you? A I would not.

MR. LEVY: Excused by consent, your Honor.

47

JOHN T. HARROLD, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A I have not.

Q What is your business, Mr. Harrold? A Interior decorator.

Q Where do you reside? A 103 East Twenty-ninth street.

Q Where is your place of business? A 335 Fourth avenue.

Q Do you know anything about this case at the bar, Andrea Cucco? A I do not.

Q You have served as a juror in criminal cases? A No.

Q No criminal cases at all? A No.

Q During this term? A No.

Q Haven't you ever been called? A No.

Q Do you know of any reason why you could not act as a fair and impartial juror in the trial of this case? A I do not.

Q Have you ever at any time served as a juror in a criminal case? A Not criminal cases, no.

Q Have you ever

Q How lately?

MR. LeBARRIER:

MR. LEVY:

FREDERICK

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Direct Examination:

BY MR. LeBARRIER:

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of none.

Q Where do you

Q What is your

of cloth bags

Q Manufacturer

MR. LeBARRIER:

Q Do you ever

BY MR. LEVY:

Q Have you ever served in civil cases? A Yes, sir.

Q How lately? A About two years ago.

MR. LeBARRIER: Challenge withdrawn.

MR. LEVY: Challenged peremptorily by the defense.

FREDERICK O. WINCHESTER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. LeBARRIER:

Q Mr. Winchester, have you any conscientious scruples against the infliction of the death penalty? A I have none.

Q Have you ever heard of this case, other than has been stated here in court? A I have not.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A I know of none.

Q Where do you reside? A 407 Canal street, city.

Q What is your business, Mr. Winchester? A Manufacturer of cloth bags.

Q Manufacturer of cloth bags? A Yes, sir.

MR. LeBARRIER: Challenge withdrawn.

C r o s s - E x a m i n a t i o n :

BY MR. LEVY:

Q Now, won't you repeat, please, your address? Where do you live, sir? I did not catch it. A 475 Canal street.

Q And where do you live? A At the same address.

Q And are you in business alone there? A I am in business alone, yes.

Q How long have you resided in New York City, Mr. Winchester?

A Fourteen years.

Q Are you a married man? A I am.

Q And near what street is 475? A It is near Hudson street.

Q Have you any prejudice against the Italians? A I have none.

Q Have you heard of this case at all? A I never heard of the case before.

Q If you are chosen in this case you will endeavor to perform your duty conscientiously? A I would.

Q Appreciating the importance of your position and the seriousness of your duty, would you? A Yes, sir, I would.

Q And if there were a reasonable doubt on the evidence in the case you would give the defendant the benefit of it?

A I would.

Q How long have you lived at 475 Canal street? A I have lived there a year and a half.

Q And before living there where did you live? A I lived

CASE #276

CASE #276

CASE #276



at 254 West Twelfth street.

Q You have not heard of this case at all? A I never heard of the case before.

Q Do you know anyone in the District Attorney's office?

A I am not personally acquainted with anyone.

Q Do you know Dr. Hamilton Williams? A I do not.

MR. LEVY: Mr. Winchester is satisfactory.

MR. LeBARBIER: He is satisfactory to the People.

(The juror is sworn.)

JOSEPH A. THORN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. LeBARBIER:

Q Mr. Thorn, have you any conscientious scruples against the infliction of the death penalty? A No.

Q What is your business? A I am an adjuster of complaints for the Consumers' Gas Company, No. 129 West One Hundred and Twenty-fifth street, Manhattan.

Q That is a pretty difficult job, I assume? A Well, rather.

BY MR. LEVY:

Q I don't suppose there are many complaints? A Overcrowded with them.

BY MR. LeBARBIER:

Q Where do you live, sir? A 227 Riverside Drive, corner of Ninety-fifth street, Manhattan.

Q Have you ever served as a juror in a capital case?

A I have.

Q And in ordinary civil cases? A I have.

Q Have you heard or read anything about this case, other than stated in court? A No, sir.

Q The case of Andrea Quoc? A I never have.

Q And do you know of any reason why you could not act as a fair and impartial juror in this case? A Well, the statement of the counsel for the defense, that this man lived in open adultery with the woman would certainly prejudice him in my mind.

Q Well, you don't know anything about the facts in this case, do you? A Nothing, only what he has stated here.

Q And if that were shown not to be so? A Then there would be no prejudice existing.

Q And if it were shown that it was so, some prejudice would exist? A Yes, sir, it would prejudice me against him.

MR. LeBARBIER: Challenge withdrawn.

## Cross Examination

BY MR. LEVY:

Q Now, Mr. Thorne, it will be shown in this case that this homicide took place in a Raines Law hotel situated at number 68 Rivington Street, to which place this defendant and the deceased went and occupied a room together. If that fact were disclosed, that they occupied a room together at a Raines Law hotel, not being husband and wife, would that prejudice you against the defendant?

MR. LE BARBIER: Pardon me.

BY MR. LEVY:

Q Because of those facts, because of that condition?

THE COURT: I will allow that question, though I do not ~~fully~~ approve of it. But I will not allow the line of examination to continue.

MR. LEVY: Very good, sir.

THE COURT: But will allow that question.

MR. LE BARBIER: I want a fair man, under whatever condition the evidence is developed in the case, who can pronounce one way or the other on the evidence.

A It would not. I meant living in open and notorious adultery, as Mr. Levy asked of another juror, as a mistress or something of that kind.

BY MR. LEVY:

Q Now, Mr. Thorne, this defendant is an Italian. Have you any prejudice against him on that account? A I have not.

MR. LEVY: Your Honor says that I must not pursue that line of interrogation at all?

THE COURT: No. I think it is very improper to state the supposed facts in a case over and over again to the jury.

MR. LEVY: Very well, sir. I will adopt your Honor's suggestion.

MR. LE BARBIER: Our facts, at least my statement of facts, may differ from what the learned counsel suggests.

THE COURT: Are you through with the juror?

MR. LEVY: No sir, not quite yet.

BY MR. LEVY:

Q Have you any acquaintanceship with anyone in the District Attorney's office, Mr. Thorne? A I have not, other than seeing them here during this term.

Q You would endeavor conscientiously to render a verdict upon the evidence, without regard to anything beyond or outside of the evidence? A I most certainly would.

MR. LEVY: we will excuse this gentleman.

Challenged peremptorily.

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Direct Exam

BY MR. LE BARBIER:

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CASE #276

CASE #276

CASE #276

WILLIAM A. MERRITT was duly sworn as to his qualifications as a juror.

MR. LE BARBIER: With your Honor's permission we will excuse this gentleman by consent. I have known him for a great many years and he has served on many juries.

THE COURT: He may be excused by consent.

JAMES DUFF, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

- Q Have you any conscientious scruples against the infliction of the death penalty? A No, sir.
- Q Where do you reside? A 446 East 122nd Street.
- Q What is your business? A Liquors.
- Q Liquors? A Yes, sir.
- Q Other than as stated here in court, have you ever heard anything about the case of the People against Andrea Cucco? A No sir.
- Q Have you ever served as a juror in a capital case? A No, sir.
- Q But you have in ordinary criminal cases? A Yes, sir.
- Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A I do.

not.

Q Are you acquainted with Mr. Levy or Mr. Unger? A No sir.

MR. LE BARBIER: Challenge withdrawn.

Cross Examination

BY MR. LEVY:

- Q Where is your store, Mr. Duff? A 122nd Street and First Avenue.
- Q Have you any prejudice against Italians? A Not particularly, no.
- Q Well there are quite a number of Italians up in your locality? A Not where I live.
- Q Oh, a little lower down, near where I live. That's right. Well, you say not particularly, Mr. Duff; how do I understand that? A No, I would not have any particular prejudice against them any more than against anybody else, as long as I found the evidence conclusive.
- Q Then I take it that you would not have any prejudice against any man that did you no wrong? A No, not at all; why should I?
- Q Why, of course, should you. And when you said that you had no particular prejudice, you meant to say that you had no prejudice against any particular individual or race? A No, sir.
- Q And you would not find any man guilty unless you were satis-

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CASE #276

CASE #276

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fied conscientiously on the evidence that he were guilty?

A Yes, sir.

Q And you would give him the benefit of a reasonable doubt, if you had it, if he were a Hottentot, wouldn't you?

A Yes, sir.

MR. LEVY: Well, Mr. Duff is satisfactory to me.

MR. LE BARBIER: He is satisfactory to me.

(The juror is sworn.)

ALBERT M. SINGLETON, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Mr. Singleton, have you any conscientious scruples against the infliction of the death penalty? A No sir.

Q Where do you reside? A Number 7 West 108th Street.

Q What is your business? A Hotel business.

Q What hotel is that? A The Martinique.

Q Where is that hotel? A 56 West 53rd Street.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A Not any.

Q You have served as a juror in a criminal case before?

A Yes, sir, in this Court.

MR. LE BARBIER: Challenge withdrawn.

Cross Examination

BY MR. LEVY:

Q Are you the proprietor of that hotel? A No sir.

Q Employed there? A Yes sir.

Q In what capacity? A Assistant Manager of the house.

Q Do you know anyone in the District Attorney's office?

A Only as I have seen them in the courtroom.

Q I mean personally or socially? A No sir.

Q Do you know my friend, Doctor Hamilton Williams?

A No sir.

Q Or Mr. Le Barbier? A No sir.

Q Have you heard of this case at all? A No sir.

Q Have you any prejudice against Italians? A No sir.

Q Well, you are familiar with your duties are you not, as a juror? A Yes sir, I think so.

Q And you understand that the burden of proving the case is upon the People, the prosecution? A I do.

Q And that this defendant is not required to prove his innocence, but that they are required to prove him guilty?

A Yes, sir.

Q Before you can vote to convict him? A Yes sir.

Q Are you married? A Yes sir.

Q Never have served in a capital case? A No sir.

Q You will be mindful of your responsibility in this case, Mr. Singleton, if chosen as a juror? A Yes, sir.

MR. LEVY: We accept Mr. Singleton.

MR. LE BARBIER: He is satisfactory to the People.

(The jurors are sworn.)

JOHN F. DOWD, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Mr. Dowd, have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q What is that? A No, sir.

Q Where do you reside? A 2321 Washington Avenue.

Q What is your business? A Real estate business.

Q Have you ever heard of the case of the People against Andrea Cucco? A No, sir.

Q The homicide occurring at 68 Rivington Street in this County in the month of April last? A I have not heard of it to my knowledge.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No.

Q Have you ever served as a juror in the trial of a criminal case? A No, sir.

Q At all? A No, sir.

Q In a capital or an ordinary criminal case? A I am in Part One now. I have served in criminal cases there, but not capital punishment.

Q Well then, you have had some experience in criminal cases? A Yes, sir, during this month there.

Q And therefore you know what the duties of a juror are in criminal cases? A Yes, sir.

MR. LE BARBIER: Challenge withdrawn.

Cross Examination

BY MR. LEVY:

Q What is your address, sir? A 2321 Washington Avenue.

Q And where is that? A Fordham, near 184th Street.

Q Do you know Mr. Le Barbier? A No, sir.

Q This gentleman here (indicating)? A No, sir.

Q Do you know anyone in the District Attorney's office? A No, sir.

Q Do you know Doctor Hamilton Williams? A No, sir.

Q Have you any prejudice against Italians? A No, sir.

Q None? A No, sir.

Q What business are you in, Mr. Dowd? A Real estate.

Q Have you always been in that business? A Yes, sir, ever since I have been in New York.

Q How long have you been in New York? A Going on fifteen

CASE #276

CASE #276

CASE #276

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Q Married man, I take it? A Yes sir.

Q Where is your office? A I do my business at my home address now.

Q Well, where was it before, your office? A 192 East 21st Street.

Q Mr. Dowd, this man is on trial for his life. If you are chosen as a juror in this case, will you endeavor to perform your full duty between the People and this defendant by a conscientious examination of the evidence? A Yes, sir.

Q And render a verdict upon the evidence without prejudice and without bias or any kind? A Yes sir, certainly.

Q And will you endeavor to do so? A Yes, sir.

MR. LEVY: I will accept Mr. Dowd.

THE WITNESS: Well, I have not got the very best of hearing just now. I have been taking quinine heavily for about twenty-four hours.

MR. LE BARBIER: Then you have a buzzing in your ears, have you?

THE WITNESS: Well, I have taken probably thirty grains in twenty-four hours; I have had a very bad cold in my head.

MR. LEVY: Well, does it affect your hearing?

THE WITNESS: No sir, it doesn't affect my hearing, but everything sounds from a distance. Just now, even my own voice.

MR. LEVY: Well, I will let you hear me; I will talk loud enough, and you need not pay any attention whatever to Mr. Le Barbier; so I will accept you.

MR. LE BARBIER: He is acceptable to the People.

(The juror is sworn.)

JAMES JACOBS, being duly sworn and examined as to his qualifications as a juror, testified as follows:

#### Direct Examination

BY MR. LE BARBIER:

Q Mr. Jacobs, have you any conscientious scruples against the infliction of the death penalty? A No, sir.

Q Where do you reside? A 19 West 113th Street.

Q What is your business? A Retired.

Q Did you ever hear of the case of the People against Andreu Qocco? A No sir.

Q Have you ever served as a juror in a criminal case? A No sir.

Q Not capital but in any criminal case? A I did.

Q You have, eh? A Yes, sir.

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BY MR. LE BARBIER:

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CASE #276

CASE #276

CASE #276



Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No.

MR. LE BARBIER: Challenge withdrawn.

MR. LEVY: We will excuse Mr. Jacobs; we will challenge peremptorily.

DANA J. McCARTHY, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No.

Q Where do you reside? A 71 West 95th Street.

Q What is your business? A Salesman.

Q You don't know anything about this case, do you? A I do not; no.

Q Have you ever served as a juror in a criminal case? A I am serving now in Part One; that's all.

Q Yes, you have been serving for the term? A Yes sir.

Q Do you know Mr. Levy? A I do not.

Q Counsel for the defendant? A I do not.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No.

MR. LE BARBIER: Challenge withdrawn.

Cross Examination

BY MR. LEVY:

Q 71 West 95th Street, that is right, is it? A Yes sir.

Q Employed by whom? A The Boston Gossamer Rubber Company.

Q Where is their office? A 52 Leonard Street.

Q You are the resident agent here? A Hand my brother, yes.

Q The Boston Gossamer Rubber Company? A Yes sir.

Q Are you married, Mr. McCarthy? A No sir.

Q Do you board or reside with your people? A I board here.

Q Have you any prejudice against Italians? A No.

Q None at all? A No sir.

Q You have had some experience as a juror, have you? A Just this term.

Q Have you served on any cases this term? A Yes sir.

Q And I have no doubt that you paid heed to the instructions of the Court in those cases? A I think I have, yes.

Q So that you are familiar now generally with your duties as a juror? A Yes sir.

Q This man is charged with murder in the first degree, Mr. McCarthy, and there is a great deal of responsibility upon the juror in a case of this kind. If you are chosen you will fully appreciate the responsibility of dealing with this case, will you? A Yes, sir.

Q And endeavor to render a verdict conscientiously upon the

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CASE #276

CASE #276

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evidence? A I will do so, sir.

MR. LEVY: Mr. McCarthy is satisfactory.

MR. LE BARBIER: He is satisfactory to the People.

(The juror is sworn.)

JOHN F. KING, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No sir.

Q What is your business? A Salesman.

Q Where do you reside? A 202 West 102nd Street.

Q Did you ever serve as a juror in a criminal case? A In Part One this term, yes.

MR. LEVY: The defense challenges the gentleman peremptorily. There is no use wasting time.

LEWIS B. CRANE, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty? Mr. Crane? A Yes sir.

Q Have you entertained those scruples for some time?

A Yes sir.

MR. LE BARBIER: I submit the challenge, may it please your Honor.

THE COURT: Challenge sustained.

ADOLPH B. HERMAN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Mr. Herman, have you any conscientious scruples against the infliction of the death penalty? A No sir.

Q What is your business? A Manufacturer of tin cans.

Q Yes; where? A 179 South Street.

Q Have you ever served as a juror in a criminal case? A Yes sir, in Brooklyn.

Q In Brooklyn? A Yes sir.

Q Then you have been serving this term in Part One, have you not? A Yes sir.

Q Have you ever heard of the case of the People against Andrea Cucco? A No sir.

Q Do you know Mr. Levy? A No sir, I do not.

Q Or anybody connected with his office? A No sir.

Q Do you know of any reason why you should not make a fair and impartial juror in the trial of this case? A No sir.

Cross Ex

BY MR. LEVY:

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CASE #276

CASE #276

CASE #276

MR. LE BARRIER: Challenge withdrawn.

Cross Examination

BY MR. LEVY:

- Q Mr. Berman, where do you live? A 1046 Lexington Avenue.
- Q Are you in business alone, Mr. Berman, or in a firm?
- A With my brother.
- Q The firm is Berman Brothers? A Leon Berman.
- Q Have you any prejudice against Italians? A No sir.
- Q Do you have any Italian help in your business? A We had.
- Q You have? A Yes sir.
- Q Your factory is where? A 179 South Street.
- Q There is not anything that occurs to you now that will prevent you from making an absolutely impartial juror, is there; anything that will prevent you from serving honestly and fairly and impartially? A There is not.
- Q And you will try to do your duty honestly and fairly?
- A Yes sir.
- Q Without any prejudice or bias, and decide the case wholly on the evidence? A Yes sir.

MR. LEVY: I accept the gentleman.

MR. LE BARRIER: He is perfectly satisfactory to the People.

(The juror is sworn.)

MR. LE BARRIER: Now, may it please your Honor, the third juror is very anxious to get away, and with your Honor's permission we will excuse him by consent.

THE COURT: Excused by consent.

FRANK H. PARTRIDGE, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination.

BY MR. LE BARRIER:-

- Q Mr. Partridge, have you any conscientious scruples against the infliction of the death penalty? A None.
- Q Where is your place of business? A I am in no business; retired.
- Q Where do you reside? A 15 East 34th Street.
- Q Have you ever served as a juror in a criminal case? A Yes sir.
- Q Have you ever heard of the case of the People against Andrea Cucco? A Never.
- Q This case on trial? A Never.
- Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A None.

MR. LE BARRIER: Challenge withdrawn.

MR. LEVY: We will excuse Mr. Partridge.

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BY MR. LE BARRIER

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Challenged peremptorily.

HENRY C. MUMBRAUER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No sir.

Q Where do you reside? A 184th Street and Jerome Avenue.

Q What is your business? A Grocer.

Q Have you ever served as a juror in the trial of a capital case? A Just now in Part One, the first time.

Q No; a capital case? A No sir, not in a capital case.

Q But you have been serving for the term in Part One?

A Yes sir.

Q Have you ever heard of the case of the People against Andrea Cucco? A Yes sir.

Q This case here? A Oh no, sir, I didn't understand you.

Q Where it is alleged that the killing took place in April last at Number 68 Rivington Street, in this County?

A No sir.

Q You never heard of it? A No sir.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No.

MR. LE BARBIER: Challenge withdrawn.

Cross Examination

BY MR. LEVY:

Q Have you any prejudice against Italians, Mr. Mumbrauer?

A No sir.

Q Do you have any Italian trade up in the district where you live? A No.

Q Well, you know what is meant by circumstantial evidence, do you? A Not exactly.

Q Well, I would like to ask you what you understand it to mean; what is your idea of it? Considerable will be said about circumstantial evidence in this case?

A Well, it is according to the evidence of the witnesses, according to the testimony, I suppose of the---

THE COURT: Well, that can be easily explained to him, what circumstantial evidence is.

MR. LEVY: Yes sir.

BY MR. LEVY:

Q Now, suppose that his Honor should say to you that the burden proof in this case rests with the prosecution, and never shifts to the defendant, would you understand him?

A Yes, sir.

Q What would you understand that to be? A Well, that means not guilty, I supposed.

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BY MR. LEVY:

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BY THE COURT:

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Q That means not guilty? A Yes sir.

THE COURT: I do not think he understood the question.

BY MR. LEVY: MR.

Q Well, are you entirely familiar with the English language, Mr. Mumbrauer? A Well, I have not been to any high school.

Q I know; I don't mean to ask you anything that is at all offensive, Mr. Mumbrauer.

BY THE COURT:

Q That last question, Mr. Mumbrauer, that he asked you---if you are aware that the burden of proof rests with the People--- that is very technical. What he meant to ask you is, are you aware that the People must prove a man guilty before the jury can find him guilty. In other words, that the duty rests with the People to prove their case. Do you understand that? A Yes, sir.

MR. LEVY: We will excuse Mr. Mumbrauer. We challenge him peremptorily.

THOMAS REILLY, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Mr. Reilly, have you any conscientious scruples against the infliction of the death penalty? A No sir.

Q Where do you reside? A 311 West 154th Street.

Q What is your business? A Real estate.

Q Did you ever hear of this case at bar, the People against Andrea Cucco? Charged with homicide? A No sir.

Q Have you ever served as a juror in the trial of a criminal case, not capital, but criminal? A No sir.

BY MR. LEVY:

Q You say in one case that I tried in the other Part, didn't you? A No sir.

BY THE COURT:

Q Have you ever served in any case in a criminal court? A No sir; not that I know of.

BY MR. LE BARBIER:

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A No sir.

BY MR. LEVY:

Q Why, Mr. Reilly, didn't you serve in any criminal case in Part One? A Not where you were.

Q You did not?

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Direct Exam

BY MR. LE BARBIER:

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BY THE COURT:

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A No.

Q You did not? A No; I was rejected by you.

MR. LEVY: Well then, I will excuse you, Mr. Reilly. Challenged peremptorily.

SOLOMON B. COHEN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Mr. Cohen, have you any conscientious scruples against the infliction of the death penalty? A Yes sir.

Q And you have entertained those scruples for some time? A Yes sir.

MR. LE BARBIER: I submit the challenge, may it please the Court.

BY THE COURT:

Q How long have you entertained those scruples? A For quite a while.

Q For quite a while? A Yes sir.

Q Well, were they first born of a desire not to serve on juries, or do they come from examination of the subject? A No.

THE COURT: Very well, challenge sustained.

NATHAN GLASSHEIM, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

Q Have you any conscientious scruples against the infliction of the death penalty? A No sir.

Q Where do you reside? A 136 Bowery.

Q What is your business? A Hotel.

Q Did you ever hear of the case of the People against Andrea Cucco, charged with murder in the first degree? A No sir.

Q Do you know anybody connected with the defense, that you know of? A No, sir.

Q Mr. Levy? A No sir.

Q Of Mr. Unger of the firm of Levy & Unger? A No sir.

Q Do you know of any reason why you should not act as a fair and impartial juror in the trial of this case? A Well, that is hard for me to say. I am not in favor of capital punishment.

BY THE COURT:

Q You were just asked if you were, and you said you had no prejudice against capital punishment. What do you wish to say about it now? A I really don't know what to say about it.

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CASE #276

CASE #276

CASE #276



THE COURT: That is what I supposed. The juror is excused.

JOHN CAMPBELL, being duly sworn and examined as to his qualifications as a juror, testified as follows:

Direct Examination

BY MR. LE BARBIER:

- Q Mr. Campbell, have you any conscientious scruples against the infliction of the death penalty? A No sir.
- Q Where is your place of business? A 75 Hudson Street.
- Q What is it? A Chemicals and colors.
- Q And where do you reside? A 24 West 88th Street.
- Q Have you ever heard of the case of the People against Andrea Gucco; this case? A No sir.
- Q Have you ever served as a juror in the trial of a criminal case? A Yes sir.
- Q Do you know Mr. Levy, or anyone of the firm of Levy & Unger? A No sir.
- Q Do you know any reason why you could not act as a fair and impartial juror in the trial of this case? A I do not.

MR. LE BARBIER: Challenge withdrawn.

Cross Examination

BY MR. LEVY:

- Q What is your name of your firm, Mr. Campbell? A John Campbell & Co..

- Q Have you any prejudice against Italians? A No sir.
- Q Do you employ Italian help? A I do not.
- Q Married man? A Yes sir.
- Q This man is charged with the crime of murder in the first degree, Mr. Campbell. If you are chosen in this case as one of the jurors, will you endeavor conscientiously to examine the evidence and obey the law as declared by the Court, and a true verdict render upon the evidence? A I would.

MR. LEVY: I will accept Mr. Campbell.

(The juror is sworn.)

THE COURT: Gentlemen, at each adjournment of the Court, I am required by the Code to admonish the jury, not to converse with each other nor with anyone else about the case on trial, and of course not to come to any conclusion upon any branch until it is finally submitted to them.

The Court will take a recess until a quarter after two o'clock.

After Recess.

OPENING ADDRESS FOR THE PEOPLE, OF ASSISTANT  
DISTRICT ATTORNEY CHARLES E. LE BARBIER:

May it please the Court:  
Gentlemen of the Jury!

Of course, at the outset of a case, the duty of the prosecuting officer is nothing more than to simply outline the facts, as they will be filled in by the evidence in the case.

Our position, as you all know, is a semi-judicial one, an impersonal position, and if we cannot win a case by fairness and upon the facts, why then if the defendant succeeds in overcoming them, he has been successful in the case.

We have no interest on this side, as you all know, beyond the duty which we owe to the People, to submit a case just as strongly as we can upon the facts.

This case appealed to the District Attorney's office as a case of murder, and a case of murder in the first degree.

It appears that upon the 6th day of April, 1931

here in the City and County of New York, one Bella Cirilliano was killed by the defendant, Andrea Guoco, and as the evidence will unwind by the proof to be submitted to you twelve gentlemen, we will show you that on that day at about seven o'clock, the defendant met Bella, the deceased, and that they went to or met at, I think it a Raine Law hotel; at all events, a disreputable resort in this city, Number 66 Rivington Street.

They went there for the purpose of sexual intercourse. Of that there can be no question.

Before going up into one of these miserable little rooms which characterize this miserable resort, they stopped at the bar or went in where the bar was, and as I understand and I think the proof will show you here, took a drink of whiskey.

They then went up a few steps, and the stairs turn a little, and they went along this corridor in that hotel; I presume a corridor the length of maybe ten feet, all partitioned off into little rooms, so that when one of the folding beds was down in the room it virtually took up the space of the room.

Bella, the deceased, and the defendant went

into that room, and were there a few moments when suddenly a pistol shot is heard.

The man at the office, or who had his room right near the office, was not on duty just then, but was asleep, and he awoke, as far as I understand the evidence, rushed to the door, and just as he came to these little stairs, the deceased Bella rushed down with her hands to her face, shouting.

What that shout was the District Attorney thinks under the evidence in this case, will be admissible, but which for the moment, will be subject to objection by my distinguished opponent, and I don't know, therefore, that I need tell you just the words she said at this time.

At that time her dress was partly torn off, or if not off, torn down from the hooks.

However, whatever was said, an officer arrives upon the scene, and they find that Bella, the deceased, had received two pistol-shot wounds, one in the forehead right over the eye, which did not penetrate, as the evidence will show you here, and which will probably be the subject of a great deal of discussion on the part of my distinguished

friend--- the first shot was over the eye, and the second shot right in the back of the head, which did not penetrate.

The girl Bella having been a healthy girl, the cause of death unquestionably was due to these pistol shot wounds. Whatever may be said upon that subject, we certainly know that even a sand-bag, without breaking bones, will produce such a brain concussion as will cause death. At all events, the girl died.

They go upstairs, and they go into this little room at the end of the corridor, and there they find the defendant, dressed, lying on the floor, and whether conscious or unconscious will be a matter of discussion probably.

We submit that the defendant fired the two shots at the girl, and then attempted to either wound or kill himself. We do not know which, and I am free to say we consider it rather immaterial, in view of the facts that we will bring out.

He was lying on the floor, stunned, his hand out and the revolver right in his hand.

We do not wish to anticipate any defense nor what the defense will be, although I am pretty

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sure what theory will be advanced, but I do not know that at this moment it will do you any good to know, and I do not know that it does the District Attorney any good to try to foreshadow the possible defense in this case.

But, be that as it may, gentlemen, this man went to that room that night, and took this girl there, and he had this revolver, and with premeditation and deliberation, because there can be no other conclusion that you twelve gentlemen can arrive at, and fired at the girl two shots, causing death, and then inflicted some wounds upon himself.

For that crime he has been duly indicted by the Grand Jury of this County, and in the opinion of the office, certainly from the facts as presented, the District Attorney is warranted in presenting as he believes a wilful, premeditated and deliberate killing, and that the defendant, it will be sought to be proven by the People, is guilty of murder in the first degree.

Now, as to the facts that we will wind around this skeleton outline, I think that is all the District Attorney need now say to you, gentlemen.

MR. LEVY: May I ask your Honor to instruct

that all the other witnesses be excluded from the court room?

THE COURT: Yes.

# THE PEOPLE'S TESTIMONY:

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

## Direct Examination

BY MR. LE BARRIER:

Q How old are you, Rosenthal? A Twenty-four, sir.

Q Where do you reside? A At present?

Q Yes. A 375 Bowery.

BY MR. LEVY:

Q Where? A 375 Bowery.

BY MR. LE BARRIER:

Q On the 6th day of April, 1901, where did you live? A 68 Rivington Street.

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

Q What are those premises 68 Rivington Street? A Hotel.

Q What kind of a hotel? A Baines Law hotel.

Q On the 6th of April, 1901, was it a Baines Law Hotel?

A Yes sir.

Q Is that? A Yes sir.

CASE #276

CASE #276

CASE #276

Q Please describe to the Court and jury the premises.

A Well, it is situated--- the store is this way (illustrating) and the side entrance is that way (illustrating), and you go into the hotel.

Q Well, we don't quite get that. Let me question you.

Does that Raines Law hotel face on Rivington Street?

A The hotel entrance is on Allen Street.

Q On Allen Street? A Yes sir, and the store entrance is on Rivington Street.

Q It is a corner house? A Yes sir.

Q And on the corner is what? A Is a two story house.

Q Well, on that corner what is there, a saloon? A A saloon yes.

Q And then the entrance to go upstairs, as I understand you, is on Allen Street? A Yes sir, on Allen Street.

Q There is a door there? A Yes sir.

Q And when you open the door, that opens into what? A Into the hotel.

Q Well--- A Into the hotel and dining room.

Q Into the hotel and dining room? A Yes sir.

Q Do the stairs face the door on Allen Street? A Yes sir.

Q About how many stairs are there, do you suppose? A Well, nine stairs, nine or ten stairs.

Q Nine or ten steps? A Yes sir.

Q And then is there a turn in the stairs? A No sir; there is another step xx.

Q Yes. A And it is just a small walk, half a yard long, to another step.

Q Yes. A And then there is a hall.

Q Now, wait. A And at the hall there is a door of the room that I slept in.

Q The hall is what? A The hall is right at the door where I slept.

Q Yes. A With that you just turn around and then go upstairs, and there is another door there.

Q Yes. A And you go upstairs, and there is another door, and you go around three steps and it leads to a hall, and from there is a room (indicating).

Q So that all these doors are on the stairs as you are going upstairs? A Yes sir.

Q Now, was it on this second flight or when you come up to the top of the stairs along that corridor, that these rooms are that you speak of? A Yes sir, on the second floor.

Q On the second floor? A Yes sir.

Q That is over the dining room? A Well, the dining room is on the ground floor. There is the first floor and then the next floor.

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CASE #276

Q Yes, the second floor? A Yes sir.

Q And that is where these rooms were? A Yes sir.

Q Now, how many rooms are there on that floor? A There is four rooms.

Q Four rooms, A Yes sir.

Q And on the next floor are---? A Four.

Q Eight rooms in all? A Yes sir.

Q How long is that corridor on the second floor, that is,

the floor over the dining room? A How long?

Q Yes. A Well, it is---.

Q Is it ten feet long? A Well, not exactly ten feet long.

Q Do you think it is ten feet long? A No sir, I don't think so.

Q Do rooms open on both sides of the corridor? A There is one room on one side, and three on the other.

Q There is one room on one side, and three on the other? A Yes sir.

Q On which side of this corridor did this occurrence take place that night? A Room 8.

Q Well, on which side? On the Allen Street side?

A On the Rivington Street side.

Q On the Rivington Street side? A Yes sir.

Q There were three rooms on that side? A Yes sir.

Q And those rooms---? A Were facing Rivington Street.

CASE #276

Q I know, but how long, or how large?

MR. LEVY: Do you mean the size of the room?

MR. LE BARBIER: Yes.

A Well, from here to that door, it was as wide as that, as wide as this space here, from here to the wall (indicating).

MR. LEVY: That is twelve by fourteen, as I estimate it.

BY MR. LE BARBIER:

Q And is that the best estimate that you can give of the room? A Well, it is more than twelve by fourteen, I think.

Q Do you know what the furniture consists of? A Yes sir.

Q Do you recollect this occurrence that took place on the 6th day of April, 1901? A Yes sir, I do.

Q In what room did that take place? A In Room 8, on the top floor.

Q Well, how large is Room 8? A Well, about--- you might say eighteen by twenty.

Q As much as that? A Yes sir.

BY THE SECOND JUDGE:

Q How large is this property altogether, if the room is eighteen by twenty and you have so many Raines law rooms in this hotel, how large is the lot that the whole business

CASE #276



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CASE #276

is on? Eighteen by twenty-- that is a large room.

A Yes sir, it is quite large.

Q And you have four on one side--? A No, I haven't said  
 four on one side. I said three on one side and one on  
 the other side.

BY MR. LEVY:

Q Well, how deep is the house or the lot? A Well, twenty-  
 five by a hundred.

BY MR. LE BARBIER:

Q Now, this Room 8, was it not--- the Counsel asks, from you,  
 from where you are now, to where I am standing--?

A Well, a little bit longer, to just about the end of  
 that table.

BY MR. LEVY:

Q From where you are sitting, you mean? A Yes sir.

BY MR. LE BARBIER:

Q How much would you say that was?

MR. LEVY: About twelve feet.

Q And how wide? A Well, from here to there (indicating).

Q About five feet? Can you say just about that? A Well,  
 you know this room is kind of---

Q Well, can't you show about how wide is the room? A Well,  
 you see the bed takes up a lot of room.

BY THE COURT:

CASE #276

Q If you stood in the middle of the room, could you touch  
 the walls on both sides? A No sir.

Q Well then, why do you say it is about that wide? A Well,  
 in one corner you could and in another you could not.

BY THE FOREMAN:

Q Well, could the witness just give a little rough draft of  
 the room? A Well, it is a little longer than my arms  
 are.

Q Toward the wall? A Yes sir.

Q Could you go through the room and touch both walls with  
 your hands? A No sir.

Q Then you are referring to one particular end? A Well,  
 there is different parts of it that you can touch with  
 your arm.

Q Well, that is what I am trying to get at, whether it is a  
 uniform room.

BY THE COURT:

Q Is it the same width all the way? A No sir.

BY MR. LEVY:

Q Well then, it is longer than it is wide? A Yes sir.

Q It is oblong? A Yes sir, that is right.

BY MR. LE BARBIER:

Q We had a diagram but our draughtsman is ill and we cannot  
 produce it, because we cannot find it. Now, I show you

CASE #276

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a piece of paper or a sketch roughly made, and I ask you if that correctly represents the stairs? A Here is the stairs (indicating) and there is the room right there.

Q Now, that represents the stairs, does it not (indicating)?

A yes sir.

Q And that represents the corridor (indicating)? A yes sir, the hall.

Q The hall? A yes sir.

Q And this represents room 8 (indicating)? A Room 8 is over there (indicating) and room 4 over here.

Q I show you a piece of paper and ask you whether or not the lines that I show you show generally the stairs? A Yes, sir.

MR. LE BARBIER: I will mark that "A".

MR. LEVY: I think that you can get someone to describe that intelligently. If your young man has been up there I will take his testimony.

BY MR. LE BARBIER:

Q Well, at all events you go down through a hall? A Yes, sir.

Q I will mark that "B". A Yes, sir.

Q And room 8 is at the end of that hall (indicating)? A Yes sir.

Q I will mark that "C". And room 8—<sup>faces</sup>—~~is~~ on Rivington

Street? A Yes sir, there is three rooms that faces on Rivington Street, that is 6, 7 and 8.

BY THE COURT:

Q And what is the length of the house on Rivington Street? One hundred feet? A No sir, the length is on Allen Street.

Q And it is twenty-five feet on Rivington Street? A Yes sir.

Q And there are three rooms in that twenty-five feet? A Yes sir.

Q 6, 7 and 8? A yes sir.

THE COURT: Now you have got the width of this room.

BY MR. LE BARBIER:

Q Now, on the 6th of April, 1901, was your attention attracted to anything? A Well, on the 6th of April I was just about to dress to go to work—

Q When do you go to work? A Sometimes at seven o'clock, and sometimes half-past seven.

Q In the morning or evening? A In the evening.

Q Was it on this day in the evening or morning? A It was in the evening that this happened.

Q Now, when you were about to go to work, what happened?

A I heard a shot.

Q What kind of a shot? A A pistol shot.

Q A pistol shot? A Yes sir, and with that I thought "Well,

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BY MR. LE BARBIER:

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BY MR. LE BARBIER:

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MR. LEVY: I object to this -- his thoughts, and I move to strike it out.

THE COURT: Motion granted.

BY MR. LE BARBIER:

Q Well, what did you do when you heard the pistol shot?

A Well, I continued dressing myself, and then I heard another shot, and I rushed to the door.

Q Yes. A With that I saw somebody run to my door and rush into my room.

Q Man or woman? A Woman.

BY THE SECOND JUROR:

Q How long was it before the second shot, after the first shot? A Well, in fact it was about a second.

Q A second? A Yes sir.

Q Immediately after the first shot? A Yes sir.

BY MR. LE BARBIER:

Q And then after you heard the second shot, somebody rushed along the hall? A Yes sir, rushed down from the stairs above and pushed my door open, and as she did that, she fell right into my arms.

Q Can you describe her dress? A Well, her dress was torn off her, at least the catch was off and the back was open (indicating).

Q You saw that, did you? A Yes sir.

Q How did she hold her hands? A She held her hands that way, up to her face, and I said, "Let me see your face" and she wouldn't let me, and I pulled down her hands and I saw that her left eye was closed like, and blotched, and the eye was as red as a beet, and the blood pouring out of her, and she says to me, "Oh".

MR. LEVY: Objected to.

A (continued) Well, the blood was running down her, and I grabbed her and she pulled away from me, and I wouldn't let go of her, and I ran downstairs with her and with that I says to one of the boys---

MR. LEVY: Objected to.

BY MR. LE BARBIER:

Q Now then, just as she rushed into you and you say she said something, did she say that while her hands were up to her face? A No sir, when her hands were down.

Q Yes. Just as you put her hands down--? A Yes.

Q What did she say? Now, wait.

MR. LEVY: Objected to as incompetent, immaterial and irrelevant, and as hearsay in the absence of the defendant.

THE COURT: Well, neither of those points would sustain an objection. It is very relevant. I take

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CASE #276

CASE #276

CASE #276



it. It is very material, I take it, and the only question is as to its admissibility.

MR. LEVY: Well, it comes under the general objection of incompetency, your Honor. If it is incompetent for any reason, it is incompetent.

THE COURT: It may be incompetent and inadmissible, but I am inclined to think that it is a part of the res gestae.

MR. LEVY: Well, up to the present stage of the case we have not any evidence as to the whereabouts of the defendant then, and the statement of this woman would seem to be decidedly incompetent.

BY THE COURT:

Q How long after the second shot was fired did she make this statement or exclamation? A She stated after the second shot was fired, and at the time she rushed down from upstairs to my-----

Q Well, you said that there was about two seconds' difference between the first and second shots? A Yes sir.

Q And then you started for the door and she met you at the door? A Yes sir, she thought this was a door to the street, I suppose.

Q Well, how much time had elapsed between the second shot

and the time that she met you at the door? A Well, a second.

Q A second? A Yes sir.

THE COURT: I will admit it as a part of the res gestae.

MR. LEVY: Your Honor will be kind enough to give us an exception?

THE COURT: Yes.

(Exception.)

BY MR. LE BARBIER:

Q What did she say? A She said "Andrea shot me".

Q She said "Andrea shot me"? A Yes sir.

Q What did you do then? A I rushed downstairs and told one of my brothers to hold her there?

MR. LEVY: That is objected to. No, never mind, it makes no difference. I will withdraw that objection.

BY MR. LE BARBIER:

Q You rushed downstairs and saw one of your brothers, you say? A Yes, sir.

Q Did any officer come there? A Not at the time, not until I took the stick and sounded for one.

Q Where did you take the stick from? A From behind the bar.

Q And you made a sound? A Yes sir, and with that Officer

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CASE #276

CASE #276

CASE #276

Lyons came there.

Q Officer Lyons came? A Yes sir.

Q When Officer Lyons came, did he come into your room?

A No sir, he came right at the door.

Q Right at the door? A Yes sir.

Q Where was this woman? A In the dining room.

Q In the dining room? A Sitting on a chair.

Q Sitting on a chair? A Yes sir.

Q And her hands up to her face? A No; her hands were down.

Q Yes. Did you go in there with the officer, to where this woman was? A No sir. I went upstairs with the officer.

Q Do you know whether the officer went in to see the woman?

A Well-----

Q Do you know? A No, he went upstairs to see the---

Q You and the officer went upstairs? A Yes sir.

Q Where did you go upstairs? A Into Room 8.

Q Into Room 8? A Yes sir.

Q When you got in Room 8, was the bed--- First of all, was it a folding bed? A Yes sir.

Q In the room? A Yes sir.

Q Was that bed open or not? A Open.

Q Open? A Yes sir.

Q Against what did the bed face or lean? A The window.

Q The window? A Yes sir.

Q Did that bed take up substantially half of the room?

A MR. LEVY: Now, won't you please permit him to testify himself? Don't lead him.

MR. LE BARBIER: No, I will not. I shall be as meek as a lamb with you, Mr. Levy.

A No, the bed didn't take up all the room.

Q Now, when you arrived in the room with the officer, what did you see? A I saw the gentleman laying on his left side, with his coat and everything on him, and I---.

Q When you say that you saw the gentleman, what gentleman do you mean? A The gentleman that was shot.

Q Well, do you see him in Court? A Yes sir.

Q Can you point him out? A Yes sir.

Q Where is he? A There he is (indicating the defendant).

Q You mean the defendant? A Yes sir, the defendant.

Q He was lying on the floor? A Yes sir.

Q How was he dressed? A Well, with all his clothes on, with his overcoat on. I saw he had all his clothes on; in fact, he had his overcoat on too, laying on his left side.

Q Now, did you see anything else in the room? A Not exactly at the time. I went downstairs, and with that the other officer came in.

Q Well, when the defendant was lying on the floor this first time, was there anything lying on the floor or there on the

CASE #276

CASE #276

CASE #276

room besides him? A A pistol.

Q A pistol? A Yes sir.

Q Well, I want to get at that. There was a pistol?

A Yes sir.

Q Did you pick up the pistol? A No sir.

Q Who picked it up? A Officer Lyons.

Q Do you know where he put that pistol? A On the mantel piece.

Q What did you do? A I merely stood on the bed, and the other officer says to me, "Would you mind---"

MR. LEVY: Objected to.

THE COURT: Never mind what was said to you.

BY MR. LE BARBIER:

Q What other officer was it? A I don't know his name exactly.

Q Well, was something said? A Nothing as I heard of.

Q Was anything else found in the room? A No sir.

Q Anything found in the wall? A Yes sir.

BY MR. LEVY:

Q When-- on that day? A At the time, after---

Q How long after? A After the officer had taken the man out of the room.

Q How long after? A Well, about an hour after.

MR. LEVY: Then I object to it.

BY MR. LE BARBIER:

Q What did you find?

A MR. LEVY: Objected to as immaterial, irrelevant and incompetent, and as too remote and not a part of the res gestae.

THE COURT: If you can show that nobody else had entered the room in the meantime I will allow it.

BY MR. LE BARBIER:

Q Do you know whether anybody else entered the room?

A No sir, there was only me and the officer.

BY MR. LEVY:

Q Within that hour's time? A No sir. The door was locked right after this thing occurred.

THE COURT: Very well.

MR. LEVY: And I make the same objection, your Honor.

THE COURT: I will allow it.

MR. LEVY: Give me an exception, kindly.

BY MR. LE BARBIER:

Q What did you find? A A bullet.

Q Where? A In the wall.

Q Who picked the bullet out of the wall? A I did.

Q What did you do with it? A Give it to the officer.

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CASE #276

CASE #276

CASE #276



Q What officer? A Officer Delaney.

Q Well, after you gave the bullet to Officer Delaney, what next did you do? A I went downstairs.

Q Please state to the jury what you did. A I went downstairs and tried to get some information out of the woman, which I could not get, a single word. She laid there, and in fact I-----

Q Well, was she lying down? A No sir, sitting in the chair that way (illustrating), and in fact I went to a neighbor, the barber, and asked him would he come in---.

MR. LE BARBIER: <sup>Levy</sup> Objected to, what he said to the barber.

BY MR. LE BARBIER:

Q Well, how long did the woman remain there? A Well, she remained there half an hour.

Q Half an hour? A Yes sir.

Q And in the meanwhile what was done, if you know, with the defendant? A The ambulance came.

Q Yes? A And they bandaged the woman up first.

Q They did what? A And they bandaged the woman up first.

Q And then did what? A And then went upstairs and bandaged him.

Q And was he brought---? A And with that I carried him down with the driver of the ambulance, carried him down-

stairs and put him in the ambulance.

Q Was the woman put in the same ambulance with him? A Yes sir.

Q Do you know what hospital they were taken to? A I think it was Gouverneur Hospital.

Q Gouverneur Hospital? A Yes sir.

Q Is that the last you heard of the woman? A Yes sir.

Q Is that the last you saw of the defendant? A Yes sir.

Q At that time? A Yes sir.

Q Did you have any talk with the defendant? A Never did in my life.

Q Do you know when it was that the defendant and the woman came to the hotel? A On the 6th day of April.

Q Why? A On the 6th day of April.

Q The 6th day of April? A Yes sir.

Q No, but I mean to say what time of the day, about? A Well, they came in at seven-thirty.

Q Well, do you know under what names they were registered? A I do not.

Q That Rains Law hotel at that place is no longer in existence, is it? A No sir.

Q How long did you remain afterward there? A About two months.

Q Why? A Two months.

Cross Exam

BY MR. LEVY:

Q How many

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CASE #276

CASE #276

CASE #276

## Cross Examination

BY MR. LEVY:

- Q How many rooms were there in that house? A Ten.
- Q A barroom on the ground floor? A Sir?
- Q A barroom on the ground floor? A Yes sir.
- Q Was there an office? A Yes sir.
- Q Where was the office situated? A Upstairs.
- Q Upstairs where? A At the head of the stairs.
- Q One flight of stairs up? A Yes sir.
- Q And near the entrance to the stairs was a room? A Yes sir.
- Q And what was in that room? A The kitchen.
- Q Was the register kept in the kitchen? A No, sir; a man was stationed there.
- Q But you had a register there? A Yes, sir.
- Q Sure about that? A Yes sir.
- Q Where is that register now? A The last I saw of it, the officer took it.
- Q The officer? A Yes sir.
- Q What officer? A Delaney.
- Q He had the register? A Yes sir.
- Q Were these people registered at all? A Yes sir.
- Q Are you sure about that? A Yes sir.
- Q And they were registered? A Yes sir.
- Q Under what name? A I couldn't say under what name.

- Q Now then, you kept the register in the kitchen? A Yes sir.
- Q And a couple that came in there would go into the kitchen and register? A There would be a man there, or the housekeeper.
- Q And who was the proprietor of that establishment? A My father.
- Q And you managed it? A I did.
- Q Assisted by anyone; any assistants there? A My brothers.
- Q Your brothers? A Yes sir.
- Q In the place? A Yes sir.
- Q Of course I don't care to know anything about that.
- I simply want to get the situation of the place before the jury. A Yes sir.
- Q Now, in order to get to the bedrooms you would have to go up a second flight of stairs? A Yes sir.
- Q And there were no rooms at the head of the first flight? A Yes sir, my brother's room and my room.
- Q I am talking of the rooms that you let out to guests.
- A No sir.
- Q They were all on the other floor? A Yes sir.
- Q And there was a dining room there? A Yes sir.
- Q Was it not the back room of a saloon? Not fitted up like a parlor, or anything of that sort? A No sir, tables and chairs.

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CASE #276

51

Q And a bare floor? A No sir; oil cloth on the floor.  
Q And who was it that received these two people, the defendant and the woman? A That I couldn't say.  
Q Why can't you say? A Because I hadn't been there when it occurred.  
Q Now, do you know how long they were in the house before you heard the shot? A No sir.  
Q Is there anyone who knows how long they were in the house before you heard the shot? A Not as I know of.  
Q Well, who did receive them? Can't you enlighten the Court? A I don't know.  
Q Was it your brother? A I can't say.  
Q They might have been there several hours? A I can't say.  
Q How long had you been asleep before you heard the shot?  
A Nine hours.  
Q Nine hours? A Yes sir.  
Q And so that you are not in a position at all to say when they arrived in the place? A No sir, I am not.  
Q Now, what time was it that you were awakened? A Twenty minutes after seven.  
Q Was it dark? A No sir.  
Q The gas lighted? A Yes sir.  
Q The gas lighted in the hallway? A Yes sir.  
Q And in your room? A Yes sir.

CASE #276

52

Q Well, were you awakened by a shot or had you awakened before you heard the shot? A I was just getting up before I heard the shot.  
Q And then you heard one shot followed immediately by another? A Yes sir.  
Q That is right? A Yes sir.  
Q And did you see in what direction the shot came from?  
A No sir.  
Q You could not tell that? A No sir.  
Q You paid no attention to the first shot? A No sir.  
Q And no particular attention to the second shot? A The second shot I rushed to the door.  
Q What is that? A The second shot I rushed to the door.  
Q Did it sound to you as if it came from within the house?  
A Yes sir, the second shot did.  
Q Exam The second shot did? A Yes sir.  
Q And as you opened the door, this person ran into your arms? A Yes sir.  
Q Was there a gasjet in that hall? A Yes sir.  
Q Where is it? Right in the center of the hall? A Yes sir; in the center of the hall.  
Q And how near your room? A About a foot away.  
Q Now, the person who rushed downstairs--- the deceased, as you say--- must have rushed down a flight of stairs before

CASE #276

53

she got to  
Q And is your  
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ing).  
Q Just at the  
of it.  
Q You were a  
A Yes sir.  
Q And you gave  
Q And your re  
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Q Did she say



she got to your room? A Yes sir.

Q And is your room right at the bend of the stairs, at the foot of the stairs? A Well, here is the stairs (indicating).

Q Just at the point or turn of it? A Yes sir, at the turn of it.

Q You were a witness before the coroner, weren't you? A Yes sir.

Q And you gave your testimony then? A Yes sir.

Q And your recollection was better then than it is now? A Well, about the same.

Q Well, it was a little more recent then than now? A Well--

Q You recollect the facts as you gave them in detail before the coroner? A I do.

Q Now, you testify here that the woman said, "Andrew shot me". Did she say that? A Well, she said--- twice she said-- she called two names in my estimation.

Q Well, I don't want your estimation, my boy. A Well, to a fact she called two names.

Q Did she say "Andrew"? A She said "Emil" and "Andrew".

Q Now, let me understand this. What was the first thing she said? A She said, "Oh, Emil shot me."

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

Q She first said, "Emil shot me"? A Yes, sir.

Q You are positive that she said, "Emil shot me."? A Yes, sir.

Q Now, when you testified before the Coroner, did you say anything about her having said, "Andrew shot me."? A No, sir.

Q Then, why did you testify before the Coroner that she said, "Andrew shot me."? A Well, I didn't like to bring the two names in.

Q What? A I didn't want to bring in the two names.

Q Why not? A Well, I didn't. I thought, well Andrew and Emil was both names.

Q Now, listen to me a moment. Is it not a fact that, since the Coroner's Inquest, you have found out that this defendant's name is Andrew? Haven't you? Is it not a fact that you have found that out since the inquest? A No, sir.

Q Did you know it when you testified at the inquest? A Well, her statement that she gave me ---

Q No. Did you know what his name was at the Coroner's inquest? A I did.

Q At that time? A I did.

Q And then, if you knew his name was Andrew, why didn't you

CASE #276

CASE #276

CASE #276

say to the Coroner's jury that she said, "Andrew shot me."?

A Well, because I didn't know his last name was -- then. I thought his last name was Andrew -- that is the way I took it, Emil Andrew.

Q Now, what name did she mention first? A Emil. She said Emil and Andrew.

Q And did she talk with an Italian accent? A No, she talked as well as I did.

Q Did she say "Andrew" or "Andrea"? A Andrew.

Q Are you sure about that? A I am.

Q Now, let me refresh your recollection. Did she mention any name, as a matter of fact? A She did.

Q Now, let me read you from your testimony before the Coroner, at page 22: "Q. She was coming down from upstairs? A. She came right in my room, her clothes pulled from her. She wanted to go downstairs, and I caught her, and she said, "He shot me. He wanted to kill me." Is that true? A No, sir.

Q That is not true? A No, sir.

Q Did you so testify before the Coroner? A I did not, sir.

Q Well, I read you from the stenographic notes that were furnished to the Court. A I never said that in my life.

I said that she told me that, "Andrew shot me," and the first thing she said was "Emil," and Emil and Andrew was the two

words she told me.

Q And how long after she said, "Emil shot me", did she say, "Andrew shot me."? A A second after.

Q Was that in response to any question that you put? A I didn't put no question to her.

Q You didn't ask her anything? A No, sir.

Q Well, let us see. Do you know how many people were in that house at that time? A Not to my estimation.

Q Don't you know? A I don't.

Q Do you know how many of the rooms on that floor were occupied at that time? A I do not.

Q Do you know whether every one of the rooms was occupied, or not? A I do not.

Q Do you know, as a matter of fact, of your own knowledge, that she was ever in room eight? A I never seen her in the house before in my life.

Q Did you ever see her in Room Eight? A No, sir.

Q Did you see her in Room Eight on that day? A No, sir.

Q Can you swear that she came there with that man (indicating the defendant); not what your conclusions are, but what you have seen? A I can swear that she came there with that man.

Q Why? A Because she couldn't have gone upstairs except with that man.

Q Couldn't she

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CASE #276

CASE #276

CASE #276

Q Couldn't she have gone up with another man? A No, sir.  
 Q Why? A Because she would have to register.  
 Q If she went up with another man? A Well, this man would have to register.  
 Q Is there any other man registered on that day? A Not to my knowledge.  
 Q Well, did you look at the register? A I haven't seen the register since.  
 Q You said, a moment ago, that you didn't know whether the rooms were occupied or not. A I did. I can't be asleep and awake at the same time.  
 Q Now, don't let us fence. Let us get the truth. A That is the truth.  
 Q You don't know whether the other rooms were occupied or not? That is true, ain't it? A Yes, sir.  
 Q You don't know whether she came in with this man, or any other man, do you? A No, I don't.  
 Q You don't know whether she was ever in Room Eight, do you? A No, sir.  
 Q And you don't know whether she came out of Room Eight, do you? A No, I don't.  
 Q And you don't know who she referred to when she spoke of "Mail" or "Andrew"? A She was referring to me.  
 Q Well, what is your name? A Emanuel Rosenthal.

THE COURT: Oh, he does not understand the question.  
 BY THE COURT: A  
 Q Do you mean to say that she said you shot her? A Oh, not at all.  
 BY MR. LEVY:  
 Q She used the three words, "Shot at me", didn't she, about the shooting? A She said, "Mail and Andrew shot me."  
 Q She said that the two persons shot her? A Yes, sir. She said, "Mail Andrew shot me."  
 Q She said, "Mail Andrew shot me."? A Yes, sir. She was excited at the time she told me these things.  
 BY THE FOREMAN:  
 Q What is your name? A Emanuel.  
 Q Does she know you, or did she? A Never saw her before in my life, and never spoke to her.  
 BY MR. LEVY:  
 Q Well, were you ever called "Mail"? A No, sir.  
 Q They call you "Manny" for short, don't they? A Yes, sir, they do, for short.  
 Q Now, she held her hand up to her face? Did you pull her hand away from her face? A Yes, sir.  
 Q And what did you see next? A I saw the left eye was like a beet, and the blood pouring.  
 Q Before I go to that subject, and it is very important that I

know this -- You  
 that house?  
 Q And the last y  
 Delaney had it  
 Q On the day of  
 the shooting.  
 Q Well, when did  
 Q How long after  
 Q Well, why can't  
 the time.  
 Q Then, you didn't  
 Q Well, how do  
 father told me  
 Q Nothing, of y  
 Q Where does yo  
 Q What is the s  
 Ninth Street.  
 Q Well, who, be  
 the register?  
 Q Oh, and he w  
 A No.  
 Q And who was  
 all my broth  
 Q Well, now, s



know this -- You are sure that there was a register kept in that house? A There was a register kept in that house.

Q And the last you saw of that register was when Officer Delaney had it? A Yes, sir.

Q On the day of the shooting? A I didn't say on the day of the shooting.

Q Well, when did he take the register? A Some day after.

Q How long after? A I couldn't say.

Q Well, why can't you say? A Because I wasn't there at the time.

Q Then, you didn't see him take it? A No, sir.

Q Well, how do you know that he got it? A Because my father told me so.

Q Nothing, of your own knowledge? A No, sir.

Q Where does your father live? A Brooklyn.

Q What is the address? A One hundred and sixty-nine South Ninth Street.

Q Well, who, besides your father, would know this, concerning the register? A My father wasn't there at the time.

Q Oh, and he wouldn't know anything about it at all?

A No.

Q And who was there besides yourself? A Well, there was all my brothers.

Q Well, now, give us their names, please. I have got to get

that register if I can find it. A The register is out of existence, I think.

Q Why is it out of existence? A I think that it was torn up.

Q Who tore that up? A I think it was destroyed, or burned, at the time we were moving out.

Q Well, then, you didn't give it to Officer Delaney?

A Yes, sir, I gave it, and then I believe Officer Delaney returned it.

Q How could you give it to Officer Delaney if he returned it?

A Officer Delaney is out in the hall.

Q Now, which did you say? Burn it, or give it to Officer Delaney? A I think that Officer Delaney gave it back.

Q He returned it? A Yes, sir; I think Officer Delaney did return it. You can find it out. Mr. Delaney is outside.

Q Were you there when it was returned? A No, sir.

Q Then, this is all hearsay? A Yes, sir. Well, I have got to believe what I hear.

Q Of course. Now, the woman didn't say another word from the time that she said, "Bill shot me," "Andrew shot me."?

A Yes, sir; she said, "Let me go out. Don't tell the police."

Q Did you testify to that before the Coroner? A I did.

Q How many times did she say, "He shot me," or "Andrew shot

CASE #276

CASE #276

CASE #276

W 8

me," or "Email shot me."? A Twice.

Q Did she repeat the same words each time? A No, sir; she repeated "Andrew", and she said, "Oh, he shot me."

Q Now, that is what I want to get at. Did she use the word "Email" separate and apart from the name "Andrew," or both names together? A She used them together. She was excited.

Q Twice? A Once she said, "Email Andrew shot me." That is all I could get out of her.

Q Did she say, "He shot me."? A Yes, sir, she said that.

Q Did she say, "He wanted to kill me."? A No, sir.

Q Did you so testify before the Coroner? A I testified once that she said he shot her.

Q Did you testify before the Coroner -- at page 22 -- "He wanted to kill me."? A No, sir.

Q Well, did she lose consciousness in that place? A Yes, sir.

Q Do you know what I mean by losing consciousness? A She was gone off, yes.

Q Well, did she go off then? A Yes, sir.

Q Well, how soon after she said what you say she said?

A I was upstairs and came downstairs again and she was off.

Q She was off? A Yes, sir.

W 9

Q Well, you went upstairs to the room? A Yes, sir, I did.

Q Was there room up there to walk around the bed? A No, sir.

Q It was so narrow, that room, that, if you wanted to get from one part of the room to the other -- A You could only get to one side of the bed, because the other side was up against the window, or near the window.

Q Now, you told the District Attorney that you saw a pistol lying near this man's hand? A Yes, sir.

Q Is that true? A Yes, sir.

Q What did you testify about that before the Coroner?

A I did, too.

Q Now, you say that the pistol was on the floor? A I did.

Q And then you said the pistol was on the bed? A Yes, sir.

Q Now, which is true? A Both are true.

Q Both are true? A Yes, sir.

Q Did you say that the pistol was on the mantel-piece at that time, at the Coroner's Court? A No, sir; I only said that the pistol was on the bed.

Q You said that the pistol was on the bed? A Yes, sir.

Q Now, which is true? A Well, I saw it three times.

Q What? A Once on the floor, and once on the mantel-piece, and once on the bed.

Q Well, the first time is what I am questioning you about.

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A On the bed.

Q Did you say that before the Coroner? A Yes, sir.

BY MR. LE BARBIER:

Q The first time was where? A The first time I came to the room, was on the floor.

BY MR. LEVY:

Q Well, we will see now. At page 25: "Q. The first time you went up there, there was no revolver on the bed at the time? A. No, sir; not at that time. Q. Where was the revolver? A. The revolver, when I first saw it, was on the mantel-piece." Now, which is true? A. The first time I seen the revolver was on the floor, and the second time I seen the revolver was on the mantel-piece, and the third time I seen the revolver was on the bed, with the man's jewelry and money, which was taken from his person.

Q Well, if there was not enough room to walk around the bed, and the man was lying on the floor with the pistol next to him, and you went in there, and several officers went in there, how could you get around the room? A There was only two officers and myself.

Q But how did you get around the room? A I stood on the bed to open the window, and one stood alongside of the man, and the other alongside of him.

Q Now, we will ask you about the man's condition. Was he

conscious? A Unconscious.

Q Sure about that? A Yes, sir.

Q When you came up there he was unconscious? A Yes, sir.

Q Was he lying on his side, or back, or front? A On his left side.

Q Were his eyes open, or closed? A I didn't take no notice to it.

Q Did he have his hat on, or was it off? A Off.

Q Did you see where the hat was? A No, sir.

Q Was it anywhere about the room? A No, sir.

Q Did he have an overcoat on? A He did.

Q Were his clothes buttoned up? A Yes, sir.

Q Did he have a collar and tie on? A Yes, sir.

Q Did you see whether or not he was bleeding? A No, sir.

Q Didn't you? Sure about that? A The time I seen he was bleeding was when the surgeon came up and bandaged him, turned his head over, and the blood was coming from his ear.

Q Now, your memory is good? A Yes, sir.

Q Your recollection is just as good now as it was then?

A Yes, sir.

Q Now, I find this on page 24: "He was down, he was lying this way (indicating), on his back on the floor." "Q. He was bleeding? A. His ear was all choked full of blood, black; and I see the officer feel his head." Is that true?



A Yes, sir.

Q And then, his ear was full of blood? A Yes, sir.

Q And he was bleeding? A Yes, sir.

Q And you saw the blood coming out of his ear? A I did.

Q You did? A Yes, sir.

Q And how many places did you see the blood come out of?

A Out of his ear.

Q Only out of his ear? A Yes, sir.

Q Well, was the man conscious at all from the minute that you first saw him in that room lying on his back, or side, whichever you like, up to the time that you saw the ambulance carry him away to the hospital? A No, sir.

Q He didn't say a word? A Didn't say a word.

Q Was his face pale or flushed? A Pale. He vomited from the mouth.

Q Vomited from his mouth? A Yes, sir.

Q Blood coming out of his mouth? A No, sir; food.

Q Food? A Yes, sir.

Q Did you ever see that man there before? A Never did in my life.

Q Never knew him? A Never knew him.

Q Did you see how many shots had been fired from the revolver?

A No, sir.

Q Who took the revolver? A Officer Lyons.

Q Officer Lyons? A Yes, sir.

Q He took the revolver? A Yes, sir.

Q What did he do with it? Did you see? A I did not.

Q Did he put it in his pocket? A I don't know. I was excited and I ran downstairs.

Q Did you see him open the pistol? A No, sir.

Q You were excited? A Yes, sir.

Q You say that the woman spoke without any accent?

A No, sir, the woman could speak just as good English as I could.

Q Yes. And was there any blood coming from her mouth?

A No, sir.

Q But you say that the blood was pouring out of her head?

A Yes, sir.

Q Which part of the head did you say? A Over the left eye (indicating).

Q On the left side? A Yes, sir.

Q Pardon me just one second. I have just one more question.

As a matter of fact, you don't know whether this man registered or not? A Sir.

Q As a matter of fact, you don't know whether this man registered or not? A I know he would have to register, or he couldn't get through the house. That is my father's orders.

Q I don't care about your father's orders.

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CASE #276

CASE #276

CASE #276

BY THE COURT:

Q No. He might disobey your father's orders. Do you know whether he did or did not put his name down on the register?

A I couldn't say.

Re - Direct Examination:

BY MR. LE BARRIER:

Q Did you hear Mr. Levy read you this question -- from your answer I don't know whether you did or not? "Q. She was coming downstairs? A. She came right in my room; her clothes pulled from her. She wanted to go downstairs, and I caught her, and she said, 'He shot me.' 'He wanted to kill me.'" You understood Mr. Levy when he asked you that question, did you? A Yes, sir.

Q And that is correct, is it not? A Yes, sir.

Q "He wanted to kill me." A Yes, sir.

Q That was said? A Yes, sir.

Q You went into that room at different times, did you not?

A Yes, sir; I went into the room different times, three or four times.

Q Now, while you were in the room there the pistol was simply changed around from place to place? A From place to place.

Q You first saw it on the floor? A Yes, sir.

Q And you got on the bed to open the window? A Yes, sir.

Q And where was the pistol placed next? A On the bed, with his jewelry and money.

Q And next it was placed on the mantelpiece, or you saw it there? A Yes, sir. And the only testimony I give at the Coroner's Court was that the pistol was found on the bed, with the gentleman's money and his jewelry. That is the statement that I give at the Coroner's Court.

Q And you were not asked in detail of these things? A No, sir, I was not.

Q And if you had been asked, you would have stated what you have stated to-day? A Yes, sir. I would have stated then.

Re - Cross Examination:

BY MR. LEVY:

Q May I ask how near the defendant was that pistol?

A About nine inches away.

Q Well, now, give me an idea of what you think is nine inches.

A Well, he was laying that way (illustrating), in that kind of manner (illustrating).

Q With his arms extended? A Yes, sir; and the pistol was about from there to there (indicating).

Q About a foot away? A Yes, sir, about a foot away.

BY MR. LE BARRIER:

Q Well, you say nine inches, don't you? A Yes, sir.

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CASE #276

CASE #276

CASE #276

Q Near what hand? A Near the right hand.

MR. LEVY: Wait a second.

BY MR. LEVY:

Q The window of that room faces where? A Rivington Street.

Q There is only one window in that room? A Yes, sir.

Q The head of the bed was where? A Toward Rivington Street.

Q Toward Rivington Street? A Yes, sir. The foot of the bed is toward Rivington Street.

Q The foot of the bed is toward Rivington Street? A Yes, sir.

Q Now, the body was lying where? A Here is the body (illustrating), and here is Rivington Street, and the gentleman was lying this way (illustrating).

Q His feet towards the head of the bed? A Toward Allen Street.

Q His feet towards the head of the bed? A No, his head was toward the head of the bed.

Q And was his right hand toward the wall or toward the bed?

A Well, towards the wall.

Q The right hand was towards the wall? A Yes, sir.

Q And the pistol was on that side (illustrating)? A Yes, sir.

Q The woman, when she ran downstairs, did she have a hat on?

A No, sir.

Q Did she have a waist on? A Yes, sir.

Q She was not undressed at all? A All that she had off was the skirt, which was pulled off her, I guess with that --

Q Well, it was on her body? A Yes, sir; she held it that way (illustrating), running down with it.

BY MR. LE BARBIER:

Q (Indicating): With both hands holding on to the dress in front? A Yes, sir; the back was open.

BY MR. LEVY:

Q And, if she was holding her skirt that way (illustrating), how did she have her hands in front of her face? A She dropped them, dropped them from the skirt when she stood in front of me.

BY MR. LE BARBIER:

Q At the time that you first saw her, where did she have her hands? A Up to her face, and the second time, she pulled her hands down and stood up against the wall that way (illustrating), and wouldn't let me see anything, and grabbed her skirt (illustrating).

Q That is, she leaned up against the wall? A Up against the partition, yes.

Q And you then saw that her dress was sort of torn off?

A Yes, sir.

Q And then she titution? A

BY MR. LEVY:

Q May I ask you

How many shot

Q No more? A

Q Are you sure?

Q Do you know

A No, sir

Q Was she bleed

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Q That is all

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Q And were you

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Q Well, you di

CASE #276

CASE #276

CASE #276



Q And then she held up her dress leaning up against the partition? A Yes, sir.

BY MR. LEVY:

Q May I ask you this question, with his Honor's permission? How many shots did you hear fired? A Two.

Q No more? A No more.

Q Are you sure? A Positive.

Q Do you know how many times the woman was wounded? A No, sir.

Q Was she bleeding from the back of her head? A I didn't see no blood at all, only from the front.

Q That is all you saw? A Yes, sir.

Q The front, you mean? A Yes, sir, out of the eye.

Q And you heard only two shots? A Yes, sir.

Q And you won't swear that there were no more than two shots? A I only heard two. That's all I will swear to.

Q And you were pretty excited then, weren't you? A I was, yes.

Q And were you nervous, excited, and worried that perhaps your father's hotel would get into trouble? A I was, yes.

Q And you didn't pay particular attention to everything that was going on, did you? A No.

Q Did you? A I don't think anybody else would, either.

Q Well, you didn't, anyway? A I didn't, no.

Q And you won't be sure as to what the woman did say, will you? A I will be sure of what she said to me.

Q Well, now, who have you talked with about this case since then? A With nobody.

Q Well, did you talk with the policeman? A No, sir.

Q Did you talk with the policeman after the shooting, about this? A No, sir.

Q And was your father's place raided after that? A Yes, sir.

Q It was raided? A Yes, sir.

Q In consequence of this episode there, what happened there on that day? A I don't know.

Q Eh? A I don't think it is for that.

Q You don't think it was for that? A No, sir.

Q And has your memory been improved since that raid, eh?

A Well, in what way do you mean improved?

Q Well, as to what the woman said when she came downstairs?

A Well, that is what I am telling you, what the woman told me.

Q Well, you didn't know that at the time -- A She told me -- Once she said, "He shot me," and then she said that "Andrew shot me." I can't tell you all of it any more than that.

Q Well, you must tell us all of it. We have got part of it now. A Well, all that she said was, "Bill and Andrew

shot me," and then she said, "He shot me."

Q "He shot me." A Yes, sir; and with that I went to run upstairs and I said, "No, I'll stay downstairs. I ain't going to face any gun." And with that the officer and me held the door, and we were afraid to go upstairs.

Q The officer wasn't afraid to go up, I hope? A Well, I was afraid, I know. I wouldn't let anybody face any gun. In fact, I held the door there.

Q Well, don't tell us what you did. I know that you were very heroic. A Not at all. But I am not risking my life --.

Q How long a time was there between the time that you talked with the woman and the officers came in, up to the time you went upstairs and saw the defendant; how long a time elapsed? A Since I talked to the woman?

Q From the time that the woman talked to you when she came downstairs? A There was nobody -- nobody else, the officer or nobody else there when she talked to me.

BY THE COURT:

Q Now, listen to his questions. He asks you how long a time was there ~~between~~ from the moment that she talked with you, until the time that you went upstairs with the officer?

A Well, fully three-quarters of an hour.

BY MR. LEVY:

Q Fully three-quarters of an hour? A Yes, sir.

BY THE COURT:

Q Before the officer came there? A Yes, sir.

BY MR. LEVY:

Q Did you see anybody go up in the meantime? A No, sir, they were all afraid to go up.

Q Did you see anybody come downstairs? A No, sir.

Q Where were your brothers? A In the bar room attending to business.

DENNIS J. LYONS, a witness called on behalf of the People, being duly sworn, testified as follows:

Direct Examination:

BY MR. LEHMAN:

Q Are you attached to the Metropolitan Police of the City of New York? A Yes, sir.

Q On the Sixth day of April, 1901, were you so attached? A Yes, sir.

Q With what precinct? A The Twelfth precinct.

Q Wh? A The Twelfth precinct.

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

Q On the Sixth day of April, 1901, did you have occasion to visit the premises Number Sixty-eight Rivington Street in the County of New York? A Yes, sir.

Q Did you see

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Q Did you see a man there by the name of Rosenthal?

A Yes, sir.

Q What time did you visit those premises? A Between six and seven o'clock.

Q In the evening of that day? A Yes, sir.

Q Please state to the Court and jury after you arrived there, just what you did. A My attention was called by somebody rapping a stick on the sidewalk and I went up there -- I was about half a block away from the house in question -- and I went inside, and they told me that a man got shot.

MR. LE BARRIER: You went that in.

MR. LEVY: Oh, I don't care whether that is in or not.

Only speak up, speak up, Witness.

MR. LE BARRIER: Pardon me, but there is a little matter of hearsay on the record there. If there is no objection to it --

MR. LEVY: No.

THE COURT: Oh, no. No objection seems to be made to it. Proceed.

MR. LEVY: No, sir; none whatever.

BY MR. LE BARRIER:

Q Now, proceed, officer. A When I went in there, I found a woman in the back room, or the dining room as they called it, and she was suffering from what seemed to be a bullet

wound over the left eye. I asked her --

MR. LEVY: Objected to.

THE COURT: I will allow it, what he asked her.

MR. LEVY: Your Honor allows conversation in the absence of the defendant?

THE COURT: No; but I will allow what he asked her.

I do not know whether I will allow her reply.

BY THE COURT:

Q You questioned her? A Yes, sir.

BY MR. LE BARRIER:

Q And in consequence of that what did you do? A She told me that --

THE COURT: Never mind what she said.

BY THE COURT:

Q You questioned her? A Yes, sir.

Q And then what did you do? A I went upstairs, in Room Eight on the top floor.

BY MR. LE BARRIER:

Q Yes. Did you go into the room? A Yes, sir, I went into the room.

Q Did anybody go in with you? A Yes, sir.

Q Who, a young man by the name of McCarthy?

BY MR. LEVY:

Q What is the name? A A young man by the name of Emanuel

Rosenthal, I t

BY MR. LE BARRIER:

Q And when you

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BY MR. LEVY:

CASE #276

CASE #276

CASE #276



Rosenthal, I think his name is.

BY MR. LE BARBIER:

Q And when you entered Room Eight, what did you see?

A I found a man fully dressed laying on the floor.

Q Did you see that man? A Yes, sir, I seen him.

Q But do you see him now? A Yes, sir, I see him (pointing to the defendant).

Q Is he the defendant? A Yes, sir.

Q That is the man that you saw in the room (indicating the defendant)? A Yes, sir, that is the man that I saw in the room.

Q Now, what position was he in when you entered the room?

A He was laying in full length on the floor, on his left side.

Q Yes. A His right hand was outstretched (illustrating).

Q Proceed. A And about from nine to twelve inches from his right hand lay a revolver.

Q Is this the revolver, officer (indicating)? A Yes, sir.

MR. LE BARBIER: I offer it in evidence.

MR. LEVY: Well, wait a minute.

THE WITNESS: It was a Hopkins & Allen, thirty-two.

BY MR. LE BARBIER:

Q Well, is this the revolver? A Yes, sir.

BY MR. LEVY:

Q Well, is it in the same condition as it was then?

A No, sir; no.

BY MR. LE BARBIER:

Q In what way is the condition different? A Well, there was some empty shells in it.

Q Well, subject to that difference, is that the instrument that you found there? A Yes, sir.

BY MR. LEVY:

Q How many barrels are there, officer, and what is the calibre? A Thirty-two calibre, Hopkins & Allen, and I think there is either five or six chambers in it.

(It is admitted in evidence, without objection, and marked "People's Exhibit 1.")

BY MR. LEVY:

Q It is a six chambered revolver? A Yes, sir.

Q Of how many calibre? A Thirty-two.

Q And what make? A Hopkins & Allen.

MR. LEVY: Now, we have a description on the record.

THE COURT: What is the number of chambers in the pistol?

MR. LE BARBIER: Six, your Honor.

BY MR. LE BARBIER:

Q Did you pick the revolver up? A I picked the revolver up and laid it on the mantel-piece.

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- Q Yes. Then what else did you do? A I seen the man was bleeding from the right side of the head.
- Q Yes. A And I tried to ask him questions, but he seemed to me to be unconscious. So I run downstairs as quick as I could.
- Q Well, before you ran downstairs, officer, we would like to know what was the condition of the dress of the defendant?
- A He was fully dressed, sir. He had a light overcoat on him.
- Q Yes. A A Fall overcoat of a yellowish color.
- Q What else did you observe? Was his hat on or off, did you notice? A His hat was off. It seemed to me that the hat fell off as he fell down.
- Q Then, when you had observed this, you say, you went downstairs? A I went downstairs and I sent in a hurry call for an ambulance. There was a drugstore just across the way, about fifty feet away.
- Q What did you do after that? A I come back to the house, and I seen the woman was downstairs that was shot, and I asked her some questions.
- Q Well, never mind her answers just now. After you saw her then and there at that time and had questioned her, what did you do? A I waited the arrival of the ambulance.
- Q Well, in the meanwhile had you gone back to the room?

- A Yes, sir, I went to the room upstairs.
- Q Was there any further investigation made in and about the room? A Not that I could see.
- Q Was there any investigation made of the walls? A Yes, sir, I looked around and I saw the sign of some bullet marks on the wall, and I believe that there was ---.
- BY MR. LEVY:
- Q How many? A One or two.
- BY MR. LE BARRIER:
- Q Well, now, did you find a bullet there? A Yes, sir, we found a bullet there that was flattened.
- BY MR. LEVY:
- Q May I inquire how long after this thing was it that you made this investigation? The length of time after you were called in? A Well, from five to seven minutes afterwards.
- Q I mean, you went in and went downstairs again? A Yes, sir.
- Q And called an ambulance? A Yes, sir.
- Q And made an investigation? A Yes, sir.
- Q And dug the bullet out of the wall? How long was that afterwards? A No, sir, the bullet struck the wall and rebounded back.
- Q And dug the bullet out of the wall? How long was that afterwards?

CASE #276

CASE #276

CASE #276

THE COURT: No; he says that he did not dig it out.

A I picked it up.

BY MR. LE BARBIER:

Q And how long afterwards was that? A From five to seven minutes.

BY MR. LEVY:

Q From the time that you went downstairs and went upstairs again?

THE COURT: That was five or seven minutes after he had gone down, and not after the occurrence, because according to the other witness he was there three-quarters of an hour before the ambulance came.

MR. LEVY: Yes, sir. Perhaps he didn't understand my question.

BY MR. LE BARBIER:

Q How long was it, officer, after the occurrence that you found the bullet in the room?

THE COURT: Which occurrence?

BY MR. LE BARBIER:

Q How long was it after you went into the room the first time, that you found the bullet in the room? A It was probably about seven minutes.

Q I show you a piece of lead and ask you whether you can

identify that as what you call the bullet?

MR. LEVY: Now, I must object to that. However, of course, he can say yes or no to this question.

MR. LE BARBIER: Yes; that is all I am asking.

THE COURT: I will allow it.

A Yes, sir.

MR. LE BARBIER: Now, I offer this in evidence.

MR. LEVY: Objected to as immaterial, irrelevant and incompetent and improper.

THE COURT: I will allow it.

MR. LEVY: An exception, please.

(It is admitted in evidence and marked "People's Exhibit 2.")

BY MR. LE BARBIER:

Q Now, after you had taken this bullet, what did you do further, officer, in the room there, if anything?

A Well, I turned the man over on his back and I examined him to see whether he had any wounds in him or not, and I found out what seemed to me two wounds over the right ear (indicating).

BY MR. LEVY:

Q Two wounds? A Yes, sir; what seemed to me to be two wounds over the right ear.

BY MR. LE BARBIER:

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Q Did you at any time show the defendant this revolver, People's Exhibit 1? A No, sir, the defendant seemed to be unconscious.

Q No. At any subsequent time?

MR. LE BARBIER: No; I will not ask that.

BY MR. LE BARBIER:

Q Now, what else did you do in that room? A I done nothing further until the ambulance surgeon arrived.

Q Did you see him put in the ambulance? A Yes, sir, I took him downstairs on the stretcher and put him in the ambulance.

Q And what was done with the woman in the meanwhile? A We put the woman in the ambulance, too, and both of them were sent to Gouverneur Hospital.

Q That is all that you saw then of either or both of them that day? A That is all I seen of them.

Q Now, then, when next did you see the defendant, if at all?

A I haven't seen the defendant since, until I see him in court to-day.

Q Did you see him at the hospital? A No, I didn't see him at the hospital. Some other officers were sent to take care of him there.

Cross Examination:

BY MR. LEVY:

Q A very few questions, officer. How many bullet marks did

you discover on the walls in that room? A Two, sir.

Q They looked to you like bullet marks? A Yes, sir.

Q Did you dig any bullets out of the walls? A No, sir, I didn't dig out any bullets, but I found one bullet on the floor.

Q On what part of the floor did you find the bullet? A Near the mantel-piece.

Q Near the mantel-piece? A Yes, sir.

Q And that was at the foot or head of the bed, the mantel-piece? A No, sir, it was on the side of the bed.

Q On the right hand side of the bed? A Yes, sir, as you go in the door.

Q And that was at the foot of the mantel-piece? A Yes, sir, at the foot of the mantel-piece.

Q A gas jet in that room? A Yes, sir, there was a gas jet.

Q Was the gas jet burning? A Yes, sir, the gas jet was burning.

Q In the room? A In the room.

Q Do you know whether anybody had been in that room before you got there? A Well, I couldn't say.

Q Well, when you got to the room did you find any person in it other than the defendant? A Nobody, only the defendant.

Q Did the young man Rosenthal go up to the room with you?

A Yes, sir; he came in immediately afterwards.

Q After you? A

Q Did you examine the revolver.

Q Did you observe

A I found th

there was six shells.

Q That is to say, exploded? A

Q And there were

A Yes, sir.

Q That is correct

Q Was the pistol

Q Did you find any of these cartridges.

Q Well, you have saw the track

Q Well, were there lots on the wall

A No, sir,

Q Up about five

Q Now, you say I saw the pistol

Q After you? A Yes, sir, I come in first.

Q Did you examine the revolver? A Yes, sir, I examined the revolver.

Q Did you observe how many chambers had been exploded?

A I found that the revolver was fully loaded, and that there was six empty shells in the revolver, cartridge shells.

Q That is to say, every chamber in that revolver had been exploded? A Yes, sir.

Q And there were six empty cartridge shells in the cylinder?

A Yes, sir.

Q That is correct, is it? A Yes, sir, that is correct.

Q Was the pistol warm? A Yes, sir, the pistol was warm.

Q Did you find any evidences in that room of the explosion of these cartridges? A Well, I found one flattened bullet.

Q Well, you have told us about that. Any other? A And I saw the track of a couple on the wall.

Q Well, were those bullets -- The track of a couple of bullets on the wall -- Was that very high, or low down?

A No, sir, up about five feet.

Q Up about five feet? A Yes, sir.

Q Now, you say that when you first got into the room, you saw the pistol lying very near the defendant? A Yes,

sir, from nine to twelve inches away from his hand.

Q And did you immediately pick it up? A Yes, sir.

Q And what did you do with it? A I laid it on the mantel-piece.

Q Are you sure that you laid it on the mantel-piece?

A Yes, sir, I am positive.

Q The young man that testified before you said that it was first laid on the bed.

MR. LE BARBIER: No. He said that he saw it on the bed, and then on the mantel-piece.

MR. LEVY: Well, if I am incorrect, I want to be corrected.

BY MR. LEVY:

Q You laid it on the bed? You say that? A No, I laid it on the mantel-piece.

Q Excuse me... On the mantel-piece? A Yes, sir.

Q And then, what did you do with it? A The gun?

Q Yes, the gun? A I laid it on the mantel-piece.

Q And what did you do after you laid it on the mantel-piece?

A Well, it was laying there until the prisoner was put in the ambulance.

Q Did you ever put it on the bed? A I may have put it on the bed.

Q Did you ever see it on the bed? A I seen it on the bed,

perhaps, when it was put there.

Q Well, when was it put there? A I searched the man -- the man was a perfect stranger to me --.

Q When was it put on the mantel-piece?

THE COURT: Oh, let him answer. He says he searched the man.

A (Answer continued): I searched the man. He was a perfect stranger to me and I wanted to find out who he was, and I found a gold watch and chain then and two dollars and, I believe, ten or twelve cents in money, and some needles and other things, and I laid them on the bed, and I may have laid the revolver on the bed with them.

BY MR. LEVY:

Q Quite so. Now, then, the defendant never regained consciousness while you were in his presence? A Not that I could see.

Q Was he bleeding very profusely? A Yes, sir, he was bleeding quite a considerable share, from the right side of the head.

Q Are you quite sure that he had two bullet marks on the right side of his head? A Well, I couldn't say. There seemed to be two wounds there.

Q Might not there have been more than two wounds? A There may have been more.

Q But you certainly saw two? A Yes, sir, I am positive that I saw two.

Q How far was one wound from the other, in point of distance, I mean? A Well, I didn't --.

Q Well, an inch or two, or what? A Well, probably an inch or an inch and a half.

Q Well, probably an inch or an inch and a half apart?

A Yes, sir.

Q Well, were both wounds bleeding? A Yes, sir, both wounds were bleeding.

Q Can you indicate in what part of the head the wounds were, indicating on your own head? A I think they were around here, or around the ear (indicating).

Q Well, that is indefinite. Was one behind or above the ear? A I couldn't say, for his head was all blood and he had long hair, and the hair was clotted around the bullet wounds.

Q Yes. Now, let me ask you another question. Did you see any hat there? A Yes, sir, I seen a hat laying on the floor.

Q Where was the hat? A The hat was laying on the floor.

Q Near the body? A Well, about six or seven inches from the body.

Q From the head? A Yes, sir, from the head.



- Q Do you recollect what kind of a hat it was? A It was a derby hat.
- Q Did you observe the hat to see whether or not it had any bullet hole in it? A Yes, sir, I think -- I don't think there was any bullet holes in the hat.
- Q Well, are you sure? A Well, not positive.
- Q Not positive? A No, sir.
- Q Did you look to see whether or not there were any bullet holes in the hat? A Yes, sir, I looked at the hat, for I found on the inside of the hat his name, afterwards. That is how I ---.
- Q Well, did you see any hole in the hat? A I don't think I did.
- Q Will you swear that there was not? A I wouldn't swear to that.
- Q Well, have you any knowledge as to what became of that hat?
- A That hat was brought to the station house, I think.
- Q Have you seen it since? A No, I haven't seen it since.
- Q Now, then, with regard to the condition of the woman. You saw her, too, didn't you, officer? A Yes, sir.
- Q Was she dressed? A She was dressed.
- Q Fully? A Fully.
- Q Have her skirt on? A She had her skirt on and waist.
- Q And corsets, apparently, so far as you could see? A So

- far as I could see she had.
- Q Well, in other words, I mean did she look to you as though she was dressed fully? A Yes, sir, she looked like a working woman.
- Q Did she have a hat? A She didn't have any on when I seen her.
- Q Did you see any hat in the room? A No, I did not.
- Q Did you look for any hat in the room? A I didn't look for her hat.
- Q Did you see any other wearing apparel or clothes in the room, besides the hat of the defendant? A No, I didn't see any other.
- Q You didn't see any other? A No, sir.
- Q Was there a closet or wardrobe in that room, or nails to hang clothes on? A Unless there was some hooks in the wall.
- Q Was there anything hanging on those hooks? A I didn't notice.
- Q When you got there, what time of the night was it, officer, approximately, as near as you can remember? A It must be about near or around half-past seven, between 7:30 and 7:45.
- Q Well, besides the light burning in the room, was there any light burning in the hallway? A Yes, sir there was a

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light burning in the hallway.

Q Now, can you say where the gas bracket was hanging from in that room, the side or the center of the room, the ceiling I mean? A I couldn't tell you; I didn't notice.

Q Was it fully turned on or dimly lighted? A It was only dimly lighted. There seemed to be a poor light in that room.

Q Now, then, officer, tell me something in regard to that house itself. I don't mean to take up time, but this is very important. Did you see any register in that hotel?

A Yes, sir, I seen a register.

Q Where did you see the register? A It was kept in the room or the office, on the first floor.

Q What became of the register? A I left the register after me there.

Q Did any one take the register? A I don't know whether anybody took it after me or not.

Q You don't? A No. I didn't take it.

Q Did you look into the register to see whether the defendant or the woman that was killed, whether they had been registered? Simply the fact itself, without the contents of the register.

MR. LE BARBIER: Of course, that would only be heard say through him, I submit, your Honor.

BY MR. LEVY:

Q Did you look to see whether any names were apparently registered? A Yes, sir.

Q Did you look to see that, only that fact? A Yes, sir, I looked to see.

Q Did you take that register to the station house? A No.

Q Have you seen that register since? A No, I haven't seen it since.

Q Did you go into the other rooms upon the floor upstairs, next to room eight? A Yes, sir, I went into some.

Q Did you go into all? A I may not have gone into all, but I went into some.

Q Did you see any other persons on that floor? A No, I didn't see any other persons.

Q How many rooms did you go into? A Probably two or three.

Q Two or three? A Yes, sir.

Q You didn't go further up, to see who was in the other rooms on the floor above? A No, sir, this was on the top floor.

Q Or on the floor below? A I didn't look to see who was in the rooms on the floor below.

Re-Direct

BY MR. LEVY:

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Re-Direct Examination:

BY MR. LE BARBIER:

Q Are those the shells that you took from the revolver, officer (indicating)? A Yes, sir, these are the shells, the empty shells.

Q You found five empty shells in the revolver? A I found five empty shells in the revolver.

Q That is in People's Exhibit 1, which is this pistol, you found five empty shells? A Yes, sir.

MR. LEVY: Yes; but he says -- he said six.

MR. LE BARBIER: No, he said that it was a six chambered revolver, and that he found only five shells in it.

BY MR. LEVY:

Q Do you say, officer, that you found only five shells?

A Yes, sir, five shells.

Q And that five barrels had been charged? A Yes, one seemed to be empty.

Q Will you swear that one was empty? A Well, I didn't find any shell belonging to it.

Q When did you take these shells out of that pistol?

A I took them out when I took the pistol to the station house.

Q When did you take the pistol to the station house? A I

mediately after the accident occurred.

Q How long did you permit that pistol to remain upon the mantle-piece before you took it? A It was there probably about ten minutes, while I was getting the man and woman into the ambulance.

Q What is this? A rim fire or center fire pistol? A I think it is a center fire.

MR. LE BARBIER: I offer the empty cartridges in evidence, may it please the Court.

MR. LEVY: Pardon me a moment.

BY MR. LEVY:

Q Have those shells been in your possession ever since?

A No, sir, they have been in the Property Clerk's office ever since.

Q Well, the District Attorney's office or the Property Clerk's office? A Well, they have been in both places, I think.

Q And have they passed through any other hands than those of the District Attorney?

MR. LEVY: Can you tell me, Mr. Le Barbier? I want to know, Mr. Le Barbier.

MR. LE BARBIER: They went from him to Sergeant Petty, as I understand, and he has had them ever since.

MR. LEVY: Then I object. I wanted to know whether



they are exactly in the same condition as when they were taken from the pistol.

THE COURT: The testimony that is in already is that they were the identical shells taken from the pistol. It is too late to raise that objection now.

MR. LEVY: But it is not shown that they were in the identical condition that they were in when taken from the pistol.

THE COURT: The only difference in condition that is material, in the matter of a shell, is whether it is loaded or unloaded.

MR. LEVY: But it becomes material, your Honor, because the District Attorney has provided himself with a so-called pistol shot expert to testify in this case.

MR. LE BARBIE: The gentleman may not be here for that purpose at all.

MR. LEVY: Well, I don't think he is here for his health.

THE COURT: Well, we will be very careful about experts. But he has testified that those are the identical shells that he took from the pistol and, when the question comes up as to the expert

you can raise that question, as to their condition.

MR. LEVY: Very well, sir. Then I have no objection now.

(The shells are admitted in evidence and marked "People's Exhibit 3.")

BY MR. LE BARBIE:

Q Did you find, among other effects of the defendant, a silk handkerchief? A Yes, sir, I found it in his pocket, in the defendant's pocket.

Q And when you say that you found the revolver lying five or six inches from the hand of the defendant, did you observe the condition of his hand? A Yes, sir, I observed the condition of his hand.

Q Was it his right hand? A Yes, sir, he was lying on the left side.

Q Now, will you please state to the Court and jury what you observed as to the condition of the defendant's right hand?

A His right hand was outstretched, like that (illustrating).

BY MR. LEVY:

Q Flat? A Yes. He was laying on his left side and his right hand stretched out like that (illustrating), and the revolver seemed to be laying perhaps from six to twelve

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CASE #276

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CASE #276

inches away from the right hand, just like as when he --.

MR. LEVY: That is objected to.

BY MR. LE BARBIER:

Q No. Six or twelve inches away from the hand? A Yes, sir.

Q Now, confining yourself to the condition of the hand, what did you observe, if anything, on the hand? A I didn't observe anything on the hand only it being outstretched.

Q You didn't take it up and look at it? A No, sir.

BY MR. LEVY:

Q Did you look at it? Don't tell him so, if you did not.

A No, I didn't look at the hand. I only turned the man over.

Q No marks on the hand, that you could see? A No marks that I could see.

BY MR. LE BARBIER:

Q Now, you don't say that, do you? A No. I won't say whether there were any marks or not. I didn't notice any.

Q Now, I understand you to say that you didn't observe the condition of the hand, other than its outstretched condition?

A Yes, sir.

Q That is what you say to the Court and jury? A Yes, sir.

BY MR. LEVY:

Q In which pocket did you find that silk handkerchief?

A In the overcoat pocket.

CASE #276

Q In the side pocket of the overcoat? A Yes, sir.

Q The right side? A I couldn't say that, whether it was the right side or left side; I didn't notice.

THE COURT: We will now take an adjournment until tomorrow morning, at half-past ten o'clock.

Gentlemen of the jury, I am obliged, at each adjournment, to caution you not to converse with each other or with any one else about the case, and, of course, not to come to any conclusion upon it, until the case is finally submitted to you.

(The trial was then adjourned until Wednesday morning, November 27th, 1903, at 10:30 o'clock.)

CASE #276

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## TRIAL RESUMED.

MR. LeBARBIER: May it please the Court, I offer in evidence the diagram of the premises in question, with the consent of counsel for the defendant.

THE COURT: It may be admitted and marked. Show it to the jury.

(It is marked "People's Exhibit 4.")

WILLIAM F. DELANEY, a witness called on behalf of the People, was duly sworn.

MR. LeBARBIER: With your Honor's permission I will ask this witness to step aside for a moment. There is a lady here who has a baby sick at home.

THE COURT: Very good.

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

## Direct Examination:

BY MR. LeBARBIER:

Q Are you a married woman? A Yes, sir. I would rather speak Italian. I can't speak English.

(The witness testified through the Official Interpreter.

Philip Dellin, from this point on.)

Q Where do you live, madam? A 272 Mott street.

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

Q You reside there with your husband? A Yes, sir.

Q Have you a family? A Yes, sir.

Q What family have you? A Two children.

Q Well, give me their ages. A One four months, and the other five years.

Q Do you know the defendant, Andrea Guoco? A Yes, sir.

Q On the 6th of April, 1901, where did you reside? A In the same place, 272 Mott street.

Q Did the defendant live in those premises? A Yes, sir.

Q How long have you known the defendant? A Nearly four years and a half.

Q Do you recall the night preceding the killing of Bella Cirigliano? A Yes, sir.

Q Did you hear the defendant say anything that night?

MR. LEVY: Yes or no.

BY MR. LeBARBIER:

Q Yes. Just yes or no. A Yes, sir. I heard him.

Q What did you hear the defendant say?

MR. LEVY: Wait a moment. I object, as incompetent.

immaterial and irrelevant. It is not shown where this woman was. It is not shown whether she was in the presence of the defendant or not, or whether she saw the defendant at the time.



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CASE #276

THE COURT: Well, she could not very well have heard him unless she was near him.

MR. LEVY: But may I interrogate her as to where she was?

THE COURT: Oh, you can ask her afterwards when and where and how she heard it.

MR. LEVY: And will your Honor be good enough to give me an exception?

THE COURT: Yes.

A I heard him quarreling and hollering with his wife.

BY MR. LeBARRIER:

Q Please state what you heard.

BY THE COURT:

Q What was said?

MR. LEVY: Now, then, one moment. I object.

MR. LeBARRIER: I will consent that it be stricken out, if it is not responsive.

MR. LEVY: But I don't want it to go in at all. I object to it, as incompetent, immaterial and irrelevant.

THE COURT: I cannot tell whether it is immaterial, irrelevant and incompetent or not until I hear it.

MR. LEVY: Your Honor will be good enough to give me an exception?

CASE #276

THE COURT: Yes.

A He said that he has a grudge against Bella Cirigliano.

BY MR. LeBARRIER:

Q Now, proceed. A As his wife felt offended that he was making love to Bella Cirigliano.

Q Now, proceed. A Then he searched for the revolver.

Q Now, what was said about the revolver?

MR. LEVY: Now, this is supposed to be an oration or conversation from her. The statement of the interpreter is that he then searched for the revolver.

MR. LeBARRIER: No, that is wrong. The interpreter is wrong.

THE INTERPRETER: Yes. "He asked his wife for the revolver." I did not catch it immediately.

THE COURT: Now, remember, you have simply to repeat what she says. If she says that the moon is made of green cheese, for instance, repeat that. Do not tell us that it is not relevant. We will decide that.

THE INTERPRETER: Well, she is using a word that means "searching."

BY MR. LeBARRIER:

Q Then it is that he asked for a revolver; is that it?

CASE #276

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A Yes, sir.

Q And then what did you hear the defendant say about the revolver, if anything? A He asked his wife for the revolver, and then he talked against his wife, and that is all what I heard.

MR. LEVY: Now, I move to strike out all this conversation which she says that she overheard, on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: Motion denied.

MR. LEVY: I take an exception.

Cross-Examination:

BY MR. LEVY:

Q Where were you when you heard this conversation? A I was in my home.

Q Did the defendant or his wife live in your home? A No, sir. I heard it. I was near the window and I heard it.

Q Well, where was the defendant when this conversation took place? A In his house, in his home.

Q How near your home is his house? A I am on the third floor, and he is on the fourth floor, one floor above.

Q And where was this conversation between himself and his wife? On the third floor, or the fourth floor? A On the fourth floor.

CASE #276

Q And what part of the room or the house was it that he was having his conversation at? A I don't know the room. He was in his home.

Q Did you see him when he was having this conversation?

A No, sir.

Q Did you see his wife when he was having this conversation?

A No, sir.

Q Did you see him at all that morning, at or about the time when this conversation is said to have taken place? Was it in the morning, or night, when it took place? A It was in the evening, about eleven o'clock.

Q Did you see him that night at a time immediately before or after this conversation? A I saw him in the street about ten o'clock. I was waiting for my husband.

Q What month did this take place in? A In April.

Q Were your windows open, or closed? A I heard a noise, and then I opened the window from the hall.

Q Do you know whether his windows in his apartment were closed, or open? A I don't know.

Q Do you know how many other people were in the room at the time the conversation was had in his room? A In his own room?

Q Yes. A There was nobody, only his family.

Q How do you know? A The defendant's family.

CASE #276

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Q How do you know? A I did not hear any other voice.

Q How many times have you talked with Guoco, the defendant?

A I could not tell. I know him. I could not tell how many times. I always talked with him.

Q Now, is it not a fact that the quarrel was by his wife with him, that she quarreled with him, and not he with her?

A I don't know the motive, but they both quarreled.

Q Did she find fault with his paying attentions to Bella?

A Yes, sir, she was criticising him for that.

Q And did he defend Bella in his conversation? A Yes, sir.

Q And did he say that he loved Bella? A I don't know. His wife said so.

Q Did he say that he loved Bella? A I don't know.

Q You say that he defended Bella. What did he say about Bella? A He did not want his wife to say anything against Bella.

Q So he defended Bella?

MR. LeBARRIER: Objected to.

MR. LEVY: If you object, then I will amend the question.

BY MR. LEVY:

Q What did he say to his wife about his like or dislike for Bella, if anything? A I don't know.

Q Eh? A I don't know.

CASE #276

Q Well, what was said by the wife, if anything, about a revolver? A His wife did not want to give him the revolver, and he asked for the revolver.

Q Well, do you know whether or not he got a revolver?

A I don't know. I heard it from his wife the next morning.

MR. LEVY: Well, I move to strike out what she heard.

THE COURT: Strike it out.

BY MR. LEVY:

Q Do you know the brother of Bella? A Yes, sir.

Q What is his name? A There are so many brothers.

Q Did you ever have a talk with one of the brothers of Bella about his intention to kill Guoco because he was paying attention to his sister Bella?

MR. LeBARRIER: Objected to, as incompetent, immaterial and irrelevant. First of all, it is collateral matter entirely, and second it does not go to the credibility.

THE COURT: I will allow it. Repeat the question.

(It is repeated by the stenographer.)

A I heard that he saw somebody with his sister, but he did not know exactly who the person was.

BY MR. LEVY:

Q Did he say that he would kill that person? A No, sir.

CASE #276



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CASE #276

Q Was there anything said in the conversation which you say you overheard between the defendant and his wife about arm-  
himself to defend himself against Bella's brother?

MR. LeBARBIER: Objected to, as incompetent.

THE COURT: Allowed. You brought out a conversation,  
and he is entitled to go into the whole of it.

A No, I didn't hear anything about that.

BY MR. LEVY:

Q Besides what you have said, what else did you hear, if any-  
thing, said between the husband and wife that night?

A All that I heard was that they were quarreling and  
he was asking for the revolver, and his wife did not want  
to give it.

BY THE COURT:

Q Did he say anything as to what he wanted to do with the re-  
volver? A No, sir, I did not hear that; I did not  
hear anything.

Re-Direct Examination:

BY MR. LeBARBIER:

Q Didn't you say something about a grudge in your direct ex-  
amination? What did you mean by saying, when I examined  
you before, that there was a grudge against Bella, and he  
had it?

BY MR. LEVY:

CASE #276

Q Let me ask you a question. Did you say that the defendant  
said that he had a grudge against Bella? A No, sir, I  
did not hear that.

MR. LEVY: The interpreter is at fault, I am informed  
by my interpreter. He misinterpreted.

MR. LeBARBIER: And my interpreter so informs me, also.

THE COURT: I know he is at fault. Now, Mr. Stenog-  
rapher, repeat that portion of the witness's tes-  
timony.

(It is repeated by the stenographer, as follows: "I  
heard him quarreling and hollering with his wife."  
"He said that he has a grudge against Bella."  
Ciriigliano.")

THE COURT: Now, I wanted it repeated by the stenog-  
rapher so as to impress the interpreter with the  
seriousness of that misinterpretation. Now, ask  
the witness this question: If she said that in  
the direct examination, or if she meant it, if she  
said it: "I heard him quarreling and hollering  
with his wife." "He said that he has a grudge  
against Bella Ciriigliano."

THE WITNESS: Well, his wife was talking against Bella,  
but I did not hear him say anything against her.

MR. LeBARBIER: She said "his wife was talking against

CASE #276

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Bella and he was defending her." Pardon me, Pro-  
fessor, but that was the translation.

THE INTERPRETER: She said, "He was talking well of  
Bella and his wife was talking against Bella."

BY MR. LeBARBIER:

Q And didn't you say that he defended Bella to the wife?

A What do you mean by "defend"?

Re - Cross - Examination:

BY MR. LEVY:

Q Did you mean to say that the wife said that she had a grudge  
against Bella, or did the defendant say that he had a grudge  
against Bella?

MR. LeBARBIER: No, we have dropped the matter of the  
grudge out of the case, Mr. Levy. It was obvi-  
ously a misinterpretation.

MR. LEVY: Then we agree that that should go out, as a  
misinterpretation?

MR. LeBARBIER: Yes, it was a mistranslation.

A She said that her husband had something to do with  
Bella, and did not say anything else. No other thing did  
she say.

MR. LEVY: Now, Mr. LeBarbier and I have agreed, your  
Honor, that the word "grudge" should be eliminated  
from the record, as it was not used by the witness  
and was a misinterpretation.

CASE #276

THE COURT: Then strike it out.

MR. LEVY: Now, I move to strike out all the conversa-  
tion detailed by the witness, if your Honor please,  
on the ground that it is immaterial, irrelevant  
and incompetent and hearsay.

THE COURT: Oh, no. Motion denied.

MR. LEVY: An exception, please.

WILLIAM F. DELANEY, being recalled to the  
stand, testified as follows:

Direct Examination:

BY MR. LeBARBIER:

Q You are attached to the Metropolitan Police force of the  
City of New York? A Yes, sir.

Q And were you so attached in the month of April, 1901?  
A Yes, sir.

Q In what precinct? A Twelfth.

Q Were you so attached on the 6th of April, 1901? A Yes,  
sir.

Q In what county? A In the County of New York.

Q Did you have occasion to visit the premises 68 Rivington  
street on the 6th of April, 1901? A Yes, sir.

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

Q At what time of the day? A Between seven and eight

CASE #276

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CASE #276

o'clock at night.

Q Did you visit those premises in company with anybody?

A Officer Walsh.

Q When you arrived at those premises did you see the defendant there? A Yes, sir.

Q Did you see anybody else? A The deceased.

Q Bella? A Bella Cirigliano.

Q When you arrived there and saw the defendant and Bella did you see any other officer besides the one in your company?

A I saw Officer Lyons enter the house ahead of me.

Q Do you know a person by the name of Emanuel Rosenthal?

A Yes, sir.

Q Did you see him that night? A Yes, sir.

Q When you arrived at those premises will you please state to the Court and jury just what you did? A I entered the back room, the dining room, and seated in a chair was the deceased, Bella Cirigliano.

Q Yes. Was she in a chair in the dining room? A Yes, sir.

BY MR. LEVY:

Q That is up one flight of stairs? A No, sir. Ground floor.

BY MR. LeBANDIER:

Q Did you go up to Bella? A Yes, sir.

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

CASE #276

Q Please state what that condition was. A She had a wound over the left eye. I should judge about there (indicating).

Q Did you observe the condition of the wound? A Yes, sir.

Q Can you describe it a little more accurately? A Well, it looked like a bullet wound, a pistol shot wound.

Q Yes. Any marks around it? A Yes, sir, there was powder marks around it.

Q You could see the powder marks around it? A Yes, sir.

Q Which eye was that? A The left eye.

Q Was it directly over the left eye? A Yes, sir.

Q Point to about where on your eye. A I think about there (indicating).

Q Pointing to a position directly over the left eye?

A Yes, sir.

Q And was it just above the eyebrows? A Yes, sir, as near as I can recollect.

Q And as you say surrounded by these powder marks? A Yes, sir.

Q Was the eye closed? A Yes, sir.

Q It was closed? A Yes, sir.

Q Did you observe any other wound upon her head? A No, sir.

Q Did you look for any other wound? A No, sir.

Q You assumed that that was the wound?

CASE #276



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CASE #276

MR. LEVY: Objected to.

MR. LeBARRIER: Question withdrawn.

BY MR. LeBARRIER:

Q After you looked at the wound just over the eye where did you next direct your attention to? A Well, I tried —  
Q In other words, I may ask you whether you observed the condition of her dress? A I couldn't say anything about her dress. She sat in the chair, and I looked at her hands. Rosenthal said that —

MR. LEVY: No, no.

A (Continued) From what I had heard —

MR. LEVY: Objected to.

MR. LeBARRIER: No, I will bring that out. You cannot get in the conversation, of course.

BY MR. LeBARRIER:

Q Somebody told you something? A Yes, sir.

Q And by reason of what was said you looked at her hands?

A Yes, sir.

Q At both hands? A Yes, sir.

Q What did you observe about the condition of her hands?

A Nothing unusual.

Q Any marks upon them of any kind? A No, sir.

Q Did you observe any powder marks upon the hands?

MR. LEVY: Objected to, as incompetent.

CASE #276

THE COURT: Objection sustained. The question is leading.

MR. LEVY: And it is negative testimony, also.

THE COURT: He testified that he observed nothing unusual.

BY MR. LeBARRIER:

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

I did not carefully examine her dress. I just looked at her.

Q Was anybody with you at the time? A Yes, sir, Detective Walsh.

Q And all of this occurred in the dining room? A Yes, sir.

Q Now, after you had observed — made this observation, as you have testified to, what did you do next? A I went upstairs to Room 8 and saw the defendant lying on the floor.

Q Please describe the condition of his dress. A Well, his clothes were — his overcoat — the back part of it was partly up under his hips, ruffled up somewhat, and this coat was open (indicating the under coat).

Q What do you mean? His sack coat? A Yes, sir, the sack coat was open.

Q What else did you observe? A That he had vomited on the floor.

Q Did you observe any blood upon him? A Yes, sir, there

CASE #276

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CASE #276

was some blood here, on the right side of his head (indicating).

Q In what position was he lying on the floor? A He was lying on his left side, partly over on his left side.

Q Well, beside the bed? A His head towards the bed, the side of the bed, and his feet toward the door.

Q Yes. Did you observe anything else about the defendant at that time? A He was groaning.

Q He was groaning? A Yes, sir.

Q Did you speak to the defendant then and there? A Yes, sir, I asked him questions, but he did not seem to be conscious.

Q I show you People's Exhibit 1, and ask you whether you saw this exhibit there that night? A Yes, sir.

Q Where was it? A On the mantel-piece.

Q Where did you first see it? A On the mantel-piece.

Q Then after you had seen the revolver what did you do, officer? A Went downstairs again to try to get some information from the deceased, Bella.

Q Did you speak to Bella? A Yes, sir.

Q Did she answer you? A After a long while she did.

MR. LEVY: One moment. Yes or no, please.

THE WITNESS: Yes.

BY MR. LEBARBIER:

CASE #276

Q What question did you put to her?

MR. LEVY: I object to that, as immaterial, irrelevant and incompetent, and as hearsay, in the absence of the defendant.

THE COURT: Objection sustained.

BY MR. LEBARBIER:

Q After having questioned Bella what did you do then? A I kept shaking her by the arm to try to arouse her. She seemed to be lapsing into unconsciousness. I tried to arouse her into consciousness until I could get the defendant carried downstairs and brought before Bella.

MR. LEVY: Objected to. One moment. That was the operation of the witness's mind, as to his intention, and I move that it be stricken out.

THE COURT: I will allow it to stand.

MR. LEVY: Your Honor allows it to stand?

THE COURT: Yes.

MR. LEVY: I will take an exception, please.

BY MR. LEBARBIER:

Q Did you bring him downstairs before Bella? A Yes, sir; but Bella had lapsed into unconsciousness before we brought him down.

Q Do you know whether the defendant was conscious when you brought him down? A No, sir, I couldn't say.

CASE #276

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CASE #276

Q But he was brought there into the dining room? A Past the dining room out into the ambulance.

Q What was done with Bella in the meanwhile? A She was put in the ambulance along with the defendant. At least, I presume that. They were carried toward the ambulance.

MR. LEVY: Leave out your presumptions.

THE COURT: Yes, leave that out. Mr. Levy very properly objects to any presumptions or assumptions.

BY MR. LEHARBIER:

Q What was the condition of the bed in the room in which you found the defendant? A Well, the clothes of the bed were mussed.

Q Yes. Can you state about how much mussed they were?

A Well, no. The blanket or the comfortable was drawn back.

Q Yes. A Ruffled like, a sort of a bunch.

Q And was there any derangement of the bed? A Well, it is a poor bed. There was no make up about it at any time. It was one of those beds that were never made.

Q Is that what you say? A Yes, it is a poor place.

Q Now, after you saw the condition of the bed you then left the premises? A Yes, sir.

Q Did you see the defendant again that night? A I did at the hospital.

CASE #276

Q That night? A Yes, sir.

Q What hospital? A Gouverneur Hospital.

Q Where is that? A Foot of Gouverneur street.

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

Q Please state what conversation, if any, you had with the defendant.

BY MR. LEVY:

Q Where did you say this took place? A In Gouverneur Hospital.

Q In whose presence? A In the presence of Detective Walsh, and Coroner Ruoca.

Q I want to get this straight. Do you refer to the ante-mortem statement taken that night? A Yes, sir, but I had some conversation with him myself.

MR. LEVY: I object to this conversation.

BY MR. LEVY:

Q Any doctor there? A Yes, sir, Coroner Ruoca.

Q No. Nobody ever accused Ruoca of being a doctor. Any doctor? A No, sir, only the three of us. The nurse was standing by.

Q Was this before, or after the ante-mortem statement?

A He had taken the ante-mortem, I believe, before we got there, and after we came there he read the affidavit that the defendant had signed as his ante-mortem over to

CASE #276



him again and asked him if it was true, in our presence.  
 Q And when was your conversation? A Between the time he took the ante-mortem and the time he read it in our presence.

MR. LEVY: Then I object to this conversation, as incompetent, immaterial and irrelevant.

BY MR. LeBARRIER:

Q When you say he asked him if it was true, what was done? Did he swear to it, I mean to say? A Yes.

Q Was the oath administered by Coroner Zuoca? A Yes, sir.

Q Did you see him sign it at that time? A I believe he signed it before we got there. I did not see him sign it.

Q But you were present during all the reading of this statement? A Yes, sir.

Q I ask you to look at this paper.

MR. LEVY: Then you withdraw your question as to the other conversation; do you mean that, Mr. LeBarrier?

MR. LeBARRIER: Well, I have not asked it yet.

BY MR. LeBARRIER:

Q I show you a paper, and ask you whether that is the paper you refer to? A Yes, sir.

MR. LeBARRIER: I offer this in evidence.

MR. LEVY: Before this is passed upon may I ask this

question?

BY MR. LEVY:

Q Do you know Herman Hausmann? There appears to be the signature of a witness, Herman Hausmann, at the bottom of this paper. A No doubt that is the nurse. I don't know him by name.

MR. LEVY: No doubt it is. Now, there are some interlineations in this paper. I wish you would send for the Coroner.

MR. LeBARRIER: I will. I am going to have him here.

MR. LEVY: Will your Honor observe that there are some interlineations?

BY MR. LeBARRIER:

Q Did you see the Coroner make any changes in reading it over to the defendant? A I am not aware positively that I did.

MR. LeBARRIER: Well, I offer it for identification. (It is marked "People's Exhibit 5 for Identification.")

MR. LEVY: Dr. Williams, the Deputy Coroner, is here.

You are familiar with his handwriting, Doctor, with Coroner Zuoca's handwriting?

DR. WILLIAMS: Yes.

MR. LEVY: Well, will you look at these interlineations and say whether they are in his handwriting?

CASE #276

CASE #276

CASE #276

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CASE #276

DR. WILLIAMS: They are.

MR. LEVY: I want to save time, and if Deputy Coroner Williams, who is familiar with the handwriting of Coroner Zuoca, says that they are in his handwriting, I will proceed. Before this is passed upon, with your Honor's indulgence —

BY MR. LEVY:

Q You heard the Coroner ask the question of the defendant.

"Do you now believe that you are going to die?"

A Yes, sir.

Q And did you hear his answer? A Yes, sir; he said he believed he was.

Q Did you hear the Coroner ask the question, "Have you any hope of recovery from the effects of the injuries that you have received?" A Yes, sir.

Q And did you hear him answer, "I do not think so?"

A Yes, sir.

Q That he did not expect to recover, but that he expected to die? A Yes, sir.

Q And that was this defendant? A Yes, sir.

Q And at that time the deceased had already died? A Yes, sir.

MR. LEVY: It is a very odd document, but I have no objection. I will let it go in. I wish your

CASE #276

Honor would look at the inquisition upon his death, before he died.

MR. LeBARRIER: Then I offer it in evidence, without objection, if your Honor please.

(It is marked "People's Exhibit 5 in evidence.")

MR. LeBARRIER: With your Honor's permission I will read it. (Mr. LeBarbier reads the exhibit to the jury).

MR. LEVY: I wish the stenographer would insert this exhibit in the record.

THE COURT: Yes, he may.

"State of New York, City of New York, Borough of Manhattan, ss:

An ante-mortem inquisition, taken at Gouverneur Hospital, No. .... street, in the .... Ward of the Borough of Manhattan, in the City of New York, this sixth day of April, in the year of our Lord one thousand nine hundred and one, before Antonio Zuoca, Coroner of the Borough and City aforesaid, on view of the body of Andrea Cucco.

That the said Andrea Cucco came by his injuries by being shot in the head with a pistol in the hands of Bella Farrayelo, on the 6th day of April, 1901, in a house at Rivington and Allen

CASE #276

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CASE #276

streets.

In witness whereof, I, the said Jurors as  
well as the Coroner, have to this inquisition set  
my hand and seal, on the day and place aforesaid.

(Seal)

Antonio Guoco, Coroner.

State of New York, City of New York, Borough  
of Manhattan, ss:

Statement of Andrea Guoco, now lying danger-  
ously wounded at Gouverneur Hospital, in the....  
Ward of the Borough of Manhattan, City of New York,  
on the 6th day of April, 1901.

Question—What is your name?

Answer—Andrea Guoco.

Question—Where do you live?

Answer—279 Mott street.

Question—Do you now believe that you are  
about to die?

Answer—I believe so.

Question—Have you any hope of recovery from  
the effects of the injury you have received?

Answer—I do not think so.

Question—Are you willing to make a true  
statement how and in what manner you came by the  
injury from which you are now suffering?

Answer—I was living at 279 Mott street with

CASE #276

my wife, Maria, and three children, but I have  
friendship with a woman, married, by the name  
Bella Ferrajolo, living 125 Houston street, 3d  
floor: I had criminal relations with her for the  
last three years: she was jealous of me. I had  
an appointment with her at 12 o'clock today at  
Allen cor. Rivington st.. is a bed house that I  
generally was use to go. I found today after  
work a friend, Antonio Mazza, at 12 o'clock, and  
went with him at Spinelli's restaurant, in 2d  
street and 3d avenue. I stay with my friend  
till 6.45 p. m. in the evening; then I went at  
Allen st. house, and met Bella. She arrived at  
7 p. m. She was mad like a tiger. We went up-  
stairs in a room in second floor. Before I drink  
a glass whiskey at the bar. A few moments after  
she asked me for a silk handkerchief, and she took  
the handkerchief from the overcoat pocket. There  
was also the pistol. I did not see her take the  
pistol, but I felt her left hand on my face and  
eye as caresses, but in a second I felt a shot in  
the right of my head, and she said, 'I told you so  
will end.' I try to grab the pistol from her  
hand. I fell from the bed unconscious. I do

CASE #276



not know if she shot herself or not. There was no other person in the room but us two. We both were dressed, only I removed my coat, but after the shooting when I recover consciousness I put my coat and I fell again. She was no more there in the room.

Andrea Cucco.

Witness, Herman Hausmann.

Sworn to before me this 6th April, 1901.

Antonio Zucca, Coroner.\*

BY MR. LeBARRIER:

Q Did you have any conversation with the defendant at the hospital at that time?

MR. LEVY: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. LEVY: He says that these conversations were had, if your Honor please, between the time of the taking of the ante-mortem and the time of its signing and verification. The conversation necessarily must have been a part of the conversation, therefore, which resulted in the preparation of that document, signed by the Coroner.

THE COURT: I do not see what this document has to do with any conversation with the defendant, or any.

admissions made by him. I will allow it.

MR. LEVY: Exception.

BY MR. LeBARRIER:

Q Did you? A Yes, sir.

Q About what? A About the shooting.

Q Anything said about the revolver?

MR. LEVY: Now, don't lead him.

MR. LeBARRIER: He said the shooting.

A I asked the defendant how he came by his injuries. He said that she had shot him, that Bella had shot him.

BY MR. LeBARRIER:

Q Yes. A I asked him how many shots had been fired. He stated there was only one, and that he fell unconscious. I asked him who shot her. He said he did not know, that when he came to, she had left the room.

Q Yes. A He asked the nurse to wash his hand, and he put out his left hand, and, as the nurse went to get the water, I picked up his right hand, which was partly hid by the clothes, and along the first finger —

Q The index finger? A The index finger. Were marks that looked and smelled like powder marks.

Q Well, what marks were they? A Powder marks.

Q They did not look like it, but they were powder marks?

A Yes, sir. I looked at them and smelled them, and they

were powder marks.

Q Yes. A And must have been that is how it

Q Any other marks? A No, sir.

Q Were these marks?

Q What, if any?

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CASE #276

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Q Yes. A And I asked him how that came, and he said it must have been, as he was shot, he grabbed the pistol, and that is how they came.

Q Any other marks on any other part of his right hand?

A No, sir.

Q Were these pronounced marks? A Yes, sir.

Q What, if anything, else was said? A He told me what he said in his affidavit. He kept repeating that more than anything, about having had criminal relations with her for the past two or three years.

Q Yes. A And that she was jealous of him; that he had promised to meet her there at twelve o'clock.

Q Yes. A And that, instead of that, he met a friend who detained him until seven o'clock.

Q Yes. A And when he went there she was made at him like a tiger.

Q Yes. A He said that they did not go to bed, that they did not take off their clothes.

Q What else, if anything, what, if anything, was said about the revolver? A Why, I asked him why he carried the revolver, and he said, "Bad boys in the street," and I asked him when he carried it before, and he said not in three months. He said that he put it in his pocket that day.

CASE #276

and I asked him why that day any more than any other day, and he said, "Bad boys in the street."

Q Did you show him the revolver? A No, sir.

Q Well, do you know whether or not this is the revolver (indicating the revolver in evidence)? A This is the revolver.

Q Referring to People's Exhibit 1? A Yes, sir.

BY MR. LEVY:

Q That is, that is the revolver that you saw on the mantelpiece? A Yes, sir.

Cross-Examination:

BY MR. LEVY:

Q Now, all this conversation took place after he had announced his belief that he was going to die and after the doctors had sent for the Coroner and the Coroner had taken his ante-mortem statement, and the man was in the shadow of death?

MR. LEHARRIER: Objected to, as a conclusion.

A I did not know his condition.

THE COURT: The last part of it is objectionable. Leave out the "shadow."

MR. LEVY: Yes, sir, leave out the "shadow."

BY MR. LEVY:

Q The man was not expected to live that night? A That I could not say.

CASE #276

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CASE #276

Q Well, from what you could gather from the physicians?

A I did not ask the physicians. The Coroner said that it was a bad case.

Q And the defendant seemed to realize — did he say anything that would indicate that he expected to die? A He said to the Coroner that he expected to die.

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

DIRECT EXAMINATION:

BY MR. LEBARBIER:

Q Are you an officer attached to the Metropolitan Police force of the City and County of New York? A Yes, sir.

Q Were you so attached in the month of April, 1901?

A Yes, sir.

Q Connected with what precinct? A Twelfth.

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

Q On the 6th day of April, 1901, did you have occasion to visit the premises 68 Rivington street, in the City and County of New York? A Yes, sir.

Q About what time? A Seven o'clock in the evening.

Q Please state upon your arrival there what did you do.

A I went upstairs on the third floor and saw a man lying on the floor.

CASE #276

Q Who was that man? A I disremember his name.

Q Well, do you see him in court? A Yes, sir (indicating the defendant).

Q Pointing to the defendant? A Yes, sir.

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

Q Well, what did you do? A He was lying on the floor, on his left arm, and a revolver in front of him, maybe six or eight or ten inches away from him, with his right hand thrown across his body.

Q Yes. A I tried to arouse him, and he was unconscious.

Q What else did you do? A I told Officer Lyons —

Q Never mind what you told the officer. A To send for an ambulance.

Q Did you observe the condition of the room in which you saw the defendant lying? A Yes, sir.

Q What was its condition, as far as you can recollect?

A Well, there was blood on the wall, and there was a bed in the room.

Q Was it open, or shut, the bed? Was it a folding bed?

A The bed had never been disturbed. The clothes was all spread over it and all. It had never been disturbed.

Q Well, what else did you observe? A That was all that was in the room at the time I went there.

Q Yes. Other people had been there in the room before you.

CASE #276



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Officer Lyons -----

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A That was all that  
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in the room before you.

CASE #276

as far as you know, if you do know? Do you? A I don't  
know.

Q You don't know? A No, sir.

BY MR. LEVY:

Q Did you go in there alone, officer? A Yes, sir.

BY MR. LeBARRIER:

Q And did you see the deceased that evening, Bella? A Yes,  
sir.

Q Where did you see her? A Downstairs in the back room.

Q What else did you do that night in relation to this case?

A Why, I done nothing, only to help to carry the defend-  
ant downstairs then.

Q Did you see any revolver in the room in which the defendant  
lay? A Sir?

Q Did you see any revolver in the room in which the defendant  
lay? A Yes, sir.

Q Where was the revolver when you saw it? A Lying in  
front of his body, on the floor.

Q Lying in front of his body? A Yes, sir, on the floor.

Q On the floor? A Yes, sir.

Q Well, near what portion of his anatomy? A (No answer).

Q Near what portion of his body was the revolver? A Be-  
tween his stomach and his knees.

Q That is where you saw it? A Yes, sir.

CASE #276

Q Did you pick the revolver up? A Yes, sir.

Q What did you do with it? A I placed it on the mantel-  
piece.

Q Do you know what became of the revolver after that?

A Officer Lyons took it, with some other stuff.

Q Yes. A That we got out of the man's pocket.

Q Yes. A And brought it to the station house.

Q Yes. Was it placed on any other thing that night in that  
room, as far as you know? A Paced on anything?

Q No, placed. In other words, did you see the revolver on  
the bed that night? A Yes, sir; Lyons put it on the  
bed. He took it off the mantel-piece.

Q That is what I wanted to know, officer. Now, what next  
did you do in this case? A I done nothing more in it,  
only turned the case over to the two detectives when they  
came there.

Cross-Examination:

BY MR. LEVY:

Q Just a few questions, officer. Where was the defendant's  
right arm when you went into the room and saw him lying on  
the ground? A Lying across his body that way (illus-  
trating), hanging on the floor.

Q He was lying on his left side? A Yes, sir.

Q And his right arm was right across his body? A Yes.

CASE #276

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CASE #276

sir, that way (illustrating).

Q And how near his hand was the pistol? A Well, from six to ten inches, maybe twelve.

Q You say that the bed was not disturbed at all? A No, sir.

Q The comfortable was not rolled up and thrown into the corner? A No, sir.

Q Did Rosenthal, the young man — do you know him? A Yes, sir.

Q Was he in the room? A Oh, he came up five minutes after, after I got there.

Q And who was it that really picked up the pistol? A I did.

Q Or the other officer who testified? A I did.

Q You put it on the mantel-piece? A I did.

Q And who put it on the bed? A Officer Lyons.

Q And after that where was it put? A I don't know where he put it then. He was supposed to carry it to the station house.

Q The defendant was unconscious? A Yes, sir.

BY MR. LeBARRIER:

Q As far as you know? A As far as I know. I could not get anything out of him.

THOMAS P. WALSH, a witness called on behalf of

CASE #276

the People, being duly sworn, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Are you an officer attached to the Metropolitan Police Force of the City of New York? A Yes, sir.

Q Were you so attached in the month of April, 1901?

A Yes, sir.

Q What precinct? A Twelfth Precinct.

Q In what county? A New York.

Q On the 6th day of April, 1901, did you have occasion to visit the premises 68 Rivington street, in this county?

A Yes, sir.

Q What time did you go there, as far as you recollect?

A About 7.50 at night.

Q In whose company, if any? A Detective Delaney.

Q When you arrived at 68 Rivington street, please state to the Court what you did. A When we arrived at 68 Rivington street, in the dining room of the Raine law hotel at that number, the deceased, Bella Cirigliano, was sitting in a chair, and she had a wound in her left eye, right about the left eye, and we tried to obtain from her who it was that had shot her.

MR. LEVY: No.

BY MR. LeBARRIER:

CASE #276

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185

Q Well, did you put any questions to her?

MR. LEVY: Yes or no.

A Yes, sir.

BY MR. LeBARRIER:

Q Did she answer the questions? A She answered that Andrea —

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

THE COURT: Motion granted.

BY MR. LeBARRIER:

Q Just yes or no. Did she answer the question? A Yes, sir.

Q And in consequence of what Bella said what did you do?

A I remained downstairs with her, and Officer Delaney went upstairs.

Q Did you have occasion to go upstairs that evening? A No, sir, I did not.

Q Did you see them — did you see the deceased and the defendant sent away in the ambulance that evening? A Yes, sir.

Q When did you next see the defendant, if at all? A I saw him at the hospital about two hours later.

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

Q Please state what conversation you had. A I saw him at

186

the hospital about two hours later, and —

MR. LEVY: Ask him who was there first, please.

BY MR. LEVY:

Q Who was there at the time you saw him at the hospital?

A Coroner Eyooca and Officer Delaney and myself.

Q Anybody else? A And the orderly, the nurse.

BY MR. LeBARRIER:

Q And what conversation, if any, did you have with the defendant? A Well, while we were there he sent the orderly for some water.

Q Yes. A And the orderly came back with it, and I asked the orderly what he wanted it for.

MR. LEVY: Objected to.

BY MR. LeBARRIER:

Q No. The orderly, as you call him, came back with the water? A Yes, sir.

Q And what did you do then? A I examined the defendant's both hands, and the index finger of his right hand was covered with powder marks.

Q Extending down how far? A Well, about — pretty near the whole finger.

Q Pretty near the whole what? A The whole index finger.

Q Pronounced marks? A Yes, sir.

Q Can you describe them a little more accurately? A And

187

I asked the

MR. LEVY

BY MR. LeBARRIER

Q Can you describe

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BY MR. LEVY:

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BY MR. LeBARRIER

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CASE #276

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I asked the defendant how he got those marks on his finger.

MR. LEVY: Wait. He does not answer the question.

BY MR. LeBARRIER:

Q Can you describe a little more accurately the marks that you saw upon the index finger of the defendant? A All black, powder marks, and smelled like powder.

BY MR. LEVY:

Q Down to where? Down to the knuckle? A Well, yes, I believe it was pretty close to the knuckle.

Q That is, from the point of the finger down almost to the knuckle? A Yes, sir.

BY MR. LeBARRIER:

Q And you say you smelled it? A Yes, sir.

Q And it smelled like powder? A Yes, sir.

Q And what then? A I asked the defendant how he got those powder marks on his finger.

Q Yes. And what did he say? A He said that the deceased had fired a shot at him, and in grappling for the revolver with her he received those powder marks.

Q And what else did he say, if anything? A And he also said that, after the first shot was fired, he had fell unconscious, and did not remember anything after the first shot was fired.

Q Yes. A And I asked him didn't he have the revolver, and

he said that the revolver was in his coat. He said he had taken his coat off in the room and hung it up, and that she had asked him for a handkerchief, and he had told her to go to his coat and get the handkerchief, and when she was getting the handkerchief out of the coat she took the revolver out of the coat pocket.

Q Yes, proceed. Then after she took the revolver out of the coat pocket did the defendant say what the deceased did with it? A He said that she fired a shot. All that he remembered was the one shot, and then he was unconscious.

Q He told you that? A Yes, sir.

Q That, after the first shot, and the only shot that he remembered, he became unconscious? A Yes, sir.

Q And did he tell you that it was at that time that he grappled with her for the revolver? A Yes, sir.

Q Before he became unconscious? A He made the both statements, yes.

Q Oh, he made the two statements, as you say? A Yes, sir.

Q Well, after this statement, or both of these statements, were made, what was next done, officer? A That is about all. I left him then.

Q You left him then? A Yes, sir. We remained there until we saw the coroner take his ante-mortem statement.

Q Did you at any time go into Room 8 that night? A Yes, sir.

Q Please sit

Room 8 at

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BY MR. LeBARRIER:

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BY MR. LeBARRIER:

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BY MR. LeBARRIER:

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night? A Yes, sir.

CASE #276

Q Please state what happened, if anything, when you went into  
Room 8 at 68 Rivington street?

MR. LEVY: When was this? What time? Let us locate  
the time.

BY MR. LeBARRIER:

Q In the evening of April 6th, 1901. A After we had re-  
turned from the hospital. I think it was about eleven  
o'clock.

Q And what did you do then?

MR. LEVY: Objected to, as immaterial, irrelevant and  
incompetent. It was several hours after the af-  
fair in question.

MR. LeBARRIER: Question withdrawn.

BY MR. LeBARRIER:

Q Do you recall any occurrence about a bullet? A Yes, sir.

Q What is the occurrence that you recall?

MR. LEVY: Objected to, as immaterial, irrelevant and  
incompetent.

THE COURT: I will hear it.

MR. LEVY: I except.

A We looked around the room and saw a bullet-hole in  
the wall.

BY MR. LeBARRIER:

Q Yes. A And young Rosenthal, he picked up from the floor

CASE #276

a flattened bullet.

Q Well, now, did you have any conversation with the defendant  
about the revolver, as to the ownership of the revolver?

A He admitted that the revolver was his.

MR. LEVY: No. I move to strike that out.

THE COURT: Strike it out.

BY THE COURT:

Q Say what he said. A He said that the revolver was in  
his coat pocket.

BY MR. LEVY:

Q You did not show him the revolver, did you? A No, sir.

Cross-Examination:

MR. LEVY: I have no questions.

WILLIAM F. DELANEY, being recalled by the  
District Attorney, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q Mr. Delaney, do you know anything about the registry book  
that was at that place at 68 Rivington street? A I saw  
the registry book.

Q When did you see it? A On the night of the shooting.

Q Well, did you ever give the registry book to the District  
Attorney? Did you ever bring it down to the District At-

CASE #276

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you? A No, sir.

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CASE #276

torney's office? A No, sir.

Q Do you know what became of it? A I believe I gave it  
back again to Rosenthal.

Q Well, it went out of your possession, then, back to Rosen-  
thal? A Yes, sir.

Cross-Examination: None.

LOUIS FERRAJOLO, being duly sworn on behalf  
of the People, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q How old are you? A Twenty-six.

Q Where do you live? A 279 Mott.

Q What is your business? A Barber.

Q Did you have a sister by the name of Bella in the month of  
April, 1901? A Yes, sir.

Q Did you see her in her lifetime in that month? A That  
month?

Q Yes. A The day before, she was at the house.

Q The day before what? A That was on Friday.

Q The day before what? The day before the shooting? A Yes,  
sir.

Q What house did you see her at? A At 279 Mott, at my  
house.

CASE #276

Q At your house? A At my mother's house.

Q Did you live there with your mother? A Yes, sir.

Q And was she in the habit of visiting your mother?

A Yes, sir, mostly every day.

Q Where was Bella living? A I think it is 123 or 121  
Hivington.

Q Well, how long since — how long was it that she had been  
married? A One year.

Q Do you know? A One year.

Q Since her marriage was it her habit to come to your mother's  
house every day? A Mostly every day.

MR. LEVY: Objected to, as immaterial.

THE COURT: Well, it is answered.

BY MR. LeBARRIER:

Q Did you see her after her death? A I saw her, yes, up  
at the Morgue.

Q Where? A At the Morgue.

Q That was your sister Bella? A Yes, sir, my sister Bella.

Q What was her married name? A Cirigliano.

Q And her maiden name was Bella Ferrajolo? A Yes, sir,  
Bella Ferrajolo.

Q When you saw her at the Morgue was she dead, or alive?

A She was dead.

Q Do you know the defendant, Andrea Cucco? A Yes, sir.

CASE #276



Yes, sir.

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A Yes, sir.

d, or alive?

A Yes, sir.

CASE #276

Q How long have you known him? A I know him for the last four or five years. We lived on the third floor — the second floor, and he lived on the fourth floor. We were doing the housekeeping at the same time, me and the old man.

Q Who is the old man? A My father. So we knew them well.

Q You knew them well? A Yes, sir.

Cross-Examination:

MR. LEVY: No questions.

Re-Direct Examination:

BY MR. LeBARRIER:

Q You attended her funeral, did you? A Yes, sir.

Q And she was buried? A Yes, sir.

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

Direct Examination:

BY MR. LeBARRIER:

Q Mr. Williams, what is your profession? A Physician.

Q And do you hold any official position in the County of New York? A Yes, sir, Coroner's Physician.

Q In the month of April, 1901, were you a Coroner's Physician?

A I was, sir.

Q For what Coroner? A Coroner Ruoco.

CASE #276

Q Antonio Ruoco? A Yes, sir.

Q Did you have occasion in such capacity to make the autopsy on the body of Bella Cirigliano? A I did, sir.

Q Where did you make it? A At the Morgue.

Q Will you kindly state to the Court and jury the autopsy and the result of it? A As a result of the autopsy —

Q And also in your opinion what was the cause of the death of Bella Cirigliano.

MR. LEVY: Please divide that question up.

MR. LeBARRIER: I will.

A As the result of the autopsy I found that the deceased met her death from hemorrhage, from a laceration of the brain, due to the impact of bullets upon the skull.

BY MR. LeBARRIER:

Q Yes. Where did you discover the bullets? Just state what you did in the matter of the autopsy, Doctor. A Right here (indicating) over what is known as the superciliary ridge, the eyebrow.

Q Over the left eyebrow? A Yes, sir. There was a bullet wound there. There was also a wound, perhaps a third of an inch exteriorly.

IF the course of the autopsy I found that a bullet entered the inner wound, flattening against the ridge. The outside portion of the bullet kinked out and made this wound.

CASE #276

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196

This one was made from without inwards. The external wound was made from within outwards.

There was a very small portion — the kinked out portion — there was a very small portion, kinked out portion on the bullet that I found, but, in the manipulation of the bullet that part fell off.

To discover that wound — I might explain that, in doing the autopsy, you enter the knife at the right of the ear and bring it over the ear and across the scalp, just as you skin an animal — and when I pulled the scalp down I found no trace that a bullet had gone through the membrane immediately covering the brain.

After feeling the scalp with my finger I recognized at once that the bullet was in the substance of the scalp that I had drawn forward. If my memory serves me right, there was no mention in the history that we got from Gouverneur Hospital that there was a second wound, and I did not expect to find one, but, in pulling back the scalp wound, posteriorly from the poll I found another ~~wound~~ in this case a single wound, and not a double wound, an inch and a half behind the external orifice of the ear and perhaps three-quarters of an inch above.

Q What ear? A Left ear, about there (indicating). Neither did this bullet pierce the skull.

Q Now, right here, Doctor, while you are proceeding with that

197

so interestingly, I ask you to take these exhibits, and, as you are explaining to the jury, to make use of them. Are these the bullets — keep them separate — that you found in the head of Bella? A They are, sir.

MR. LeBARRIER: Now, wait. We first offer them in evidence.

MR. LEVY: Are they two bullets?

MR. LeBARRIER: Yes.

MR. LEVY: One moment. Are they the bullets that were extracted by Dr. Williams?

BY MR. LEVY:

Q Were they, Doctor, the bullets that you yourself extracted?

A Yes, sir, they were.

(They are admitted in evidence without objection and marked "People's Exhibits 6 and 7.")

BY MR. LeBARRIER:

Q Now, with reference to People's Exhibit 6 and with reference to the wound behind the left ear, I ask you now to state what you did and what you found.

MR. LEVY: That is the bullet from behind the ear (indicating)?

MR. LeBARRIER: Yes.

MR. LEVY: Now, show the bullet taken from the brain to the jury.

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BY MR. LeBARRIER  
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BY MR. LeBARRIER  
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A I don't see quite what you wish to get from me.

BY MR. LeBARRIER:

Q What did you find there? A Neither did the bullet behind the ear reach the bony wall of the skull. It was imbedded in the substance of the skull. And I found that also -- my fingers went against it -- in pulling the scalp backwards, right from the poll. Before we go any further the left eye for a space of ---

Q No, pardon me, Doctor, just before you get at that, will you describe, please, to the Court and jury the physical condition of the wound upon the ear? A Yes, sir.

Q That is to say, of any marks upon it, other than the wound.

MR. LEVY: Oh, let him testify, please.

A It was distinctly a bullet wound. It had all the characteristics of a bullet wound, and, of course, finding the bullet immediately inside, it confirmed me in the belief that I hold, and did hold, that it was a wound caused by a bullet.

BY MR. LeBARRIER:

Q Now, was it in the hair at all there? A No, sir.

Q Was any part of the hair disarranged? A Only the portion of the hair that was evidently impinged upon by the bullet, in its entrance into the scalp.

Q Any hair burned? A No singeing of the hair and no pres-

ence of powder stain or of the discoloration of powder on that side.

Q Now, will you kindly proceed with what you were about to say, Doctor? A The wound over the eye, I found, to the extent of one of the old trade dollars, powder marks, coarse ---

Q Now, one moment. You are now speaking of People's Exhibit 7, the bullet that was extracted from the wound over the eye, which did not penetrate the skull? A Yes, sir.

MR. LeBARRIER: I offer that to the jury for inspection.

BY MR. LeBARRIER:

Q Will you now proceed, Doctor, and please pardon my interruption?

BY THE COURT:

Q Go on, Doctor. A To the extent probably of a -- of an old-fashioned trade dollar, or a little more, true powder marks and almost circular, very coarse powder marks.

BY MR. LeBARRIER:

Q Direct powder marks? A Direct powder marks, and not slanting. If a powder grain strikes at right angles it will rest. If it come obliquely it may give you a comma-shaped mark, that is, the head of the comma being where it strikes and the tail of the comma where it glances off tangentially. In other words, there is a direct powder mark.

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CASE #276

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CASE #276

and there is the one that is sent tangentially (illustrating). It struck me, from what I saw, that those were powder marks due to the discharge of a pistol.

Q Extending over an area of space of how much? A I should say about the size of one of the old trade dollars, a very large silver dollar, or a little more than that.

Q That would be about two inches? A I did not ever measure it. Perhaps an inch and a half. But the eye itself was not injured. The eyelid had the powder marks all over, but there was no congestion of the eye, no particular congestion.

Q Yes. A I removed what is known as the calvarium, the bony covering of the skull, and I found, diagonally across, a very considerable — well, of course all terms like that are more or less relative — a large pial hemorrhage into the pial membrane, right here, the posterior or occipital lobe of the brain behind, diagonally opposite this wound (illustrating).

Q Causing a laceration? A Oh, yes. I was going to say also that there was a laceration there. I found on the top, over what is known as the pericortical lobe of the brain, a pial hemorrhage and a laceration. This pial hemorrhage and laceration I connected with this shot (indicating). The origin of this pial hemorrhage and lacer-

CASE #276

ation (indicating) was not quite so obvious as far as any supposed connection with this shot was concerned (indicating), until on reflection I said that it was quite possible that, if a person were running away and bent the head and ducked to escape, the bullet arriving here will go tangentially or diagonally across here (indicating).

MR. LEVY: Now, I move to strike this out, as not being competent evidence, as being speculative, and not a part of opinion evidence, even.

THE COURT: Motion denied.

MR. LEVY: Exception.

BY MR. LEBLANC:

Q Now, you were about to say, Doctor, that this wound, entering under the lower portion of the left ear, caused the laceration and pial hemorrhage, you say, on the top of the skull, on the top of the brain? A Yes, sir. If I might illustrate —

Q I have just sent for a skull. A Well, I could do it better with the permission of one of the gentlemen here.

Q Well, illustrate on the officer there, if he does not mind it. A Now, a bullet striking here, especially if it came from this direction, will give you the pial hemorrhage and laceration right where my finger is here (illustrating) on the right posterior or occipital lobe of the brain. I

CASE #276

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CASE #276

had no difficulty with that, but, with this other bullet  
you get your trouble. When I got the hemorrhage and lacer-  
ation on the pericortical lobe, the connection with this  
other bullet was not so manifest to me, and so I said after-  
wards, a person running and ducking — there you get it  
right away (illustrating), and so I connected this injury  
of the brain with the bullet behind the ear.

Q Was either bullet wound sufficient to cause death, in your  
opinion? A Oh, yes, either one or the other would have  
caused death, and of course, a fortiori, both.

Q In what condition were the organs of the — what was the  
general condition of the woman otherwise? A She was a  
singularly healthy woman, as far as the autopsy showed,  
well developed, strong muscles, good heart, kidneys in good  
condition and the other organs.

Q No other cause of death then, I assume? A Absolutely  
no other.

Q Are you familiar with the use of firearms, Doctor? A Oh,  
I could not give you any testimony in particular on that.

Q Well, are you able to state in your opinion whether the  
wounds were self-inflicted or not?

MR. LEVY: I object to that, as incompetent.

THE COURT: I think the question is a little too broad,  
too comprehensive. You can ask him to state if

CASE #276

there were any indications that would enable him  
to form an opinion as to how those wounds were  
inflicted, and what those indications were.

MR. LeBARRIER: Yes, I will put the question that way.  
Repeat the Court's suggestion, Mr. Stenographer,  
as my question.

(The question was repeated by the stenographer as sug-  
gested by the Court, as follows): "State if there  
were any indications that would enable you to form  
an opinion as to how those wounds were inflicted,  
and what those indications were."

MR. LEVY: Answer yes or no.

A Yes.

BY MR. LeBARRIER:

Q Please state from what indications you arrived at your  
opinion.

MR. LEVY: I object, on the ground that it is incom-  
petent.

THE COURT: I will allow it.

MR. LEVY: An exception, please. Now, I object to the  
exhibition of that skull on the table there in the  
presence of the jury. It is a gruesome object,  
and the jurors may not like to look at it. I  
object to its exhibition.

CASE #276

tions that would enable him  
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those indications were.

I put the question that way.  
Suggestion, Mr. Stenographer,

I by the stenographer as sug-  
as follows): "State if there  
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CASE #276

THE COURT: If it is needed, why, it will be called  
for. In the meantime you can stow it away, if  
you like, Mr. District Attorney.

BY MR. LEBARBIER:

Q Please state from what indications you arrived at your  
opinion. A What was the question?

MR. LEVY: I object also on the ground that the witness  
is not qualified to testify as an expert on the  
subject of the use of firearms.

THE COURT: The question does not touch upon the use of  
firearms; only if there were indications that  
enabled him to form an opinion as to how the  
wounds were inflicted. He says that there were  
such indications.

A There were indications.

MR. LEVY: Your Honor will kindly give me an exception?

THE COURT: Certainly.

THE WITNESS: Now, do I understand that I am to state  
the indications?

BY MR. LEBARBIER:

Q Yes, what the indications were that enabled you to form an  
opinion. A Well, the indications are of two ears, and  
I state this now so as to enable the counsel to object if  
necessary, so that I will not appear to dump them in upon

CASE #276

him suddenly — there are indications of two kinds, one of  
the physical and the other of the psychological. Now,  
considering the distance —

MR. LEVY: Now, I ask your Honor to instruct the wit-  
ness not to give us psychological reasons.

THE COURT: We will have the physical first, and then  
we will proceed to the psychological later.

A (Continued) It is impossible, upon physical grounds,  
that the woman could have fired — that the deceased could  
have fired the shot which sent the bullet against the skull  
behind the ear. It would have been held so far back, and  
she could not, as you can try — you can see by example, by  
taking that revolver in your hand, that you cannot bring it  
around in such a fashion as would direct it against that  
portion of the skull (indicating), considering the distance  
at which it would have to be held, as evidenced by the fact  
that you had no powder marks or singeing of the hair.  
Then —

MR. LEVY: Now, stop there, if that is the end of the  
physical.

THE WITNESS: You have stopped me, sir.

MR. LEVY: And I now move to strike it out, upon the  
ground that it is incompetent, speculative, argu-  
mentative, theoretical, and not the direct proof

CASE #276



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CASE #276

required under the provisions of the Code for the  
proof of the corpus delicti.

THE COURT: Motion denied.

MR. LEVY: Exception. Now, the doctor is about to  
give us the psychological reasons. I object to  
them.

MR. LeBARRIER: No, I have not offered them yet.

BY MR. LeBARRIER:

Q Now, Doctor, I call your attention to the nature of the  
wound over the left eye, and I desire to know whether there  
are any indications that would cause you to believe that  
that wound could not be self-inflicted?

MR. LEVY: I object to that, as immaterial, irrelevant  
and incompetent, and as speculative and theoret-  
ical and argumentative.

THE COURT: Objection overruled.

MR. LEVY: An exception, please.

A The indication, in connection with the wound over the  
left eye, is not quite so strong as the indication in con-  
nection with the wound behind the left ear. May I take  
the pistol, by way of illustration?

BY MR. LeBARRIER:

Q Certainly. A To have shot herself there (indicating)  
the woman must have held the pistol with the thumb, in that

CASE #276

manner (illustrating).

Q Yes. Proceed. A Now, I am afraid that I am breaking  
in upon the psychological side of it.

THE COURT: Very well. We will strike it out if you  
do so.

A (Continued) Now, this is my point —

MR. LEVY: I make my objection to this. Pardon me.  
Doctor. I object to this line of statement now  
on the part of the doctor.

THE COURT: I am inclined to think that it will be ob-  
jectionable. Doctor. I think any reasoning based  
upon the method by which the pistol was discharged  
would be objectionable.

MR. LEVY: Well, that might also apply, your Honor, to  
the other portion.

THE COURT: No, the other portion is a mere statement  
of a physical fact, that there was no singeing of  
the hair or powder marks at that wound, and the  
difficulty of holding the pistol.

MR. LEVY: But the doctor went beyond that. The one  
idea is to keep the record clear. The doctor went  
on to illustrate that, if a person were to duck  
down and bend and run away, he would or she would  
receive the bullet in that way (illustrating).  
That seemed to be reasoning.

THE COURT: No; that is perfectly proper.

MR. LEVY: And then your Honor will give me an excep-  
tion?

THE COURT: Certainly.

CASE #276

Cross

BY MR. LEVY

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## Cross Examination:

BY MR. LEVY:

Q Now, Doctor, neither of those bullets----

MR. LE BARBIER: Pardon me.

BY MR. LE BARBIER:

Q You made that autopsy in the morgue? A Yes, sir.

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

Q In the month of April, 1901? A Yes, sir, the early part of the month.

THE COURT: Will you just allow me to ask one question?

MR. LEVY: Certainly, sir.

BY THE COURT:

Q Doctor, would these wounds, such as you describe, have brought about a condition of unconsciousness immediately or gradually? A Gradually, sir, gradually. Of course, it may have brought it around immediately, but the normal trend is to bring it around gradually.

BY MR. LE BARBIER:

Q Do you recall the date of your autopsy, Doctor?

A I think it was the Seventh or Eighth; you will find it in the inquisition paper.

Q Yes. Just look at the inquisition paper. A I think it was on the Seventh of April, 1901.

BY MR. LEVY:

Q Doctor, neither of those bullets which you extracted from the head of the deceased penetrated the skull?

A Neither.

Q Did the bullets, or either of them, reach the bone of the skull? A Neither.

Q So that there was no hole or indentation upon the bony structure of the skull? A No.

Q Could these bullets, independent of the hemorrhage, have produced--- these bullet wounds have produced death?

A Yes, sir.

Q Of themselves? A Yes, sir.

Q Without the hemorrhage? A Without the hemorrhage, yes.

Q In what way, Doctor? A Well, I would have to explain to you what cerebral commotion is.

Q What? A What cerebral commotion is.

Q Please do. A It was noticed two centuries or three centuries ago that people died from blows upon the head when, upon autopsy, there was shown no visible disturbance on macroscopical examination, that is, with the naked eye examination of the brain.

In the year 1700 there was a famous case in Paris. It is known as Luttre's case. It was the case of a young

criminal who was  
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criminal who was sentenced to be broken upon the wheel, and he proposed to anticipate death---I mean that form of death---by butting his head against the wall of his cell. So, running from one side of the cell to the other, he butted his head against the side of the cell wall, against the wall, and he fell dead.

On autopsy, Luttre was surprised to find that there was no injury, as far as he could determine, to the brain.

Well, it was very difficult to explain how the man could have died. Some physicians said, "What is shock?" "You are as badly off as ever".

These cases continued to be recorded. Some of them were explained readily enough, one, for instance, in St. Thomas's Hospital in London, where they made an examination and there they found a hemorrhage in the central canal of the spinal cord.

But there still occurred a recurring series of cases where, notwithstanding a blow upon the head and death, you found no physical disturbance of the brain.

Well, the microscope was brought into play, and many cases were removed from the series by discovering microscopic injuries to the brain.

But they still had a persistence of cases in which death followed a blow upon the head without leaving any

trace of disturbance upon the brain, to be determined either macroscopically or microscopically.

Well, naturally, the explanation was looked for and the explanation was suggested, I believe, originally, by Duret, a Frenchman, and his views were enforced by Sither and Bouchard or Bordeaux.

They explained it upon the theory of cerebral commotion.

The brain is within this bony column here (indicating). As a matter of fact the brain really rests upon water, that is to say, between the immediate covering of the brain, which is known as a pia, and the covering which is immediately on the outside you have fluid. The brain floats upon that fluid and that fluid extends down into the central canal of the spinal cord; it also extends into these hollow spaces in the interior of the brain known as the ventricles.

Now, Duret's theory was simply this: That this covering of the brain is not an inelastic but is an elastic covering, and that when you get a blow upon the head there is formed what is called a cone of depression and a cone of elevation, and inasmuch as the fluid is continuous in the inside of the skull, into the ventricles of the brain, that when you have the cone of depression here

(indicating), and when it is done. It will ventricles, and brain.

Q Point it out right here (indicating). Fourth ventricle, have death of brain followed preceded the theory of mol

BY THE COURT:

Q So that your wounds would A I will a man may be dead, on the in perfect to judge be find evidence would with that man of ponent say



(indicating), that fluid is sent right across the brain, and when it reaches the opposite side your damage is done. It will be sent down into the floor of the fourth ventricle, and that is one of the vital spots of the brain.

Q Point it out on your own head. A Why, drive a knife right here (indicating) and you will get the floor of the fourth ventricle. And it is admitted that you may have death from the displacement of the fluid in the brain following a blow on the head. And the theory that preceded that we need not go into. It was simply a theory of molecular disturbance of the cells of the brain.

BY THE COURT:

Q So that your answer is, Doctor, that either of these wounds would have produced death without hemorrhage?

A I will say that we do not know what wound in the head a man may recover from, but you give me a man or a woman dead, on that table (indicating) and give me all his organs in perfect condition, if there be a standard of health to judge between perfection and imperfection, and I find evidence that the two bullets struck this man or woman with sufficient force to flatten them, then I say that man or woman died of cerebral commotion. If my opponent says no, then I say, "Well, what did he die of?"

BY MR. LEVY:

Q Now, Doctor, your answer is then that the woman did not die of the bullet wounds? A It is not, sir.

Q Well, how can you explain the fact that the bullets did not penetrate the skull upon the fine spun theories of the authorities whom you have quoted as indicating the cause of this woman's death, when the laceration was not the direct result of the penetration of the bullet?

A But that has nothing to do with the momentum of the bullets directed against that woman's head, or those fine spun theories as you call them. A man might have fired that bullet from the distance of one hundred yards and it may not have reached the skull at all.

Q Is there any ~~distance~~ between the bullet and the skull? A Yes, sir.

Q And that tissue was not penetrated? A Yes, sir.

Q And the depth of that tissue not penetrated before the bony structure might have been reached, was how much? A Probably the tenth of a line, about one one-hundred-and-twentieth of an inch.

Q Doctor, could a blow of the fist have produced that laceration? A No.

Q Could it be possible to produce a similar laceration by a blow of the fist? A No.

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CASE #276

- Q Would it be possible to receive a similar laceration of the brain tissue by a fall and striking of the head?
- A I suppose you mean identical laceration, laceration such as this woman had in the forehead? I say that the blow of the fist could not have produced that.
- Q I am not speaking of the wound on the forehead, but the laceration of the brain. She did not die of the wound upon the head but of the laceration of the brain.
- A Unquestionably she died of the laceration of the brain.
- Q She did not die of the wound? She died of the laceration? A Yes, sir.
- Q She did not die of the wound in the forehead or of the wound in the back of the head, but of the laceration of the brain? A Yes, sir.
- Q Now, then, could that laceration of the brain and that pial hemorrhage have been produced by the blow of a fist?
- A Yes, sir. Of course, assuming that the blow was sufficiently powerful.
- Q Could it have been produced by falling of the deceased and striking her head against the mantel piece, if you like, a mantel piece of any hard substance?

MR. LE BARRIER: I really think that is objectionable on the ground that it is in evidence that there was a bullet wound here, and that the bullet was

CASE #276

taken out of her forehead.

THE COURT: Oh, I will allow the question. It may be useful information.

- A The impact of any body upon the forehead which would resemble, a fortiori, be identical with the impact of the bullets, would do what the bullets did, produce those lacerations. There was no particular merit in the bullet at all. It was the momentum of the bullet and the space it covered that caused it.
- Q Now, Doctor, one question more. You say there was no particular merit in the bullet which caused the death. Is that what you say? A No.
- Q Then what did you say about that? A That there was no magic about the fact that it was a bullet. Any object, whether a fist or a stone, or the floor--- the floor could not fly up and hit except under certain circumstances---striking the forehead where that bullet struck it, would do exactly what the bullet did. In other words, it did not act as a bullet, but as a missile.
- Q Well, what would you call the primary cause of death in this case? A The primary cause of death was the pial hemorrhage, the laceration, and I believe, cerebral commotion in addition.
- Q Superinduced by the impact of the bullet? A Induced by

CASE #276

the impact of the bullet.

Q It is charged against this defendant, Doctor, that he did shoot off a leaden bullet which shot the deceased upon her head and face and produced one mortal wound of the breadth of one inch and of the depth of six inches. Is that true?

MR. Le BARBIER: Objected to. Pardon me. I call your Honor's attention to the case of the People against Fritz Meyer particularly, lately decided, following all the authorities which said that in common law form of indictment, any spelling out of murder is sufficient to uphold that form. Whether this was a mere accusation stating that the defendant killed this woman with malice forethought or not would be sufficient in law to uphold the indictment, and as it is directed against the indictment, I object to the question as incompetent, immaterial and irrelevant.

THE COURT: Objection sustained.

MR. LEVY: I take an exception.

BY MR. LEVY:

Q Was there a wound upon that woman's face or head of the depth of six inches? A No.

Q Let me ask you, Doctor, whether or not the commotion as

you describe it in the brain matter could be produced in any way without receiving direct violence upon the head?

A The cerebral commotion of which I speak is invariably brought about by violence. Of course, you could use the term cerebral commotion from other points of view, but when I speak of cerebral commotion I speak of a distinct recognized brain trouble which has its definite limitation.

Q Could it be produced, Doctor, in any other way than by direct violence to the head? A Well, it all depends upon what you mean by direct or indirect violence. What distinction do you draw?

Q Well, now, for instance let me illustrate to you. Suppose that I happen to get off a cable car and the car should be suddenly started and I should be jolted and thrown on the sidewalk, or the pavement, could that produce cerebral commotion? A Yes, sir.

Q Well, but is not direct violence. A Well, yes it is. The commonest cause of a fracture of the skull is the transmission through the spinal column of the shock on the heel, for instance, now I am thrown from a trolley car and I get a shock on my heels like that (illustrating) and the head will come down and the spinal column will drive up into the base of the skull, and that is direct violence.

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CASE #276

Q And would that produce a pial hemorrhage where you found it? A Well, an injury of that kind? Yes, it would have brought that around.

Q It would? A Yes, sir.

Q So that we may recapitulate and summarize as follows.  
Doctor: In your opinion the hemorrhage and laceration of the brain matter was produced by reason of the shock attendant upon the impact of the bullets? A Yes, sir.

Q And, secondly, such a condition of pial hemorrhage, or laceration, could be produced by other means, such as a blow, or fall, or sudden jolt on the spinal column? A Yes, sir.

Q All of which would hold good on the proposition that they would produce such a condition as you found in the skull of that unfortunate woman? A Yes, sir; because the force is independent of the object from which it proceeds.

Q Now, Doctor, you are simply expressing an opinion upon this subject, aren't you? It is your opinion that the condition that you found in that woman's skull was brought about in the manner that you have described? A I know it.

Q Well, but it is due, your knowing it, to your reading and experience? A Yes, sir.

CASE #276

Q And to your personal experience in this case?

A Yes, sir.

Q But you do not propose the sue suggestion that you are infallible? A No, sir. I know of no man but one who is infallible, and that one is infallible only in a limited domain.

BY THE COURT:

Q When you determine a condition which naturally must come from a known cause, do you believe that you are liable to error when you say that it comes from that cause? A I do not think that I am liable to error in the particular case that we are dealing with.

BY MR. LEVY:

Q But that is simply an expression of confidence in your own ability, isn't it? A It is more or less an expression of confidence of my ability in this particular case.

Q Well, but medicine is not an exact science after all?

A There are certain spheres of medical science where you have the basis of the exact science where you have got your facts. If I give five drops of Croton oil, for instance, I have the most profound opinion that it will have a given effect upon you.

Q Now, Doctor, you just admitted that there was so much doubt as to the condition which you found in this woman's

CASE #276

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brain---I don't mean in this identical case--- that for centuries the medical world has been discussing the result without knowing the cause? A Yes, sir.

Q Isn't that so? A Unquestionably.

Q And even that French surgeon whom you mentioned-- I think it was Luttre--was in doubt for sometime? A Oh, it was in Seventeen hundred and five that he was in doubt.

Q Well, do you believe that we have attained perfection in the knowledge of this subject? A In this particular case I think that the conclusions of science are absolute to-day.

Q And that is based upon your own knowledge and experience? A Naturally. I have nothing else to rely upon at this moment.

Re- Direct Examination:

BY MR. LE BARRON:

Q I should like, if possible, Doctor, to have you give me the measurement--- you had not a measure with you?

A No, sir.

Q Of the distance just from the left eye brow down to where you pointed to on your cheek sideways, as to the area of the powder marks? A Well, with a small piece of paper I could measure it on this gentleman's face (indicating orier).

MR. LEVY: May I ask a question before you do that, please?

BY MR. LEVY:

Q Doctor, in telling His Honor and the Jury your conclusion, or, opinion rather, with regard to the possible position of the pistol which produced the powder marks about the eye and so on--- A Yes, sir.

Q You based that opinion upon the assumption that the pistol was held just in the fashion that you indicated to this jury, directly pointing to the eye? A Yes, sir.

Q Now, did you take into consideration the possibility of the movement and change of the body or the limits of the body during a struggle for the possession of a weapon? A Oh, I don't know what happened then, counsellor.

All that I say is that whatever movements and contortions there may have been that this bullet struck almost at right angles to the plane of impact.

Q Now, it does not take very much to deflect a bullet, does it? A No, sir; very little indeed.

Q So that it is hard to determine, is it not, from the position in which you find the bullet, the exact position in which the pistol was held? A It is.

Q It is very difficult? A Yes, sir.

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BY MR. LEVY:

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Q Some substance might deflect it? A Yes, sir. My only contention is that whatever position it was held in it struck at right angles to the plane of impact.

Q Whether to a direct shot or a deflected shot? A Yes, sir.

Q And you must take into consideration, also, the possibility of a struggle for the possession of the weapon?

A Oh, I did not discuss that at all. I simply confined myself to the opinion---to the conclusion, rather--- that the bullet struck at right angles to the plane of impact.

BY THE COURT:

Q No matter what preceded the <sup>instant</sup> incident of discharge, you say that, at that <sup>instant</sup> incident the course of the bullet was at right angles to the plane of impact? A Yes, sir.

BY MR. LEVY:

Q Is it not possible that a strong and able bodied man struggling with a strong, healthy woman for the possession of a weapon, that the arm could have been brought around to the left side of the body so as to be pointed directly at the eye?

MR. Le BARRIER: Objected to as assuming a state of facts that does not exist.

MR. LEVY: No. It is based upon the Doctor's

opinion. He has indicated that the pistol was held in that position.

A Yes. Of course, it is physically possible. I cannot question that.

BY MR. Le BARRIER:

Q Now, Doctor, will you kindly take this sheet of paper and give me the measurements? Now, what is this paper that you give me? A That is a paper measuring or determining the length of the powder marks, the area on the face of the deceased.

Q On the face of the deceased? A Yes, sir.

MR. Le BARRIER: I offer this paper in evidence.

MR. LEVY: I object to it.

THE COURT: Objection sustained. The Doctor can state whether it was about an inch and a half or not, or whatever it was.

BY MR. Le BARRIER:

Q How much is it? A About two inches in length, and the width was pretty much about the same, about an inch and three-quarters.

BY MR. LEVY:

Q I neglected to ask you this, Doctor: A normally healthy person receiving the injuries that you have described the woman as receiving, would her condition of consciousness

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BY MR. LEVY:

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CASE #276

CASE #276

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commence to diminish immediately after receiving the impact of the substance?

THE COURT: He has answered that already. He said it was more apt to be gradual.

BY MR. LEWY:

Q Well, would it be possible for such a condition to be brought about, for instance, the impact of the bullet, the laceration of the brain, the production of the pail hemorrhage, would it be possible for such a person to go around consciously for a long period of time before the unconsciousness would make itself apparent?

A Oh, yes.

Q I want to have that explained this way, as to whether or not it is possible to inflict such a wound upon one day and the patient continue in perfect consciousness for several days until unconsciousness made itself manifest?

A Oh, yes. It would all depend upon what the unconsciousness would arise from. For instance, I get a blow on the head. As the result of the blow on the head I get an effusion of blood into the pia mater. That presses upon the cortex, that is the gray matter which is in the outer side of the whole mass of the brain. That renders me unconscious. That is to say, supposing that there would be a sufficient extent of cortex pressed

upon by this swollen and tumefied membrane, because it is alone through the cortex that we receive external impressions.

Now I get a blow on the head and there is a small hemorrhage into the pia. That hemorrhage may go on extending, and as it goes on extending, consciousness will lessen until gradually you will pass into complete unconsciousness.

You may get a blow of a billy on the side of the head and get a mere minute rupture of an artery, and the blood begins to come out and you get a dizziness of the head and on take a stimulant, perhaps, and feel better, and three or four afterwards you are found by the side of the road. The blood continues to come out until a sufficient quantity comes out sufficient to be inconsistent with the continuance of consciousness.

Q One moment, Doctor. Can the effusion of blood, the hemorrhage about the laceration, can that be accelerated by a further act of violence? For instance, by way of illustration only, suppose that the deceased had been beaten on the head the day before the date of her death and she was further injured by the impact of the bullet on the day of her death, would the further injury by the impact of the bullet on the day of her death have accelerated the

diffusion of the blood, or the pial hemorrhage?

A Well, not necessarily, counsellor. She might--of course this did not occur in this particular case at all.

But take the case of a woman that got a pial hemorrhage from a blow with a club on the head the night before, and she might get a pial wound and a corresponding hemorrhage, but if they were not close to each other, in time both would go on independently of the other, both spreading and moving in the direction of causing unconsciousness. The violence done the membrane will set up an inflammation and that will create a large amount of matter known as lymph, and that will press on the cortex just as the blood will, and so you have several causes of unconsciousness operating together.

When a man is---I will leave this case alone-- when a man is struck a blow he may have had sufficient injury done to him to kill him by laceration of the brain. On the other hand, he might have a pial hemorrhage which might kill him, and on the other hand again he may have had such amount of cerebral commotion as would have killed him, and the question would be, what did he die of, and the answer is he died of the blow.

Q Now in what way did you associate at the time of your performance of the autopsy, the laceration of the brain with

the hemorrhage? Were they independent or associated together? A Oh, they were due to the same cause.

Q No. The objective condition. The physical condition that you observed them in, were they associated, the laceration and the hemorrhage, immediately about the laceration? A There were clots there where the laceration was. I don't quite catch your question.

Q Now, laceration is a break or tear? A Yes, sir.

Q And a hemorrhage is a diffusion of the blood about that place? A Yes, sir.

Q And was the diffusion of the blood around that place of laceration, or separate from it? A Oh, no. The laceration brought about a hemorrhage, and so by the injury to the pia, and both the injury to the pia and the laceration of the brain, were both caused by the bullet.

BY MR. LE BARRIER:

Q How far above the bullet wound itself did the powder marks extend over the eye brow? A Well, I am not very much of a---I could tell you. Perhaps a third of an inch (illustrating).

Q Oh, that is half an inch, fully. A Well, perhaps half an inch above the upper portion of the eye brow. It impinged very well on the skin of the forehead.

## THE COURT:

Gentlemen of the Jury: At each adjournment I am required by the code to admonish you not to converse with each other, nor with anyone else, in regard to the case on trial, and, of course, to come to no conclusion until it is finally submitted to you.

The Court will now take a recess until a quarter to two o'clock.

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After Recess.

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

Direct Examination

BY MR. LE BARSIER:

Q In April, 1901, did you hold an official position in the County of New York? A I did so.

Q What was that position? A Please repeat the question.

Q What was it? A An inquisition on the---

Q Oh, no. What official position did you hold during that year? A Coroner of the Borough of Manhattan.

Q As said Coroner on the 6th of April, 1901, did you attend at Gouverneur Hospital, in this County, and see-- well, did you attend there? A I did so.

Q When? A About nine o'clock in the evening, or about that time.

Q Did you see the defendant there? A I saw the defendant in bed on the second floor of the hospital, I guess it was, and the deceased on the ground floor.

Q Yes? A The woman.

Q Did you observe the physical condition of the defendant?

A The defendant had a bandage around his head, and the doctor and nurse told me that he has a wound, and shot right in the front (indicating the forehead).

BY THE COURT:

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BY MR. LE BARSIER:

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CASE #276

CASE #276

CASE #276



Q You mean this man here; the defendant here? A Yes, sir.  
And the woman, the deceased, she was also--- she was on  
the ground floor, and she had a wound in the temple. At  
the time we didn't know that she had in the back--- any  
wound in the back.

BY MR. LE BARBIER:

Q I show you People's Exhibit 5, and ask you whether or not  
it is in your handwriting? A It is so.  
Q And was taken by you? A Yes, sir.  
Q And did the defendant swear to it before you? A Yes sir.  
Q Yes or no? A Yes sir.  
Q Now, other than as hearsay, did you know or not on that  
day that the defendant had been shot in the head by a pis-  
tol in the hands of Bella Ferrajolo? A That is what he  
said.  
Q And that is the occasion and reason why you inserted it  
in this paper, is it?

MR. LEVY: Objected to. I object to that.  
The Coroner is presumed to do his duty, and if he  
put it in an official document he put it in of-  
ficially and because it was so.

THE COURT: I will allow the question.

MR. LEVY: I take an exception.

A I inserted it in the inquisition paper because that is

what was said as the result of the antemortem statement.  
The inquest has not been taken at the time as yet.

Q The inquiry into the cause of the killing, that is to say,  
the inquest, had not been held at that time? A No sir;  
the examination.

BY MR. LEVY:

Q You did not hold an inquest on a live body, did you?

MR. LE BARBIER: No, that is where he was  
wrong. Here is the man, alive and well.

MR. LEVY: Yes, it was purely a mistake, I  
take it.

BY MR. LE BARBIER:

Q Now, Mr. Coroner Zucca, did you observe the physical con-  
dition of the defendant? A Well, we expected-- at least  
the doctors told me---.

Q No; did you observe the physical condition of the de-  
fendant? A He was very weak.

Q Did you take notice of his hands? A One of the doctors  
or officers that was present after I took the ante mortem  
statement, called me up in the room again and showed me  
some marks of powder which was on one of his fingers on  
the hand.

Q The index finger? A I suppose it was the index finger;  
I forget now. We have so many cases.

231

Q On the right hand? A Yes sir, I believe it was the right hand.

Q And what was the condition there? A It was like full of powder marks.

Q Powder marks? A Yes sir.

Cross Examination

BY MR. LEVY:

Q You spoke Italian to him, Coroner? A I did, in English and Italian both.

Q Well, mostly in Italian, I suppose? A Yes sir.

Q And the man was weak? A He was quite weak.

Q Did you ask him whether he thought he was going to die? A Yes sir.

Q And what did he say to you? A He says he believes he is very weak and that he is going to die.

Q Did you say anything to him about the necessity for him to tell the truth while he was in the shadow of death? A I did so.

Q You did tell him that? A Yes sir.

Q And what did he say to you when you said that to him? A What is that?

Q And what did he say when you said that to him? A He told me---

Q No. What I mean is, when you say you said to him that it

232

was necessary for him to tell the truth because he was in the shadow of death, what did he say? That he would tell you the truth or not? A Well, he jumped out his hands this way (illustrating) and he said he will tell me the truth, and he says he has one Italian friend in the Sixth Assembly District that is a good father, and that I shall speak to this gentleman about his children after he says he is going to die.

Q After he died? A Yes sir.

Q The man impressed you that he had the belief that his time had come? A Yes sir.

Q And did he impress you that he had that belief? A Yes sir, and he said so at the time to the officer.

Q And then he told you what you wrote down in that inquisition? A He told me that before.

Q Before? A Yes.

WILLIAM E. PETTY, a witness called on behalf of the People, being duly sworn, testified as follows:

Direct Examination

BY MR. LE BARRIER:

Q Where do you reside, Mr. Petty? A 951 Lexington Avenue.

Q Are you connected with the Police Department of the City of New York? A I am.

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BY MR. LE BARRIER:

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BY MR. LEVY:

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Q In what capacity? A Sergeant of police.

Q Were you a sergeant of police in April, 1901? A I was.

Q Had you had other duties besides that in relation to the Police Department, A I had.

Q What? A I organized a school of pistol practice in 1896 and conducted it for three years.

Q And that was for what purpose?

MR. LEVY: Objected to. I object to the purpose.

THE COURT: Well, for pistol practice. That is sufficient.

BY MR. LE BARBIER:

Q Have you made the subject of revolvers and guns an object of study on your part? A I have.

Q Have you taken part in contests, revolver contests? A I have.

Q Do you hold the championship of the United States in matters of revolver shooting? A I have held the amateur championship of the United States since 1892.

BY MR. LEVY:

Q As a good shot? A Yes sir.

BY MR. LE BARBIER:

Q And you hold it to this day, do you not? A Yes sir, I do.

Q Have you had occasion to examine People's Exhibit 1 in

7 235

this case? A I have.

Q What kind of a revolver is it?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A Hopkins & Allen, thirty-two calibre, six-shot, three-inch barrel.

Q Have you had occasion to examine the bullets that were taken from People's Exhibit 1? A I have examined them.

Q Showing you People's Exhibit 2-- I show you now People's Exhibit 7 and I ask you if you have examined that?

A I have.

Q I show you People's Exhibit 6 and I ask you if you have examined that? A I have.

Q I show you People's Exhibit 3 and I ask you the same question? A I have examined them.

Q Will you please state what calibre cartridge it is?

MR. LEVY: Wait a minute before you answer.

Which is the calibre cartridge that you wish to point out?

THE COURT: The calibre of the pistol.

MR. LEVY: Oh, I have no objection to that.

A The pistol is thirty-two calibre, and the shells shown

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BY MR. LE BARBIER:

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BY MR. LE BARBIER:

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BY THE COURT:

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BY MR. LE BARBIER:

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CASE #276

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MR. LEVY: Objected to.

BY MR. LE BARBIER:

Q What are the shells shown you in People's Exhibit 3?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: These are the shells that have been testified to as having been taken out of the pistol in evidence?

MR. LE BARBIER: Yes sir, and have been offered in evidence without objection.

THE COURT: Allowed.

MR. LEVY: Exception.

A They are thirty-one one-hundredths of an inch. They are known as the Colt short cartridge.

BY MR. LE BARBIER:

Q You say you have examined--- Are you able to state the composition of the bullets that were in those shells?

MR. LEVY: Yes or no, please?

BY THE COURT:

Q Are you able to state the composition of those bullets?

A Not of my own knowledge.

BY MR. LE BARBIER:

Q Well, are you able to state what the composition is?

CASE #276

MR. LEVY: I object to that. He says not of his own knowledge. I object to it as incompetent, immaterial and irrelevant.

THE COURT: Objection sustained.

BY MR. LE BARBIER:

Q Have you made any experiments with People's Exhibit 1 and the cartridges as shown here of the character of People's Exhibit 3?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. LEVY: An exception, please.

A I have made numerous experiments with that revolver.

BY MR. LE BARBIER:

Q And in the firing off of that revolver with cartridges of that character, have you noted the effect of the powder upon the hand?

MR. LEVY: I object to it as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A Every shot fired from--

MR. LEVY: Yes or no is the answer to that.

THE WITNESS: Yes.

CASE #276

BY MR. LE

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BY MR. LE BARBIER:

Q Now, what effects have you noticed?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A That at every shot fired the index finger and sometimes the thumb will be blackened by gunpowder.

Q Is it by reason of what you term the Colt short cartridge?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A It is.

Q Now, will you kindly explain to the jury the effects of firing cartridges of that character from that particular revolver?

MR. LEVY: I object to it as incompetent, immaterial and irrelevant, and improper.

THE COURT: Allowed.

MR. LEVY: Exception.

A What is the question, please.

Q Now, will you kindly explain to the jury the effects of firing cartridges of that character from that particular

revolver? A I can with the aid of a paper I have here.

Q Was it a paper that you made and used at the time of the experiments? A Yes sir.

Q BY MR. LEVY: When?

BY MR. LE BARBIER:

Q When was that? A July 19th, 1901.

Q Was anybody present with you? A Yes sir.

Q Who? A Doctor Weston.

Q Are you able to state the effect of the penetration of the bullet from a cartridge such as shown here and used in the revolver in evidence?

BY MR. LEVY:

Q Yes or no to that. A Yes.

BY MR. LE BARBIER:

Q Please state to the Court and jury what experiments you have made.

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A For gunpowder marks?

BY MR. LE BARBIER:

Q Yes.

BY THE COURT:

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CASE #276

Q One moment, Sergeant. Do I understand you to say that those shells are not the calibre of this pistol? A They can be shot in that pistol, but they are not intended for it.

Q They are not intended for it? A No sir.

Q That is, are they higher or lower calibre? A They are intended for a Colt's Thirty-two.

Q And this is a Thirty-two? A Yes sir, but it is a Smith & Wesson cartridge. It is a little larger in diameter.

Q That is what I want to know. The Smith & Wesson cartridge is not fitted for this---? A Yes sir, the cylinder is a little larger than the other.

Q And that would necessarily leave a space between the shell and the cylinder of the pistol? A Yes sir.

BY MR. LE HARRIEN:

Q Now, bearing that question in mind, the question of the Court, and before telling of your experiments, I ask you to take that revolver and produce if you have them cartridges of the same calibre as People's Exhibit 3 and which you used in your experiments, and show the difference to the Court and jury.

MR. LEVY: I object, on the ground that it is immaterial, irrelevant and incompetent, and improper.

CASE #276

THE COURT: Allowed.

MR. LEVY: Exception.

A That shell, gentlemen, is the same diameter of the Smith & Wesson shell with the exception of its length.

MR. LEVY: And because it is also not shown that the gentleman is a competent expert to testify, in addition to the other grounds of objection.

THE COURT: Well, I will allow it.

MR. LEVY: Exception.

A (Continued) This bullet, this cartridge, is known as the Colt short shell. The diameter of the bullet is the same as the diameter of this bullet inside the shell. The diameter of the shell is the thickness of this shell, small, so that it leaves a space for the unburned powder to blow back, pass the end of the cylinder and out at the sides.

BY THE COURT:

Q That is, the Colt shell when used in this pistol? A Yes, sir; it is too small when used in this pistol.

MR. LE HARRIEN: Now, pass that around among the jury.

BY MR. LE HARRIEN:

Q Now, how much smaller is the Colt short cartridge? A It is nearly three one-hundredths of an inch smaller in di-

CASE #276



meter.

Q Where did you determine the composition of the cartridge such as was used in this case?

MR. LEVY: I object to it as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A In the District Attorney's office.

BY MR. LE BARBIER:

Q No. I mean to say--- Don't you understand me, Mr. Petty? As to the composition, whether it is lead or zinc or tin or anything else? A The Colt is a pure lead bullet.

Q Well, you know that, don't you? A Yes sir.

Q Well, that is what I am trying to get.

MR. LEVY: I object to this. It has as much to do with the case as the texture of my coat, as to what the shell, the composition of the Colt cartridge is. I object to it as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. LEVY: Exception.

MR. LE BARBIER: We will show you how close this is. You need not worry on that subject, Mr. Levy.

BY MR. LE BARBIER:

Q Now, what did you say about that bullet, Mr. Petty? A The Colt bullet is a pure lead bullet.

Q Which is the pure lead bullet-- the smaller bullet?

A The shorter cartridge there (indicating).

Q That is of the size that was fired from this revolver?

MR. LEVY: Objected to as incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A Yes sir.

BY MR. LE BARBIER:

Q And the other bullet was what?

MR. LEVY: Objected to as incompetent.

THE COURT: That part does not. It is not necessary to go into. It is necessary to investigate only the actual character of the bullet fired from the pistol. As to what might have been the character of the pistol bullet that might have been fired from the pistol, you need not go into that.

BY MR. LE BARBIER:

Q Now, as to the difference in the sizes of the bullets, will you kindly look at these exhibits and state what they are? A This is a Colt bullet and shell (indicating).

The bullet is pure lead.

MR. LEVY: Now, wait a moment. You have answered the question.

BY MR. LE BARBIER:

Q The bullet such as was fired from this revolver?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent. We can't say what was fired from the revolver.

MR. LE BARBIER: Why, here are the cartridges.

MR. LEVY: Well, I will take his Honor's ruling.

THE COURT: There is no necessity for the question. You can prove that otherwise, perhaps.

MR. LE BARBIER: Question withdrawn.

MR. LEVY: And the answer is stricken out, I suppose?

MR. LE BARBIER: Yes, it is stricken out.

BY MR. LE BARBIER:

Q Will you kindly say what that first exhibit that I hand you is?

MR. LEVY: I object to it. The instrument or article or whatever it is must speak for itself.

THE COURT: Objection overruled. Let him state what it is, and then it speaks for itself.

MR. LEVY: Exception.

A It is a Colt thirty-two shell and bullet.

BY MR. LE BARBIER:

Q And the other? A It is a bullet known as a thirty-two Smith & Wesson cartridge.

Q Are the others all Smith & Wesson's? A Yes sir, and this is a Colt (indicating).

MR. LEVY: They are not in evidence yet, Mr. Le Barbier.

MR. LE BARBIER: Well, I will offer them in evidence for the purpose of comparison and explanation.

MR. LEVY: I object to it as immaterial, irrelevant and incompetent.

THE COURT: I will allow them in evidence.

MR. LEVY: I will take an exception.

THE COURT: I will allow the Colt bullet and cartridge in evidence.

MR. LEVY: Well, he is speaking of a Smith & Wesson cartridge also.

THE COURT: Well, as it does not appear to have been used in this case, I will not allow it. It is not necessary to go into that. Your purpose is to show, Mr. District Attorney, as I take it,

BY MR. LEVY:

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CASE #276

CASE #276

CASE #276

that the cartridge used did not fit the bore?

MR. LE BARBIER: Yes, sir, that is right.

THE COURT: And that therefore there was an escape of powder to the rear?

MR. LE BARBIER: Yes sir.

MR. LEVY: Well, but he wants to prove deliberate murder by expert testimony.

THE COURT: Proceed.

BY MR. LEVY:

Q What is the name of the maker of the pistol in evidence?

A Hopkins & Allen are the makers.

MR. LEVY: And it is neither a Colt nor a Smith & Wesson, your Honor.

BY MR. LE BARBIER:

Q Now, Mr. Petty, will you please state the experiments you made with the revolver in question, and the short calibre ridge bullet, or cartridge, as you term it?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A I fired a number of shots with the thirty-two calibre short cartridge, within a contact of four feet on paper. That is on July 19th this year.

Q Yes; now, what result did you get after the contact?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A Here it is; here is the result (indicating a sheet of paper).

Q Now, on this first page, which you say is from contact, will you kindly explain to the jury what you mean?

A The paper was placed against a board, and the muzzle of the pistol placed tight against it and fired.

Q And is that the effect that was produced by the discharge?

A Yes sir.

BY MR. LEVY:

Q What is that book that you are looking at there, Sergeant?

A That is the record that I kept at the time that all the shots were fired; made at the time.

Q Can't you recollect them without that book? A No sir, they were too many to recollect them all.

BY MR. LE BARBIER:

Q You have designated that as "Number One contact"?

A Yes sir.

Q Now, I refer you to Number Two, and ask you to state what you did.

MR. LEVY: I make the same objection.

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CASE #276

CASE #276

CASE #276



THE COURT: Allowed.

MR. LEVY: Exception.

A That was fired with the muzzle one inch from the paper.

Q One inch from the paper? A Yes sir.

Q Number Three? A Number Three was fired at two inches.

MR. LEVY: Of course, your Honor, I do not mean to make any captious objections. My objections run through this entire line of questions, and your Honor will be kind enough to allow me to except to the whole line of interrogations?

THE COURT: Yes, certainly.

BY MR. LE BARRIER:

Q Number Three was what? A At two inches.

Q Number Four? A Number Four was at three inches.

Q Number Four three inches? A Number Four was at three inches.

Q Now, Number Four; do you observe the powder marks? Just look at it.

MR. LEVY: How many inches is that?

MR. LE BARRIER: Three inches.

A Number Four three inches.

BY MR. LE BARRIER:

Q Now, turn to the next experiment you made. A Number Five, four inches.

Q Number Five four inches? A Yes sir.

Q Are you able to state what is the area of the powder marks upon Number Five? A It is about three inches.

Q About three inches, A Yes sir.

Q Number Six was at a distance of how far from the point of contact? A Five inches.

Q And the area approximately as you can observe of the powder marks, how much? A Well, it measures about three inches and a half.

Q Three inches and a half by about how much? A It is nearly circular.

Q Eh? A Nearly as broad as it is long.

Q Number Seven was at a distance of how much? A Six inches.

Q Now, will you kindly state to the jury about, or from measurement if you can, what is the area of the powder marks? A They measure about three and a half inches at the widest part.

Q Yes. Number Eight was at what distance? A Seven inches.

Q Yes. And the area of powder marks about how much? A About three and three-quarters.

Q Upon what objects at which you fired with this revolver and these cartridges did the bullet penetrate? A What objects?

Q Yes. A A board.

Q Number Nine

Q Now, Number

Q Number Eleven

Q Number Twelve

Q Number Thirteen

Q What is the

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Q Number Fourteen

Q Number Fifteen

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CASE #276

CASE #276

CASE #276

Q Number Nine was at what distance? A Eight inches.  
 Q Now, Number Ten at what distance? A Nine inches.  
 Q Number Eleven? A Ten inches.  
 Q Number Twelve? A Eleven inches.  
 Q Number Thirteen? A Twelve inches.  
 Q What is the area of powder marks at a distance of twelve inches as shown here by your experiment? A The extreme area is six and a half by seven.  
 Q Seven? A Yes sir.  
 Q Number Thirteen was twelve inches, you say? A Yes sir.  
 Q Number Fourteen was how far? A Fifteen inches.  
 Q And an area of powder marks of how much? A About seven and a half inches.  
 Q Number Fifteen? A Was eighteen inches.  
 Q Are you able to state at what distance the primer penetrated-- by the way, what is the primer, Mr. Petty? A It is a copper cap in the rear of the base of the shell, which holds the fulminate and explodes the powder.  
 Q Well, show it on this exhibit, People's Exhibit 8.  
 A It is the copper cap inside of the cartridge.  
 Q That is the primer? A Yes sir.  
 Q In making this experiment was the primer punctured?  
 A It was punctured in Number Nine.  
 Q Number Nine was at what distance?

MR. LEVY: Objected to. The same objection applies to this testimony as to the other?

THE COURT: Yes.

A At eight inches.

BY MR. LE BARBIER:

Q What is the result of the puncturing of the primer? A There is more powder that escapes at the rear.

Q Now, take the puncturing of the primer and the lesser diameter of the cartridge. Does that prevent the force of penetration? A It does, materially.

BY THE COURT:

Q That is, would it diminish the force of penetration?

A It would.

BY MR. LE BARBIER:

Q Are you able to state to what extent?

MR. LEVY: Objected to as immaterial, irrelevant and incompetent.

THE COURT: No, I will allow it, if he is able to state to what extent it would diminish it.

MR. LEVY: Exception.

A I found from experiment that it diminished it more than half.

BY THE COURT:

Q The penetrative force of the bullet? A Of the Colt

shell is less than the cartridge for the

BY MR. LE BARBIER:

Q In your opinion, the direction of the bullet

BY MR. LE BARBIER:

Q After Number Nine, the primer next punctured the distance of nine

Q And after that?

Q At eighteen inches

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BY MR. LE BARBIER:

Q Now, Mr. Petty, the defendant visited

shell is less than half what it would be with a proper cartridge for this weapon.

BY MR. LE BARBIER:

Q In your opinion, would that account for the non-penetration of the bullets in this case?

MR. LEVY: Objected to.

THE COURT: Objection sustained.

BY MR. LE BARBIER:

Q After Number Nine at eight inches, when did you find the primer next punctured? A That was Number Ten at a distance of nine inches.

Q And after that? A Number Fifteen.

Q At eighteen inches? A Yes sir.

MR. LE BARBIER: Now, I offer these various experiments in evidence, from One to Fifteen.

MR. LEVY: Objected to, as incompetent, immaterial and irrelevant.

THE COURT: Objection overruled.

MR. LEVY: Exception.

(The papers are admitted in evidence, and marked.)

BY MR. LE BARBIER:

Q Now, Mr. Petty, assuming as true that the deceased and the defendant visited the premises 68 Rivington Street in the

County of New York, at what is known as a Raines Law hotel, and that they proceeded to and did occupy a room, Number Eight in said premises, and assuming that pistol shots were heard, and that the autopsy subsequently revealed a bullet wound over the left eyebrow, the bullet being flattened against the skull, and the powder marks extending in an area, if I recollect, of about two and a half by three inches, the powder marks showing direct impact, and assuming that the cartridges had been discharged from a revolver such as People's Exhibit One with the cartridges as offered here in evidence, People's Exhibit Three-- I say, assuming those facts as true, are you able to state in your opinion, what was the distance at which that shot was fired?

MR. LEVY: I object, on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. LEVY: I take an exception. Perhaps this question calls for a categorical answer, yes or no. My objection is intended to apply to the main question.

THE COURT: Yes. He says, "Are you able to state it from those facts?"

Witness: A I am.

BY MR. LE BARBIER:

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BY MR. LE BARBIER:

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THE COURT: He says he is.

MR. LEVY: Probably my learned friend will ask what was the distance. I presume that is your question, Mr. Le Barbier.

BY MR. LE BARBIER:

Q Please state what, in your opinion, was the distance?

MR. LEVY: Now, I make the objection that it is immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. LEVY: I will take an exception.

A The distance was from seven to eight inches.

BY MR. LE BARBIER:

Q Now, please take People's Exhibit One in your hands and show the jury whether it is possible that such a wound may be self-inflicted?

MR. LEVY: Wait a minute. That brings us to another objection. I object to that on the ground that it is immaterial, irrelevant and incompetent, and speculative and theoretic and hypothetical. Your Honor sees the possibility of the question? Is it possible? He asks. We have had a learned physician ~~xxxx~~ tell us that all things are possible under certain conditions to-day. We are getting now very close to the psychological condition

that Doctor Williams spoke of.

THE COURT: I am rather inclined to exclude that question.

MR. LE BARBIER: I am prepared to show physically before this Court and jury, if your Honor please, and the jury may take that revolver and see that it is not a psychological discussion or any other kind except a statement---

THE COURT: Well, I think I will allow it, on the whole. He can show for the jury to see, whether such a wound producing such an effect could be self-inflicted.

MR. LEVY: Your Honor will be good enough to give me an exception?

THE COURT: Certainly.

BY MR. LE BARBIER:

Q Well, what is your answer? A What was the question, please?

Q Now, please take People's Exhibit One in your hands, and show the jury whether it is possible that such a wound may be self-inflicted? A No.

Q No, what? A The wound could not be self-inflicted.

Q Now, show that to the jury.

MR. LEVY: Objected to. I object to any

demonstration of this character before the jury. It is incompetent and improper, and it tends to prejudice the jury, to inflame them against this defendant, and it is not a part of the main case.

THE COURT: I will allow it.

MR. LEVY: I will take an exception.

A To produce a wound as described over the left eye it becomes an impossibility to get the hand around far enough without coming close in.

MR. LEVY: Will you permit me to interrupt you? This gentleman never saw the deceased; this gentleman, your Honor, never saw the wound.

THE COURT: All right. Those considerations will be considered by the jury.

MR. LEVY: Very good, sir. I will take an exception very respectfully.

BY MR. LE BARRIER:

Q Now, please show the Court and jury, Mr. Petty. A It becomes impossible, owing to the position of the wrist, to discharge a pistol at the distance shown by the description of the wound, without getting very close up.

Q Well, at a distance of seven or eight inches, are you able to pull the trigger of that pistol? A I am not.

MR. LEVY: Well, I make the objection to that

question as well, your Honor.

BY THE FIFTH JUROR:

Q Well, can't you discharge the pistol all right if you pull it with your thumb? A If you get it with your thumb, but not as it is here held.

MR. LEVY: Your Honor, I object to the question as to whether or not he was able to pull the trigger at that distance.

THE COURT: I will sustain the objection to that question.

MR. LEVY: Yes. And the answer is stricken out?

THE COURT: Yes.

THE COURT: Now, repeat the juror's question and the answer.

(They are repeated by the stenographer.)

MR. LE BARRIER: Your Honor allows the question and answer of the juror to stand?

THE COURT: Yes.

BY MR. LE BARRIER:

Q Now, assuming as true the facts as set forth in the question I have lately put to you, namely, that at 68 Rivington Street on the 6th of April, 1901, the deceased and the defendant went to this hotel, and that subsequently after

they had occupied a room certain shots were fired, and the autopsy revealed a wound back of the left ear, I think about two inches, the hair unsinged and no powder marks upon the flesh, and assuming as true that the deceased was caressing the defendant's face with her left hand, are you able to state whether that wound is or is not a self-inflicted wound?

MR. LEVY: Wait a minute. I presume your Honor, that that calls for a categorical answer? Perhaps I had better reserve my objection until he has answered yes or no. Yes, or no, please?

A Yes, sir.

BY MR. LE BARBIER:

Q You are able to state? A yes sir.

Q Was it or was it not a self-inflicted wound?

MR. LEVY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: That is, in his opinion?

MR. LE BARBIER: Yes.

THE COURT: One clause of the question, I think, is a little objectionable. Where is the evidence about the caressing with the left hand?

MR. LE BARBIER: In the statement of the defendant, as testified to here, which was received

in evidence without objection.

MR. LEVY: Yes, and by which you are bound.

THE COURT: Where does it appear?

MR. LE BARBIER: In the ante mortem statement. It says here, "I didn't see her take the pistol, but I felt her left hand on my face and eye, as caresses, but in a second I felt a shot in the right of my head".

THE COURT: Well, but that refers to another shot.

MR. LE BARBIER: Well, that is the fact, that she was caressing him.

THE COURT: No, that will not do at all. The statement is that at the time he was shot he felt her hand caressing him, but not at the time the shot that wounded her was fired. You can ask him the question whether, from the absence of powder marks or the singeing of the hair that wound could have been self-inflicted.

CASE #276

CASE #276

CASE #276



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CASE #276

MR. LEVY: Well, you see, your Honor, that the learned District Attorney is trying to prove his case negatively. In other words, he wants to exclude any hypothesis of innocence in this manner. He asks the question as to whether or not it is possible. It is clearly not the proper way to put the case in.

THE COURT: Oh, no. It is the only line of proof that is open to him, and I will allow the question as to whether a wound of this character, unaccompanied by powder marks or singeing of the hair, and one under the left ear as indicated by the Doctor, whether that could be self-inflicted.

MR. LEVY: May I take an exception to the question as incompetent?

THE COURT: Yes, certainly. But I will not allow the reference to the caresses.

BY MR. LE BARBIER:

Q From the pistol, as offered in evidence and the kind of cartridges, also offered in evidence?

MR. LEVY: Objected to, as before.

THE COURT: Allowed.

MR. LEVY: Exception.

A The wound could not be self-inflicted.

CASE #276

MR. LE BARBIER: Now, the other question to which you objected, about the caressing, I withdraw.

MR. LEVY: Well, but I want it flat on the record as to the capability or right of the witness to express an opinion on that subject.

THE COURT: Very well. Your objection is on the record.

Cross Examination:

BY MR. LEVY:

Q Did you experiment in the shooting on those charts which have been produced --.

MR. LEVY: And marked what?

MR. LE BARBIER: Marked from one to fifteen inclusive, People's Exhibit Nine.

BY MR. LEVY:

Q Did you experiment in the making of these charts by the shooting of that pistol with your left hand? A No, sir.

Q Only with the right hand; is that right? A That is right.

Q Suppose that the person who held the pistol was a left-handed person, could he have inflicted that wound on the left side? A I am not prepared to say.

Q What? A I am not left-handed, and I am not prepared to say.

CASE #276

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262

- Q Oh, you mean that you are a right-handed expert? A Yes, sir.
- Q And you can't testify on the left hand? Is that my understanding of your testimony? A Yes, sir.
- Q You don't know how a left-handed person holds a pistol?
- A I don't know that I ever saw a person shoot left-handed.
- Q But you know numbers of left-handed people? A Yes, sir.
- Q And you know a lot of people that are ambidextrous? Do you know what I mean? Quite handy with both hands? A I don't.
- Q Well, did you ever see a person shoot left-handed?
- A No, sir.
- Q Or write left-handed? A I have.
- Q And do his manual work with his left hand, the same as a person does with his right usually? A Yes, sir, I have seen those.
- Q Now, what would be the effect, if it were shown that this defendant -- not that the defendant, but that the deceased were a left-handed person -- What would have been the effect upon the conclusions that you have arrived at as to the manner in which she inflicted the wounds upon herself?
- Q Could it have been done? A It might have been done.
- Q Now about the wound in the back of the head being inflicted by a left-handed person? A That could not have been self-

CASE #276

V 4

263

- inflicted.
- Q It could not? A No, sir.
- Q Why? A Because there were no powder marks.
- Q Oh, leaving out the question of powder marks for the present -- we will get to that in a moment -- Could it not have been self-inflicted? A No.
- Q So far as the location of the wound is concerned? A Not when you take into consideration the location and the direction.
- Q What do you know about the location of the wounds in this woman? A As described by Doctor Williams.
- Q When did you hear him describe them? A On numbers of occasions.
- Q How many times? A Half a dozen or more.
- Q Where did you confer with him? A In the Morgue.
- Q What was the object of your conference with him? A This case.
- Q To prepare to give expert testimony against this defendant?
- A Yes, sir.
- Q And to be paid by whom for your services? A I haven't been paid by anybody.
- Q Do you expect to be paid? A I do not.
- Q But do you expect to present a bill for your services as an expert? A I can't tell yet.

CASE #276

W 5

264

Q Now, be honest about it, Sergeant. Do you intend to present such a bill? A I am going to try it.

Q And you are going to try to be paid for your services?

A Yes, sir.

Q And you have done it in other cases, haven't you?

A Yes, sir.

Q Well now, you were retained for the purpose of demonstrating a theory here, weren't you, by the prosecution? A No, sir.

Q Well, you were called to demonstrate that that woman could not have died from self-inflicted wounds? A No, sir, I was not.

Q Well, now, didn't they tell you that they wanted you to demonstrate that? A No, sir.

Q Now, who spoke to you about it? A Mr. Le Barbier spoke to me about the case.

Q Didn't he tell you that the theory of the defense was that the woman shot the defendant first and then tried to commit suicide? A No, sir. He called me into the case to explain the conditions of the thing, and I went to work at it.

Q Now, be honest with me on this proposition, Sergeant. I have known you a long time, and I believe you are going to try to be. Suppose that I, as counsel for this defendant, to whose defense I have been assigned, had gotten to you

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265

first, before my learned friend had gotten to you, and I had promised you compensation for your services, wouldn't you have become my expert? A No, sir.

Q You would not? A No, sir.

Q Well, do you mean to say that your expert opinions are not salable? A Not while I am a member of the Police Department.

Q Oh, but if you were not connected with the Police Department, you would sell your commodity? A Then I would be with you.

Q Then you would be with me? A Yes, sir.

Q So that the restrictions of the Police Department, and the rules, and so on, have sort of hampered you, haven't they?

A Well, they haven't hampered me much.

Q Well, but they have kept you in restriction in some degree?

A No, sir, not to any extent.

Q Now, there is no certainty about this proposition that you have advocated, Sergeant, absolute certainty? A In what regard.

Q You give your best opinion here, do you not? A I give the result of facts.

Q Of your best opinion? A Of facts.

Q Now, all pistols are not constructed the same, are they?

A No, sir.

Q There is always a deviation, or change, either in the barrel,

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or barrel arrangement, or cylinder, or chamber? A Yes, sir.

Q And there is always a variation in the construction of cartridge bullets? A Yes, sir.

Q There is always a variation even in the manufacture by the same house of the same kind of cartridge? A There is at times.

Q Sometimes there is quite a deviation in the line of fitting in of the leaden bullet into the fulminate, is there not?

A The lead don't go into the fulminate, Mr. Levy.

Q Well, it comes very close to it. Something separates it from the fulminate? A Yes, sir; the powder.

Q And there is sometimes quite a deviation in the fitting in of it to the cylinder? A I have occasionally known bullets to be set in the shells crooked.

Q And if such bullets are set in the shells crooked and experiments are made with such bullets, wouldn't the result made with such bullets differ materially from the experiments with bullets set in straight? A They would.

Q Now, where do you find any absolute certainty in the experiments that you made? A I bought the shells, the cartridges, loaded, of a very reputable firm, and examined every one before they were shot.

Q I have no doubt that you were sincere in regard to what you

were doing, but I am talking of the construction of these articles. Now, then, you assumed, I take it, here was a pistol of a certain manufacture, and you examined that very closely, I take it? A Yes, sir.

Q And you looked at the empty cartridges and assumed that they were Colt short cartridges? A They are so marked.

Q And you tried them in that cylinder? A Yes, sir.

Q And they were rather loose? A Yes, sir.

Q And you concluded that, necessarily, at the explosion of the cartridge there would be some escaping fire, so as to darken the finger using the pistol? A I didn't assume that, Mr. Levy. I proved that to be a fact.

Q Proved it to your own personal satisfaction? A Yes, sir.

Q Now how can you, in the trial of a man for his life, tell these twelve men that, because you experimented a dozen, or five hundred, times, if you like, upon pieces of paper, put up against a board, how can you tell this jury what the composition of those five bullets was which were in that pistol on the day that that unfortunate woman came to her death, satisfy them of that? How do you know that the composition was?

THE COURT: He has not testified to it.

MR. LEVY: Then he is deceiving this jury.

THE COURT: Oh, no. The question was asked and you

CASE #276

CASE #276

CASE #276

objected, and I sustained your objection.

MR. LEVY: But he said that they were short Colt bullets.

THE COURT: But that has nothing to do with their composition. He stated what the cartridges were, that they were what is called the short Colt cartridges, and when he was asked for the composition of the bullets you objected, and I sustained your objection to his answer.

BY MR. LEVY:

Q Now, then, you want to tell the jury that, because of the experiments that you have produced here upon these papers, you are able to tell how the bullets were fired that day against that woman's head? A Yes, sir.

Q Now, how can you do that upon experiments made months after the shooting? I don't care about your technical terms and expert evidence, but come right down to earth.

THE COURT: Well, let him answer. Now, go on, Sergeant, and tell how you can do it.

A The cartridges contain nine grains of powder and eighty grains of lead. They will produce the same effect every time that they are fired through the same barrel.

BY MR. LEVY:

Q And that is the reason, you state? A That is one reason,

and the prime reason.

Q Now, suppose that the bullets that were in that pistol on the day of the shooting were improperly, or crookedly set into the cylinders of the shells? A That has not been proven.

Q How do you know? A The bullets are here.

Q The shells are here. A And the bullets are here.

Q Well, do you mean to say that the bullets, if produced here, would show whether they were set in the shell square, or not? A Yes, sir.

Q Now, take the bullet that was flattened and taken out of the right eye, and show the jury how you can tell whether it was placed in the cylinder straight or crooked; take the flattened bullet. A You can't tell from that.

Q You can't tell from that? A No, sir; not from the flattened bullet. That bullet shows, which was taken from the head, shows that the base of it was set in the shell square.

MR. LEVY: Now, what Exhibit is this that he is referring to.

MR. LEVY: Exhibit Two.

BY MR. LEVY:

Q Now, I want you to demonstrate to the jury, where this bullet, Exhibit Two, shows where it was straight in the shell before it was exploded. A If the bullet had been set in

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the shell crooked it would not show this line around here (indicating), the heel of the bullet, as it is called. As you notice there it goes up. It shows that the bullet was set in the shell fair, just the same as the rest of the box of cartridges that I have here. This little protuberance (indicating) is known as the heel, and it is made to hold the bullet there so that it can be carried. That shows all the way around and it fits this shell, it goes right in, as you see (illustrating).

BY THE FIFTH JUROR:

Q I would like to know whether that gun was a smooth bore, or a rifled bore?

MR. LEVY: The juror wants to know whether that was a smooth bore, or a rifled bore.

A It is rifle.

BY THE FIFTH JUROR:

Q It has a sort of turn? A Yes, sir, a spiral movement.

BY MR. LEVY:

Q Now, suppose that the flattened bullet, People's Exhibit Two, had been inaccurately, or imperfectly, or crookedly, set into the shell; how would it have made itself shown on People's Exhibit Two? A I have fired thousands of them, and fired them purposely to ascertain what the result would be, and the heel of the bullet still shows the mark of the

shell, where it is no more destroyed than that.

Q You mean that protuberance that is put into the base of the shell? A Yes, sir. It is here nearly the sixteenth of an inch. It is put down into the shell on the top of the powder and then the edge of the shell is slightly turned in, to prevent its coming out.

Q Now, Sergeant, let me ask you these questions, please. You have made so many experiments in shooting guns, rifles, and so on, have you made any experiments with regard to the deflection of bullets? A I have.

Q Does it require any substance to deflect a bullet? A At times, very little.

Q Is it not a well known fact that a silk handkerchief will deflect a bullet? A At times.

Q A thread? A I draw the line at a thread.

Q Well, how close do you come to a thread? Let us see.

A I have seen a heavy string.

Q Well, I call that a thread. A heavy string will deflect a bullet? A Yes, sir.

Q And by deflection, you mean anything that will interfere with the direct course of a bullet, which will cause it to take another course? A Anything that will turn it off its course.

Q Yes. Anything that will turn it off its course? A Yes,

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Q Suppose -- Inasmuch as there have been so many hypothetical questions put to you by my learned brother -- Suppose that at Sixty-eight Rivington Street, Sergeant, there was a struggle for the possession of the weapon and the weapon was exploded, and, if you like, the bullet which proceeded from that weapon were to strike a hard substance like a mantel-piece, or the wall, if you like, could that bullet have been so deflected as to cause the wound at the back of the head, which you heard Doctor Williams describe? A No.

Q Why? A The bullet shows no marks of having been turned from its course.

Q How would a bullet show whether or not it was deflected?

A By marks on its side.

Q Do you mean to go on record as saying that a bullet will show whether it has been deflected? A Yes, sir.

Q In every case? A In every case where it has turned from its course as much as that.

Q Well, you are assuming an angle. A Yes, sir, of course.

Q Now, suppose there are two people right together, struggling for the possession of the weapon and there is a struggle up against the wall, and the explosion of the pistol and the bullet striking the wall, and the deflection to the side. Could it not have been done? A No.

Q Explain to the jury why not? A Well, there is a bullet that was found in the wall (indicating).

Q Couldn't the bullet hit another object after its deflection, and then strike the person? A Not under the circumstances as described by you, Mr. Levy, because a bullet is non-elastic.

Q Well, there were not any eye-witnesses to describe the manner in which that was done, but we have testimony here, and your answer must be based upon this testimony, that there was a struggle for the possession, or a grapple for the possession of the pistol. There is evidence that several shots were fired. There is evidence of a bullet hole in the wall. There is evidence of the fact that there was no knowledge that the woman was hit at the back of the head. Are you prepared to say that that bullet which hit that woman in the back of the head was not a deflected bullet? A In my opinion, it was not.

MR. LE BARRIER: Well, while you have answered, I desire to call the Court's attention, may it please your Honor --

THE COURT: It does not make a particle of difference whether it was or was not a deflected bullet.

MR. LE BARRIER: That there is no evidence in this case showing that there was any struggle.

CASE #276

CASE #276

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THE COURT: Yes. And, aside from that, suppose that it was a deflected bullet, on the theory of the defense, where is the evidence that she fired at the wall expecting that the bullet would come back and hit her in the back of the head?

MR. LEVY: No, sir; there is none, we don't put it in that way. There have been so many conjectures and hypotheses in this case -- conjectures and speculations.

THE COURT: No, only as they come from you. He has answered you several times, but every time you ask a question you go into a long and elaborate argument. Now, ask your questions hereafter, and omit the arguments.

BY MR. LEVY:

Q Now, then, what personal knowledge have you outside of what Doctor Williams told you, as to the circumstances of this case, of the shooting? A None, whatever.

Q You sat in court and listened to the witnesses? A I did.

Q You heard the ante-mortem statement of the defendant read?

A Yes, sir.

Q You heard the description of the witnesses as to the condition of the room? A Yes, sir.

Q I ask you upon what you base your opinion that the wound at

CASE #276

the back of that woman's head was not the result of a deflected bullet, one of the five that were shot off?

A The condition of the bullet shows that it was not deflected.

Q Now, pick it up, and show in what way it is shown?

A Simply flattened.

BY MR. LE BARBIER:

Q Now, where did you take that bullet from? A Right here (indicating).

MR. LEVY: What exhibit is that?

MR. LE BARBIER: People's Exhibit Two.

MR. LEVY: Now, you see that you have been mixing yourself up on the bullet that came out of the front and the back. I am talking of the back bullet.

MR. LE BARBIER: No, there is no question of disagreement at all. He is talking of the back bullet, too.

MR. LEVY: No, he is testifying about a bullet that he has not seen.

MR. LE BARBIER: Oh, no. He has had it in his hand all the time.

BY MR. LEVY:

Q Is this the bullet that you say came out of the back (in-

CASE #276

dictating)? A Yes, sir.

Q From the back? A Yes, sir.

Q Now, show me the bullet that came out of the front. Now, what is there about People's Exhibit Two that would indicate that it was not deflected? A The sides of the bullet are not marked to any extent.

Q That is the principal reason? A That is one of the principal reasons.

Q Did you ever see a deflected bullet that was not marked?  
A No.

Q How would it be marked if it were deflected? A It would be marked by whatever object it struck.

Q Suppose that it struck a string? A The mark of the string would be there.

Q Or a silk handkerchief. A It would show the mark of the fabric of the handkerchief.

Q On the lead? A Yes, sir.

Q It is in a molten state when being transmitted through the air, is it not? A It is not.

Q Well, what is it? A Solid? A No, sir. The force of the bullet against the thread will leave a mark there. Now, I am not assuming a thread, Mr. Levy, but a string, something strong enough to deflect a bullet.

Q Well, you heard Doctor Williams say that it didn't require

any particular sort of substance to deflect it, but that the slightest thing could deflect it. A I heard him make some such statement as that.

Q Well, do you agree with him?

THE COURT: Oh, I must shut down on this cross-examination of the witness. He is here for a particular purpose and you are wandering off into other things, about which the witness is not called to testify and as to which he is not required to testify. It is immaterial whether he agrees with the theories that the Doctor advanced, because he is called to testify here as to the results of experiments in firing at different distances at sheets of paper.

MR. LEVY: But he has gone beyond that.

THE COURT: Then, you may move to strike it out if he has gone further.

MR. LEVY: Then I move to strike out the testimony of the witness as to what occurred in Sixty-eight Rivington Street. This man ventures to testify to what happened there.

THE COURT: Oh, no. He testifies in view of the experiments that he made with that pistol and with cartridges similar to those that were used in that



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CASE #276

pistol. He testifies in that view.

MR. LEVY: Oh, no. He testifies to the condition of  
affairs in that room, how the parties stood, et-  
cetera.

THE COURT: No; not at all. He says from his exper-  
iments that these bullets must have been fired at  
such and such distances in order to produce such  
and such results; and that is the extent of his  
testimony.

MR. LE BARBIER: And, as to the wounds, that they were  
not self-inflicted.

MR. LEVY: But he ventures to say that they were not  
self-inflicted, and that goes to the very marrow  
of this thing.

THE COURT: Yes, that is precisely it.

MR. LEVY: Well, I will put this question, then, and  
you may rule upon it, your Honor --.

BY MR. LEVY:

Q Do you agree or disagree with the opinion expressed by  
Doctor Williams on the witness stand, in your hearing, that  
the slightest substance will deflect a bullet?

MR. LE BARBIER: Objected to as immaterial.

THE COURT: I sustain the objection, merely to shorten  
the trial. And yet I would have no hesitation,

CASE #276

on the part of the District Attorney, to admit that  
the slightest substance will deflect a bullet.

MR. LEVY: Yes. Your Honor knows that.

THE COURT: Yes; a puff of wind will deflect a bullet.

MR. LE BARBIER: Then I withdraw my objection.

BY MR. LEVY:

Q Now, let me put this question, finally, to you, Sergeant,  
on that subject. Do you desire to tell to his Honor and  
the jury that in every case where there is a deflection of  
the bullet, there must be some mark upon the bullet of the  
article or substance, whatever it may be, that causes the  
deflection? A Such a deflection as you describe in your  
harangue.

Q In any case can there be a deflection of a bullet, without  
the bullet bearing the evidences of that which caused the  
deflection? A A deflection caused by any foreign substance  
will leave its mark. A deflection of the flight of a bullet  
at long range, as described by his Honor, will not leave any  
mark. That is what is called windage.

Q Anything further? Could the hair of that woman have de-  
flected the bullet? A No.

Q Under no circumstances? A No.

Q Is there any rebound to a bullet? A It depends upon what  
it strikes.

CASE #276

Q Suppose that it struck a marble mantel? A It would drop.  
Q Suppose that it struck the wall? A It would partly imbed itself in the wall and fall to the floor.

Q What causes a rebound? A Striking steel or iron will do it, and stone will sometimes send a bullet back a few inches.

BY MR. LE BARBIER:

Q That is, you mean by direct impact? A Yes, sir; fired at right angles.

Q But not on a slant? A No, sir, not on a slant.

BY MR. LEVY:

Q Just one question, and I will let you go, Sergeant. You have already said to his Honor and the jury that it is possible for a bullet to be twice deflected in its passage, that is to say, to be deflected from one substance and then strike another; is that right? A Yes, sir.

Q Now, suppose that it struck the second object and flattened, would it wipe out the evidences of the substance which caused the deflection? A I never saw one do it.

Q You never saw one like that? A No, sir.

Re-Direct Examination:

BY MR. LE BARBIER:

Q Mr. Petty, we will confine ourselves to this case. This bullet, People's Exhibit Two, which was found flattened

along the skull behind the ear, does that bullet show any deflection? A It does not.

Q It shows direct impact, does it not? A Yes, sir.

Q Are you able to state whether the bullet that penetrated, or, rather, that struck over the eye shows any deflection, considering the powder as imbedded in the skin at virtually right angles? A I can't say that it shows any deflection.

BY MR. LEVY:

Q Do you swear that it does not? A But the bullet has split.

BY MR. LE BARBIER:

Q Are you able to state in your opinion whether or not it shows direct impact? A No, I couldn't say that.

Q Are you able to state by looking at these cartridges, People's Exhibit Three, whether any of them have been in such a condition as the learned counsel for the defendant has argued, that is to say, put in wrongly or otherwise?

A The shells are in a normal condition.

Q In a normal condition? A All five shells are in a normal condition.

Q Now, I show you People's Exhibit Six, which is said to be the bullet taken from the wall. Does that show direct impact, or slant? A The bullet struck at an angle.

Q In the wall? A Yes, sir.

Q Are you able to state whether or not that is a deflected

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bullet? A It shows no marks of deflection.

Q Now, in every shot that you have ever fired from a revolver, does it not necessarily follow that there is some explosion of gun powder, of powder, in every shot that is discharged from a revolver? A Well, of course the powder must explode.

Q That is what I say. There must be an explosion of powder?

A Yes, sir.

Q And, if a shot is fired near a person, according to the distance will the powder marks be strong or weak? A The farther a person is away, or the object is away, the larger will be the area of unburned powder grains.

Q And does that necessarily follow in every discharge from a pistol? A It does, up to a certain distance.

Q It does, up to a certain distance? A Yes, sir.

Q Now, then, the bullets in this case have been apparently accounted for.

MR. LEVY: I object.

MR. LE BAUMIER: Question withdrawn. I did not intend to ask the question.

THE COURT: Gentlemen of the jury, at each adjournment, I am required to give you the usual statutory caution, not to converse with each other nor with any one else in regard to the case and, of course,

not to form or express any conclusion upon any branch of it until it is finally submitted to you.<sup>8</sup>

You are now excused until Friday morning at half-past ten o'clock.

(The trial was then adjourned until Friday morning, November 29th, 1901, at 10:30 o'clock.)

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TRIAL RESUMED.

WILLIAM E. PETTY, being recalled by the District Attorney, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q With the experiments as made by you with People's Exhibit 1 and the .32 short cartridges, are you able to state whether upon the discharge of a single shot there is an explosion of powder such as would come back upon the hand or finger?

MR. LEVY: Yes or no.

A Yes, sir.

BY MR. LeBARRIER:

Q Well, please state what number of shots it would take?

MR. LEVY: Objected to, as incompetent.

THE COURT: Allowed.

MR. LEVY: An exception, please.

A At the first discharge the finger — the forefinger will be blackened. As it is successively discharged the discoloration, the blackening, becomes more intensified.

Cross-Examination: None.

ALBERT T. WESTON, a witness called on behalf of the People, being duly sworn, testified as follows:

Direct Examination:

BY MR. LeBARRIER:

Q You are a physician, are you not, Doctor? A I am.

Q Do you hold any official position in the County of New York?

A I am one of the Coroner's Physicians.

Q Yes. Did you hold such position in the month of April, 1901? A I did.

Q Have you devoted any time and study to the — to experiments made with revolvers or guns? A I have.

Q Please state to the Court and Jury what experience, if any, you have had in that respect? A I have performed autopsies in a large number of cases of death from pistol shot wounds and gunshot wounds, and have made experiments with different firearms, with revolvers of different calibre and different ammunition, at different times, covering a period of probably twelve years.

Q Yes. You are therefore familiar, are you not, with the results of such experiments and such experience in relation to gun and pistol shots and the firing of them, are you?

A I am, yes.

Q Were you present at the experiments made in this particular case with People's Exhibit 1, the revolver? A With Sergeant Petty, I was.

Q You have had occasion, have you not, to examine the shells.

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CASE #276

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CASE #276

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CASE #276

People's Exhibit 3, that were in this revolver, People's Exhibit 1? A I have.

Q Are they the shells proper for such a revolver?

MR. LEVY: I object to that, as incompetent.

THE COURT: Well, how do you mean? Proper for such a revolver? Are they the shells that belong to that pistol?

MR. LeBARRIER: I will withdraw it and put it that way.

BY MR. LeBARRIER:

Q Are they the shells that -----

BY THE COURT:

Q That are made for that revolver?

MR. LEVY: Objected to, as incompetent.

THE COURT: I will allow it, on the question of competency.

MR. LEVY: And as irrelevant and immaterial.

THE COURT: Allowed.

MR. LEVY: Exception.

A They are not.

BY MR. LeBARRIER:

Q In what respect? A The shell is smaller than the diameter of the cylinder.

Q Yes. And what effect of the discharge of such a cartridge from such a revolver?

CASE #276

MR. LEVY: Objected to, as immaterial, irrelevant and incompetent.

BY MR. LeBARRIER:

Q In view of the experiments that you have made?

MR. LEVY: Objected to.

THE COURT: Allowed.

MR. LEVY: Exception.

A That as given vent to the escaping gas from the ignited powder backward through the chamber of the revolver.

BY MR. LeBARRIER:

Q Did you have any such effect in the firing of People's Exhibit 1, with a cartridge of the size and calibre that you have in your hand?

MR. LEVY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: Exception.

A We did.

BY MR. LeBARRIER:

Q Well, please state what the effect was. A The effect was that there was a discharge of unburned powder and gases through -- backward through the back of the cylinder.

Q And where did that back discharge show itself?

CASE #276

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CASE #276

MR. LEVY: Objected to, as incompetent, immaterial and irrelevant.

THE COURT: Allowed.

MR. LEVY: Exception.

A It would discharge in an area about this part of the revolver (indicating), between the frame and the pistol end of the cylinder.

BY MR. LeBANSIER:

Q Yes. Did you discharge that revolver with that kind of a cartridge in it? A I did.

Q And what was the effect upon the hand, if any, that held the revolver?

MR. LEVY: The same objection to all this line of interrogation.

THE COURT: Allowed.

MR. LEVY: Exception.

BY MR. LeBANSIER:

Q Please state. A The hand which was — the part of the hand which was opposite the space referred to was blackened by the smoke and powder.

Q Yes. After what discharge or discharges, if any, was the hand blackened under the circumstances that I have mentioned to you? A Blackened at every discharge.

Q Was one discharge sufficient for that purpose? A Yes.

CASE #276

sir, it was.

Q Assuming that a person has a wound inflicted upon the left side of the head, about two inches below the ear; that there is no singeing of the hair or powder marks around the wound, are you able to state whether such a wound may be self-inflicted?

MR. LEVY: Yes or no, please, to that.

A I am.

BY MR. LeBANSIER:

Q Can such a wound be self-inflicted?

MR. LEVY: Objected to, on the ground that it is immaterial, irrelevant and incompetent, and on the further ground that that is within the province of the jury to determine, and not within the province of any expert witness.

THE COURT: I will allow it.

MR. LEVY: An exception, please.

A It is not possible for such a wound to be self-inflicted.

BY MR. LeBANSIER:

Q Assuming that such a wound is inflicted upon the head of a person, for instance, over the left eyebrow, and the powder marks showing direct impact, that is to say, at right angles, extending from a distance, an area — showing a diameter of

CASE #276



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CASE #276

from one and a half to two inches, are you able to state from the experiments made with this revolver, People's Exhibit 1, and the cartridges such as were used in that revolver, what was the distance at which that revolver was in front of the eye?

MR. LEVY: Objected to, as incompetent, immaterial and irrelevant.

THE COURT: Allowed.

MR. LEVY: An exception, please.

A I am.

BY MR. LeBARRIER:

Q Will you kindly state to the Court and jury what was the distance?

MR. LEVY: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. LEVY: An exception, please.

A The distance was about seven inches.

BY MR. LeBARRIER:

Q The distance was about seven inches? A Yes, sir.

Q Are you able to state whether or not such a wound was self-inflicted? Just yes or no. A Yes, sir, I am.

Q Could it be self-inflicted?

MR. LEVY: Objected to, as incompetent, immaterial and

CASE #276

irrelevant.

THE COURT: Allowed.

MR. LEVY: Exception.

A No, it could not have been self-inflicted.

BY MR. LeBARRIER:

Q Having in view either the right or the left hand, could such a wound be inflicted with either hand?

MR. LEVY: The same objection.

THE COURT: Allowed.

MR. LEVY: Exception.

A I do not believe that the wound described could have been self-inflicted with either hand.

BY MR. LeBARRIER:

Q You do not believe that the wound described could have been self-inflicted with either hand? A No, sir.

Q You have had occasion, have you not, of knowing instances in which the thumb has been used in the discharge of weapons?

MR. LEVY: I object to that, as immaterial.

THE COURT: I will allow it.

MR. LEVY: An exception, please.

A I have, yes.

BY MR. LeBARRIER:

Q Will you please state to the Court and jury the instances in that respect which have come under your experience?

CASE #276

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CASE #276

MR. LEVY: Objected to, as incompetent, immaterial and irrelevant.

THE COURT: What is the object?

MR. LeBARRIER: Well, I desire to show, may it please the Court, without making any argument, that, if there were a possibility of the thumb being used in inflicting that wound, it was most unusual and a departure from every reason that exists.

THE COURT: I do not see how you are going to show it by showing that there have been instances where people have used the thumb in pulling the trigger.

MR. LeBARRIER: Well, the only instances that are known, we submit, are really —

MR. LEVY: Well, I object to the statement of the District Attorney in the presence of the jury.

THE COURT: Well, I inquired the purpose, and he may state it.

MR. LeBARRIER: Such as contests for prizes in marksmanship at great distances in firing at a mark, where they lie down and hold the pistol in a peculiar position, and sometimes use the thumb, but not where it is aimed at the eye, at close range.

BY THE COURT:

Q There is no question, is there, Doctor, that a revolver may

CASE #276

be used by using the thumb on the trigger? A No question whatever.

BY MR. LeBARRIER:

Q Having in view the experiments that you made in this case, and the cartridges such as you used, are you able to state the effect of a bullet fired at the distance which you have stated upon the object, as to perforation, or not? A I am.

Q Will you please state to the jury?

MR. LEVY: I object to it, as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. LEVY: An exception, please.

A The penetration of a bullet from this cartridge, a cartridge of this make and calibre, fired from that revolver, is less than one-half the penetration of a proper cartridge, fired from the same revolver.

BY MR. LeBARRIER:

Q In your opinion, would that account for the flattening of the bullet over the left eye?

MR. LEVY: Objected to, as incompetent.

THE COURT: I will sustain the objection.

Cross-Examination:

BY MR. LEVY:

Q I have a very few questions to ask of you, Doctor. You

CASE #276

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CASE #276

have stated to his Honor and these gentlemen of the jury that you occupy an official position. That is right, is it not? A Yes, sir, that is right.

Q Do you attend here as a witness today in that official capacity, or as an expert witness? A I don't understand that, Mr. Levy.

Q Do you attend here as a witness today in that official capacity, or as an expert witness? A As an expert witness.

Q For which you expect to receive separate and independent compensation, above that which you receive in your official capacity? A I don't know whether I will or not, Mr. Levy.

Q But you expect to make a demand, do you not? A I shall ask for it.

WILLIAM F. DELANEY, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION:

BY MR. LeBARRIEN:

Q Mr. Delaney, did you observe where the bullet had struck in the wall in Room 8? A Yes, sir.

Q Where? A About five feet from the floor, over the mantel-piece.

Q And the mantel-piece was directly opposite the bed, was it

CASE #276

not? A Yes, sir.

Q By "mantel-piece" do you understand shelf; is that it?

A Yes, sir, just the mantel-piece, the shelf, yes.

Q What was it? Of marble, or wood? A I believe it was of wood.

Q Yes. And you say the hole was just where, about?

A About a foot above the shelf, or a foot and a half, the shelf or mantel-piece.

CROSS-EXAMINATION: None.

MR. LeBARRIEN: The People rest, may it please your Honor.

MR. LEVY: May it please your Honor, I ask your Honor to advise the jury to acquit the defendant, upon the ground that the People have failed to establish facts sufficient to sustain the indictment.

And, upon the further ground that they have failed to establish the corpus delicti.

THE COURT: Motion denied.

MR. LEVY: An exception, if your Honor please.

I now ask your Honor to take from the consideration of the jury the charge of murder in the first degree, and the charge of murder in the second degree, on the ground that there is no evi-

CASE #276



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CASE #976

dence in this case upon which either of those  
counts in the indictment can be sustained.

THE COURT: Motion denied.

MR. LEVY: To which the defendant excepts.

I ask your Honor also, so far as the degrees  
of manslaughter are concerned -- I make the same  
motion.

THE COURT: Motion denied.

MR. LEVY: To which the defendant excepts.

I also move, upon the whole case, and upon  
the whole testimony, on the ground that there are  
not sufficient facts presented to the Court upon  
which this case can be submitted to the jury. I  
make that as a part of the motion.

THE COURT: Motion denied.

MR. LEVY: To which the defendant excepts.

Upon proper reflection and after due consid-  
eration, your Honor, I have concluded, realizing  
the seriousness of the step I am about to take,  
appreciating my responsibility towards the defend-  
ant and towards the Court, I have concluded to rest  
the case upon the People's case, for the reasons  
that the motions made by me, and which your Honor  
has denied, have been presented in all earnestness

CASE #976

and good faith, and with the conscious belief that  
the same should have been made and should have  
been granted.

And, at the close of the whole case, I now  
renew the motions made at the close of the Peo-  
ple's case, and on the grounds then stated.

THE COURT: Motion denied.

MR. LeBARRIER: And the defendant rests?

MR. LEVY: Yes; the defendant rests.

MR. LeBARRIER: And you have made these motions anew,  
at the close of the defendant's case, that were  
made at the close of the People's case?

MR. LEVY: Yes.

THE COURT: Motion denied.

MR. LEVY: I take an exception, sir.

THE COURT: At the suggestion of counsel, gentlemen of  
the jury, I will take an earlier recess than usual,  
so that they may look over the testimony and pro-  
ceed with their summing-up immediately after.

So that I will take a recess at half past  
twelve.

I am required at each adjournment to give you  
the usual statutory caution, not to talk with each  
other during the recess about the case, nor with

CASE #976

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CASE #2976

anyone else, and, of course, not to come to any  
conclusion upon any branch of it until it is finally  
submitted to you.

If you will be in your seats at half past one,  
gentlemen, we will go right on with the case.

#### AFTER RECESS.

#### SUMMING UP FOR THE DEFENSE.

of Abraham Levy, Esq.

May it please your Honor:

Mr. Foreman and Gentlemen of the Jury.

I am firmly of the belief that you gentlemen  
are fully alive to the seriousness of your re-  
sponsibility in a case of this character. I do  
not know of any greater privilege that can be ac-  
corded to a human being than the privilege of  
passing in judgment upon the fate of a fellow  
human being.

The defendant at the bar is arraigned and has  
been tried before you upon the most serious charge  
known to the criminal calendar.

You are a jury of his own selection. You  
were selected with much care, in the hope of se-  
curing twelve men who would set aside every condi-

CASE #2976

#### THE COURT'S CHARGE.

Gentlemen of the Jury.

The defendant is charged with the crime of  
murder in the first degree.

The definition of murder in the first degree,  
as given in the Penal Code, I will read to you:  
"The killing of a human being, unless it is ex-  
cusable or justifiable, is murder in the first  
degree, when committed either from a deliberate  
or premeditated design to affect the death of the  
person killed, or of another."

That is all of the definition of murder in the  
first degree which it is necessary for you to ex-  
amine in connection with the case at bar.

Murder in the second degree is thus defined:  
"Murder in the second degree is the killing of a  
human being, when committed with a design to affect  
the death of the person killed, or of another, but  
without premeditation and deliberation."

You will see that the difference in character  
between the two degrees of murder is the presence  
of deliberation and premeditation in one case, and  
their absence in the other; but that, in both

CASE #2976

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CASE #276

degrees, there must be present the intent to kill.

The courts have held, in repeated instances, as to premeditation and deliberation, that the time necessary for the mental operation which those two words describe is vague and indefinite, and that it is for the jury to say whether or not sufficient time elapsed before the doing of the act to permit of such mental operation and consideration as would constitute deliberation and premeditation.

Inasmuch as counsel concedes that there is no question here as to justifiable or excusable homicide, it is not necessary to detain you with any definitions upon that subject.

To constitute murder in the first degree, there must not only be the killing, but it must be with premeditation and deliberation and intent to kill.

It has been laid down in the higher courts:

"Where the offense charged is murder in the first degree, it is essential that it should appear that there was some actual deliberation and premeditation operating in and upon the mind of the accused in reference to the subject matter of

CASE #276

the offense, before the actual occurrence of the act which is alleged to be criminal."

This may be illustrated by supposing a case of poisoning, where the party procures the poison, prepares it, and in some form most convenient, causes its administration, or administers it.

"So, where the offense is committed in any other mode, as being shooting or stabbing, the previous preparation for the deed, the arming of one's self, the loading of the gun, the going to the place, the lying in wait, or the seeking of the interview, and the various steps, either pre-arranged in the person's mind, or taken with a view, in the judgment of the jury, to the accomplishment of the fatal end, might very properly be deemed to bring the case within the first provision of the statute, if satisfactorily shown."

In this case the People claim to have established that, at the time of the killing of this woman, this defendant and the woman were alone in this room at the time laid in the indictment.

The People claim to have established that this woman came to her death by pistol-shot wounds, inflicted upon her then and there.

CASE #276



The People claim, further, to have established that the defendant came there by appointment to meet her; that, on the night previous, he had a quarrel with his wife, in which this woman's name was mentioned, and that, in the course of this quarrel or conversation, he demanded from his wife the revolver.

Subsequently the defendant stated, in the explanation made to the officer, that he wanted the revolver because of "bad boys on the street." In the same conversation he said that he had not carried a revolver for three months prior to that time.

Now, then, these two persons, according to the evidence presented to you, and which I believe is undisputed, met in this room, and, shortly thereafter, the shooting occurs.

It is for you to say:

First: Was this shooting the act of the defendant?

Second: Did it cause the death of this woman?

Third: Was there premeditation or deliberation and intent to kill, prior to the act of the

discharging of that pistol?

Every sane person is presumed to intend the natural and necessary consequences of his act; and it is therefore a fair presumption that, when a person discharges a loaded revolver in the face or upon the head of another, that he had the intent to produce the natural and necessary consequences of that act, that is, death.

If you find that this defendant did discharge that revolver against the person of the deceased, with intent to kill, you may determine from the circumstances and the testimony whether he did it with premeditation and deliberation.

That does not mean premeditation of days, or even of hours or minutes. It means a premeditation such as to give time enough to permit the clear operation of the mind and the formation of the determination to effect death.

If you find that this killing, if done by the defendant, was done without premeditation, yet with intent to kill, that is to say, if you believe that he had not time nor reflection sufficient to form the design to kill immediately before the doing of the act, it would reduce the

CASE #276

CASE #276

CASE #276

373  
offense committed to murder in the second degree.

The limit between the two degrees of murder is narrow and not easily defined, but I have given you the gist of what the higher courts have held upon the subject, and it is left entirely to your judgment to say whether, if the killing was done by the defendant, with intent to kill, it was done with premeditation and deliberation or not, for that would regulate the degree of the offense committed.

Where a reasonable doubt exists as to the degree of the offense, if proven, then, of course, the defendant is entitled to the benefit of that doubt, and to a conviction of the lesser degree.

I will add one or two further extracts, upon this subject, taken from the decisions of the Court of Appeals, so that you may have it fully impressed upon your mind:

"If there be sufficient deliberation to form a design to take life, there is sufficient deliberation to constitute murder, no matter whether the design is formed at the instant of striking the fatal blow, or whether it be contemplated for months."

374  
Again: "If the killing is not the instant effect of impulse, if there is hesitation or doubt to overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder.

"Under the statute there must not only be an intention to kill, but there must also be a premeditated and deliberate design to kill. Such design must precede the killing by some appreciable space of time. But the time need not be long. It must be sufficient for some reflection or consideration upon the matter, for a choice to kill or not to kill, and for the formation of a definite purpose to kill. The human mind acts with celerity, which it is sometimes impossible to measure, and whether a deliberate or premeditated design to kill was formed, must be determined from all the circumstances of the crime."

As to what really occurred in that room, you must derive information, as best you can, from the testimony presented to you, whether it be direct testimony or circumstantial.

The People claim to have shown, by the testi-

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CASE #276

mony of experts. what would be the effect upon the person firing the pistol under the conditions shown, that is to say, the firing of a misfit cartridge from this identical pistol, the effect upon the hand or finger of the person firing it.

They claim also to have shown, and it is for you to say whether they have or not, that such marks were upon the index finger of this defendant, shortly after the firing, and were not seen upon the index finger of the hand of the deceased.

The theory of the defense, as I understand it, is that the deceased came to her death by her own hand, after she had made an attempt to kill the defendant.

You will consider the testimony presented to you in that particular and give it careful consideration. That is circumstantial evidence. But you must not, because of the word "circumstantial," infer that such evidence is to be distrusted, merely because it is circumstantial. You have to decide, however, how far the circumstances upon which it is based give or do not give such moral certainty as would justify a conviction.

As to the character of the wounds inflicted

CASE #276

upon the deceased, and their result upon the brain and the consequent death, as testified to by the physician, you, of course, will give such consideration to that testimony as it deserves.

So, too, as to the character of the wound inflicted on the defendant, which has been testified to by the officers, and which was also admitted by him in his conversation in the hospital, where he stated that after the firing of the first shot he became unconscious. So, too, as to the circumstance of his stating in this conversation — and I am not now referring to what is known or what is called the ante-mortem statement, because, while this was admitted in evidence, and is in evidence, by consent of the District Attorney, it certainly cannot be in evidence as an ante-mortem statement, inasmuch as the maker of it is not dead — it was intended to be an ante-mortem statement, and, had he died, it would have been so regarded, and, of course, would have been entitled to all the solemnity which the law attaches to a statement made in the presence of death, or in the immediate expectation of death — you have the fact that he stated to the officers that he hung his coat up, but, when

CASE #276



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CASE #276

they found him on the floor, his coat was on him.

He explains that, as the District Attorney has called to your attention, by stating that, after the firing of the first shot, which rendered him unconscious, he arose and put on his coat and then fell again, and was in the condition described by the officers, apparently unconscious, upon their arrival; and that, as far as the testimony goes, no explanation was made by him then and there, or at that moment, nor any explanation other than the conversation had in the hospital and in the ante-mortem statement, taken in the presence of the Coroner.

The People are obliged to make out their case beyond a reasonable doubt.

You will understand that the words "reasonable doubt" mean precisely what they imply, a doubt that has a reason behind it, not a shallow reason, not a worthless reason, but a good reason. Otherwise it is not reasonable.

It should be such a doubt as would influence you in the important affairs of your daily life, and control your action; and if, upon a full consideration of this case, you have such a reason-

CASE #276

able doubt, as to any of the essential features of the case, the defendant is entitled to the benefit of such a doubt, and should be acquitted.

In other words, if you believe that the wounds were not inflicted upon the deceased by him, but were inflicted by the deceased upon herself, or if you believe that there is a reasonable doubt upon that subject, then of course he is entitled to an acquittal.

But if you believe that he did inflict those wounds upon the deceased, with intent to kill, but without premeditation and deliberation, then that doubt, if it be a reasonable doubt, will apply to the charge of murder in the first degree. If you have a reasonable doubt as to the firing of the pistol, if he fired it, with intent to kill, that would apply to the charge of murder in the second degree, and reduce it to a lower grade of homicide, that of manslaughter.

Gentlemen, the case is in your hands, unless

Mr. Levy desires to make some requests to charge.

MR. LEVY: Would your Honor be good enough to charge the jury upon the four degrees of homicide?

THE COURT: The four degrees.

CASE #276

MR. LEVY: Yes, sir.

THE COURT: You do not desire that I should read the whole of the statute, do you?

MR. LEVY: No, sir, but simply to instruct the jury on the four divisions of homicide.

THE COURT: "The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate or premeditated design to effect the death of the person killed, or of another."

"Murder in the second degree is the killing of a human being, when committed with a design to effect the death of the person killed, or of another, but without deliberation and premeditation."

Manslaughter is thus defined: "In a case other than one of those specified in Sections 183, 184 and 185, homicide, not being justifiable or excusable, is manslaughter."

"Such homicide is manslaughter in the first degree when committed without a design to effect death, \* \* \* in the heat of passion, but in a cruel and unusual manner, or by the means of a dangerous weapon."

So you will see, gentlemen, how far that may

be applicable here, in view of the last sentence of my charge, that, if you believe that he did the act which resulted in the death of this woman, but not with intent to kill, but in the heat of passion, by means of a dangerous weapon, it would then fall within the definition of manslaughter in the first degree.

Manslaughter in the second degree is thus defined: "Such homicide is manslaughter in the second degree when committed without a design to effect death, in the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual."

So that you will see that the distinction between manslaughter in the first degree and manslaughter in the second degree is the use of a dangerous weapon, or its commission by cruel or unusual means, in the one case, and in the other, not by a dangerous weapon or by means cruel or unusual.

MR. LEVY: May I respectfully except to so much of your Honor's charge wherein you say that the theory of the defense is that the deceased came to her death by her own hands?

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CASE #276

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CASE #276

380  
THE COURT: Is not that the theory?

MR. LEVY: The defendant need not advance any theory.

THE COURT: I will withdraw that part of the charge then.

MR. LEVY: And that the burden is upon the part of the prosecution -- I ask your Honor to charge that the burden is upon the People to make out their case, beyond a reasonable doubt.

THE COURT: I have so charged, but I will so charge again. The burden rests upon the People to the end of the case to establish the facts that constitute guilt.

MR. LEVY: I respectfully except to so much of your Honor's charge wherein you place a limitation upon the effect of the so-called ante-mortem statement.

THE COURT: Well, will you be a little more definite as to that?

MR. LEVY: Well, I cannot recall the exact words, but you said in substance that it was admitted in evidence, but it was not an ante-mortem statement, that it was admitted by the consent of the District Attorney; and my purpose in excepting is this, to ask your Honor to charge, in all frankness, that it is admitted in evidence and must be considered by

381

the jury as evidence, and is part of the evidence, and must receive consideration at their hands.

THE COURT: I will charge that it is in evidence, and that the jury will give it much consideration as they deem it to be worth, but that it is not what is technically known as an ante-mortem statement, because the party making it did not actually die.

MR. LEVY: I respectfully except to that modification.

THE COURT: And that therefore it is not entitled to the solemnity with which a document, duly offered as an ante-mortem declaration, is regarded. I could add further, but I think that the counsel understands why I refrain.

MR. LEVY: I understand, sir. I simply want to conserve the defendant's interests. And I ask your Honor to charge this: That the so-called ante-mortem statement was offered by the prosecution, and is in evidence, and must be considered by the jury as part of the evidence.

THE COURT: Precisely. And the jury can pass upon its credibility.

MR. LEVY: Well, but won't your Honor charge in the words that I use?

THE COURT: No.

382

CASE #276

CASE #276

CASE #276



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CASE #276

MR. LEVY: I respectfully except.

THE COURT: Repeat that request, Mr. Stenographer. I  
may not have caught it fully.

(It is repeated by the stenographer.)

THE COURT: Under the same limitations. I do not wish  
the jury to understand that it is conclusive proof  
of the matters stated in it, but must be considered  
by the jury as any other evidence submitted to them.

MR. LEVY: I except to the modification.

THE COURT: Subject to the same limitations.

MR. LEVY: I respectfully except to so much of your  
Honor's charge wherein you define what is meant by  
reasonable doubt, and where you say particularly  
that there must be a good reason for the doubt,  
and otherwise it is not a reasonable doubt. Now,  
I respectfully ask your Honor to charge the jury—

THE COURT: Do you want to read authorities on that?

MR. LEVY: Well, I presume that I can furnish them to  
your Honor personally, a little later. But I  
will ask your Honor to charge the jury that the  
burden of proof is with the prosecution, and that  
it never shifts to the defendant.

THE COURT: I will charge that.

MR. LEVY: That the responsibility of sustaining the

CASE #276

burden of proof continues with the prosecution  
throughout the case.

THE COURT: I so charge, although I have already charged  
that.

MR. LEVY: I ask your Honor to charge the jury that the  
fact that the defendant did not take the witness  
stand in his own behalf is not to be taken by the  
jury as prejudicial to the defendant.

THE COURT: I will so charge.

MR. LEVY: And I ask your Honor to charge the jury that  
your Honor's overruling of my objections throughout  
the case, and the denial of my motions at the end  
of the case, to advise the jury to acquit, are mat-  
ters of law, and are not to be considered by the  
jury, and are not to be taken by the jury as any  
expression of opinion upon your Honor's part with  
regard to the facts in the case.

THE COURT: Most assuredly, I will charge that. The  
case is in your hands, gentlemen.

THE FOREMAN: Can we take the revolver, your Honor, be-  
fore we retire? May we have the weapon?

THE COURT: If there be no objection.

MR. LEVY: There is no objection whatever, sir.

(The jury retired at 3:10 p. m.)

CASE #276

the prosecution  
have already charged  
the jury that the  
take the witness  
to be taken by the  
ndant.

charge the jury that  
bjections throughout  
motions at the end  
to acquit, are mat-  
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y the jury as any  
Honor's part with

charge that. The  
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r, your Honor, be-  
e weapon?  
ever, sir.

CASE #276

(The jury returned to the court room at eleven p. m.  
The jury found the defendant guilty of murder in  
the second degree.)

MR. SIMPSON: I ask your Honor to be good enough to  
stay the sentence until Mr. Levy may have an op-  
portunity to make such motions as seem advisable,  
until the 4th or 5th of December, say.

THE COURT: Is there any object in that, counsel?

MR. SIMPSON: Yes, sir.

THE COURT: Of course, any motions that you may desire  
to make for a new trial, or in arrest of judgment,  
will be considered carefully by the Court.

MR. SIMPSON: Monday is the 2d of December, the first  
day of the new term, and Wednesday is the 4th.  
This man has some affairs that must be straightened  
out before he goes away.

THE COURT: There will be no difficulty about that, as  
to the commitment, but, as this is the end of the  
term, I cannot see any advantage in the delay.

MR. SIMPSON: Your Honor, it is in order to prepare the  
proper papers and an argument in arrest of judg-  
ment and for a new trial. I certainly could not  
be ready, tonight, in the absence of Mr. Levy. Mr.  
Levy was not feeling well when he left here, and

CASE #276

has gone up home. If your Honor wants to fix

Monday ----

THE COURT: I will fix Monday, in Part III of this  
Court. The defendant may be remanded until Mon-  
day next.

CASE #276