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Summons.

Filed Nov. 27, 1928.

The State of New Jersey to Emma L. Von Moschzisker and Frank A. Von Moschzisker:

(Seal)

You are summoned to answer the annexed complaint of Sarah E. Mowell, in an action at law in the Circuit Court of Bergen County.

And take notice that unless you file your answer to said complaint with the Clerk of the said Bergen County Circuit Court, at Hackensack, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, Honorable Edwin C. Caffrey, Judge of the Bergen County Circuit Court, at Hackensack, this sixteenth day of October, Nineteen hundred and twenty-eight.

JAMES W. MERCER,
Clerk.

John B. Zabriskie,
Attorney.

Complaint.

Filed Nov. 27, 1928.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Complaint.

The plaintiff, Sarah E. Mowell, residing in the Village of Ridgewood in the County of Bergen and State of New Jersey, says that:

1. The defendants, Emma L. Von Moschzisker and Frank A. Von Moschzisker, on or about the 10th day of August, 1927, with force and arms assaulted the said plaintiff at the Village of Ridgewood in the County of Bergen and State of New Jersey, and then and there seized and laid hold of her and with great force and violence pulled and dragged her about and then and there gave and struck her a great many violent blows and strokes and then and there forced and compelled her to go from out of a certain dwelling house or other building situate and being in the Village of Ridgewood in the County of Bergen into the public street there, and then and there forced and compelled her to go in and along divers public streets to a certain police office, to wit, the office of the Clerk of the Court of the Second Criminal Judicial District of the County of Bergen, and then and there imprisoned the said plaintiff, and kept

and detained her there, without any reasonable or probable cause whatsoever, for a long space of time, to wit, for the space of one hour then next following, contrary to the laws and customs of the land and against the will of the said plaintiff, and further imprisoned the said plaintiff and kept and detained her in prison, to wit, for the space of six hours then next following, contrary to the laws of the land and against the will of the said plaintiff, whereby the said plaintiff was then and there not only greatly hurt, bruised and wounded, but was also thereby then and there greatly exposed and injured in her credit, standing, position and circumstances, and the said plaintiff has by means of the premises greatly suffered both in body and mind, so that her health has been permanently ruined.

SECOND COUNT.

And said plaintiff complains of the defendants, for this, that on or about the tenth day of August, 1927, in the county aforesaid, the said defendants with force and arms, assaulted the said plaintiff, and then and there beat, bruised, and ill-treated her; and then and there imprisoned her, and kept and detained her in prison there, without any reasonable or probable cause whatsoever, for a long time, to wit, for the space of six hours then next following, contrary to the laws of the land, and against the will of the said plaintiff.

THIRD COUNT.

The said plaintiff complains against the said defendants that the said defendants contriving and maliciously intending to injure the said plaintiff in her good name, fame and credit, and to bring

her into public scandal, infamy and disgrace, and to cause the said plaintiff to be imprisoned for a long space of time, and thereby to impoverish, oppress and wholly ruin her, theretofore, to wit, on or about the 10th day of August, 1927, at the city of Hackensack in the County of Bergen and State of New Jersey, appeared before one, Charles Schmidt, then and there being a clerk of the Second Criminal Judicial Court of the County of Bergen, and then and there before the said clerk of said court falsely and maliciously and without any reasonable or probable cause whatsoever, charged the said plaintiff in manner and form following, to wit, viz: "that on or about the 30th day of June, A. D. one thousand nine hundred and twenty-seven, at the Village of Ridgewood, in the County aforesaid, did violate Section 39 of the Criminal Procedure Act in that the said Sarah Mowell (this plaintiff) did knowingly, unlawfully, maliciously and with criminal intent, send and deliver to the complainant (Emma L. Von Moschzisker) a letter without a name subscribed thereto, demanding money in the sum of $20,000 from the complainant (Emma L. Von Moschzisker) and threatening to do civil injury to the complainant (Emma L. Von Moschzisker) by threatening to send blackmail letters in the Borough of Ridgewood, whereby the complainant, (Emma L. Von Moschzisker) would be subject to arrest, trial, conviction and imprisonment contrary to the form of the statute, &c.", and upon such charge falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said Charles Schmidt, so being clerk as aforesaid, to make and grant his certain warrant, in due form of law, for the taking and

apprehending of the said plaintiff, and for bringing the said plaintiff before the Judge of the Court of the Second Criminal Judicial District of the County of Bergen, to be dealt with according to law for the said supposed offence. And the said defendants, under and by virtue of the said warrant, afterwards, to wit, on the day, month and year aforesaid, wrongfully and unjustly, and without any reasonable cause whatsoever, caused the said plaintiff to be arrested by her body, and to be imprisoned and kept and detained in prison for a long space of time, to wit, for the space of six hours, then next following, at the expiration of which time, the said plaintiff was released from the said prison, upon her entering into a recognizance in the sum of $5000. conditioned for her appearance before the Court of Quarter General Sessions to be holden at Hackensack in and for the said County of Bergen, when sent for, and from day to day thereafter, then and there to answer such charges as should be then and there preferred against her, and not depart the said court without leave.

And the said defendants, further contriving and maliciously intending to injure the said plaintiff, and to cause her to be imprisoned and kept and detained in prison, and to put her to great charges and expense, and to vex, harrass, oppress, impoverish and wholly ruin her, at the September Term of the Bergen Over and Terminer in and for the said County of Bergen, on or about October 28th, 1927, the said defendants falsely and maliciously and without any reasonable or probable cause whatsoever, indicted and caused and procured to be indicted this plaintiff, on the charge that she did on the 29th day of June, 1927, at the Village of Ridge-

wood in the County of Bergen, knowingly, unlawfully, maliciously and with criminal intent, send and deliver to one Emma L. Von Moschzisker, a letter without a name subscribed thereto, demanding money in the sum of $20,000 from the said Emma L. Von Moschzisker, and threatening to do civil injury to the said Emma L. Von Moschzisker by sending blackmail letters to some of the prominent people of the Village of Ridgewood, in the County aforesaid, and falsely signing the name of the said Emma L. Von Moschzisker to said letters, where by the said Emma L. Von Moschzisker would be subject to arrest, trial, conviction and imprisonment, contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same.

And the said plaintiff further says that the said defendants falsely and maliciously, and without any reasonable or probable cause whatsoever, prosecuted and caused and procured to be prosecuted the said indictment against the said plaintiff in the Bergen County Court of Quarter Sessions at Hackensack in the said County of Bergen, until the said plaintiff afterwards, to wit, on the sixteenth day of February, 1928, in the said Bergen County Court of Quarter Sessions holden before Honorable William M. Seufert, Judge of said Court, and a jury duly impanelled in said court, which said Court of Quarter Sessions had jurisdiction to hear and determine said alleged offense, the plaintiff Sarah E. Mowell was acquitted of the charge in said indictment contained, whereupon it was then and there considered in and by the said court that the plaintiff of the charge in the said indictment, specified, should be

discharged and should go without day, as by the record and proceedings remaining in the said court, reference being thereunto had, will more fully appear. By means of which said premises, the plaintiff has been forced and obliged to undergo and has undergone much trouble and labors both of body and mind, and to lay out and expend large sums of money, in the whole amounting to a large sum of money, to wit, to the sum of $5000 in and about the defending of herself in the premises, and the manifestations of her innocence therein, and hath been imprisoned, and kept and detained in prison, for a great length of time, to wit, for the space of six hours, and hath been kept and detained under recognizance of bail for the space of one hundred ninety days; and the said plaintiff was also, by means of the premises, hindered and prevented from transacting her necessary and lawful affairs and business, for divers long spaces of time, and hath been and is otherwise greatly injured and damnified, and very much impoverished; and the said plaintiff has by means of the premises greatly suffered both in body and mind so that her health has been permanently ruined.

Plaintiff demands the sum of seventy-five thousand dollars ($75,000) damages.

JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Answer of the Defendant, Emma L. Von Moschzisker.

Filed Dec. 7, 1928.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Answer of the Defendant, Emma L. Von Moschzisker.

The defendant, Emma L. Von Moschzisker, of the Village of Ridgewood, Bergen County, New Jersey, by way of answer says that:

AS TO THE FIRST COUNT.

1. She denies the truth of each and every allegation contained in the First Count.

AS TO THE SECOND COUNT.

1. She denies the truth of each and every allegation contained in the Second Count.

AS TO THE THIRD COUNT.

1. She denies the truth of each and every allegation contained in the Third Count.

FIRST SEPARATE DEFENSE.

1. The Defendant, further says that the complaint signed by her, which is referred to in the

complaint, was signed by her upon probable cause, and in good faith.

SECOND SEPARATE DEFENSE.

1. Defendant, Emma L. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, she consulted a competent Attorney at Law of the State of New Jersey, and the signing of said written complaint, was based upon his advice.

THIRD SEPARATE DEFENSE.

1. Defendant, Emma L. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, she consulted with able and competent handwriting experts, concerning the authenticity of certain letters received by her, and she only signed said written complaint mentioned in the complaint, after receiving advice from said experts.

FOURTH SEPARATE DEFENSE.

1. Defendant, Emma L. Von Moschzisker, further says that the signing of the said written complaint mentioned in the complaint, was at all times free from any malice on her part.

FIFTH SEPARATE DEFENSE.

1. Defendant, Emma L. Von Moschzisker, further says that she had due and probable cause for signing said written complaint mentioned in the complaint.

BRESLIN AND BRESLIN,
Attorneys for Defendants.

November 30th, 1928.

Answer of the Defendant Frank A. Von Moschzisker.

Filed Dec. 7, 1928.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Answer of the Defendant, Frank A. Von Moschzisker.

The defendant, Frank A. Von Moschzisker, of the Village of Ridgewood, Bergen County, New Jersey, by way of answer says that:

AS TO THE FIRST COUNT.

1. He denies the truth of each and every allegation contained in the First Count.

AS TO THE SECOND COUNT.

1. He denies the truth of each and every allegation contained in the Second Count.

AS TO THE THIRD COUNT.

1. He denies the truth of each and every allegation contained in the Third Count.

FIRST SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that the written complaint mentioned in

the complaint, was signed upon probable cause, and in good faith.

SECOND SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, a competent Attorney at Law was consulted, and the signing of said written complaint, was based upon his advice.

THIRD SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, competent handwriting experts were consulted concerning the authenticity of certain letters received by the defendant, Emma L. Von Moschzisker, and the said written complaint was signed, after receiving advice from said experts.

FOURTH SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that the signing of the said written complaint mentioned in the complaint, was at all times free from any malice.

FIFTH SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says there was due and probable cause for the signing of said written complaint mentioned in the complaint.

SIXTH SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that he did not sign the written complaint, and as a matter of law, is not responsible for any damages that might accrue as a result of the signing of said written complaint.

BRESLIN AND BRESLIN,
Attorneys for Defendants.

December 3rd, 1928.

Reply to Answer of the Defendant, Frank A. Von Moschzisker.

Filed Dec. 14, 1928.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Reply to Answer of the Defendant Frank A. Von Moschzisker.

The plaintiff denies the truth of each and every allegation contained in the First Separate Defense, Second Separate Defense, Third Separate Defense, Fourth Separate Defense, Fifth Separate Defense and Sixth Separate Defense of the defendant Frank A. Von Moschzisker.

The plaintiff reserves the right to move to strike out each of the first, second, third, fourth, fifth and sixth separate defenses on the ground that the facts alleged in each of said defenses respectively does not constitute a legal defense to plaintiff's complaint.

JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Reply to Answer of the Defendant, Emma L. Von Moschzisker.

Filed Dec. 14, 1928.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Reply to Answer of the defendant, Emma L. Von Moschzisker.

The plaintiff denies the truth of each and every allegation contained in the First Separate Defense, Second Separate Defense, Third Separate Defense, Fourth Separate Defense, and Fifth Separate Defense of the defendant Emma L. Von-Moschzisker.

The plaintiff reserves the right to move to strike out each of the first, second, third, fourth and fifth separate defenses on the ground that the facts alleged in each of said defenses respectively does not constitute a legal defense to plaintiff's complaint.

JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Order.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff,	
vs.	Action at Law.
EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Order.

It appearing that the issue in the above entitled cause has been joined and that the cause has not been tried, and it further appearing that the said plaintiff desires to examine the defendant Emma L. Von Moschzisker, as a witness in the above entitled cause before trial, in pursuance of the statute in such case made and provided, and the said plaintiff having made application for an order to have the said defendant examined as a witness in pursuance of said statute:

It is, therefore, on this 25th day of February, 1930, ordered that Emma L. Von Moschzisker, one of the defendants in this cause, appear before Howard Mackay, Esquire, Supreme Court Commissioner, at his office, Main Street, Hackensack, New Jersey on Saturday, the first day of March, 1930, at 11 o'clock in the forenoon, to be examined as a witness in the above stated cause, before trial, by the said plaintiff, or her attorney concerning

1. The custody of Exhibit S-1 referred to as the "wrapper" (in case of State vs. Sarah E. Mowell) from the time of receipt thereof in the month of April, 1926.

Order.

2. The authenticity of certain documents, letters, &c., believed to have been written or made by said Emma L. Von Moschzisker, the above named defendant.

3. The steps taken and conduct of the said Emma L. Von Moschzisker in and about making complaint and procuring arrest of the plaintiff, Sarah E. Mowell, in the criminal proceeding heretofore had in the Bergen Quarter Sessions Court, in which proceeding said Sarah E. Mowell was defendant.

And it is further Ordered that a copy of the within order and of the annexed petition (which copy may be certified by the attorney of the plaintiff) be served on the said defendant, or her attorney, within two days from the date hereof.

EDWIN C. CAFFREY,
Judge.

On motion of
JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Amended Answer of Defendant, Frank A. Von Moschzisker.

Filed March 10, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Amended Answer of Def't Frank A. Von Moschzisker.

The defendant, Frank A. Von Moschzisker, of the Village of Ridgewood, Bergen County, New Jersey, by way of answer says that:

AS TO FIRST COUNT.

1. He denies the truth of each and every allegation contained in the First Count.

AS TO SECOND COUNT.

1. He denies the truth of each and every allegation contained in the Second Count.

AS TO THIRD COUNT.

1. He denies the truth of each and every allegation contained in the Third Count.

FIRST SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that the written complaint mentioned in the complaint was signed upon probable cause and in good faith.

Amended Answer of Defendant Frank A. Von Moschzisker.

SECOND SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, competent Attorneys at Law were consulted and a full disclosure of the facts made to them, and the signing of said written complaint was based upon their advice.

THIRD SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, competent handwriting experts were consulted concerning the authenticity of certain letters received by the defendant, Emma L. Von Moschzisker, and the said written complaint was signed, after receiving advice from said experts.

FOURTH SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that the signing of the said written complaint mentioned in the complaint, was at all times free from any malice.

FIFTH SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says there was due and probable cause for the signing of said written complaint mentioned in the complaint.

SIXTH SEPARATE DEFENSE.

1. Defendant, Frank A. Von Moschzisker, further says that the proceedings alleged of in the com-

plaint by which the plaintiff was arrested are not at an end as the plaintiff has been indicted in the Federal Court for the District of New Jersey.

BRESLIN & BRESLIN,
Attorneys of Defendants.

Amended Answer of Defendant, Emma L. Von Moschzisker.

Filed March 10, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Amended Answer of Def't Emma L. Von Moschzisker.

The defendant, Emma L. Von Moschzisker, of the Village of Ridgewood, Bergen County, New Jersey, by way of answer says that:

AS TO FIRST COUNT.

1. She denies the truth of each and every allegation contained in the First Count.

AS TO SECOND COUNT.

1. She denies the truth of each and every allegation contained in the Second Count.

Amended Answer of Defendant Emma L. Von Moschzisker.

AS TO THIRD COUNT.

1. She denies the truth of each and every allegation contained in the Third Count.

FIRST SEPARATE DEFENSE.

Defendant, Emma L. Von Moschzisker, further says that the written complaint mentioned in the complaint was signed upon probable cause, and in good faith.

SECOND SEPARATE DEFENSE.

Defendant, Emma L. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, competent Attorneys at Law were consulted and a full disclosure of the facts made to them, and the signing of said written complaint was based upon their advice.

THIRD SEPARATE DEFENSE.

Defendant, Emma L. Von Moschzisker, further says that prior to the signing of said written complaint mentioned in the complaint, she consulted with able and competent handwriting experts, concerning the authenticity of certain letters received by her, and she only signed said written complaint mentioned in the complaint, after receiving advice from said experts.

FOURTH SEPARATE DEFENSE.

Defendant, Emma L. Von Moschzisker, further says that the signing of the said written complaint

mentioned in the complaint, was at all times free from any malice on her part.

FIFTH SEPARATE DEFENSE.

Defendant, Emma L. Von Moschzisker, further says that the proceedings alleged of in the complaint by which the plaintiff was arrested are not at an end as the plaintiff has been indicted in the Federal Court for the District of New Jersey.

SIXTH SEPARATE DEFENSE.

Defendant, Emma L. Von Moschzisker, further says that she had due and probable cause for signing said written complaint mentioned in the complaint.

BRESLIN & BRESLIN,
Attorneys of Defendants.

Order.

Filed March 11, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Order.

The parties consenting hereto, it is, on this sixth day of March, 1930, in the presence of John J. Breslin, Jr., of the firm of Breslin & Breslin, attorneys for defendants, and John B. Zabriskie, attorney for plaintiff, Ordered that the First, Second and Third Counts of the plaintiff's complaint be amended by the addition of the following averment, viz:

At all the times mentioned in this complaint, said defendant Emma L. Von Moschzisker was the the wife of the said defendant Frank A. Von-Moschzisker.

EDWIN C. CAFFREY,
Judge.

Order.

Filed April 3, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Order.

The parties consenting hereto, it is, on this 27th day of March, 1930, in the presence of John J. Breslin, Jr., Esq., of the firm of Breslin & Breslin, and Peter J. McGinnis, attorneys for defendants, and John B. Zabriskie, attorney for Plaintiff, Ordered that the concluding part of the Third Count in the following language:

> "and the said plaintiff was also, by means of the premises, hindered and prevented from transacting her necessary and lawful affairs and business, for divers long spaces of time, and hath been and is otherwise greatly injured and damnified, and very much impoverished; and the said plaintiff has by means of the premises greatly suffered both in body and mind so that her health has been permanently ruined"

be and hereby is amended to read:

> "and the said plaintiff was also, by means of the premises, hindered and prevented from transacting her necessary and lawful affairs and business, for divers long spaces of time, and hath been and is otherwise greatly in-

jured and damnified, and very much impoverished; and the said plaintiff has by means of the premises greatly suffered both in body and mind, and her health has been thereby permanently ruined."

EDWIN C. CAFFREY,
Judge.

Reply to Amended Answer of Defendant, Emma L. Von Moschzisker.

Filed March 24, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Reply to Amended Answer of the Defendant Emma L. Von Moschzisker.

The plaintiff denies the truth of each and every allegation contained in the First Separate Defense, Second Separate Defense, Third Separate Defense, Fourth Separate Defense, Fifth Separate Defense and Sixth Separate Defense of the defendant Emma L. Von Moschzisker.

The plaintiff reserves the right to move to strike out each of the first, second, third, fourth, fifth, and sixth separate defenses on the ground that the facts alleged in each of said defenses respectively does not constitute a legal defense to plaintiff's complaint.

JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Reply to Amended Answer of Defendant, Frank A. Von Moschzisker.

Filed March 24, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff,	Action at Law.
vs.	Reply to Amended Answer of the Defendant Frank A. Von Moschzisker.
EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	

The plaintiff denies the truth of each and every allegation contained in the First Separate Defense, Second Separate Defense, Third Separate Defense, Fourth Separate Defense, Fifth Separate Defense and Sixth Separate Defense of the defendant Frank A. Von Moschzisker.

The plaintiff reserves the right to move to strike out each of the first, second, third, fourth, fifth and sixth separate defenses on the ground that the facts alleged in each of said defenses respectively does not constitute a legal defense to plaintiff's complaint.

JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Rule for Judgment.

Filed April 2, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Rule for Judgment.

This action having been tried before Judge Edwin C. Caffrey, with a jury, in the presence of counsel of the respective parties; and the jury having returned a verdict in favor of the plaintiff for $25,000 damages;

It is Ordered that judgment final be entered in favor of the plaintiff, Sarah E. Mowell, and against the defendants Emma L. Von Moschzisker and Frank A. Von Moschzisker for the sum of twenty-five thousand dollars ($25,000) and plaintiff's costs to be taxed.

On motion of
JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Rule entered this 2nd day of April, 1930.

Judgment.

BERGEN COUNTY CIRCUIT COURT.

13922

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Verdict April 1, 1930.

JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Amount of damages on verdict Twenty-five thousand dollars and Costs One hundred one dollars fifty cents in favor of plaintiff and against defendants.

Damages	$25,000.00
Costs	101.50
	$25,101.50

Judgment entered April 2, 1930.

Rule to Show Cause.

Filed April 3, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Rule to Show Cause.

This matter being opened to the Court by Breslin & Breslin, Attorneys for the defendants, and sufficient reasons appearing therefore,

It is on this 3rd day of April, 1930, Ordered that the plaintiff or her attorney, John B. Zabriskie, show cause before this Court on Friday the 18th day of April, 1930, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, why the verdict rendered in the above mentioned cause should not be set aside on the following grounds:

1. Said verdict is excessive.
2. Said verdict is contrary to the weight of of the evidence.
3. Said verdict was the result of misconduct on the part of the jurors empaneled in said case.

The exceptions heretofore taken by the defendants during the course of said trial are hereby reserved to said defendants.

Rule to Show Cause.

And it is further ordered, that execution and all other proceedings be stayed, pending the determination of the Rule.

EDWIN C. CAFFREY,
Judge.

Dated: April 3rd, 1930.

Acceptance of Reduction of Verdict.

Filed May 14, 1930.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. On Rule to Show Cause.

A verdict of $25,000 having been entered in the above entitled cause, and by order dated May 9th, 1930, the plaintiff having been put "on terms to accept the sum of $13,000 within ten days or take a new trial", the said plaintiff, Sarah E. Mowell, does hereby accept the said sum of $13,000.

SARAH E. MOWELL,
By JOHN B. ZABRISKIE,
Attorney for Plaintiff.

Notice of Appeal.

Filed May 23, 1930.

NEW JERSEY SUPREME COURT,

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law. Notice of Appeal.

To: JOHN B. ZABRISKIE, ESQ., Att'y of Plaintiff.

Sir:

Please take notice, that the defendants, Emma L. Von Moschzisker and Frank A. Von Moschzisker appeal to the Supreme Court of the State of New Jersey from the whole of the judgment entered in the above cause in the Bergen County Circuit Court.

BRESLIN & BRESLIN,
Attorneys of Defendants.

Clerk's Certificate.

United States of America,]
State of New Jersey, }ss.
County of Bergen,]

I, James W. Mercer, Clerk of the County of Bergen aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas holden therein, the same being Courts of Record with a seal,

Do Hereby Certify, that the foregoing is a true copy of the original papers in the case of Sarah E. Mowell vs. Emma L. Von Moschzisker, as the same remain on file and of record in my office at Hackensack.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Courts and County at Hackensack, this 29th day of May, 1930.

(Seal)

JAMES W. MERCER,
County Clerk.

Grounds of Appeal.

NEW JERSEY SUPREME COURT,

SARAH MOWELL, Plaintiff, vs. FRANK A. VON MOSCHZISKER and EMMA L. VON MOSCHZISKER, Defendants.	On Appeal. Grounds of Appeal.

The following are the grounds of appeal in the above entitled cause:

1. Notwithstanding that the complaint charged and the evidence showed that the alleged malicious prosecution was commenced by a complaint sworn to by the defendant, Emma L. Von Moschzisker; that the alleged threatening letter upon which the complaint was based, was contended by the plaintiff to have been written by the defendant, Emma L. Von Moschzisker, and that there was no evidence to charge the defendant, Frank A. Von Moschzisker with having taken any part whatsoever in the proceedings of any kind, the Court, nevertheless, charged the jury that the defendants were responsible jointly, both as to legal responsibility and damage, in the following language:

> "The defendants in this cause are Emma L. Von Moschzisker and Frank, her husband. For the purpose of abbreviation I am referring to them as Mr. & Mrs. Von. They have been charged in the complaint which is the basis of the suit before you, with having ma-

liciously prosecuted Miss Mowell in the criminal proceeding.

Now, under the law, there are certain elements which must be established to your satisfaction by a fair preponderance of the evidence. The first is * * *

Second, that the defendant or defendants instituted the proceedings against her without reasonable or probable cause, and the defendants were actuated by a malicious motive in making the charge."

And again:

"Now we come to the other elements. Did the defendants have probable cause in making this complaint? Were they actuated by malicious motives?

Also:

"If Miss Mowell or someone else wrote this P-29, and Mrs. Von and her husband made a full disclosure, and they acted on the advice of attorneys, then, whether she made a mistake or not, the law would justify you in giving a verdict in favor of the defendants."

The Court committed error in so charging inasmuch as the defendant, Frank Von Moschzisker did not institute, or direct or aid, in the institution of said proceedings and therefore (1) was not responsible in law for the acts of the said defendant, Emma Von Moschzisker. Due objection and exception was taken to the error of the Court in this respect.

2. Because the Court charged the jury as follows:

> "Sitting as you are, the triers of fact, the Court cannot impose any limitation on you with respect to what you should do on the question of fact in this case."

There was error in this statement as to the law, inasmuch as the jury should have been confined to legal evidence, and be only permitted to draw legitimate inferences as the law would permit, from the evidence.

3. Because the Court charged the jury as follows:

> "The mere consulation of handwriting experts, standing alone, does not come within the rule of justification. But if the handwriting experts were consulted with respect to consultation with attorneys, where there has been a full disclosure of the facts, and the complaint was made, based upon a full disclosure of the facts, then, of course, the defendants would be absolved from liability in this case."

There was error in the charge in this respect, in that the jury were prevented from finding that the defendant, Emma L. Von Moschzisker might, in good faith, be justified in making the complaint upon the opinion furnished to her, by the handwriting experts. The charge, in effect, required the jury to also find that in addition to the opinion of experts and her own good faith, that the opinion of the lawyers with whom she consulted, had also justified the making of the complaint.

Grounds of Appeal.

4. Because the Court charged the jury as follows:

> "But, on the other hand, if you conclude that she did not write this letter, if you conclude that someone else wrote it, other than Miss Mowell, and she went to her attorney or attorneys, and not the requirements of full disclosure that I have mentioned, then, of course, the law would protect her in acting on the advice of counsel."

There was error in this, in that it imposed upon the defendant, the burden of proof of establishing the fact that she did not write the threatening letter, which was the basis of the complaint.

5. Because the Court charged the jury as follows:

> "But, on the other hand, if you conclude that she did not write this letter, if you conclude that someone else wrote it, other than Miss Mowell, and she went to her attorney or attorneys, and met the requirements of full disclosure that I have mentioned, then, of course, the law would protect her in acting on the advice of counsel."

There was error in this, in that the jury were required to find, in order to decide in favor of the defendant:

> 1. That someone other than the defendant wrote the letter.
>
> 2. That someone other than Miss Mowell, the plaintiff wrote the letter.

3. That the defendants went to their attorney or attorneys, and there made a full disclosure.

6. Because the Court charged the jury that the plaintiff might recover damages for loss of employment or position the language being:

"If you conclude that the plaintiff has made out her case, she ought to be compensated."

There was error in this, as there was no evidence before the jury that the plaintiff lost her position or employment by means of the arrest.

7. Also, because the Court charged the jury that they should take into consideration, as elements of damage, the plaintiff's expenses, with respect to medical bills and sickness after the arrest, the Court's language being:

"There has been also testimony in the case with respect to medical bills and sickness after the arrest."

and further language informing the jury that recovery could be had for the same.

There was error in this, in that there was no evidence before the jury to justify any inference that there had been any medical expenses for any sickness, growing out of the arrest.

8. Because the Court charged the jury with respect to the liability of the defendant Frank Von Moschzisker, as follows:

"Under the law that existed at the time

that this complaint was made out a husband was chargeable with the torts of his wife, whether he was present or not, provided the tort was not committed on the separate business of the wife. So you see, irrespective of Mr. Von's active participation, if you conclude that Mrs. Von should have a verdict against her, the law carries with it the obligation to also include Mr. Von in your verdict, that is, rendering a verdict against him, in favor of Miss Mowell,"

which charge was erroneous in law.

9. Because the Court charged the jury as follows, with respect to both defendants:

"In the event of recovery on the part of the plaintiff, in view of the fact that malice is charged, in addition to compensatory damages, the plaintiff would be entitled to punitive damages. That would be exemplary damages, as a punishment for what they did."

said charge being erroneous in this respect, that the plaintiff, Frank Von Moschzisker could not be charged with punitive damages, when there was no evidence to show that there was any act of participation by him in the malicious prosecution, and that his liability was predicated solely by virtue of the fact that he was the husband of the defendant Emma L. Von Moschzisker.

10. Because the court improperly admitted into evidence over the objection and under the ex-

ception of the defendants a certain letter commonly known as "P-39" alleged to have been written by the defendant, Emma Von Moschzisker, to one Dr. John B. Hopper.

BRESLIN AND BRESLIN,
Attorneys for Defendants.

Service of a copy of the within Grounds of Appeal is hereby acknowledged this 20th day of May, 1930.

JOHN B. ZABRISKIE,
Attorney of Plaintiff.

Testimony.

BERGEN COUNTY CIRCUIT COURT.

SARAH E. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER. Defendants.	Action at Law.

Hackensack, New Jersey,
March 24, 1930.

Before: HON. EDWIN C. CAFFREY, Judge,
and a Jury.

APPEARANCES:

For the Plaintiff: JOHN B. ZABRISKIE, ESQ.
For the Defendants: MESSRS. BRESLIN & BRESLIN; By JOHN J. BRESLIN, JR., ESQ., and MESSRS. WARD & MCGINNIS, by PETER J. MCGINNIS, ESQ.

(A jury was accepted and sworn).
(Mr. Zabriekie opened the case to the jury).
(Mr. Breslin opened the case to the jury).

Mr. Zabriskie: I have subpoenaed the County Clerk to produce the complaint. Who is the representative of the County Clerk's office that has that?

The Court: It is here.

Mr. Zabriskie: I will call Charles Schmidt.

CHARLES SCHMIDT, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Schmidt, you are now one of the assistant prosecutors of the County of Bergen? A. I am.

Q. And on the 10th day of August, 1927, what position did you hold? A. 1927? I was Clerk of the Second Criminal Judicial District Court.

Q. On that day did you see Mrs. Emma L. Von Moschzisker, the lady who is sitting here at the end of the table? A. Yes, surely. I think so.

Mr. Zabriskie: I have a certified copy of the complaint. Probably we could use that just as well, to save time.

Mr. Breslin: We will admit the signing of the complaint.

Mr. Zabriskie: And she signed a complaint of which this is a certified copy?

Mr. Breslin: You may have them marked for identification.

The Court: Where are the originals?

Mr. Zabriskie: They are in the County Clerk's office. They will be up here.

Mr. Breslin: Let me see that.

The Court: Of course, if the originals are available, there is no use of offering secondary evidence.

Mr. Breslin: I will object on the ground

that this certificate is not the best evidence at the present time.

Mr. Zabriskie: Well, then, suppose we wait a minute until that is brought up.

The Court: Were you not subpoenaed to bring the records?

The Witness: No. I just got a subpoena to come. I didn't know what it was all about.

Mr. Zabriskie: I might say, your Honor, that, of course, Mr. Schmidt is now assistant prosecutor, but for some reason or other this complaint and warrant, after its return, was lodged with the County Clerk. Of course the records are of the Second Judicial Criminal Court, and they should have been there.

The Court: What are these papers in the books here?

Q. I may ask you, perhaps, to save a little time, this: Mr. Schmidt, was there any conversation exchanged between you and Mrs. VonMoschzisker, if you recall, at that time? A. There was some conversation, but I, of course, have no recollection whatsoever.

Q. It just came to you, just like any other case, in the ordinary routine? A. Surely. I think so.

Q. As a matter of fact, do you know where the complaint was actually signed, in what part of the Court House? A. I think it was in the prosecutor's office, I think.

Q. And you were asked to come to the prosecutor's office, were you? A. Yes. That is often the case.

Q. Whom did you see in the prosecutor's office at that time? Whom did you see there? A. I

saw the complainant, Mrs. VonMoschzisker, and—

Q. Who was representing the State? Was anybody that is sitting at the counsel table? A. I don't know. Either Mr. Hart or Mr. Breslin. I just can't recall. I think it was Mr. Breslin. Yes, it was Mr. Breslin.

Q. Did you have your seal with you? A. I did. I brought my seal in with me.

Q. At whose request? At whose request? A. I don't know. One of the prosecutor's detectives came over and requested me to take the oath.

The Court: You better look at this. This was taken and evidently was out of the Court House.

Mr. Zabriskie: Yes, but that is not it, if your Honor please. The original and the copy of this complaint—

Mr. Breslin: I certainly object to anything coming from Mackay & Mackay's office, because they have one exhibit that should have been returned to the prosecutor's office a week ago.

The Court: It may be that they are originals. We do not know what is in there.

Mr. Breslin: No; I am going to object to anything coming from the office of Mackay & Mackay.

Mr. Zabriskie: Mr. Mackay was the Commissioner.

Mr. Breslin: If it is not the complaint, all right.

Mr. Zabriskie: No, it is no complaint.

Mr. Breslin: I am dealing with the complaint at the present time.

Q. Is that your signature, Mr. Schmidt (handing paper to witness)? A. It is.

Q. Is that the signature of Emma L. VonMoschzisker, the lady who is sitting at the table there? A. It is.

Mr. Zabriskie: I offer this in evidence,
Mr. Breslin: No objection.
(Paper marked Exhibit P-1).

Q. And then after that complaint was made, what did you do? A. I issued the requisite warrant.

Q. And is that the warrant that was issued by you? A. It is.

Q. And do you know what you did with the warrant? Do you recall? A. I gave it to one of the detectives. I think it was Dawson.

Q. And he was an employee of the prosecutor's office at that time? A. He was.

Mr. Zabriskie: I offer the warrant in evidence.
Mr. Breslin: No objection.
(Paper marked Exhibit P-2).

Q. Did you ever see anything more of the complaint, as far as you know, or not, Mr. Schmidt, after giving it to Mr. Dawson? A. That was the last time I had seen it, I believe. That is correct.

Cross-examination by Mr. Breslin:

Q. There was some conversation at the time the complaint was made which you do not remember? A. I have no recollection of what it was. It has been so long ago, and I have not been in on it since that time.

Q. There was not anything unusual about you coming to the prosecutor's office and taking the complaint? A. No. That frequently occurs.

Mr. Breslin: That is all.

Mr. Zabriskie: I will call Mr. Dawson.

GARRETT A. DAWSON, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Dawson, what was your position on the 10th of August, 1927? A. Lieutenant of Detectives, prosecutor's office, Bergen County.

Q. And at that time the prosecutor was— A. Archibald C. Hart.

Q. And the assistant prosecutor was— A. John J. Breslin, Jr.

Q. Do you know Mrs. Emma L. VonMoschzisker? A. I do.

Q. At that time did you know Sarah Mowell? A. The date of that warrant is the first time I ever met her; just a week or so before that.

Q. Some time before that? A. Just prior to that, yes.

Q. I show you this warrant and I ask you if that is your signature on the back? A. It is.

Q. After you received this warrant, Mr. Dawson, what did you do? A. I took the lady detective connected with our office, Mrs. Terhune, took a taxicab, went to Ridgewood, to the Mowell home, told Mrs. Mowell what it was for. She called Sarah, from upstairs down in the room where we were; told her what it was for; showed her the

warrant. They started to telephone right and left for bail. They were not successful. Called a neighbor in from next door, talked to her about getting bail; was not successful. Then put her in the taxicab with Mrs. Terhune, and the mother of Sarah, with Sarah; went down to the Village of Ridgewood, down to the business section, and there three persons were talked to by Mrs. Mowell, and the last one was Mr. Allabough. After consulting with Judge Doremus, he refused to go on the bail.

We then brought Mrs. Mowell around—or Miss Mowell, to the prosecutor's office, and took her from there into the prosecutor's office proper, where Mr. Schwartz was sitting. Mrs. Terhune was present.

Mr. Schwartz asked her to give him a sample of her handwriting. She refused to do it on the advice of her lawyer. She was then turned over to Mrs. Terhune; commitment was made out, and she was taken over to the Sheriff's office.

Q. You say that her mother was with her, but was her mother in the room with her? A. The mother was with her in the prosecutor's office, but the mother sat outside in the reception room, and Miss Mowell went in with Mrs. Ann Terhune and I, and Mr. Schwartz who was then in the prosecutor's office proper, and there the question was asked for a sample of her writing, which she refused to give, on the advice of her lawyer.

Q. By the way, you say that was the second time that you had seen Miss Mowell. That was the second occasion on which you had seen her? A. The second occasion that I saw Miss Mowell was the day the warrant was served on her.

Q. And you had seen her some time before that?

A. I had seen her prior to that, at her bank there in Ridgewood.

Q. How did that come about, that you saw her at the bank in Ridgewood? A. I got permission from Judge Doremus to go to her bank across the street and talk to her.

Q. How did that come about, that you asked for that privilege? A. I was investigating this S-10 letter at the time, on orders of Prosecutor A. C. Hart.

By the Court:

Q. Had the complaint been made at that time? A. No, sir, it had not.

By Mr. Zabriskie:

Q. And you talked to Miss Mowell, you say? A. Miss Mowell and I were alone in the banking —one of the banking offices there, and we talked over several matters connected with this.

Q. You asked her to do some writing for you? A. I did ask her would she give me a sample of her handwriting.

Q. What did she say and what did she do? A. She gave it to me on a card which was produced at the other trial. Where it is now, I don't know.

Q. Did she do all the writing that you asked her to do at that time? A. I asked her to write two names, which she did.

Q. Besides that did you do anything else at the time, besides having her write? A. On the card.

The Court: Now, just a minute. We cannot have everything that she did.

Q. Did you take her fingerprints?

Mr. Zabriskie: That is what I want to get at.

Q. Did you take her fingerprints? A. I made her put her fingers on the bottom of the card, without using any ink of any kind, just merely a bare finger.

Q. So you went up there in pursuance of this investigation that was going on? A. Yes, sir. Under orders of the prosecutor.

Q. Then you had some dealings with Mrs. Von-Moschzisker while that was going on; is not that so?

Mr. Breslin: I object to that, if your Honor please.

The Court: I sustain the objection.

Mr. Zabriskie: Does your Honor rule that we cannot go into conversation between Mr. Dawson and Mrs.—

The Court: You cannot. We are dealing now with the malicious prosecution growing out of the complaint.

Mr. Zabriskie: Yes.

Q. Who took her to the jail, Mr. Dawson? A. Mrs. Terhune.

Q. You did not go along with her? A. I did not, sir.

Q. So you do not know when she was released? A. I do not know what happened, sir, after that.

Q. May I ask one thing? The date that Miss Mowell wrote for you, was not that in 1926?

Mr. Breslin: Pardon me, Judge. I have the memorandum and I thought it might refresh Mr. Dawson's—

The Witness: No. It was in 1927.

Mr. Breslin: Does that refresh your recollection?

The Witness: I have my date on the card, sir.

Mr. Breslin: It is right on the card there.

The Witness: That is the date?

Q. September 20, 1926? A. I said 1927. I will take that back. It was 1926.

Q. September 20, 1926. I am going to ask a question; do not answer it until the Court rules. Whom did Mrs. VonMoschzisker talk about when you were talking with her?

Mr. Breslin: Just a minute. I object, if your Honor please.

The Court: I sustain the objection.

Q. Did you give any instructions to Mrs. VonMoschzisker as to what she should do with the anonymous letters, if she received them?

Mr. Breslin: Objected to, if your Honor please, on the ground that it is immaterial.

The Court: I sustain the objection.

Mr. Zabriskie: May I just say my reason for asking the question is, I want to show something in relation to conduct on the part of Mrs. Von Moschzisker, that she was afraid these fingerprints may connect her up.

The Court: That may be your conclusion. We cannot say we are all going to agree in support of the facts.

Mr. Zabriskie: Of course. However, all I want to prove is—

The Court: No.

Mr. Zabriskie: Your Honor will allow me an exception.

Cross-examine.

Cross-examination by Mr. Breslin:

Q. Mr. Dawson, I show you a memorandum purporting to be in the handwriting of the plaintiff, Sarah Mowell, and ask you if that is the memorandum that was made in your presence? A. It is.

Q. And these smudges, are they the various fingerprints that have been spoken of? A. The smudges I put there myself, trying to bring out the fingerprints.

Mr. Breslin: I ask to have it marked for identification.

(Card marked Exhibit D-1 for identification.)

Q. Were you present the morning the complaint was signed by Mrs. Von Moschzisker? A. I was.

Q. What if anything did she say at the time the complaint was made? A. That she wanted this letter writing stopped.

Q. Do you remember anything else she said? A. She did not want to punish this girl if the girl was guilty, but she wanted all letter writing stopped, so that she could be left alone.

Mr. Breslin: That is all.

Redirect-examination by Mr. Zabriskie:

Q. I just want to correct one thing. Of course, if you were there in September, 1926, why, of

course, you were not there to see her about S-10, because S-10 had not been written then, had it? A. No. I didn't get S-10 until sometime prior to making the arrest. That was the letter I was working on, the original, at the time, with Mrs. Von.

Q. And she did write everything that you asked her to write when you went up there? A. I asked her to write two names, which she did for me.

Mr. Breslin: A few questions that I overlooked.

Recross-examination by Mr. Breslin:

Q. You say that when the Mowell girl was brought into the prosecutors' office she refused to make specimens of her handwriting for Mr. Schwartz? A. She did.

Q. What was her reason? A. She did not give any reasons. Just merely Mr. Schwartz asked her to make some standards, to make some letters for him, do this and do that. She said, "No, I will not, by the advice of my lawyer."

Q. Was her lawyer present then? A. No, sir.

Redirect-examination by Mr. Zabriskie:

Q. When you were at Ridgewood, at Mrs. Mowell's house, she did call up her family lawyer, Judge Randall, did she not? A. That I am not sure of. So many calls, Mr. Zabriskie, that were made, I won't say who was called and who was not.

Q. When she got to the prosecutor's office, she also tried to talk to Judge Randall? A. There

were several calls also from the prosecutor's office, but I don't remember who they were.

Q. She asked for Judge Randall? A. If I am not mistaken, Randall's name was mentioned that morning, either in Ridgewood, or in our office, but I am not sure.

Mr. Zabriskie: That is all.

I offer the commitment in evidence by consent.

(Paper marked Exhibit P-3).

Mr. Zabriskie: I will call Mr. Sinniger, from the Sheriff's office.

WILLIAM J. SINNIGER, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Sinniger, you are one of the undersheriffs of the County of Bergen? A. Yes, sir.

Q. The Sheriff is absent now? A. He is.

Q. I show you a paper purporting to be a jail docket.

Mr. Zabriskie: I will ask to have it marked for identification.

(Paper marked Exhibit P-4 for identification).

Q. What is that paper? A. That is a docket card used by the jail.

Q. In what connection? A. When prisoners or material witnesses are brought in, or anybody is brought in and incarcerated in the county jail.

Q. And what particular defendant does that deal with? A. Sarah Mowell.

Mr. Zabriskie: I offer that in evidence.

Mr. Breslin: No objection.

(Paper marked Exhibit P-4).

Mr. Zabriskie: I think that is all.

Mr. Breslin: No questions.

Mr. Zabriskie: I think there will be no question about this being the indictment?

Mr. Breslin: No objection.

(Paper marked Exhibit P-5).

Mr. Zabriskie: I think I might read this indictment to the jury, so that they would kind of know what it is all about.

(Mr. Zabriskie reads Exhibit P-5 to the jury).

Mr. Zabriskie: Now, Mr. Breslin, I am going to offer in evidence the minutes of the proceedings showing the acquittal.

Mr. Breslin: No objection at all.

Mr. Zabriskie: Those are certified copies because the clerk objects to producing the books.

Mr. Breslin: No objection.

(Papers marked Exhibit P-6).

Mr. Zabriskie: I will not read the whole thing, gentlemen of the jury, but I will just read the part which shows the case was closed, and then this record: "The evidence closed, and the case summed up by the respective attorneys, and submitted upon charge of the Court. The jury retired to consider of their verdict, having an officer sworn to attend them, the court to remain open for the purpose of the clerk taking the

verdict. The jury returned into the Court, and, being called, they all appeared, and said they find the defendant not guilty, and so say they all. Verdict, February 16, 1928."

Is Mrs. Blauvelt in the court room? I am calling her really out of turn, because she was up all night, and wants to get away.

LAURA BLAUVELT, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mrs. Blauvelt, what position were you holding on August 10, 1927? A. Matron in the Bergen County Jail, Sheriff's office.

Q. And did you see Sarah Mowell, the plaintiff in this case now, on that day? A. I did.

Q. Where did you see her, Mrs. Blauvelt? A. I saw her in jail, in a cell.

Q. What was she doing? A. Crying.

Q. How long was she there, that you saw her there? A. Well, I came in half past three, and I think she went out some time between 7 and 8, or around that time.

Q. What clothes was she wearing when you saw her? A. Well, she had a cream-colored silk dress on, because I noticed it particularly, because she had a pretty brooch on.

Q. I mean while she was in the jail, what was she wearing? A. Just the silk dress, because, being because she expected bail, she did not change.

Q. There was no blue— A. She did not come in on time and I would not have noticed the brooch

if she had blue clothes; because she was expecting to go out at any time, you know. She was waiting for bail.

Mr. Breslin: Referring to the testimony taken before trial, on the deposition of Sarah B. Mowell, I am going to ask a question based upon this testimony, that you might want to follow.

Cross-examination by Mr. Breslin:

Q. It is not true, then, that they put a blue dress on the girl in jail, is it, as far as you saw? A. No, because—

Mr. Breslin: That is all.

Redirect-examination by Mr. Zabriskie:

Q. Mrs. Blauvelt, you were talking to Miss Feld just a few days ago, were you not? A. I was talking to a young lady come over there.

Was it you?

Q. Did you not tell her she had the blue dress on?

Mr. Breslin: I object to that.

The Court: Objection sustained. This is your witness.

Mr. Zabriskie: I am surprised.

A. I returned her—

The Court: There is no question.

Recross-examination by Mr. Breslin:

Q. Mrs. Blauvelt, is it not so she had a brooch on? A. Yes, I admired the brooch.

Q. Did you notice any other jewelry or personal property? A. No.

Q. That she had.

Redirect-examination by Mr. Zabriskie:

Q. Did you see her when she went out? A. Yes. I took her downstairs, but I didn't see who came to take her away.

Q. And you did not see her change any clothes at all, then? A. No.

ANN TERHUNE, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mrs. Terhune, you are connected with the prosecutor's office of Bergen County? A. Yes, sir.

Q. And you were on August 10, 1927? A. Yes.

Q. Do you recall going off with Mr. Dawson in connection with the Mowell case? A. I do.

Q. Will you just tell the jurors just what you remember about it from the time you left the court-house until you parted company with Miss Mowell? A. We went to Ridgewood, and went into the bank, I believe, and understood that Miss Mowell was at luncheon. We went over to her house, and she was preparing to leave. Mr. Dawson told her that she was wanted at the court house, and the mother asked if she could call her lawyer. Mr. Dawson said yes. So she called her lawyer in Paterson. Then he—they wanted to get bail so—

Q. Do you remember the name of the lawyer? A. Randall, I believe.

Q. I see, yes. A. Then Mr. Dawson and I rode around Ridgewood for about an hour, to get someone to go her bail, and when Mr. Dawson was informed that the man who was to go her bail would follow us down, she was brought down into our office, and from there was taken over—after being there about, well, very nearly three-quarters of an hour, Miss Mowell and her mother went over to the jail with me.

Q. I suppose in the prosecutor's office she was questioned some, was she not? A. I don't know —well, the mother was with us all the while that the girl was in the office.

Q. The mother was in one room and the girl was in the inside room with Mr. Schwartz part of the time? A. I just don't remember.

Q. I see. Did you go to the jail with her? A. I did.

Q. Did you see her while she was in her cell or not? A. She was not placed in a cell when I was there. I brought her in and took her inside of the jail there, and waited until the matron came downstairs, and told Mrs. Blauvelt that someone was following with bail. I believe the mother was in the hall of the jail. And told her that someone was following down with bail, and I did not think it was necessary to take her upstairs.

Q. Yes. How long did you stay? A. Well, until the matron come down, because we don't leave the women prisoners on the first floor without a matron.

Q. Then you did not see anything more of her; you did not see her when she got out? A. No.

Mr. Zabriskie: I think that is all.

Mr. Breslin: No questions, Mrs. Terhune.

Mr. Zabriskie: I suppose this should be opened by the Court. It is returnable to the Court.

The Court: What is it?

Mr. Breslin: An examination before trial.

Mr. Zabriskie: No, testimony de bene esse.

(Envelope opened by the Court).

Mr. Breslin: If your Honor please, there are a number of objections here to certain questions, and I think, in all fairness, your Honor should pass on the questions before the testimony is read to the jury.

The Court: How many questions are objected to?

Well, suppose you start reading it, and, as you come to an objection, do not read, if the question is objected to, and we will rule on it.

Mr. Zabriskie: I do not know, if your Honor please, whether I should read what it says at the beginning there or not. I will submit that to your Honor. Otherwise the jury probably will not know what it is.

The Court: You might explain the purpose of it, in other words, that the witness is not here.

Mr. Zabriskie: Yes. With the Court's permission, gentlemen of the jury, I will say to you that this is the testimony of the plaintiff, Sarah Mowell, taken at her home, she being so sick that she cannot appear in court, this testimony having been taken on the 3rd of March.

I do not know whether it would be proper

to explain that if she could be in court today we would dispense with this and use—

The Court: Well, the fact that that is going to be used, indicates that she is not here.

(Mr. Zabriskie reads as follows:

"SARAH E. MOWELL, the Plaintiff, called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zabriskie: (That is myself)

Q. Miss Mowell, are you the plaintiff in this case? A. Yes.

Q. And were you the defendant in the case of State against Sarah E. Mowell, which was finished in the Quarter Sessions Court at Hackensack on February 16, 1928? A. Yes.

Q. Do you recall the tenth day of August, 1927? A. Yes, I do.

Q. And will you just tell us what occurred on that day? A. I was arrested.

Q. And just tell us what the details of your arrest were as you remember them? A. I was home here to lunch, and I was eating my lunch, when the doorbell rang, and I went to the door and Mr. Dawson and Mrs. Terhune—Mr. Dawson said he had a warrant for my arrest, and I called my mother, and she—and he read the warrant, and then he allowed me to come upstairs and get my hat and things with Mrs. Terhune, and my mother telephoned to Judge Randall, and Mr. Dawson talked to Judge Randall, too. Then, in the car with them, we went up town, and we went into Mr. Allabough's store to see if he could do anything about my bail.

Q. On that day, how much was the bail? A. Five thousand dollars.

Q. You went to Allabough's? A. Mr. Dawson told mother she couldn't do it."

Mr. Breslin: I will withdraw the objection to both the questions on this page, because in my opinion, they are trivial and do not amount to much.

Mr. Zabriskie: (Continuing reading):

"Mr. Breslin: I object to what Mr. Dawson said on the ground—"

Mr. Breslin: Wait a minute.

The Court: That is withdrawn.

Mr. Zabriskie: Both are withdrawn?

The Court: Both are withdrawn.

Mr. Zabriskie: (Continuing reading) "A. Mr. Allabough and my mother went to the bank—

Q. Never mind what he said; don't tell what he said. After you had gotten through with talking to Mr. Allabough, where were you taken? A. I was taken to Hackensack, to the Prosecutor's Office.

Q. And who took you there? A. Mr. Dawson and Mrs. Terhune.

Q. Then you went to the Prosecutor's office with them? A. Yes.

Q. Then what happened at the Prosecutor's office? A. Mr. Dawson took me inside, and my mother and Mrs. Nevin were there, but they were not allowed to come inside with me, and they took me in through an inner room and Mrs. Terhune was there, and Mr. Schwartz questioned me, and I told him that I won't say anything for him until Judge Randall got there, and he kept on asking

me questions, and asking me to write, and I told him that when Judge Randall came, if he advised me to, I would do it. And Mr. Schwartz said, 'If you won't talk to me, I will get somebody who will make you talk.' "

Mr. Breslin: I will withdraw the objection to that question.

Mr. Zabriskie: (Continuing reading) "The Witness: So then Mr. Breslin came and questioned me.

Q. That is Mr. Breslin, counsel in this case? A. Yes, and when I told him I would not talk to them, they said, they told a man who was to take notes not to take any, and then they took me into the room outside of that one, and Mr. Dawson was there, and a lot of other people around, I don't know, and they talked to me more, told me that they thought—

Mr. Breslin: The same objection, statements of others not involved in this case.

Q. How long were you kept at the Prosecutor's office, as near as you can tell? A. About half to three-quarters of an hour.

Q. And were you being questioned by somebody all that time, practically? A. Practically all the time.

Q. And then what happened after that, from there where were you taken?"

Mr. Breslin: I object to the answer, if the Court please, on the ground that it is a conclusion on the part of the witness.

Mr. Zabriskie: The objection was made after the answer is in.

The Court: What is the question?

Mr. Zabriskie: "And then what happened after that, from there where were you taken?"

The Court: Is there an objection to the question?

Mr. Breslin: Yes.

Mr. Zabriskie: An objection to the answer.

Mr. Breslin: An objection to the answer on the ground that it was a conclusion.

Mr. Zabriskie: He asked that it be stricken out as a conclusion after the answer was given.

Mr. Breslin: I did not know what she was going to say.

The Court: Strike that out. I will permit the answer with reference to the jail, but I will not permit her conclusion.

Mr. Zabriskie: Starting with the word "they"?

The Court: Yes.

Mr. Zabriskie: (Continuing reading) "—they put me in jail."

"Q. The reason was because of what was said by Mr. Breslin?"

Mr. Breslin: I object to that, if your Honor please.

The Court: That is the same objection. Strike that out.

Mr. Zabriskie: Did your Honor read the answer to this?

The Court: Well, I do not care about the answer. I know what I struck out in the prior question.

Mr. Zabriskie: (Continuing reading) "Q.

Then what happened? A. I didn't, and he put me in jail."

Mr. Breslin: I object to that.

The Court: Now, Judge Zabriskie, my ruling has been indicated with respect to the first question, and certainly the witness on the stand could not testify as to facts which were not facts, but conclusions.

Mr. Zabriskie: Well, those are facts: "I didn't, and he put me in jail."

The Court: Well, that is based upon the same objection as the prior question.

Mr. Breslin: It was just a conclusion on her part as to why she was incarcerated.

The Court: Yes.

Mr. Zabriskie: Then I said, "What happened?"

The Court: The answer is permitted, whether she was put in jail.

Mr. Zabriskie: All right.

(Continuing reading) "Q. Who took you to the jail? A. Mrs. Terhune and my mother.

Q. Just tell what occurred at the jail as much as you can remember. A. Took me in the jail and there was a big gate there, and Mrs. Terhune left me there, and then—

Q. Don't cry—"

Mr. Breslin: I object to that.

The Court: We do not have—

Mr. Breslin: I object to that part being read into the record. Just a little friendly advice on Judge Zabriskie's part.

Mr. Zabriskie: Well, that was put down here.

Mr. Breslin: Well, I object to it.

Mr. Zabriskie: The answer is:

"A. Then I went over to a man and he asked me the things about my name—" and Mr. Breslin says

---

Mr. Breslin: I will withdraw the objection.

Mr. Zabriskie: (Continuing reading)

"Q. Gave your record there?"

Then Senator McGinnis, who was present, said: "Took her pedigree." And I said, "Yes," and the witness said, "Then they took me to a room about one floor up, a woman did, and she took my pocketbook and hat and things and she gave me a blue dress to put on, and then they took me to a cell.

Q. And how long did you stay in the cell? A. I think I was there about six and a half hours.

Q. And then what happened? A. Then my mother and the man from the bonding company and Mr. Burnett and my father and my brother came and got me.

Q. That is after you had been in jail about six and a half hours, you say, as near as you can remember? A. Yes.

Q. Now, had you been working on that day you were arrested, that is, on the 10th of August, 1927? A. Yes.

Q. And how long had you been working before that? A. About three and a half years, I think.

Q. Regularly during that time? A. Yes.

Q. And what place had you been working at during that period of time you mention? A. I work-

ed in the trust company, the Ridgewood Company, First National Bank in Ridgewood."

I think the stenographer was not accurate, but it was down that she worked in those two institutions.

(Continuing reading) "Q. And in both places you worked regularly? A. Yes.

Q. Do you know whether or not you worked on the day of January 18, 1926? A. I am not positive, but to the best of my knowledge, I was.

Q. And you worked right up till August 10, 1927, then, without any real interruptions? A. Yes.

Q. Now, when you were at the Hackensack Jail, or the Prosecutor's Office, did you have any counsel present with you? A. No, I did not.

Q. Who told you to put this blue dress on you put on down at the jail? A. The woman.

Q. The woman in charge there? A. Yes, the woman that put me in the cell.

Q. Did you say that some personal property was taken away from you at the jail? A. They took my pocketbook, and I had a bracelet on, and they took that.

Q. Did you appear in court on November 10, 1927? A. Yes.

Q. And for what prpose, do you remember? A. To be arraigned.

Q. And you pleaded not guilty at that time? A. Yes."

The Court: What date was that, January 10th?

Mr. Zabriskie: November 10, 1927. (Continuing reading):

"Q. And do you know when the trial of the case of State against Sarah E. Mowell started?

Mr. Breslin: We can stipulate, I will concede you have records there, no need to bother Miss Mowell about that unless she knows definitely, stipulate right in the record.

Q. Do you remember what day it was? A. 8th of February, 1928.

Q. Did Mrs. Emma L. Von Moschzisker testify in that case against you? A. Yes.

Q. The same Emma L. Von Moschzisker who is defendant in this case? A. Yes.

Q. And did Frank A. Von Moschzisker testify in that case? A. Yes.

Q. The same Frank Von Moschzisker that is defendant in this case? A. Yes.

Q. The trial was concluded on the 16th of February,—that can be stipulated?

Mr. Breslin: Yes, sure.

Q. Did you work after August 10, 1927? A. No, I did not.

Q. Did you report back to your position at the First National Bank at Ridgewood? A. Yes, I reported on the first of October.

Q. And whom did you see there? A. Saw Mr. Griffith.

Q. Who was Mr. Griffith? A. He is the manager.

Q. Did he take you back?

Mr. Breslin: I object—I withdraw the objection.

The Witness: He told me that I would be

given a leave of absence without pay.

Q. And then did that leave of absence ever finish, did he ever call for you, or employ you again? A. No.

Q. What was the condition of your health before the arrest? A. Well, I was—I was not in perfect health, I had a bad cough.

Q. What was the condition of your health before Mr. Dawson came to see you in September, 1926? A. I was all right then.

Q. Had you taken any interest in athletics before that date? A. Yes.

Q. And have you anything to show that, or indicate you had proficiency in athletics? A. Yes.

Mr. Zabriskie: Have you got those medals here?

(Medals produced).

Mr. Zabriskie: I suppose those could be marked for identification at this time.

Mr. Breslin: I am going to object to the admission of them.

Q. Twelve medals, are those all separate medals for proficiency at separate times in separate events? A. Yes."

Is there any objection to putting those in evidence?

Mr. Breslin: Yes. I think they are immaterial.

The Court: I sustain the objection.

Mr. Breslin: I think they are just to prejudice the jury, that is all.

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor will allow an exception. (Continuing reading)

"Q. What branch of athletics were you especially proficient in before this sickness was brought on? A. Swimming and skating.

Q. Now, where have you been since the date of your arrest? A. Want me to tell you in detail?"

Mr. Breslin: If your Honor please, I would like to interrupt at this time and object to any testimony going in concerning the condition of this girl from that time on, unless it is coupled up by competent medical testimony.

The Court: Does the question call for a diagnosis, or just describing her condition, how she felt?

Mr. Zabriskie: Well, she does not say very much about it except she says where she was, your Honor.

Does your Honor want to glance over it? Mr. Breslin: I have not any objection as long as it just says she went to Saranac.

Mr. Zabriskie: Yes. I do not think there will be anything there. I will read very slowly, so that you can interpose an objection, if there is any objection.

(Continuing reading):

"Q. Just in a general way where you have been?" She said,

"A. Well, I have been in bed most of the time.

Q. At what places? A. Home, and at my aunt's house in Preakness, and at Saranac Lake.

Q. How long were you at Saranac Lake? A. I was there just eight months.

Q. Did your arrest have any effect on your feelings? A. Well, I felt humiliated, and felt kind of funny about going out places, seeing people, I felt as if everyone was staring at me.

Q. Did you have to employ the services of a lawyer to defend you in a case that was finished up February 16, 1928, in Hackensack? A. Yes.

Q. Who was the lawyer? A. You were.

Q. And how much cash did you pay me in connection with that matter? A. $1500.

Q. And did you have to hire experts on handwriting? A. Yes.

Q. And do you know how much was paid for the experts? A. I don't know exactly.

Q. Who took charge of that for you? A. My father.

Q. And how much did you have to pay for the bond, there was a bond premium at the time you were let out of the jail? A. That was $100.

Q. Have you been able to earn any money since your arrest? A. No.

Q. Did you try to do some work? A. I did try to do some work for Mr. Spencer, some illuminating, but I couldn't do it, the Doctor told me I had to stop it.

Q. When you were at Saranac Lake were you obliged to have a nurse up there, or special attention? A. No, in the one cottage where I lived there was no nurse, but I had a nurse come in to give me a bath, things like that; then I moved to what is called the nursing cottage and there they have two nurses for the whole cottage.

Q. What did you have to pay for board at Saranac Lake? A. $25 a week.

Q. What were your feelings the day you were arrested? A. Cried most of the time.

Q. And when you were in the jail? A. Nervous.

Q. Now, did you know this defendant, Emma L. Von Moschzisker before your arrest? A. Yes.

Q. Did you receive a letter from her? A. Yes, I did.

Q. Is this letter the letter that was marked, and envelope, and enclosure, marked D-7 in evidence, in the case we had in Hackensack, that is, the criminal prosecution? A. Yes, that's it.

Mr. Zabriskie: I guess there is no controversy about that, Mrs. Von Moschzisker admitted in Court she wrote it."

And Mr. Breslin said, "I object to it,"—oh, I did not know there was an objection to that.

(Continuing reading):

"Q. Now, did you write the letter that was marked—and, by the way, we have given you notice to produce that."

Well, that does not amount to anything.

(Continuing reading):

"Q. Did you write the letter that was referred to as Exhibit S-10, being the one that was referred to in the indictment in the case of State against Sarah E. Mowell? A. The one the indictment was based on?

Q. Yes? A. No, I didn't write it.

Q. Did you have anything to do with the writing of that letter? A. No.

Q. Did you ever write a letter in your life to Mrs. Von Moschzisker? A. No.

Q. Did you ever send her anything by mail, messenger, or otherwise? A. I sent her back her pamphlet about Larry Foster.

Q. What writing was there on that? A. There was a brown paper wrapping, with the address and return address.

Mr. Zabriskie: We can agree that was Exhibit S-1 in the prior case?

Mr. Breslin: Yes.

Q. And did you ever in your life write a letter to Mr. Von Moschzisker? A. No.

Q. Or anything at all, did you ever send to Mr. Von Moschzisker? A. No, I never sent him anything.

Q. And in that Exhibit S-1, the wrapper, as you call it, that one, when was that sent to Mrs. Von Moschzisker, as near as you can recall? A. I think about the end of March or first of April.

Q. In 1926? A. Yes.

Q. When was the first that you ever saw that paper we have referred to as S-10 in the case of State against Sarah E. Mowell being the one on which the indictment was based, when was the first you saw it? A. I may have seen it in the Prosecutor's office; but I didn't see anything there long enough to know the contents.

Q. What do you mean, you may have seen it? A. I was shown various letters very quickly; I saw it in Court.

Q. So you think you did see it at the Prosecutor's office, that was the first and second time you saw it in your life? A. Yes.

Q. You mean the Prosecutor's office on the day of the arrest? A. Yes.

Q. And you say that letter, you did not write it and had nothing to do with it? A. No.

Q. I show you a letter and envelope which bears

the identification mark of 'P-6a' for the envelope, and 'P-6b' on the letter, and the envelope being postmarked Paterson, January 18, 1926, 5:30 P. M.—suppose we have that marked today?

The Commissioner: Do you want her to look at it, Judge?

Mr. Zabriskie: Yes, she can take a look at it."

Mr. Breslin: I object to Judge Zabriskie reading any further, if your Honor please, on the ground that that letter cannot be introduced in evidence and read into the record in the examination before trial, and get it to the jury. If brought before you it would not be evidential.

The Court: I see no purpose in the contents of this letter being read.

Mr. Zabriskie: I am willing to leave out the contents at this particular time, but, of course, I want to argue to your Honor, the same as I argued before, that that would be the malicious conduct, to write a letter—

The Court: This may or may not be. I will not permit it to be read at this time.

Mr. Zabriskie: I ask that an exception be noted.

(Continued reading):

"Q. When is the first you ever saw any of Mrs. Von Moschzisker's writing, that you knew to be Mrs. Von Moschzisker's—"

Then Mr. Breslin objected to that.

The Court: She can answer when she saw the writing.

Mr. Zabriskie: She answered, "The letter

that she wrote to me." (Continuing reading):

"Q. The one offered in evidence and marked for identification P-8 today? A. Yes.

Q. When is the first you ever saw her do any printing? A. Saw her do printing?"

Mr. Breslin: I withdraw that objection.

Mr. Zabriskie: And Mr. Breslin said, "Same objection."

"The Witness: In court.

Q. You mean in the case of State against Sarah E. Mowell at Hackensack? A. Yes.

Q. Did you ever say that you thought Thelma Fritts had written"—

That is the same letter. Is that barred?

The Court: Just a minute. The letter is written in court?

Mr. Breslin: I, of course, if your Honor please, object to anything written in court, because it was subsequent to the controversy. Under Section 20 of the Evidence Act it cannot be used as standards.

Mr. Zabriskie: No, this is not the one that was used in court here. She said she saw her write in court. I asked her, "Did you ever say that you thought that Thelma Fritts had written this letter which we have just referred to?", and I say that is the letter that the Court has ruled out. So, I suppose that his Honor does not want that question answered.

The Court: No.

Mr. Zabriskie: (Continuing reading):

"Q. When is the first time you ever met Mrs. Von Moschzisker? A. 1926, the first part of the year."

The Court: Judge, is there very much more to read?

Mr. Zabriskie: There is quite a lot.

The Court: Then we better come back at 2 o'clock.

Mr. Zabriskie: We are up to page 16.

(Recess)

After Recess.

The Court: Judge, you were reading that.

Mr. Zabriskie: Yes, if your Honor please. Miss Feld calls my attention to the fact that I missed some question on page 12, and I guess that is so.

The Court: All right.

Mr. Zabriskie: And I think maybe Mr. Breslin has an objection to it. But I want to raise that now, if we can, and get it disposed of. I said on page 12, "Did you receive a letter from her?" The answer was, "Yes, I did." Then I said, "Is this letter the letter that was marked, and envelope, and enclosure, marked D-7 in evidence, in the case we had in Hackensack, that is, the criminal prosecution?" "Yes, that's it." And then Mr. Breslin objected to its admissibility.

I might have this marked for identification, if I may.

(Letter marked Exhibit P-7 for identification.)

Mr. Zabriskie: So I said, "Now, did you write the letter that was marked?" I said, "We have given notice to produce it." And Mr. Breslin said, "I didn't bring it."

So this was the letter, and I offer it at this time, as being a standard, and as being a part of the res gestae, and showing the relationship between the parties.

The Court: What date was this written?

Mr. Zabriskie: I think it shows it is in March, 1926. The letter was referred to in my opening as being the one in response to which Miss Mowell called on Mrs. Von Moschzisker.

I offer it as the standard of handwriting, being part of this—

The Court: Offering it as a standard, and then reading it to the jury for the contents, are two different things.

Mr. Breslin: I have not any objection, if your Honor please, to it being marked as a standard, but I do object to Judge Zabriskie reading from that letter as to the contents. I ask that he be confined strictly to standards, and not comment on anything therein.

The Court: I will permit it as a specimen, but I will not permit any reference to the contents.

Mr. Zabriskie: Then I will ask for an exception, for the record, to your Honor's ruling on the other point.

The Court: Yes.

Mr. Zabriskie: You have seen it, Mr. Breslin?

Mr. Breslin: No, I have not.

Mr. Zabriskie: Oh, I beg your pardon.

(Mr. Zabriskie hands letter to Mr. Breslin).

Mr. Breslin: All right.

(Letter marked Exhibit P-7).

Mr. Zabriskie: Then, of course, your Honor holds it cannot be read to the jury, as far as that goes, and then I will just have an exception noted.

Now, we were at page 16, I think.

Mr. McGinnis: Bottom of page 16. You read, "When is the first time you ever met Mrs. Von Moschzisker?" That was the last question you read.

Mr. Zabriskie: Well, I said, "When is the first you ever saw her do any printing?" Did I read that?

Mr. McGinnis: Yes.

Mr. Zabriskie: (Continuing reading):

"A. In court.

Q. You mean in the case of State against Sarah E. Mowell at Hackensack? A. Yes.

Q. Did you ever say that you thought Thelma Fritts had written this letter—"

Mr. Breslin: I object to that. That is out.

The Court: No; that is not material.

Mr. McGinnis: Then you read the next question when we adjourned.

Mr. Breslin: I object to that, if your Honor please.

The Court: I will sustain the objection.

Mr. Zabriskie: Your Honor will allow an exception to be noted.

The Court: In view of the fact that this may go to the jury, we ought to be able to cut out all those matters that are objected to—that I have sustained, rather.

Mr. Breslin: Yes.

Mr. Zabriskie: (Continuing reading):

"Q. When is the first time you ever met Mrs. Von Moschzisker? A. 1926, the first part of the year.

Q. Was it before or after January 18, 1926? A. I believe it was after that.

"Q. And can you tell the circumstances of the call and what transpired?"

Mr. Breslin: We object to that on the ground that it is immaterial.

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor will allow an exception. (Continuing reading):

"Q. Don't tell what—"

Mr. Breslin: Now, I object to that, if your Honor please. Your Honor has already ruled on that question.

The Court: I do not know what the question is.

Mr. Breslin: The following question is predicated upon the other question being answered, and your Honor has already ruled that first question could not be answered. The first question is, "Can you tell the circumstances of the call and what transpired?" And this question is, "Don't tell what Burnett said unless Mrs. Von was present."

The Court: I sustain the objection.

Mr. Zabriskie: Of course, there was no objection put to that question.

The Court: It may be raised here.

Mr. Zabriskie: As to what Mr. Burnett said, that was the objection there. He objected as immaterial to the issue involved in this case, and he objected to what Mr. Burnett said. Then I said, "Don't tell what Mr. Burnett said unless Mrs. Von was present at the same time."

The Court: Does not the second question relate to the first?

Mr. Breslin: The second question—there is an objection to the first question.

Mr. Zabriskie: Then your Honor strikes out that question and answer?

The Court: Yes.

Mr. Zabriskie: (Continuing reading):

"Q. Nothing unusual or nothing unpleasant as far as you know?"

Is that objected to?

Mr. Breslin: No; no objection to that.

Mr. Zabriskie: (Continuing reading):

"A. No.

Q. By the way, in connection with the case of State against Sarah E. Mowell, you were acquitted in that case? A. Yes.

Mr. Breslin: No dispute as to that.

Q. Now, then, when is the second time you met Mrs. Von Moschzisker, and what were the circumstances in connection with that? A. The second time Mrs. Von Moschzisker telephoned me and ask-

ed me to come and see her, and by that time—can I say by then I knew she thought I wrote this first letter?

Q. Of course, you can tell what happened when you were there. A. Well, she asked me to come and see her, and see if we could talk over this letter and say who wrote it. So I said I am glad to come. So when I finished—

Q. Where were you when she telephoned to you? A. I was home to lunch.

Q. I see, all right. A. So when I finished my work, I went there, and I told Mr. Burnett I was going, and he drove me to about a block—within a block of her house, and he said he would not take me the rest of the way.

Mr. Breslin: I object.

Q. Don't say what Burnett said. What happened after you got there?"

Mr. Breslin: If your Honor please, I object to all of this next line of testimony on the ground that it is highly immaterial, and was asked merely for the purpose of creating an atmosphere.

The Court: I see nothing wrong with this. I will permit it.

Mr. Breslin: About the cigarettes. They have nothing to do with this case.

The Court: I will permit it.

Mr. Breslin: I pray an exception.

Mr. Zabriskie: (Continuing reading):

"A. When I got there, she was very nice to me, she offered me a cigarette, and we both smoked and talked as usual, and she showed me the letter.

Q. What kind of cigarettes did she smoke?

Mr. Breslin: Objected to as immaterial.

The Witness: They were Pall-Malls.

Q. And you smoked the same Pall-Malls with her? A. I did, yes, and she showed me the letter and asked me if I could think who wrote it; if I had ever seen stationery like that before. I said I have not, and then she said, "Who could have written it?" And we named all the people I knew and all the people she knew, and all the people Mr. Burnett knew, and tried to figure out who would have a motive for doing such a thing and couldn't of course. We just talked about a lot of people, and, later on, Mr. Burnett came there and we all went over the thing again, and he took me home.

Q. Anything unpleasant, so far as you could see? A. No, from the way Mrs. Von Moschzisker talked to me, she said she knew the minute she saw me I wouldn't do anything like that—things like that, so I assumed that I was exonerated.

Q. Then, when is the next time you saw Mrs. Von Moschzisker? A. Then she wrote me that letter.

Q. That is a letter that has been referred to here today under today's Exhibit number? It is for Identification, P-8? A. She wrote me the letter and the letter says to come an see her sometime. So I had a rather mysterious 'phone call myself, when I was working in the bank; so I thought I would tell her about it, to see if she could tell anything about it, because she said she had 'phone calls the other time I went to see her. I telephoned and asked her if I could come and she said I could, and I went there.

Q. That is after you received a letter inviting you to come? A. Yes, and we talked all about the letter again, and 'phone calls, and she said some of them were in a woman's voice, and some were in a man's voice, and about how the man would always ask if Mr. Burnett was there, and things like that, and it was annoying to her because once Mr. Von Moschzisker answered the 'phone, and she said it was absurd that any woman her age would be interested in a young man like Mr. Burnett, except as a friend.

I said I thought it was. So we talked about all the people we knew—people in Paterson, and about Ray Lippincott marrying the Verro girl, and about friends—we asked each other if we knew people in Paterson, I asked her if she knew Judge—"

I might say here, I think counsel will agree, that that was Judge Randall and not Judge Doremus, that the stenographer evidently made a mistake here.

Mr. Breslin: Now, wait. I do not agree to that at all.

Mr. Zabriskie: Just take your time, because you will remember Judge Doremus—

Mr. Breslin: Judge Doremus' name has been mentioned quite a few times.

Mr. Zabriskie: "I asked her if she knew Judge Randall, she said yes, she thought he was a very nice man, liked his wife; and then—"

Mr. Breslin: She probably knows the same thing about Doremus.

Mr. Zabriskie: No.

The Court: Well, if it is in there, I cannot change it.

Mr. Zabriskie: She changed it when it was sent back to her and Miss Feld was taking notes at the time. She said yes, that was the correction that she made, when she signed it.

Mr. Breslin: I was not present. I did not have an opportunity to cross-examine her on that.

The Court: No. Was it changed after the hearing was over?

Mr. Zabriskie: Here is what Miss Mowell said: There is not any question about that in my mind.

The Court: Who took her affidavit; who swore her?

Mr. Zabriskie: The Commissioner. The Commissioner swore her at the beginning.

The Court: Was this changed in his presence?

Mr. Zabriskie: It was changed before she signed it.

The Court: No,—

Mr. Zabriskie: If he wants to leave it "Doremus", I will leave it "Doremus".

The Court: Strike out "Judge Randall."

Mr. Zabriskie: Yes. (Continuing reading): It says here:

"if she knew Judge Doremus, she said yes, she thought he was a very nice man, liked his wife; and then, later, she said she had some cherry brandy upstairs, and it was very old, and she would like me to have some. I told her not to go upstairs just for me, but she went. So I had some in a whiskey glass, and later on, she wanted me to drink some more, but I said I did not want any more,

and I thanked her. Then she said—the first time she said she couldn't have any because her heart was bad, and the second time she said, "I want some myself, so you must have some with me." So I had some then. Just a short time before I left there, Mrs. Mallaby came.

Q. That is the Mrs. Mallaby that was in court? A. Yes. She came in and she said she brought Mrs. Von Moschzisker's car. So Mrs. Von Moschzisker asked her to sit down. She said she couldn't, she had to hurry back. She asked her to have some brandy. She said no, she didn't care for any. Then she said she must go back, and I said I thought I ought to go, too. Mrs. Von Moschzisker said she would take us home, she was going uptown for her dinner. She would take us home. So I put on my things, and I think it was about then Mrs. Von Moschzisker got me the pamphlet about Larry Foster, and we talked about him and went out on the porch. The chauffeur did not bring the car right away, so Mrs. Von Moschzisker went to find him, and Mrs. Mallaby stood there and she said wasn't Mrs. Von Moschzisker nice. I said she was, I liked her, and then there came the car, and I offered to ride in front so as not to crowd them. They drove me home first, and I got out and thanked her and told her I would give her the pamphlet back and take good care of it, and then I told her —thanked her for the ride, and I went in the house.

Q. Was there anything unpleasant that you know of at that meeting? A. No.

Q. Did you say, "You are just rotten," or use any expression of that sort? A. No.

Q. Were the words used, "You are just rotten; that be damned for a tale," or anything like that?"

Mr. Breslin: I withdraw that next objection.

Mr. Zabriskie: (Continuing reading):

"A. No.

Q. Now, then, this Larry Foster pamphlet that you say you said to her you would return it, did you return it? A. I did return it.

Q. And how long after, approximately, after that last visit, if you remember? A. A few days after, possibly a week.

Q. And that was after you had heard Mrs. Von Moschzisker had said something; is that right? A. Yes.

Q. In discussing Judge Randall, was anything said by either of you as to whose lawyer he was? A. I said he was my parents' lawyer."

Mr. Breslin: (Reading cross-examination).

"Cross-examination by Mr. Breslin:

Q. What was the name of the doctor that treated you at Saranac Lake? A. Doctor Price.

Q. Is he the only physician that treated you there? A. Yes.

Q. And when you first went to Saranac Lake, did you give him the history of your case? A. What do you refer to when you say, 'case'?

Q. The history of your physical case, that is, your sickness? A. The best I knew it, I did.

Q. And you told him that you had this cough for a long time, didn't you? A. Didn't tell him I had it. When I went to see him, it was in January, 1929, and I told him I had it since about the spring of 1927.

Q. Spring of 1927. The cough had become serious or worse from the spring of 1927 up until the time you went to see him? A. I didn't say that.

Q. I am asking you if that is so? A. No, that is not so.

Q. Is it not so? A. No.

Q. Well, when was the first time that you required the attendance of a physician for this cough that started to trouble you in the spring of 1927 A. I did not pay any attention to it hen, particularly, except that I went to Atlantic City to see if I could recuperate a little.

Q. In other words, you had a nervous breakdown and went to Atlantic City to recuperate? A. No, I did not.

Q. Did you go to Atlantic City? A. I did.

Q. Do you recall when you went to Atlantic City? A. Yes.

Q. When was that? A. I went on Good Friday in 1927.

Q. And did you go for pleasure or because of your physical condition, or both? A. Both.

Q. Did you ever go to art school? A. Yes.

Q. What school did you go to? A. New York School of Fine and Applied Art.

Q. And how long did you go to school there? A. I went just one semester.

Q. How long was that? A. From September 1922 to the end of the school—sometime in June 1923.

Q. And while you were there, what particular subjects did you study? A. I studied stage designing.

Q. Did you do printing while you were there? A. When it was necessary to print, I did it.

Q. You did printing? A. Yes.

Q. Now, when you worked at the bank, the first bank I refer to, is the trust company, what were your duties there? A. I was bookkeeper.

Q. And as bookkeeper, what did you do? A. I ran a bookkeeping machine.

Q. Did you do any printing there? A. I printed the heads of the ledger sheets.

Q. With what kind of a pen? A. A stub pen.

Q. And when you went to the First National Bank, what was your work there? A. I ran a bookkeeping machine, and before I kept statements, which is the customers' duplicate, and I ran the control sheet every other month.

Q. Those statement sheets were in your handwriting? A. No, my handwriting was not on the statement sheet.

Q. What was? A. Just printing and addressograph.

Q. And the printing that appeared on the statement sheets, was that printing your printing? A. No.

Q. Whose printing was it? A. Done by machine.

Q. Wasn't there any printing on the statement sheets? A. Not in my handwriting.

Mr. Zabriskie: One question I forgot.

By Mr. Zabriskie:

Q. How much salary were you getting at the time you ceased working for the First National Bank of Ridgewood? A. I got a thousand a year.

By Mr. Breslin:

Q. Did you do any printing while you worked in the bank? A. In the First National Bank?

Q. Yes. A. Yes, I did.

Q. What printing did you do? A. In the First National Bank?

Q. Yes. A. I printed the heading of the controller.

Q. When you say printing, what do you mean? A. I mean printing.

Q. Most of this work was done with a stub pen? A. No; it was not.

Q. What was it done with? A. With a fine pen.

Q. Now, you know Mr. Burnett? A. Yes.

Q. You know Mr. Lanier? A. No, I met him just once.

Q. When? A. In the bank.

Q. What was the particular circumstances surrounding the meeting? A. Mr. Griffith called me in the director's room, and Judge Doremus and Mr. Lanier were there.

Q. Who else? A. No one else.

Q. Mrs. Von Moschzisker wasn't there? A. No.

Q. Will you tell us the names of the people who attended that conference again? A. Judge Doremus, Mr. Griffith and Mr. Lanier.

Q. And it was after that conference you went to Atlantic City? A. I couldn't be sure.

Q. And it was at that conference that they accused you of sending this anonymous letter? A. No, they didn't accuse me.

Q. Now, Mr. Randall was your family lawyer prior to the time you were arrested? A. Yes.

Q. You met Mrs. Von Moschzisker on three occasions? A. Yes.

Q. And on all of these occasions, she acted toward you in a very friendly way? A. Yes.

Q. She never displayed any animosity at all? A. No.

Q. Never displayed any animosity toward you? A. No.

Q. Now, what was the name of the doctor that treated you before you went to Saranac? A. Doctor Fisher.

Q. Where is he from? A. He lives down on the corner of Franklin and Walnut Street.

Q. Did you give him the history of your case? A. No, he didn't need any; he was called in the day after I was arrested.

Q. This cough you had in the early spring of 1927, ever have a doctor treat you for that? A. Not until Doctor Fisher did.

Q. And he was the first one treated you? A. Yes.

Q. What doctors have treated you beside Doctor Fisher? A. Doctor Fisher, Doctor Price and Doctor Morrow.

Q. Doctor Morrow from Bergen Pines Hospital? A. Yes.

Q. Are you sure Doctor Morrow treated you? A. He comes here in consultation with Doctor Fisher, and Doctor Hagen came in consultation once.

Q. Who is Dr. Hagen? A. He lives in Paterson.

Q. How long have you lived in Ridgewood? A. Since 1923, I think it is, or four.

Q. Where did you live before that? A. In Paterson.

Q. Had you ever been treated by a doctor in Paterson? A. No.

Q. Have you any brothers or sisters? A. Yes, I have four brothers and one sister.

Q. Are they all living home at the present time? A. No.

Q. Are they away? A. Two brothers and my sister are married.

Q. And how about the other members of the family, are they living home? A. Yes.

Q. Have they been living home continuously? A. Yes.

Q. They have not been away on account of illness or anything like that? A. Yes; my youngest brother was in Bergen Pines.

Q. What is his name? A. Randall.

Q. How old is he? A. Nineteen.

Q. He was away for sickness, too, wasn't he? A. Yes.

Q. Where was he? A. In Bergen Pines.

Q. And do you know what he was treated for over there? A. Yes.

Q. What was he treated for? A. The same disease I had."

Mr. Breslin: Judge Zabriskie has asked a question to which I object.

The Court: I will sustain that objection.

Mr. Zabriskie: Your Honor will allow me an exception.

The Court: Yes, surely.

Mr. Zabriskie: There are several questions there, are there not?

Mr. Breslin: Going on, the next question I intend to ask is:

"Q. What was this work you did for Mr. Spencer, Miss Mowell?"

Mr. Zabriskie: The question is when he went there. I suppose they are all objected to and all sustained?

The Court: I do not know.

Mr. Zabriskie: The first one is. Your Honor has read—

Mr. Breslin: They are all based upon the same theory.

The Court: The first one, I sustain that. The second one, surely, is hearsay, not within the witness' knowledge. I sustain that. I sustain the next one.

Mr. Zabriskie: That is on page 30?

The Court: Yes.

Mr. Breslin: (Continuing reading):

"Q. What was this work you did for Mr. Spencer, Miss Mowell? A. It was illuminating.

Q. I don't quite understand that. What do you mean by that? A. Illuminating capital letters—engrossing.

Q. Did you have to do printing? A. You couldn't call it printing.

Q. I mean, did you work with your hands? A. Yes.

Q. What did you use, pen or pencil? A. I didn't get any further than a pencil.

Mr. Breslin: I suppose we can agree to this, Judge Zabriskie, to save time?"

Handing Judge Zabriskie this wrapper, and he said, "What is the relevancy of this?"

Mr. Zabriskie: No; we did not have the wrapper there, Mr. Breslin.

Mr. Breslin: Well, the George Murphy standard, then.

(Continued reading):

"Mr. Breslin: All right. If you want me to, I will prove them.

Q. Miss Mowell, I show you a paper purporting to have your handwriting and ask you if the handwriting of that paper is in your handwriting? A. Yes."

And I asked that it be marked for identification. That is the George Murphy standard.

(Continued reading):

"Q. I show you a Christmas card purporting to have your name on it, and ask you if the writing thereon is in your handwriting? A. Yes.

Q. I show you the envelope which contained that card, and ask you if that is in your handwriting? A. Yes, it is.

Q. And I show you another envelope purporting to have your handwriting on it, which contains your handwriting? A. Yes."

Mr. Breslin: I will not press the next question. And I ask, if your Honor please, at this time, that these exhibits be marked for identification.

(Christmas card, 1926, marked Exhibit D-2 for identification).

(Christmas card of 1925, marked Exhibit D-3 for identification).

Mr. Zabriskie: I was going to call a witness to prove Mrs. Von Moschzisker's handwriting before the Court and jury. I think you will concede that.

The Court: I thought we had a witness from the Motor Vehicle Department which both of you can call. There is no use of keeping her from her work.

Mr. Zabriskie: Well, I can get through with her very shortly, I think.

Mr. Breslin: I can stipulate on her testimony. I will concede that the cards that she has are in the handwriting of Mrs. Von Moschzisker. I have shown them to her.

Mr. Zabriskie: Suppose we look and see which ones are conceded and which are disputed, and maybe we can get it on the record and save time.

Mr. Breslin: All right.

ELIZABETH McLAUGHLIN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Miss McLaughlin, you are from the office of the Commissioner of Motor Vehicles? A. Yes, sir, I am.

Q. Of Mr. William L. Dill? A. Yes, sir.

Q. He is still in office, is he not? A. Yes, he is, until the 1st of April.

Q. You have produced some applications for motor vehicle ownership registration? A. That is right.

Q. Now, have you any for 1925? A. No. We only keep our records three years.

Q. So the records of 1925 are destroyed? A. Yes, sir.

Q. Have you any for 1926? A. No, sir.

Q. Records for 1926 are destroyed? A. Destroyed.

Q. That is all pursuant to the regular practice

in the Motor Vehicle Department? A. Yes, sir.

Q. Now, have you them for 1927? A. Yes, I have.

Q. And for 1928?

Mr. Breslin: I object to 1928 and 1929. It is after the controversy.

The Court: He may ask the question.

Q. And 1929? A. Yes.

Q. And for this year? A. Yes, I have.

Q. Then you have a transfer car signed by Mrs. Von Moschzisker, have you not? A. Yes, I have.

Q. That is for what year, if I may ask? A. 1929.

Mr. Zabriskie: Now, if your Honor please, I suppose we may as well argue this question now. I am going to offer, so far as Mrs. Von Moschzisker is concerned, all of those, and if I may, I will just, if your Honor will hear me at this time—

The Court: All right.

Mr. Zabriskie: Now, Section 20 of the Evidence Act provides that in all cases where the genuineness of any signature or writing is in dispute, comparison of the disputed signature or writing with any writing proved to the satisfacton of the Court to be genuine shall be permitted to be made by witnesses, and such writing and the testimony of witnesses respecting the same, may be submitted to the Court or jury as evidence of the genuineness or otherwise of the signature or writing in dispute, provided, nevertheless, that when the handwriting of any person is sought to be disproved, not proved, as we are doing here, but sought to be dis-

proved by comparison with other writings made by him, not admissible in the cause for any other purpose, such writings, before they can be compared with the signature or writing in dispute, must, if sought to be used before the Court or jury, by the party in whose handwriting they are (and of course that does not apply here) be proved to have been written before any dispute arose as to the genuineness of the signature or writing in controversy. In other words, if I were trying to disprove Miss Mowell's signature here, this would be a bar to it, but when I am trying to prove Mrs. Von Moschzisker's, using it against her, I submit, sir, that we have a perfect right to use these, whether before or after.

(Argument).

The Court: These signatures, if they were offered at common law, would not be admissible at all, would they?

Mr. Zabriskie: Not at common law.

The Court: Because they are extraneous to the issue. The statute has permitted evidence to be offered which is extraneous, for the single purpose of comparison after the genuineness of the standard has been shown.

Mr. Zabriskie: Yes.

The Court: Well now, if the statute has changed the common law to the extent of the expression in the statute, how can we read into this statute something that did not exist at common law, when it is not included in the statute?

Mr. Zabriskie: Well, here is what Justice Gummere said. He said the rule—

Mr. McGinnis: Reading from what case?

Mr. Zabriskie: State against Barris, 78 Law.

The Court: Page 14. I have it before me. (Argument).

The Court: I still maintain my same ruling.

Mr. Zabriskie: Then, your Honor, we will take them up and then we will—

Q. Will you let me have them, please? A. (Cards handed to Mr. Zabriskie).

Mr. Zabriskie: For the purpose of the record, then, I offer—how much handwriting do you concede?

Mr. Breslin: You offer them, and I will object to them in the proper manner.

Mr. Zabriskie: Of course, unless you agree to the handwriting, I cannot offer them at all at this time, because I have to prove the handwriting. But, subject to the proof, and assuming that they are Mrs. Von Moschzisker's handwriting, I will offer, if you will take it that way. I will offer the one of November 22, 1929.

Mr. Breslin: I object to it.

Mr. Zabriskie: And I will make it a little more full. It has an affidavit signed on the back, and a card marked Registration No. B 4309, and on which appears the name "Emma Von Moschzisker," and the affidavit. And I say that I will offer that after proving it is in the handwriting of Mrs. Von Moschzisker, unless your Honor wants to dispose of it. That is a somewhat irregular way.

The Court: Well, there is no objection yet to anything.

Mr. Breslin: I object to it, if you have finished with your question, on the ground that the writing in question, if it were made by Mrs. Von Moschzisker—

Mr. Zabriskie: Then I will withdraw this witness at this particular time, and I will call Mrs. Von Moschzisker, and we will see about these different ones.

The Court: I do not understand Mr. Breslin is objecting to the signatures.

Mr. Breslin: Let us see.

Mr. Zabriskie: I will withdraw this witness for a few moments. We will not keep her much longer, if your Honor please.

Mr. Breslin: These three are in the handwriting of Mrs. Von Moschzisker, and the other one was in the handwriting of the agent.

Mr. Zabriskie: I will withdraw this witness for the time being, with your Honor's permission, and I will call Mrs. Von Moschzisker.

Mr. Breslin: We admit they are her handwriting.

Mr. Zabriskie: It is the short way of identifying several of these writings, and I will call her at this time for that purpose.

The Court: All right. You may call her.

(Witness withdrawn).

Mr. Zabriskie: I will ask that this be marked for identification.

(Paper marked Exhibit P-8 for identification).

EMMA L. VON MOSCHZISKER, one of the defendants, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Zabriskie:

Q. Mrs. Von Moschzisker, I show you a paper marked P-8 for identification, dated November 22, 1929, and I ask you whether or not that contains the handwriting of yourself? A. Yes.

Q. Will you please read off the handwriting that is yours?

Mr. Breslin: Well, now, if your Honor please, I object to this.

The Court: I sustain the objection.

Mr. Breslin: The certificate is not evidential, under your Honor's ruling. It is an attempt to get before the jury—

The Court: What was the question?

(Question read).

Mr. Zabriskie: The part that is in her handwriting, I asked her to read.

The Court: Let her identify it.

A. Do you mean this script writing or the letter?

Q. Everything that is there in your writing or printing, if you will just indicate that.

Mr. Breslin: I object to it, if your Honor please.

The Court: What date is that?

Mr. Breslin: That is after, November, 1929; two years after the controversy.

The Court: I will sustain the objection.

Mr. Zabriskie: I am offering it as a standard.

The Court: Yes.

Mr. Zabriskie: And your Honor will allow me an exception.

I will ask that this be marked for identification.

(Paper marked Exhibit P-9 for identification).

Q. Now, Mrs. Von Moschzisker, I show you a paper that has been marked P-9 for Identification and that is dated November 17, 1928, and I ask you if the ink part of that is in your handwriting?

Mr. Breslin: Objected to, if your Honor please, on the ground that the instrument itself is not evidential.

The Court: The same?

Mr. Breslin: The same, subsequent to the controversy.

Mr. Zabriskie: Exception. I am offering it as a standard for comparison, and your Honor overrules it, and I will ask for an exception.

I ask that this be marked for identification.

(Paper marked Exhibit P-10 for Identification).

Q. Now, Mrs. Von Moschzisker, I show you a paper that has been marked P-10 for Identification, dated December 2, 1926, and I ask you if what appears in printing on the face of that paper is in your handwriting or handprinting, as you

may call it? A. The top is not mine, the Emma Von Moschzisker there.

Q. You mean opposite the name where it says "Name of Owner"? A. No. Right there is mine, but this at the top is not.

Q. Let us get that clear. The "Emma Von Moschzisker" that is written at the very tip top, as we may say? A. Yes, that is not mine.

Q. That is not your writing? A. No, it is not.

Q. But the "Emma Von Moschzisker" that is written opposite the printed words "Name of Owner," that you say is yours?

Mr. Breslin: I object to that on the ground that that writing in question was subsequent to the subject-matter of this controversy which arose in January 1926.

The Court: What date is that?

Mr. Breslin: That is December, 1926.

Mr. Zabriskie: S-10 was written on—

Mr. Breslin: I will withdraw the objection.

The Court: I thought the paper was written long before the prosecution.

Mr. Breslin: The first letter they received was in January 1926. I will withdraw the objection.

Q. The "Emma Von Moschzisker" then, that appears on this paper marked for Identification P-10, is in your handwriting? A. That is in my handwriting.

Q. And where it says "Street Address: 144 Spring Avenue," the "144 Spring Avenue" is in your handwriting? A. It is.

Q. And where it says "city or town," "Ridge-

wood", "Ridgewood," is in your handwriting? A. Yes.

Q. And where it says "County of Bergen", "Bergen" is in your handwriting? A. Yes.

Q. And then when it says "Date of purchase, April 14th," "April 14th" is in your handwriting? A. It is.

Q. And when it says "Hupmobile" opposite the words "name of car", that is in your handwriting? A. That is mine.

Q. That is yours. Where is says "Serial number, 17334," is that your handwriting? A. Yes, that is my lettering.

Q. And where it says "Engine number, 17440," the "17440" is in your handwriting? A. Yes.

Q. Where it says "Year 1926," that is— A. That is mine.

Q. Where it says "Model E," is the "E" in your handwriting? A. Yes.

Q. Where it says "Number of cylinders, eight," is the "eight" in your handwriting? A. That I am not sure of. I was not sure of the number of the serial—cylinders, rather.

Q. Where it says, "Were headlights properly equipped and focused," and the word "yes" appears after it? A. That is not mine.

Q. That is not yours? A. No.

Q. The word "December" opposite the date "December first?" A. That is mine.

Q. That is yours? A. Yes.

Q. Now, turning to the back of Exhibit P-10, where it says "E. L. Von Moschzisker," right above the words "Signature of Applicant," that is yours, is it not? A. That is mine.

Q. Of course, the other— A. The other is not.

Q. The other is not? A. No.

Mr. Zabriskie: I offer this in evidence as a standard.

Mr. Breslin: No objection.

(Paper marked Exhibit P-10).

Q. There is no controversy about this being in your handwriting, this Exhibit P-7, is there? A. Yes, that is mine.

Mr. Zabriskie: I will ask to have this marked for identification.

(Envelope marked Exhibit P-11 for identification)

Q. Now, I show you an envelope and letter marked P-11 for identification, and the letter bearing the postmark of February 16, 1926, and I ask you whether or not that letter and envelope are in your handwriting? A. Yes, that is in my handwriting.

Mr. Zabriskie: I offer that as a standard.

Mr. Breslin: No objection.

(Envelope and letter marked Exhibit P-11).

Q. I show you a letter and envelope dated April 11, 1926, which I will ask to have marked for identification.

Mr. Breslin: Of course, I assume your Honor is admitting them with the same restriction that you allowed the other standard?

The Court: Only as standards.

Mr. Breslin: And they cannot be commented on as to the nature of their terms,

and so on, at any part of the case.

(Letter and envelope marked Exhibit P-12 for identification).

Q. Now, I ask you if this paper that has just been marked P-12 for identification, consisting of three sheets and envelope attached, is all in your handwriting? A. I don't think the envelope is in my handwriting.

Q. The envelope is not? A. The rest is in my handwriting.

Mr. Zabriskie: Then I suppose we will take the envelope off.

Then I offer that letter in evidence as a standard.

Mr. Breslin: No objection.

(The letter only was marked Exhibit P-12).

Q. Do you want to look at this again before making your answer, Mrs. Von Moschzisker? A. I looked at it, Judge Zabriskie.

Q. Are you positive that it is not? A. I am positive that it is not.

Mr. Zabriskie: Now, I would like to have this marked for identification.

(Letter and envelope marked Exhibit P-13 for identification).

Q. This paper that has been marked P-13 for identification, consisting of an envelope addressed to "Miss Thelma Fritz, 142 Walnut Street, Town," and postmarked "January 30, 1926", and the accompanying letter, is that in your handwriting? A. Yes, that is all mine.

Mr. Zabriskie: I will offer this at the present time as a standard. Later on, I may offer it for something else, but as a standard at this time. Is there any objection?

Mr. Breslin: Of course, I cannot tell what you are going to do later on.

Mr. Zabriskie: No, no; I am not talking about that part. I say as a standard.

Mr. Breslin: I have not any objection to it going in as a standard.

Mr. Zabriskie: All right.

(Letter and envelope marked Exhibit P-13)

Mr. Zabriskie: I ask to have this marked for identification.

(Paper marked Exhibit P-14 for identification).

Q. I show you a paper that is marked P-14 for identification, and I ask you whether or not that is in your hand-printing or hand-writing, either one?

Mr. Breslin: I have not any objection to to that question being asked, but I will object to its introduction unless it is shown that that paper writing was made before the controversy arose.

The Court: What does the witness say with respect to the writing itself?

A. Yes, that is what I printed before.

Mr. Breslin: All right.

Q. And when did you print that in court? A. Well, the first day of the trial, I think.

Q. That was in— A. February 8.

Q. February 8, 1928? A. 1928.

Q. That was in that case that we have been talking about, State against Sara Mowell? A. Yes.

Mr. Zabriskie: I offer that, your Honor.

Mr. Breslin: I object to it, if your Honor please, on the same grounds.

Mr. Zabriskie: That was in the trial itself.

The Court: I will sustain the objection.

Mr. Zabriskie: Your Honor will allow me an exception.

The Court: These will all be here in case I change my mind about it.

Mr. Zabriskie: Your Honor will allow me an exception for the time being.

Q. I show you another paper that I will ask to have marked for identification.

(Paper marked Exhibit P-15 for identification).

Q. I show you the paper that has just been marked P-15 for identification, and I ask you whether or not that is in your hand-printing? A. It is.

Mr. Zabriskie: I offer that in evidence.

Mr. Breslin: The same ground of objection as was made, as there is no evidence at this time that it was made prior to the controversy.

Mr. Zabriskie: I will ask her.

Q. This was made when, Mrs. Von Moschzisker?

A. Well, that I don't remember.

Q. Well, it was long before the trial, was it not?

A. I can't remember that.

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The Court: Of course, so far as these offers are being made, the real objection might come when the comparison is attempted, and we have not come to that yet. In other words, the only evidence we have now is with respect to certain originals. Objection might arise when an attempt is made to compare them.

Mr. Zabriskie: Of course, I think, if your Honor please, it might be a good idea, though, if we can dispose of them very largely now, so that Mr. Breslin's experts and mine may not be inconvenienced.

Mr. Breslin: I see your Honor's point. I will withdraw the objections at this time as to those, but I will object to the experts using them as standards.

The Court: We will meet them when we come to it.

Mr. Breslin: As methods of comparison.

Q. Then this is yours? A. That is my printing.
Q. Referring now to P-15.

Mr. Zabriskie: Then I will offer that as a standard at this time.

Mr. Breslin: I object to that on the same ground of objection. That was made before the controversy arose.

The Court: Well, we have not come to the comparison yet.

Mr. McGinnis: Should it be introduced in evidence at all, your Honor, under the circumstances?

The Court: Well, of course, the jury may compare when it comes to that.

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Mr. McGinnis: If there is any question as to the relevancy of the standards being admitted, I think they ought to be kept out at this time.

Mr. Zabriskie: I will ask that this be marked for identification.

(Paper marked Exhibit P-16 for identification).

The Witness: Judge Zabriskie, may I see the other two?

Q. I am going to show them to you. A. I was going to say I didn't identify all of them. Pardon me. Yes. That is mine.

Mr. Zabriskie: And I offer P-16 as a standard.

Mr. Breslin: The same objection as I have outlined before, at this time.

Mr. Zabriskie: And I offer P-15 first. The stenographer calls my attention to the fact that it was not marked. I offer P-15.

Mr. Breslin: The same objection.

The Court: As I say, we have the documents here in case I change my mind about this.

(Paper marked Exhibit P-15).

(Paper marked Exhibit P-16).

Mr. Zabriskie: I will ask that this be marked for identification.

(Paper marked Exhibit P-17 for identification).

Q. I ask you if that is in your handwriting, Mrs. Von Moschzisker? A. It is.

Mr. Zabriskie: I offer P-17 for identification.

Mr. Breslin: The same objection.

Mr. Zabriskie: Your Honor will admit it?

The Court: Yes.

(Paper marked Exhibit P-17).

Mr. Zabriskie: And I ask that this be marked for identification.

(Paper marked Exhibit P-18 for Identification).

Q. Now, I show you the paper that is marked P-18 for identification. I ask you if that is in your handwriting, Mrs. Von Moschzisker, or handprinting? A. It is.

Mr. Zabriskie: I offer it in evidence.

Mr. Breslin: The same objection.

The Court: I will make the same ruling, with your right to renew your offer.

(Paper marked Exhibit P-18).

Mr. Zabriskie: I will ask that this be marked for identification.

(Paper marked Exhibit P-19 for identification).

Q. I show you a paper that has been marked P-19 for identification, and I ask you if the writing on the face of that is in your handwriting? A. Yes, that is all mine.

Mr. Zabriskie: I offer it.

Mr. Breslin: The same objection.

(Paper marked Exhibit P-19).

Mr. Zabriskie: I ask that this be marked for identification.

(Photograph marked P-20 for identification).

Q. I show you a picture of a letter, being marked P-20 for identification, three sheets, and I ask you if the writing that appears on there is yours?

Mr. Breslin: I object to that, if your Honor please. It is a copy, a picture of a letter.

The Court: Well, photographic copies have been allowed.

A. Will I answer this?

The Court: Yes.

A. Yes, that is mine.

Q. That is yours? A. It is.

Mr. Zabriskie: And I offer that in evidence.

Mr. Breslin: I object to it at this time upon the ground that it is not the best evidence that could be offered. The original letter could be offered at this time.

The Court: We have to—

Mr. Zabriskie: I will prove that the original is lost by a witness.

The Court: You will have to do that. You have to lay the foundation before you can introduce it.

Mr. Zabriskie: Then I will hold back the offer for the time being, and reoffer it again.

I ask to have this marked.

(Paper marked Exhibit P-21 for identification).

Q. I show you a small slip marked Exhibit P-21 for identification, and I ask you if that is your printing or writing? A. Well, it does not look like it to me. I don't remember to have written that.

Q. You do not recognize it? A. I don't.

Q. Then you cannot say whether it is your writing or not? A. I don't think it looks like it.

Q. Can you say whether or not it is? A. I can't say positively, no.

Q. That you cannot say? A. No.

Mr. Zabriskie: I will ask to have this marked for identification.

(Paper marked Exhibit P-22 for identification).

Q. I show you a paper that is marked P-22 for identification and ask you if that is in your handwriting or hand-printing? A. I don't think that is mine. Where is this supposed to have come from?

Q. No, I am just asking you whether— A. Well, it does not look like it.

Q. You do not know whether it is or not? A. No, I don't, not to say positively.

Mr. Zabriskie: I will ask that this be marked for identification.

(Paper marked Exhibit P-23 for identification).

Q. I show you a paper that has been marked P-23 for identification, and I ask you whether or not that is in your handwriting? A. Well, I don't know whether it is or it is not.

Q. You do not know whether it is or whether it is not? A. That is what I said.

Mr. Zabriskie: I offer this slip for identification.

(Paper marked Exhibit D-24 for identification).

Q. I show you another paper marked D-24 for identification. I ask you whether or not that is in your handwriting? A. Yes, that is.

Q. That is? A. Yes.

Mr. Zabriskie: I offer it in evidence.

Mr. Breslin: The same objection as before, if your Honor please.

(Paper marked Exhibit P-24).

Q. Now, Mrs. Von Moschzisker, perhaps I can refresh your recollection. Do you not remember writing those slips right in court in the last proceeding? A. Well, I can't remember anything I did in court. I may have. I do not say I didn't.

Mr. Zabriskie: I will ask that this be marked for identification.

(Paper marked Exhibit P-23 for identification).

Q. I show you a paper that is marked Exhibit P-25 for identification, being a picture of an application for a license, dated, or stamped November 30, 1925, and I ask you if that is in your handwriting, that is, the part that is not printed, of course? A. Well, where is there any part that is not printed?

Q. I mean that is not printed by machinery. A. Oh. Yes, I think so.

Q. When you say it is in your handwriting, you refer up to the word— A. To the lettering.

Q. —"Emma Von Moschzisker, 144 Spring Avenue, Ridgewood, Bergen"? A. The "Bergen" is not mine.

Q. The word "Bergen" is not? A. "Bergen". That is the only thing on it that is not mine, I think.

Q. The word "Bergen", opposite the word "County", is not yours, you think? A. That is not mine.

Q. Then the part that is again is "April first, 1925, Dodge?" A. The rest is all mine except those numbers at the top there.

Q. "A-276742"? A. That is mine.

Q. Let us get that clear. This is in your handwriting, "April first, 1925"? A. Yes.

Q. Also the word "Dodge"? A. Yes.

Q. Also the "A-276742"? A. Right.

Q. Also "A-348526"? A. Right.

Q. Also the word "Touring"? A. Right.

Q. Also "Blk", for body color, that is your handwriting? A. Well, I think so.

Q. And the word on number plate and the word "Yes"? A. Those two "Yes" are not mine.

Q. And the word "Yes"? A. All the other part is mine. Those two words.

Q. Then those two "Yes's" are not yours? A. The two "Yes" or "No's."

Q. I see.

Mr. Zabriskie: I offer that in evidence.

Mr. Breslin: The same objection.

Mr. Zabriskie: And I suppose the same disposition.

The Court: Yes. You may later renew your application to offer them in evidence.

(Paper marked Exhibit P-25).

Mr. Zabriskie: I ask that this be marked for identification.

(Paper marked Exhibit P-26 for identification).

Q. Now, I show you the paper that has been marked P-26 for identification, and I ask you if the handwriting or hand-printing of yourself appears on that? A. Yes. The "E. L. Von Moschzisker" is mine.

Q. The "E. L. Von Moschzisker" in script, that is yours? A. Yes, that is mine.

Q. And the "November"? A. Yes.

Q. The "Five" is yours? A. Yes.

Q. And opposite the signature, the word "E. L. Von Moschzisker"? A. Right.

Q. That is yours and the rest is not? A. The rest is not.

Mr. Zabriskie: I offer that in evidence.

Mr. Breslin: The same objection.

(Paper marked Exhibit P-26).

Mr. Zabriskie: If the Department of Motor Vehicles wants to take back their originals, we could use copies of them.

Mr. Breslin: We have a copy of Miss Mowell's, and I would not have any objection to it.

Mr. Zabriskie: If there is a photograph of the one that the Department would like to take away, suppose we ask her in the same way as to that?

The Court: Have you the photographs of 1925 to 1929 inclusive?

Mr. Zabriskie: I think we have. Here is 1926, and we put the original card in evidence.

Mr. Breslin: But as I understand it, the Department of Motor Vehicles does not like to leave that with the Court.

The Court: It may be offered in evidence. I mean my ruling is not final. It may be admissible. Therefore, you better have it.

Mr. Zabriskie: I think it should be offered as a standard of 1926.

The Court: It would only be cumulative.

Mr. Breslin: My point is we have an application here signed by Miss Mowell, and I will need Miss McLaughlin for that. If they have a photostatic copy of that application, we would not need her tomorrow. They may not need her, but I will need her and have to bring her back anyhow.

The Court: I thought you could call her out of turn.

Mr. Breslin: I want to do it, if I may do it.

The Court: Maybe Judge Zabriskie will admit those are Miss Mowell's signatures.

Mr. Breslin: He did at the criminal trial.

Mr. Zabriskie: Probably so.

Let us have this marked for identification. It is cumulative, as your Honor says.

(Paper marked Exhibit P-27 for identification).

Q. I show you P-27 for identification, and I ask you if the handwriting of yourself appears on that, or hand-printing, or a copy? A. Yes, that is all mine except the top and the "Yes", and in here, and that "29".

Q. So that the part that is in your handwrit-

ing is the "Emma Von Moschzisker," opposite "Name of Owner"? A. Right.

Q. "144 Spring Avenue," street address? A. Yes.

Q. "Ridgewood"? A. Yes.

Q. "Bergen"? A. Yes.

Q. "April 14th"? A. "Hupmobile."

Q. "Hupmobile, 17334, 17440, Touring"? A. "Touring." "Gray."

Q. "Gray," and— A. The "Yes" is not mine.

Q. "Yes" is not yours? A. No.

Q. And the "December"? A. "December" is mine.

Mr. Zabriskie: I offer that in evidence, under the same objection, I suppose.

Mr. Breslin: The same objection.

(Paper marked Exhibit P-27).

Mr. Zabriskie: I ask that this be marked for identification.

(Paper marked Exhibit P-28 for identification).

Mr. McGinnis: I am wondering why these could not be left in the custody of the court clerk and mailed back afterward.

The Court: Oh, yes; if they are marked in evidence, they will have to stay here.

Q. I show you the paper marked P-28 for identification, and I ask you if that contains your handwriting, Mrs. Von Moschzisker? A. No; that is none of it mine except the signature, "Emma L. Von Moschzisker."

Q. On the back? A. On the back.

Q. Then there is nothing that appears on the face? A. There is nothing on it that is mine. I didn't print any of it.

Mr. Zabriskie: I offer that in evidence just for the signature, then.

Mr. Breslin: The same objection.

(Paper marked Exhibit P-28).

Mr. Zabriskie: We served notice to produce certain papers on the Prosecutor, some in the Prosecutor's Office.

Mr. Breslin: Are you through with Mrs. Von Moschzisker now?

Mr. Zabriskie: No.

Have you S-10 in the other case?

Mr. Breslin: Yes, sir.

Mr. Zabriskie: Will you let me have those that I served the notice for?

Mr. Breslin: You did not serve me with a notice for S-10. We will give it to you anyhow.

The Court: Is that the one—

Mr. Breslin: That is the one on which the indictment is based.

The Court: Is that the letter on which the indictment is based?

Mr. Breslin: Yes.

Q. Mrs. Von Moschzisker, you were before the Grand Jury in this case yourself, were you not?

Mr. Breslin: I object—

A. Yes.

Mr. Zabriskie: And I will ask to have this marked for identification.

(Envelope and letter marked Exhibit P-29 for identification).

Q. I show you an envelope and letter, P-29 for identification, and ask you if that is one of the let-

ters that you produced against Sarah Mowell in the previous case?

Mr. Breslin: Well, I object to that on the ground that she did not produce anything in the previous case.

The Court: Well, technically, it is correct.

Q. Is that one that you said was received by you anonymously and handed by you to the Prosecutor and put in evidence in the criminal case?

Mr. Breslin: I object to that on the ground that what she said in the criminal case is not material at the present time.

The Court: I will allow it.

Mr. Breslin: She is Judge Zabriskie's own witness.

The Court: What?

Mr. Breslin: Mrs. Von is his witness at the present time.

The Court: It does not make any difference. There is no impeachment with respect to the question.

Q. What is the answer? A. The answer is yes.

Mr. Zabriskie: And I offer that in evidence at this time.

(Envelope and letter marked Exhibit P-29).

Mr. Breslin: If these letters are offered in evidence, I want to have them stay there, because in the criminal trial we had a lot of confusion, and they were all over the court room.

The Court: The letters that are marked, I think, in view of the fact that there are so many exhibits to be referred to by counsel, during the course of questioning, ought to be left right with the stenographer.

Mr. Zabriskie: If your Honor please, the difficulty with these is that these have been all in the control of somebody else. We have had very little chance to observe them. These are our exhibits and we will see that they are properly brought into court, but I would certainly like to have my experts have a chance to look at them now. You must remember this was a criminal prosecution before, and they were in the custody of the State and then just recently the Prosecutor allowed us to look at some of his records, but we find that Mr. Breslin individually had a great many of those, so we did not have any chance to see them before, so we feel that these that we are offering as exhibits at this time—

The Court: I mean I do not want them mixed up.

Mr. Zabriskie: No, we will not mix them up. We will keep them very carefully.

I will ask to have this marked for identification. It is an envelope and an enclosure.

(Envelope and enclosure marked Exhibit P-30 for identification).

Q. I show you Exhibit marked P-30 for identication, being a letter sheet and an envelope, and I ask you if that is one of the letters, anonymous letters, that you said you had received? A. Yes, that is one of them.

Q. And you turned it over to the representative of the Prosecutor's Office? A. I must have or it wouldn't be here.

Q. And it was used as an exhibit in the criminal prosecution against Miss Mowell? A. I don't remember that.

Q. You do not remember whether it was or not? A. No, I don't know.

Mr. Zabriskie: I ask that this envelope of July 3rd, 1926, be marked for identification, together with an enclosure.

(Envelope and enclosure marked Exhibit P-31 for identification).

Q. I show you the envelope and letter marked P-31 for identification, and I ask you whether or not those are letters that you reported that you had received, a letter and envelope that you had received? A. Yes.

Q. And you turned it over to the Prosecutor's office? A. Yes.

Q. And it was used in the criminal case against Sarah Mowell? A. That I do not remember.

Q. You do not remember? A. No.

Mr. Zabriskie: I ask that this envelope and enclosure be marked for identification.

(Envelope and enclosure marked Exhibit P-32 for identification).

Q. Now, I show you an envelope and enclosure consisting of two pages marked Exhibit P-32 for identification, and I ask you whether that envelope and that enclosure were said by you to have been received by you? A. Yes.

Q. And turned over to the Prosecutor? A. Yes.

Q. And used in the case of— A. I think it was.

Mr. Zabriskie: I offer them in evidence.

Mr. Breslin: Objected to as being immaterial. She might have received a million letters. The only letter in issue is S-10. It is his case. He has made Mrs. Von his witness. It has not any bearing on the issue at the present time.

Mr. Zabriskie: May I be heard on that, your Honor?

The Court: Yes.

What letter is that?

Mr. Zabriskie: That was one of the letters that was used in evidence against Miss Mowell by the State in the criminal prosecution. Now, I think—

The Court: Well, that, standing alone—is there nothing else connecting the defendant with that letter?

Mr. Zabriskie: It is a letter that she said she had received and which she turned over to the Prosecutor in order that this case might be prosecuted, and was used against her.

The Court: What control had the defendant over what the Prosecutor did with this letter?

Mr. Zabriskie: I argue on this principle, if your Honor please, and it is somewhat along the line of the case of Navarino vs. Dudrop.

Our theory in this case is that this affidavit made by Mrs. Von Moschzisker was false; that she set the machinery of the law in op-

eration by swearing to something that was not true.

Now then, on that theory, she having started the machinery of the law in motion, she is responsible for what happens. Of course, if it were a case where the facts had been stated truthfully, and there was no question about that, why, then she probably would not be bound. But when a person falsely and maliciously, as we claim to be the case here, sets the machinery of the law in motion, she is responsible for what occurs, whether she says yes or no, or not. That is my theory.

The Court: Judge, suppose she did not make this complaint with reference to Exhibit S-10. I think that is the exhibit.

Mr. Zabriskie: Yes.

The Court: There would have been no criminal trial, and there would have been no acquittal, and there would have been no civil suit growing out of it, would there?

Mr. Zabriskie: No.

The Court: Then what difference does it make what she gave the Prosecutor's Office unless you can show that she had something to do with it?

Mr. Zabriskie: Well, of course, you cannot show your whole case at one time. But I will connect her with it. In fact, I will show by experts that that is her handwriting.

The Court: When we come to that, we will admit it, but not now.

Mr. Zabriskie: Then that is just marked for identification at the present time.

I will ask that this be marked for identification.

(Envelope and letter marked Exhibit P-33 for identification.)

Q. I show you an envelope and a letter marked P-33 for identification, and I ask you whether or not you delivered them to the Prosecutor's Office saying that you had received them? A. Yes.

Q. And was it used by the prosecution in the case of State against Sarah Mowell?

Mr. Breslin: I object to that as being immaterial.

The Court: I think we are going too far, even assuming that we may admit letters before or after. You could pick up any piece of paper around this courtroom and ask her if she gave it to the Prosecutor. In other words, the requisite has not been made and the genuineness has not been established yet.

Mr. Breslin: That is my objection, if your Honor please.

Mr. Zabriskie: Well, then, I will withhold the offer for the time being.

I ask to have this envelope and enclosure marked for identification.

(Envelope and enclosure marked Exhibit P-34 for identification).

Q. Now, I show you a paper marked P-34 for identification consisting of an envelope and a sheet of paper and I ask you whether or not you had that and had it received by you? A. Yes.

Q. And you delivered that to the Prosecutor's Office?

Mr. Breslin: Objected to as being immaterial.

The Court: Sustained at this time.

Q. And you do not know whether it was used? Do you know whether it was?

Mr. Breslin: I object to that, if your Honor please.

The Court: I have sustained the objection.

Mr. Zabriskie: Yes, all right.

I think you will consent to this, the wrapper. You have no objection to that, I guess?

Mr. Breslin: Well, I want to prove my case in my own way as I have outlined it.

Mr. Zabriskie: Well, I ask that this be marked for identification.

(Wrapper marked Exhibit P-35 for identification).

Q. This was received by you, Mrs. Von Moschzisker? A. Yes.

Q. Referring now to Exhibit P-35 for identification.

Mr. Zabriskie: Now, using the testimony of Miss Mowell, that was read, I offer that in evidence, being the wrapper that has been spoken of.

Mr. Breslin: No objection.

(Wrapper marked Exhibit P-35).

Mr. Zabriskie: That is all I will ask Mrs. Von Moschzisker at this time.

Mr. Breslin: No questions at this time.

The Court: What have you agreed on with respect to the other registration cards?

Mr. Breslin: I find here a photostatic copy

of the license card that was admitted at the previous trial as being the handwriting of Miss Mowell. Here is the original card, and here is a photostatic copy of it. There is the original.

Mr. Zabriskie: Now, I want to say right now that anything that is in Miss Mowell's handwriting we will agree to the fact, so if we get it clear, what is in her handwriting, it is stipulated on the record.

Mr. Breslin: We contend that "139 Walnut Street, Ridgewood," "Bergen," "31," and "104", "white", "light", "female", "brown", "5 feet, 2 inches", "First National Bank of Ridgewood", "Yes", "Paterson," "N. J.", "Yes", "No", signature at the left hand bottom, "Sarah B. Mowell" down here—(indicating).

Mr. Zabriskie: Down in the lower left the "Sarah B. Mowell" at the left hand corner.

Mr. Breslin: Corner.

Then on the other side, where the affidavit is to be taken, "Sarah B. Mowell" at the top of the affidavit, and "Sarah B. Mowell" in the lower left hand corner.

Mr. Zabriskie: I think we can stipulate that, your Honor.

Mr. Breslin: That will dispense with that one.

Mr. Zabriskie: Then we will use the photograph, instead of using this.

Mr. Breslin: I will offer that. Mr. Zabriskie has not any objection at this time. If it is offered, then I understand your Honor

has control of it, and Miss McLaughlin will not have to come back tomorrow.

The Court: That is just the point. There is no occasion for the witness, who is not a fact witness, coming here with a document.

Mr. Breslin: I will offer that, with those illustrations, as I have just given to the stenographer.

Mr. Zabriskie: No objection.

Mr. Breslin: We can send those back. They do not have to worry about them at Trenton. We will take good care of them.

The Court: The witness need not come back.

Mr. Zabriskie: No. We will see that they go back by registered letter, receipt required, and everything, so that there cannot be any trouble as to that.

(Application for registration marked Exhibit D-4).

DR. WILLIAM B. NEVIN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Doctor, where do you live? A. Ridgewood.

Q. Do you know Sarah Mowell? A. I do.

Q. And for how long a time have you known her? A. About seven years.

Q. You did know her prior to her arrest? A. Yes, I did.

Q. Did you see her frequently? A. Quite frequently, as a neighbor.

Q. You live near her? A. Yes.

Q. Did she seem to be a healthy girl?

Mr. Breslin: I object to that on the ground that it is leading.

The Court: Sustained.

Q. What have you seen her do, Doctor? What did you see her doing?

The Court: Within what time?

Q. Prior to her arrest, we will say.

Mr. Breslin: I ask that the time be fixed. I object to it on the ground that it is immaterial. A man may have seen her do a lot of things that have no bearing on this case.

The Court: The question is too general.

Q. Did you see her frequently in Ridgewood? A. Quite frequently, yes.

Q. How far away did you live from her? A. Next door.

Q. Do you know what her reputation was in Ridgewood for honesty in living, and as being a law-abiding citizen? A. Her reputation—

Mr. Breslin: Objected to, if your Honor please, on the ground that it has nothing to do with this case.

The Court: It is permissible in this case. Proof of reputation is permissible.

Mr. Breslin: I pray an exception.

A. Will you repeat the question?

Q. You say you did know her. What is her re-

putation, Doctor? A. Her reputation, character, was very good.

Mr. Breslin: I object to any speeches.

The Court: No.

Mr. Zabriskie: Suppose we read the question, then, then I asked.

(Question read).

Q. Do you? A. Yes, I do.

Q. What was that reputation, good or bad? A. Very high; very good.

Cross-examination by Mr. Breslin:

Q. You have known the Mowell girl for how many years? A. Approximately seven years.

Q. And you testified in the criminal case on her behalf as a character witness? A. As a character witness, at the time.

Q. And your wife is very friendly, or was friendly, with Miss Mowell? A. Yes; still is.

Q. Still is very friendly with Miss Mowell. And as a result of this friendship that existed between Miss Mowell and you and your wife, you went out together, did you not, on social parties together? A. No.

Mr. Breslin: That is all.

RAY LIPPINCOTT, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Are you the Ray Lippincott to whom this letter was addressed, P-11?

Mr. Breslin: I object to that, if your Honor please. I object to any reference being made to that letter.

Mr. Zabriskie: It is offered for one purpose, as a standard.

The Court: What is the occasion for this witness? The defendant admitted the signature, did she not?

Mr. Zabriskie: Yes, but I want to show by him that, although he is friendly with the other side, I am going to put him on as a character witness for Miss Mowell.

The Court: What has that letter to do with that?

Mr. Zabriskie: Well, it just identifies him.

The Court: No.

Mr. Breslin: I object, your Honor.

The Court: Strike out that question.

Mr. Zabriskie: Well, I will withdraw the witness, then, if there is no question about it.

The Court: That is all.

Mr. Breslin: Just a minute.

The Court: There is no question.

Mr. Breslin: Oh, all right. Maybe judge Zabriskie will allow me to prove a couple of cards by this witness, so that he will not have to come back tomorrow, out of turn. I do not know whether you have any objection or not.

Mr. Zabriskie: I think that is all right, surely. It will save time.

By Mr. Breslin:

Q. Mr. Lippincott, I show you a card addressed to you and ask you if you know in whose hand-

writing the words "Mr. Ray Lippincott, 16 Walnut Street, Town," is in? A. That is Miss Mowell's.

Q. Talk up a little louder. A. Miss Mowell.

Q. And I show you a Christmas card purporting to have the handwriting of Sarah Budd Mowell at the bottom of it, and ask you if that is in her handwriting? A. Yes.

Q. And the envelope, is that also in her handwriting? A. Yes.

Mr. Breslin: I will offer these exhibits as standards of Miss Mowell's writing, on my case. That is all.

Mr. Zabriskie: No objection.

(Cards marked Exhibit D-2 and D-3)

Adjourned to tomorrow, March 25, 1930.

Hackensack, New Jersey,
March 25, 1930.

Trial Resumed.

Mr. Zabriskie: I will call Mr. Bushrod Spencer.

The Court: You have kept those exhibits which I permitted to be passed upon as being genuine and stated I would reserve on whether or not they would be admitted?

Mr. Zabriskie: Yes.

The Court: You have now those separate, have you?

Mr. Zabriskie: I do not know as they are separate, but we can check them up with the stenographer.

The Court: I am inclined to admit them.

Mr. Zabriskie: I will go over them with the stenographer before we use any of them.

Mr. Breslin: I take a general exception to the admission of all those letters.

BUSHROD H. SPENCER, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Spencer, did you ever see Mrs. Von Moschzisker print? A. I did.

Q. Do you know whose printing this is?

The Court: What exhibit are you referring to?

Mr. Zabriskie: I am referring now to Exhibit P-29.

Mr. Breslin: Now, just a minute.

Q. Do you know in whose printing this is? A. I do.

The Court: Has that been admitted as to genuineness?

Q. Whose is it?

Mr. Breslin: Just a minute.

The Court: Now, just a minute. Has Mrs. Von Moschzisker—

Mr. Zabriskie: It is an exhibit, your Honor, yes, sir.

The Court: Did she acknowledge making that?

Mr. Breslin: No. She said this is the let-

ter she received, on which the complaint was based.

Mr. Zabriskie: That is the letter in the indictment.

Mr. Breslin: I object.

Mr. Zabriskie: May I be heard? If your Honor please, I am reading now from your Honor's own work, on page 581.

(Argument).

I said, "Did you ever see her print?" And he says, "Yes." Now then, if the reply is in the affirmative, the next question would be, "Do you know her handwriting?" Here I say, "Do you know her printing?", and I ask him that question, "Do you know her printing?"

The Witness: I do.

Mr. Zabriskie: And if the reply is in the affirmative, the next question should be, "In whose handwriting is this?"

Q. Now, I say, in whose printing is that? A. Mrs. Von Moschzisker's.

Q. Yes. When I said "that", you were referring to the Exhibit P-29? A. P-29.

Mr. Breslin: I take an exception, if your Honor please, to that ruling.

Q. Now, Mr. Spencer, what is your profession? A. I am an examiner of questioned documents.

Q. And will you please state to the Court and jury what has been your experience? A. I taught penmanship in the public schools of Ohio. At the same time I was teaching a grade school in Ohio. Later I attended the Oberlin School of Pen Art

and Business School, and I took a complete course in that institution, and received my diploma.

I accepted a position right after graduating, with the Spencer, Felton & Loomis School, in Cleveland, Ohio, the largest institution in Cleveland, and I taught in that institution for about two years, doing all the penmanship work and attending to the correspondence.

Later I accepted a position with the Albany, New York, Business School, where I did all the engrossing, penmanship work, teaching of penmanmanship for four years.

I then established a chain of commercial schools in Schenectady, Kingston, Newburgh, Yonkers, Jersey City, and after disposing of my school, those schools, I came to Paterson, and with the purpose of opening a commercial school, but I was persuaded to—

Mr. Breslin: Well now, I object to this recitation.

The Court: No.

The Witness: I thought you wanted a full explanation.

Q. Now what you were persuaded, just what you did, Mr. Spencer. A. All right. I taught in penmanship, shorthand, bookkeeping, in the Paterson High School, for one year. I was then appointed Supervisor of Penmanship in the public schools of Paterson. Of late years I have been running the business school in Paterson and in Jersey City. And in the capacity as teacher of penmanship in these institutions, I was very frequently called upon to give testimony in regard to disputed documents.

Q. You say testimony. Testimony where? I mean in courts or where? A. Cleveland I did not appear in court, when I was in Cleveland in 1885; and when I went to Albany, New York, I had a case where two men from Rutland—

Mr. Breslin: I object to the kind of cases he has been in. He is not to tell us his life history.

The Witness: I thought you wished to know it.

Mr. Breslin: I object, if your Honor please, on the ground that any case he had —

The Court: The difficulty is your question is so broad we cannot tell when it is time to object.

Mr. Zabriskie: Yes, I realize that.

Q. Just give us briefly the experience you have had. Perhaps I better ask you a specific question. I will ask you this: have you made a special study of handwriting and handprinting? A. I have.

Q. What work or what studies have you pursued in relation to the investigation or disputed documents, whether in writing or printing? A. I have read Carvahlo's book on Ink, and Edwin T. Ames' book on disputed writing, Osborn's book on handwriting. I gave written books on penmanship and—

Q. You, yourself, have written? A. I have written several different textbooks on handwriting.

The Court: By that do you mean on handwriting as an art, or disputed writings?

The Witness: Handwriting as an art. And I have a manuscript that I have sub-

mitted to a publishing concern on disputed writing, that has been accepted.

Q. Have you given special attention to the subject of lettering? A. I have.

Q. You said you had given testimony. Can you tell approximately how many cases you have testified in, in the courts of the State of New Jersey and New York? A. Never kept an absolute accurate record of each and every case. I probably testified in about 500.

Q. And for how many years? During what period of years have you been testifying in courts? A. About forty.

Q. About forty years. And the testimony that you have been giving in those forty years, has been with reference to what? A. Disputed documents.

Mr. Zabriskie: Do you want to cross-examine as to his qualifications as an expert at this time?

Mr. Breslin: We reserve it at this time.

Q. At my request, or at someone's request, have you examined the paper which was S-1 in the former trial, and which is P-35 in this trial, the wrapper? A. I have.

Q. And have you given that careful study? A. I have.

Q. Have you also examined P-29? A. I have.

Mr. Breslin: Now, I object to this.

Q. And given that careful study? A. I have.

Mr. Breslin: I object to it, if your Honor please.

The Court: Why?

Mr. Breslin: It is not material. What difference does it make. He has testified. The issue in this case is who wrote that S-1. We will waste two or three days here if Judge Zabriskie is going into all those letters. He has testified that Mrs. Von wrote the letters. Our experts are going to say that the Mowell girl wrote the letters. That is the clear cut issue in this case.

The Court: I see no reason why we should pile up speciments.

Mr. Breslin: It will take two weeks, your Honor.

Mr. Zabriskie: I withdraw that question, and I will ask you this:

Q. Can you say what in your opinion is the relation between these two papers?

Mr. Breslin: I object to that, if your Honor please.

The Court: I sustain the objection.

Q. You know in whose handwriting S-1 is? A. I do.

The Court: That is, that is your opinion.

Mr. Zabriskie: S-1 is the admitted standard, the wrapper. It is P-35 in this case.

The Witness: Yes.

The Court: Wait a minute. Then S-10 in the criminal case is P-29?

Mr. Zabriskie: P-29, yes.

Mr. Breslin: Yes.

Mr. Zabriskie: And S-1 is P-35.

Q. Have you paper with you? A. I have.

Q. Will you go to the board and put up one of the papers?

Mr. Breslin: Now, wait a minute. I object to this.

The Court: No. I will permit the witness pointing out the similarity or dissimilarity between P-29 and some document which has been accepted as the genuine handwriting. I will allow that.

Mr. McGinnis: If the Court please, that is allowing him to give his reasons as to the former judgment expressed.

The Court: He is going to give his reason, that is all.

A. (Witness leaves stand. Paper adjusted on board). Before making these—

Mr. Breslin: Now, wait a minute. I object to any speeches on the part of the witness. There is no question before the Court.

The Court: No.

Q. Will you take the letter "A" from the—

The Court: No.

Mr. Breslin: I object to this, if your Honor please.

The Court: I am going to let him do his own comparing now.

Q. Well, then, will you explain to the jury how you arrive at your conclusions?

Mr. Breslin: I object to the use of the wrapper. The admitted testimony in this case is that the wrapper is in the handwrit-

ing of the Mowell girl, and the only question at the present time is the similarity between Mrs. Von's admitted standards and P-29 in this case.

The Court: I had supposed that the wrapper—what are you attempting to prove now, Judge, by this Exhibit?

Mr. Zabriskie: I want to show the difference between the two kinds of printing. I want to show that one is an imitation of the other.

Mr. Breslin: I object to that.

Mr. Zabriskie: And I want to show—I want Mr. Spencer to show how the "A" is made in one and how it is made in the other.

Mr. Breslin: That is for the jury.

The Court: He has testified that P-29 was the handwriting of the defendant. Now, I will permit him to use a specimen admittedly to be the genuine handwriting of the defendant. If he wants to demonstrate, he may do that.

Mr. Breslin: I object to Mr. Spencer talking to Judge Zabriskie at the present time.

The Court: No. You take the stand, Mr. Spencer.

(Witness resumes the stand).

Mr. Zabriskie: Is Dr. Hopper in court?

(No response).

Mr. Zabriskie: In this case I just wanted to show by Dr. Hopper the original letter is lost. There is not any question about it having been lost. That is the reason I am using the photograph.

The Court: Were they marked in evidence yesterday?

Mr. Zabriskie: This that I have in this hand, but these are marked for identification, because it was secondary evidence, and I wanted to prove by Dr. Hopper he was the possessor of the original, that the original was lost by him right after the other trial. Fortunately we have a photograph made.

Mr. Breslin: We are not admitting anything in this trial at the present time.

Q. Mr. Spencer, I show you Exhibit P-25, and I show you Exhibit P-27, and I show you Exhibit P-26, and I show you the letter that was marked as an exhibit, P-13, which we will call the Thelma letter, and the accompanying envelope, and P-11, which we will call the Lippincott letter, and Exhibit P-8, which we will call the Sarah Mowell letter, and Exhibit P-12, which we will call the Burnett letter, being exhibits which are admittedly in the handwriting of Mrs. Von Moschzisker. Now, with these exhibits before you, will you make a comparison between those and the exhibit P-29? A. (Witness leaves the stand and goes to board). I will take the capital "A"—

Q. Now, you better address the jury, so that they can see you. A. I will take the capital "A". And show this to the jury.

Q. Yes. Finish in that. A. In "Avenue". I will show you how that "A" is made (writing on paper). You will notice that the second stroke is very, very heavy, and the third stroke, the stroke across, is also very heavy, showing that the pen, or the stub pen, was held in that position (indicating), the extreme width of the pen point, both nibs of the pen, touching paper, and making a broad

stroke, while the pen held in this position, coming down this way, only one of the points of the pen struck the paper.

Mr. Breslin: I do not like to interrupt, but I assume Mr. Spencer's testimony is based upon his opinion. I do not think he intends to convey to the jury that he did actually see this "A" made. I mean I just want that straightened out at this point.

The Court: This is only his opinion.

The Witness: Only my opinion.

Mr. Breslin: All right.

The Witness: And that is the way the "A" was made.

Mr. Zabriskie: May I interrupt and ask a question now?

Q. Did you ever see Miss Mowell write? A. I have.

Mr. Breslin: I object, if your Honor please.

The Court: We cannot go into that now.

Mr. Breslin: That is a different issue entirely.

The Court: Let us finish one proposition first.

Mr. Zabriskie: I will withdraw that question.

Q. Can you tell from this writing whether it was done by a right handed person or a left handed person? A. I certainly can.

Q. Was it done by a left handed person or right handed person? A. Exhibit P-29 was done by a right handed writer.

Q. Proceed. A. The "A" is not closed at the top, as you will see there in "Avenue."

Mr. Zabiskie: I wonder if I might interrupt again, if your Honor please. We have glasses here, magnifying glasses, for each member of the jury, and if there is no objection—

Mr. Breslin: I have not any objection.

Mr. Zabriskie: I think they could see some of these things so much better.

Is there any objection on the part of your Honor?

(Magnifying glasses handed to the jury).

Mr. Zabriskie: With your Honor's permission, may I withdraw Mr. Spencer a moment? I see Dr. Hopper has just come in the court room.

The Court: All right.

(Witness withdrawn).

DR. JOHN B. HOPPER, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Zabriskie:

Q. Dr. Hopper, where do you live? A. Ridgewood.

Q. What official position do you hold there? A. Commissioner.

Q. And that is Mayor?

Mr. Breslin: I object. It does not make any difference what position he has.

The Court: Maybe the jury will not hold that against him.

Mr. Breslin: No, I hope not.

Mr. Zabriskie: No.

Q. Doctor, I show you a paper or a photograph which is marked Exhibit P-20 for identification, and I ask you if that is a copy, with the exception of where some part has been cut out, of a letter that you had in the court, in the last proceeding?

Mr. Breslin: I object to it, if your Honor please, on the ground that it is not a true copy. I do not know what parts have been cut out. I think it is some of Mr. Spencer's work. In fact, I am quite sure that he made it, and I object to it for that reason.

The Court: Unless you show it is entire, I will not admit it.

Mr. Breslin: Mr. Spencer cut out what he wanted to cut out for the last trial. I object to it.

The Court: It is altered.

Mr. Zabriskie: Yes. There are some that were taken out for examination.

The Court: No.

Mr. Zabriskie: Well, I will offer it.

Mr. Breslin: I object to it, if your Honor please.

Mr. Zabriskie: You object to it just on the one ground that there are some—

Mr. Breslin: That it is an altered document. It is not a true copy of the original.

Mr. Zabriskie: Your Honor will allow me an exception.

I may get the altered parts. I may be

able to put them on there during the progress of the trial. Then it will be a complete copy.

Q. Now, Doctor, do you know Sarah Mowell, who was the defendant in the other case, and who is the plaintiff in this case? A. I do.

Q. Do you know what her reputation is? Do you know where she lives? A. Yes.

Q. Where does she live, Doctor? A. On Walnut Street.

Q. In what municipality? A. Ridgewood.

Q. Do you know what her reputation is for morality, virtue and honesty in living?

Mr. Breslin: I object to that.

The Court: It is too broad entirely.

Mr. Breslin: Too broad.

Mr. Zabriskie: I am taking the language that received the approval of the Court in the case of The State of New Jersey v. Henry Snover, and that was the precise question that received judicial attention there, and that was the question that was allowed.

The Court: Was there not some limitation as to where?

Mr. Zabriskie: In the municipality in which she lives, in Ridgewood.

Mr. Breslin: I object to it on the further ground that it must be confined to the time before this trouble arose.

Mr. Zabriskie: I will say before this trouble arose, then. Do you know what her reputation then was in Ridgewood, for morality, virtue and honesty in living?

The Witness: Very good.

Cross-examination by Mr. Breslin:

Q. Doctor, how long have you known the Von Moschziskers? A. Oh, twenty-five or thirty years, something like that.

Q. And at the present time you are not on friendly terms with them, are you? A. Yes.

Q. Is it not a fact that you have been unfriendly with them for about at least ten years? A. It is not.

Q. Is it not a fact that you had some trouble with Mrs. Von over a horse that was brought to you for treatment? Yes or no? A. No.

Q. Doctor, you have not spoken to Mr. or Mrs. Von during the last twelve years, have you? Yes or no? A. Yes.

Q. How many times? A. Every time I met Mr. Von.

Q. Just to say "Hello"? A. Oh, no.

Q. Well, have you talked to Mrs. Von in the last twelve years? A. Not to my knowledge.

Q. And yet you say you are on friendly terms with her, although you have not spoken in the last twelve years? A. Well, perhaps it is the other way around.

Q. Well, in other words, the two of you don't hit it off very well, do you? She does not like you, or you do not like her, one or the other; the result is just the same, is it not?

Mr. Zabriskie: I object to it. That seems to be a multiple question.

Mr. Breslin: That is all.

Redirect-examination by Mr. Zabriskie:

Q. You have not anything against either one of them personally? A. I have not.

Mr. Zabriskie: That is all, for the present, Doctor.

I will probably get another photograph which will be full and complete.

(Witness withdrawn).

Mr. Zabriskie: Now, Mr. Spencer, if you will just return.

BUSHROD H. SPENCER, resumes the stand and testifies further as follows:

The Witness: There are 74 capital "A's" in Exhibit P-29, and practically every one of them—practically every one are open at the top. You see there (drawing).

Direct-examination (resumed) by Mr. Zabriskie:

Q. May I ask you one question at this time. Are you a photographer? A. I have taken a few photographs.

Mr. Zabriskie: I will ask to have these marked for identification. They can all be marked the same number. They are all the same thing.

(Photographs marked P-36 for identification).

Q. Now, did you cause some of the "A's" in the letter that you are now discussing, the S-10 in the former case, to be photographed? A. I did.

Q. And I show you the paper that has been marked P-36 for identification, and I ask you if that contains some of them? A. It does.

Mr. Zabriskie: I offer that in evidence.

Q. Are they enlargements of the— A. They are enlargements of the—

Mr. Breslin: I object to that, that they are enlargements, and upon the ground that it is a matter of common knowledge that photographers can dope up pictures in any way they see fit, by coloring, and so on.

The Court: What does the photograph represent, one exhibit or a series of exhibits?

Mr. Zabriskie: Well, it shows under the photostat here the "A's" of the letter that Mr. Spencer is referring to, the "A's" and the "B's", as I understand it.

The Court: And when you speak of the standard, is that the one that is P-29?

Mr. Zabriskie: Yes, P-35.

The Court: Do I understand, Mr. Spencer, that you say the "A's" in the standard are the same as the "A's" in the questioned documents?

The Witness: I didn't say they were the same. I said they were entirely different. The standard "A" is closed at the top, and the questioned—

The Court: I want to know what exhibits are photographed.

Mr. Zabriskie: This apparently is from the original S-1, those two, but that could be disregarded, as far as I am concerned, and just Mr. Spener can—

The Court: No, you better leave it on.

Mr. Breslin: If your Honor please, I would like the stenographer to repeat the answer that Mr. Spencer made a few moments ago in response to your Honor's question.

The Court: That is referring to the exhibit, the proposed offer.

Mr. Breslin: When your Honor referred to the standard "A", that is, the standard "A" of Mrs. Von?

Mr. Zabriskie: No.

Mr. Breslin: Of whose?

Mr. Zabriskie: Miss Mowell's.

Mr. Breslin: Then I object to it.

Mr. Zabriskie: It did happen to have that on.

Mr. Breslin: No, I object to it.

The Witness: Cut it off.

The Court: I thought you said that standard "A" was P-29.

Mr. Zabriskie: P-35.

The Court: Did you not just tell me it was P-35?

Mr. Zabriskie: Yes, I did. I mis-spoke. I get those numbers confused. As I said, this was S-1 in the former case. As far as I am concerned these are from S-1, all those there, and Mr. Spencer is showing how the "A's" and "B's" are made.

The Court: I see no point in that offer, if that is all that is to be used for.

Mr. Zabriskie: I will withdraw the offer at this time.

Q. Then you proceed as you were proceeding,

Mr. Spencer. A. I find no "B" on this automobile license with which I can make a comparison. There is no "B" here. She says she did not make—

Mr. Breslin: I object to speeches—

The Court: You are not testifying.

Mr. Breslin: —on the part of this witness that has testified in 500 cases. He knows how he ought to act in court.

The Court: Anything you cannot testify about, remain silent about, and do not comment.

The Witness: I have nothing to compare it with.

The Court: Well, then, make no statment concerning it.

Q. You just proceed with the next letter, where you can make a comparison in the same way that you did with the letter "A". A. Take the capital "E" in "Emma". That "E", that first stroke made —this is made with a—I am using a different pencil that I did in making the "A". The "E" in "Emma", showing that this first lateral stroke, horizontal stroke, is heavy, showing that both points of the stub pen were right—touched the paper.

These three horizontal strokes of the "E" in "Emma", and the horizontal stroke in "A" are characteristic. They are shaded, heavy, showing that the pen was held in this position (illustrating), thin strokes, the pen pointed more over the right shoulder, and on the edge of the pen, made the fine line.

In Exhibit P-29 you will find, going back to the "A" in the word "same"—I didn't finish that "A".

Mr. Breslin: I object to that.

A. (Continuing) I will go back to the "A" and show how the "A" is made in P-29.

Mr. Breslin: If your Honor please, he has already covered "A". Now he wants to go back to "A".

The Witness: I was interrupted.

The Court: Just a moment. Do not argue with counsel. I will settle any disputes. The trouble is, as I said before, Judge Zabriskie, with a question such as you ask the witness may when he should not. Now, if you have any definite letter that you want to characterize, ask him that.

Mr. Zabriskie: I will ask him now to demonstrate his opinion by the use of comparisons of the letter "A".

Mr. Breslin: I object to that on the ground that the question has already been asked and answered.

Mr. Zabriskie: If he has omitted anything, or if there is something still to say, I do not see any reason why he should not. He started with the "A". Then Dr. Hopper was put on the stand, so he did not finish.

Mr. Breslin: I object to characterizations by this witness.

The Court: Frame your question so we will get his answer.

Q. Now then, just illustrate the way you reach your conclusion, using the letter "A"? A. When I was finishing up the "A" I had in mind to show you the "A" in "same".

Mr. Breslin: I object to what the witness had in mind.

A. In "same" to show you that that "A" is in "same"—is not closed at the top, and the line, the lateral line, or horizontal line, is very heavy in the word "same".

The Court: What specimen which has been shown to have been genuine are you comparing P-29 with, Mr. Spencer?

The Witness: I am comparing that with the automobile license, Exhibit P-25, 1925, standard writing of Mrs. Von Moschzisker.

Q. Now, have you anything further to show the jury as to how you arrive at your opinion, using the letter "A" in either that exhibit or in any of the other exhibits which I gave you, and I am now referring to the Burnett letter, and the Sarah letter, and the Lippincott letter, and the Thelma letletter?

A. I was waiting until I saw the "E". Then I was going to finish the "E".

Q. Are you finished with the "A"? A. I don't know how much time I have for them to look at the "A".

Q. Yes.

Mr. Zabriskie: Unfortunately, we have not any copies of that particular photo.

A. (Continuing) This lateral or horizontal stroke of the "A" will be found in the "E", in the word—you have the wrong license here. The one I had, I don't know where it is, the automobile license.

Mr. Breslin: I object to all these side remarks by Mr. Spencer.

The Witness: I have the wrong one. They had it over there.

Mr. Breslin: Then you were using the wrong one a minute ago?

The Witness: No, I was not.

Mr. Breslin: That is all.

The Witness: I was looking for that "E". I was describing it.

Mr. Zabriskie: Is there any objection to letting the Court take one of these copies of this letter?

Mr. Breslin: I want the Judge to have it. That is P-29.

Mr. Zabriskie: P-29.

Mr. Breslin: That is S-10.

Mr. Zabriskie: And how about P-35? Have you any objection to the Court having that?

Mr. Breslin: No. I have not any objection to the Judge or the jury looking at anything.

A. (Continuing) The next letter is the "M", capital "M" in "Emma". This was written (illustrating)—there is a downward stroke in that "M" that is in keeping with all the strokes to the right. This last stroke on that "M" is very much heavier than the first stroke, and it is a trifle heavier than the second stroke. Those shades are very pronounced in the "M". Am I permitted to use Exhibit P-1 for comparison, the wrapper?

Q. No, no. This is just a question now of the comparison between Mrs. Von Moschzisker's admitted writing and the anonymous. A. That "same", letter "M" in the word "same", that "E" is —was, in my opinion, a simulation of Miss Mowell's writing.

Mr. Breslin: Wait a minute. What was that, please, Mr. Stenographer?

(Answer read).

Mr. Breslin: Well, now, I will leave that stand. Go ahead.

A. (Continuing) That was a different proposition here than this "M" where there was a model for simulation. In the word "same" this second stroke, the second stroke of that "M" in "same" is very much heavier than the first stroke. It is very much heavier than the third stroke, and it is heavier than the last stroke, every lateral stroke and every horizontal stroke, from beginning to end, from "A" to "Z", that prominent characteristic stands out, that there is a shade the full width of the stub pen on every stroke, every letter.

Mr. Zabriskie: I was wondering if we could not get some of these photographs over to the jury, of S-10, so that they can see what is going on.

Q. Mr. Spencer, are these photographs true representations of the standard writing?

Mr. Breslin: I have not any objection, if you say so, Judge Zabriskie. I would much rather take your word for it than Mr. Spencer's. If you say that is S-10, I have not any objection.

The Witness: You doubt my veracity?

Q. Now, do not talk to him about that.

Mr. Zabriskie: I suppose these can all be marked.

(Photographs marked Exhibit P-37).

Q. Now, then, Mr. Spencer, the jury have among

them photographs of P-29, the anonymous writing in this case, so that will help you. A. Have they got a copy of P-25, the automobile license?

Q. No. We have no copies of that. A. The next letter is the capital "V", in "Von."

Q. Can you say whether that was done by a right-handed person? A. Most assuredly, by a right-handed writer. A left-handed writer would not be able to make that shade, and not be able to make the shade with the pen in this position. It would be more apt to be on this side, if it were a left-handed writer (indicating).

I would like to have you look at the word "convince" on page 3, the bottom line.

The Court: What are you referring to now?

The Witness: That is Exhibit—

Mr. Breslin: P-29.

The Witness: P-29.

The Court: That is S-1 originally?

The Witness: S-1.

The Court: What are you referring to, Mr. Spencer? What page?

The Witness: The word "convince" on the 3rd page, the last line.

A. (Continuing) "Convince". You will notice in that "V" in the word "convince", in Exhibit P-29, that that stroke is very, very heavy, and the second stroke very, very light. The next letter is the small letter "o" in "Von". Now, that "o", it was not made with two operations, like that, but it was made heavy, when the pen was held in this position; that heavy shade was on the lower part of that "o". I have something that looks like a "u",

but that "o" in "Von" does look like a "u" in that case, this part of that "Von"—

Mr. Breslin: I wonder if Mr. Spencer knows what he is referring to now? Which "o"?

The Witness: The "o" in "Von", "Emma Von".

Mr. Breslin: All right. You are referring to P-29 now?

The Witness: I was referring to the automobile, P-25, the automobile—this is on the automobile license, in her name, P-25, 1925 license.

A. (Continued) You take the word "neurotic" on the first page, "neurotic". "Who's brain is neurotic?", and see how that shade is also so apparent in that "O", in the lower part of that "O". That is a simulation of the Exhibit P-29. That is a simulation. This automobile license is careless.

The Court: What is that? Just a minute.

The Witness: This automobile license, P-25, is careless work, quick work, which no doubt accounts for it not being closed at the top.

Mr. Breslin: I respectfully submit that Mr. Spencer is not—

The Witness: I withdraw that.

Mr. Breslin: Oh, you withdraw that?

The Witness: I withdraw the latter part of that statement.

Mr. Breslin: That is all.

The Witness: I don't know why it was accounted for, but it is not closed at the top.

This shade on an "O", on a "U", on a "C", on any oval letter—

Mr. Breslin: I object to Mr. Spencer referring to any other letters than the letter under discussion. Under your Honor's ruling, he is to discuss one letter at a time.

The Witness: It runs all through every letter, this characteristic.

The Court: All in that; all right.

The Witness: A casual observer may not have noticed this.

Mr. Breslin: I object to that remark, if your Honor please.

The Court: No comments, Mr. Spencer; just give your opinion.

The Witness: Running through every "N" in any writing, this writing, in any of this writing, we find this very prominent shade on the second stroke. I pick out—I wish to pick out a letter on Exhibit P-29, to show you where that characteristic maintains all the way through, "So you think my threat to sue you"—

Mr. Breslin: I object to Mr. Spencer reading from the letter. He is not here for that purpose.

The Court: No. We are not concerned with the contents of the letters at all. They have not anything to do with this case.

The Witness: "N" in "think", Exhibit P-29, the second line—

Mr. Breslin: Now, I object to Mr. Spencer going back to the other letters. He is just stalling for time, that is all.

The Witness: I am waiting on the jury.

I can run right through this. I am waiting for the jury to see.

Mr. Zabriskie: I will just interrupt at this point, Mr. Spencer.

Let us get the exhibits that were in question yesterday.

I think perhaps, if your Honor please, it might be well for us to determine about the exhibits. There was some question as to whether or not they were in or not. Now, let us take them up in order.

I will take the Exhibit P-14, being the writing that was made in court at the last trial, and it was marked P-14 for identification. Now, from what your Honor said at the outset, I do not know whether it is your Honor's intention to admit P-14 or not. I will offer it for the purpose of getting the question before the Court.

The Court: I will admit it now for the purpose of comparison.

Mr. Breslin: Your Honor has already ruled on those this morning, and I have my objection.

The Court: Yes.

Mr. Zabriskie: And this can be offered for identification.

The Court: In other words, yesterday we excluded them.

Mr. Zabriskie: They were only marked for identification yesterday. That is as far as they got.

Mr. Breslin: And they are introduced, and their use will be restricted and confined solely to standards?

The Court: Absolutely.

(Papers marked Exhibit P-14).

The Court: Looking at P-29 you emphasized some characteristics concerning the word "convince" with reference to "C". What did you say that indicated?

The Witness: That the second stroke in "N", in "convince", is very much heavier than the first stroke, and the third—what I would call the third stroke, and was written with the right hand.

By the Court:

Q. Well, now, how do you account for the difference in shade between—I am now referring to P-29, that word "convince"? How do you account for the difference between the "C" and the "O"? A. I say—I see no difference. There is no difference.

Q. I mean in the shading. A. There is no difference in the shading. One is a little bit heavier, on the "C" than on the "O", because "C" is a capital.

Q. Is there not a difference in shading there? A. There is more shade on the lower part of the capital "C" than there is on the lower part of the "O". But the lower part of the "O" is twice as heavy as the upper part of the "O".

Q. Well, then, there is a difference? A. And a photograph would show that distinction.

Q. Yes. An enlarged photograph.

Q. Would you say that the "N" was heavier than the "O"? A. Well, the lower part of an "O" is shaded, while the complete length of the "N" stroke, from top to bottom, is shaded. There is a different position of the shading in those two letters.

Q. Now, looking at "R", the last letter in the

word "never", how would you characterize that, as being light or heavy? A. In all "R's"—

Q. No. A. In that "R", and every other "R"—

Q. No. On that "R"—

Q. Yes. A. The upper part is heavy, where it turns to the right, and both points of the pen are brought squarely on the paper.

Q. Well, is not that stroke very light? A. I consider it a good deal heavier than the stroke in the "H" right—the perpendicular stroke, a great deal heavier.

Q. Would not the "R" convey to you—I am asking your opinion—that at the conclusion of the making of the "R" the pen might have been dry? A. That is a possibility.

Q. Well, now, if the pen were dry, and you dipped it in the ink, then the next letter would probably show heavier than the last letter, would it not? A. If there were no ink on the pen to speak of, you would not get very much of the width of a stroke on your final stroke of an "R". When you start off with a heavily-loaded pen, of course, the next stroke might be a little heavier than the first —or last stroke that was made.

Q. Would you say that the reason why this "C" is heavier than the "R" is because a person using the right hand made it, or is it probable? A. It is made by a right-handed writer, and with a stub pen, where both points of the stub came full. Both points spread right out full width to make the turn there when you go towards the right.

Q. Would you say the "R" was made with a different pen than the "C"? A. Oh, not at all. The whole writing was done with the same pen, stub pen.

Q. If the "C" is heavier because you said it was made by a right-handed person, using the stub pen, why is not the "R" heavy? A. That is a different angle altogether. There is not the same kind. In the "C" we have an oval, and the lower part, and the top of the "R"—the majority of the strokes in the "R" are straight lines, except the turn at the top.

By Mr. Zabriskie:

Q. Now, calling your attention to the paper that is marked P-21 for identification, did you see that written? A. I did.

Q. Who wrote it? A. Mrs. Von Moschzisker.

Mr. Zabriskie: I offer that.

The Court: When was it written?

The Witness: During her trial.

Mr. Zabriskie: During the last criminal trial.

Mr. Breslin: I have a general exception. Your Honor has already ruled.

(Paper marked Exhibit P-21).

(Paper marked Exhibit P-23).

Mr. Breslin: Of course the one you are introducing is the one Mrs. Von Moschzisker wrote at the trial.

Q. Did you see these three written by Mrs. Von Moschzisker, P-21, P-23, and P-22? A. Yes.

Q. All three of them? A. Yes.

Mr. Breslin: He has not even looked at them. How does he know Mrs. Von Moschzisker wrote them?

He has answered the question already.

The Witness: I have seen them many times.

Mr. Breslin: You have seen these many times?

The Witness: I have seen this writing in this court room many times.

Mr. Breslin: How do you know they are the same papers? A. Take a look at them before you answer it.

The Witness: I know her writing so well, I could tell it.

The Court: Never mind. Just answer the question.

The Witness: What is the question?

Q. Did you see Mrs. Von Moschzisker write those? A. I did.

Q. And now you are referring to exhibits, to read the numbers of the exhibits— A. P-22, P-23, P-21.

Q. I call your attention to Exhibit P-22, and I ask you if you saw Mrs. Von Moschzisker write that? A. I did.

Mr. Zabriskie: I offer that in evidence.

(Paper marked Exhibit P-22).

Mr. Zabriskie: And I offer in evidence the exhibit P-8, which was marked for identification yesterday, being a card with the registration B-4309, dated November 22, 1929,

(Card marked Exhibit P-8).

Mr. Zabriskie: And I offer P-9 that was yesterday marked for identification.

(Card marked Exhibit P-9).

Q. Now, with these additional standards before

you, will you proceed to explain to the jury how you arrive at your opinion? A. The next letter is the "B".

Mr. Breslin: What?

The Witness: "B".

Mr. Breslin: I object to that, if your Honor please. Here he is down to "N" in the alphabet. Now he is going to start all over again. Just a minute, Mr. Spencer.

Mr. Zabriskie: No. He has not discussed the letter "B" at all, because he had no standard. Now he has a standard.

The Court: Yes.

Mr. Breslin: I thought he was down to the letter "N" before.

The Court: It does not make any difference. After a while, if we decide there is too much, cumulative—

Mr. Breslin: All right. In view of that fact I will withdraw my objection.

Is he finished with "N"?

The Witness: I finished with the "N".

Mr. Breslin: All right.

A. (Continuing) The "B" in "bank". The "B" in "bank", 8th line. We have a very light line in the request writing in court, Exhibit P-33, "B". This stroke is very light. This stroke, as it turns, is a little heavier. It comes to that point and stops, and the pen is raised as practically in every "B" in P-29. The pen is raised in the "B" in Exhibit P-29.

The request writing in court, the "B", the pen is raised, and starts at that point, and comes around with a very heavy stroke, showing that the

two nibs of the pen were at the extreme width of the paper. The raising of the pen at that point in every "B" in Exhibit P-29, the "B" has been made by the raising of the point; and in Exhibit— in the "B" in the request writing, in "bank", and in "Bluff", and all through, where it is a printed "B", the pen has been raised.

Q. The writing you have before you now, Mr. Spencer, did you see that written by Mrs. Von Moschzisker? A. I did.

Q. Was it written naturally or simulated? A. Disguisedly.

Mr. Breslin: I object to that.

The Court: That is his opinion, that is all.

The Witness: My opinion is, disguised.

Mr. Breslin: Then he is basing his opinion on a disguised standard of Mrs. Von's, and then his opinion is not worth anything. It is not a standard.

Mr. Zabriskie: Can people disguise?

Mr. Breslin: All right. I will withdraw the objection.

A. (Continuing) The "D"—

The Court: Now, what are you referring to, Mr. Spencer? What exhibit?

The Witness: The request writing.

Mr. Breslin: Right here.

A. (Continuing) "Doctor", "D", the 5th line, where a turn is made, the heaviness is made. You get that "D" heavy. The Exhibit P-29, the "D" in "Doctor", you will notice—I will just print that at this point. That is, in my opinion, the simulation,

a simulation. That is a better "D". That is a better shaped "D" than the request writing. This part is, as you will see, very heavy, in the Exhibit P-29, that oval part, the request writing. This is Exhibit 29.

Q. Why did you write that "request"? A. This is the request.

Q. What do you mean by "request"? A. She was requested to write in court.

Q. Oh, I see.

Mr. Breslin: Now, just a minute, Mr. Spencer. In the interest of my client, I would like to examine that comparison here, This is P-29, "D", is it not, the "Doctor"?

The Witness: Yes.

Mr. Breslin: And this is the one written by Mrs. Von?

The Witness: In court.

Mr. Breslin: And they are the same, in your opinion?

The Witness: The same? I mean this one characteristic is the same. I didn't mean the form of the letter.

Mr. Breslin: Oh.

The Witness: I am not saying a word about the form. Only I said this was a much better "D", because it was simulated. This was a disguised.

A. (Continuing) The word "for" on the top of the page of the request writing in court, "F-O-R-", the "F" in "for", P-29, "for he has influence." That is the "F", where it says, "he has influence", "F-O-R", the 6th line, second page.

The "F" in the request writing is the same

heavy stroke, and this stroke made very high, and also very heavy. We find those two characteristics in the request writing in court, and also in P-29, the one in dispute, the same heavy strokes.

Now, let us take the "G". I will pick out a "G", out of that request writing.

Q. Now, suppose, Mr. Spencer, we just withdraw from that line of argument for a minute, because it is probably getting monotonous. You understand, do you, that all of those papers that are now on this ruling are standards, do you not? A. I understand they are standards.

Q. That can be used? A. Yes.

Q. Are there other things besides the formation of letters which, in your opinion, serve to indicate to you whether or not the same person has or has not written them? A. Numerous things.

Mr. Breslin: Wait a minute. I object to that. Let us proceed in an orderly way, and let us finish the alphabet.

Mr. Zabriskie: If you prefer the alphabet, we will go on.

Mr. Breslin: I have not made any objection. We want to finish this trial some time.

Q. With that in view, you may proceed along your own line again.

Mr. Zabriskie: I was going to diversify it a little.

Mr. Breslin: No. I want to finish it up some time this week.

Mr. Zabriskie: Yes. Well, all right. I thought it was getting tiresome, that is all.

A. (Continuing) The "G" in "I haven't gone back to Kingston." The "G" in "Kingston". In every "G" in P-29, and in every "G" in all the request writing, it is made by two operations, in this way (writing).

In "Kingston" we have the "G" something like that, as near as I can reproduce it, two operations. First this stroke, and usually heavier at this point, as in all "O's" and in all "U's", than at any other point in the letter, except the last downward stroke, which is very heavy in "Kingston".

Q. May I ask you, in your opinion, the word "Kingston", in the rest of that exhibit, is that natural writing or otherwise? A. No; disguised. All disguised, every bit of it. May I refer to any writing in Exhibit 29?

Q. What do you say? A. I want to show how Miss Mowell made a "G".

Mr. Breslin: Now, I object to that.

Q. No, you cannot tell that.

The Court: Just answer questions, Mr. Spencer.

Q. Do not mention Miss Mowell's writings. That is not being discussed at this time. A. Every "G" in P-29, every "G" in Exhibit P-29, and every "G" in the request writing is made with two strokes. Even one of them is made that way (indicating). That is a backward "G". That was, well, writing made backward. And I don't know whether—I have not examined it closely to see if the pen was raised in that backward "G", but there is a backward "G" in the request writing. But the majority of "G's" are made with two operations in the request writing in court, and they are two opera-

tions in all the writing in the exhibit P-29, the one in question. I say all the "G's". A great majority of the "G's", 95 per cent. of them.

Mr. Breslin: You want to change it?
The Witness: Modify it slightly.
Mr. Breslin: Yes, modify it.
The Witness: It has to be.
Mr. Breslin: I see.
The Witness: Wouldn't be too perfect.
Mr. Breslin: You are far from it.

A. (Continuing) I wish you would look at "Ha! Ha!" on the request writing in court for an "H", "Ha! Ha!", the last two words, and then look at the "Ha! Ha!" in Exhibit P-29.

(Witness draws). That is an enlarged—I will make it more like that, which is a better representation. I don't want to exaggerate it, but it is very, very much heavier on these cross strokes in an "H", in "Ha! Ha!", very much heavier than it is—than these perpendicular lines and the exclamation mark after "Ha! Ha!".

You notice how that "H" is made in "Ha! Ha!".

Mr. Breslin: Which "H" are you referring to now?

The Witness: In the "Ha! Ha!"

Mr. Breslin: Which one, request, or in the standard?

The Witness: The standard "H", the standard "H" compared with the "P-29", the standard "H"—how carelessly it is made in the questioned—in the standard, how carelessly that is made. It doesn't cross. It doesn't join; not properly connected there at all; does not go all the way across. And

the P-29, "Ha! Ha!", the "H" is crossed there better. It is a simulation, is trying to simulate, and it is a better work, but it is very, very strong there, very heavy, all right through.

I wish to take the capital "I". There is not any capital "I" in P—the wrapper.

Q. No, you cannot refer to that. A. No, I know I can't. There is a small "i"—I wish to show you a capital "I" that was made by the request writing in court.

Mr. Breslin: If your Honor please, if there is no comparison between a capital "I" in Mrs. Von's writing, and a capital "I" in the disputed document, how can there be any comparison? We are only wasting time, then.

The Court: I thought we asked Mr. Spencer not to comment unless he was going to make a comparison.

Mr. Breslin: He cannot, in this case.

The Witness: I am going to make a comparison with the capital "I".

Mr. Breslin: I thought you said there was not any in P-29.

The Witness: There is no capital "I" in P-29.

Mr. Breslin: Well, then, how can you make a comparison?

The Witness: I have some of these letters, some of these letters that have been admitted, with a capital "I" on, and I have some of her writing that was admitted in court, and I want to make that comparison.

Mr. Breslin: Yes, but you have not any in P-29, the disputed document.

The Court: Never mind, Mr. Breslin.

Mr. Breslin: I object, if your Honor please.

The Court: Well, unless he has the same letter in two documents, he cannot make the comparison.

The Witness: I will try to find one. All this is numerous specimens. "I laugh", the first after "hav'nt," "I laugh."

Mr. Breslin: I object on the ground that there is no capital "I" in the disputed document.

All right. I will withdraw the objection.

The Witness: I just wanted to show—

Mr. Zabriskie: Just a minute, Mr. Spencer. I will ask you a question.

Q. Mr. Spencer, were you present at the last trial in the criminal case which has been referred to here? A. I was.

Q. And I show you a paper that has been marked P-31 for identification, and I ask you whether that was used by the prosecution on behalf of the State as being a letter that was one of the anonymous letters in this case?

Mr. Breslin: Objected to.

A. It was.

Mr. Breslin: I object.

Mr. McGinnis: I think the witness should be instructed not to answer a question when there is an objection pending.

The Court: Yes.

Mr. McGinnis: He has done it several times.

Mr. Zabriskie: My theory is, under the line of cases that are discussed in Newell, on Malicious Prosecution, that the plaintiff can show to the jury—in fact, can give to the jury the best recollection of the testimony that was adduced against the present plaintiff, and can also show the exhibits that were used against her in the prior prosecution, because it is all a part of the same prosecution. She can say what witnesses were brought against her and what they said, what exhibits were brought against her, and what was said in that former prosecution. And I think one of the cases—it is not a New Jersey case, but I think there is one that goes even so far as to say that the plaintiff, in a present preceeding, can testify before the jury what the prosecutor said in his opening and closing to the jury, and so on. So it is on that theory that I am offering now this Exhibit P-31.

May I ask one question more?

The Court: You may ask him.

Q. Was it stated in that trial, by witnesses on the stand, that the same hand that had written the paper that is now called P-29 is the same one that wrote the paper that is now in the hands of the Court?

Mr. Breslin: I object.

The Court: I sustain the objection.

Mr. Zabriskie: Will your Honor allow me an exception?

Then I will offer this in evidence.

Mr. Breslin: Objected to.

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor allows me an exception.

Q. Proceed, then. A. When I said there was no "I" in Exhibit P-29—

The Court: There are so many exhibits, and so many offers of evidence here, I hope there is an accurate list kept of what disposition has been made with respect to the various documents.

Mr. Zabriskie: Yes. We better have that marked.

The Court: I think any matter which has been offered, either admitted or rejected, ought to be put together with a notation. We should not put letters there with counsel's papers, and others here and there. I think we ought to keep them all together.

Mr. Zabriskie: The discussion was concerning the paper that had been marked for identification, P-31, so I think that will keep that straight.

The Witness: When I spoke of the capital "I", being no capital "I" in Exhibit P-29, I had reference to a capital "I" without a serif.

The Court: Without what?

The Witness: Without a serif, a little line protruding from a heavier line.

Q. Will you just demonstrate to the Court and jury what you mean by a serif? Is that a technical term? A. Well, it is a definition given in Webster's dictionary.

The Court: There are a lot of definitions there that we do not know.

Mr. Breslin: A lot of words there that you do not know, Mr. Spencer.

A. (Continuing) Now, that is not properly a serif on the lower part of the "I" and the upper part of an "I". That is not, because it is a little too heavy. A very fine line protruding from a heavier line is called a serif. But when I spoke about having no capital "I" in Exhibit P-29, I meant that kind of an "I". But I find in the Exhibit P-29 an "I". "I guess". It is on the last page, the third line, "I guess".

That "I" was made like this (illustrating). It is made like that, a single stroke with no top, no horizontal top, and no horizontal base. That is the way the "I" is made in P-29.

I find the same kind of an "I" in the request writing, the same kind of an "I" in the request writing, with this "I guess," the same stroke, with a dot over the capital "I", a dot over a capital "I", the only difference. That stroke is just the same in P-29, and the request writing, just the same kind of a stroke.

All dots on "I's" in the request writing and admitted writing, of course, are very near the top of the letter, both small and capital. But I can make no comparisons with the other "I", with the other writing.

Q. Now, the capital "J" that you see in "Judge Doremus", "J", and in "just", the word "just", as it appears in the third line, and as it appears in the center, and down at the last page, "Judge".

Q. Can you say whether that is done by a right handed person or a left handed person? A. I will

show them how it is done with right-handed writing.

The Court: No. Answer the question. Was it done by a right-handed writer?

The Witness: It was done with a right-handed writing, in my opinion.

The Court: I mean there is no demonstration required now.

A. (Continued) This "J", a trifle heavy on the lower curve. This "J", the lower part of the stroke, was made up, and this stroke was made upwards, made upwards, when the pen was held in this position. It was held up that way, and was cut off on that angle. That stroke is made upward. That "J", and the "J" in the request writing, that upward stroke there, is just a stab of the pen. It is just a stab. There was no attempt to do it at all. It was really made with a heavy stroke.

Another "J" over here, the word "just", in the Exhibit P-29, a capital "J". We have it in the request writing, a small letter "j", so that there is not the proper comparison to make, and it is the same in the third line. It is a small letter "j", while in the capital it is—but we will take the "Judge Doremus." We will take the only "J" I can find in the request writing, and show wherein the characteristics, at least in one place, is the characteristic—is the same, and that is on the heavy part, and she has left off—this was left off (indicating), and this stroke; this stroke was made in the same pen pressure, struck down, something like that, as a disguise, struck downward in that "J", that was struck downward instead of struck —but all the "J's"—I think I have some "J's" over

here in the admitted writing, the capital "J's".

Well, as that "J" in P-29, referring to it, you can see it now. I wish to refer you to a stroke that is made with the same characteristic stroke in the letter, in the letter to—this one will do just as well. The upward stroke in "Lippincott", the upward stroke in "Street", that upward stroke is made similar to the upward stroke of the top of the "J" in Exhibit P-29.

This upward stroke in "character" in the letter to Mr. Burnett, the upward stroke in "Burnett", all these upward strokes after a "T", the word "to", all those upward strokes are characteristic of the upward stroke at the top of a "J".

The word "this,"—take the word "this," "T-H-I-S." I will try to copy this writing, "this," (writing that upward stroke. Mine slants a trifle more than the one in this standard writing. But you find that is the stroke that we find in this Exhibit P-29, that stroke. There is a little difference in the slant, because one is marking and the other is script.

The word "last", "in our last conversation," the last word on the second line, "in our last," I will just show the comparison of that "t" stroke in that word "last", with the upward stroke from the top of the "J", in "this", and that word, "Town."

Take the word "Town" on the enelope, "Town", and compare that stroke with the last stroke and and the "J" upward stroke. Notice how those strokes are the same width, practically the same slant on it now as in the top of the "J".

Now you can see the word "Town". Do you see that upward, the top of the "T" in "Town", and the upper part of the "J" in "Johnson"—in "Judge Doremus"? And that, we have not come to that

yet. We have not come to that stroke. That is a different stroke, different simulation, of somethink entirely different.

Mr. Breslin: What are you referring to, the different stroke?

The Witness: I refer to a top over here, a capital "M". We have not got to that yet.

The capital "K" in Exhibit P-29, the final stroke has a tendency to go toward the right of the vertical. It slants off. I will show you that.

Now, the "K" in Exhibit P-29, the last stroke in the "K", has the tendency to slant in the word "sick", "make you look sick." The dash after the word "sick". You notice that "K" is made so (writing), the first light line, very light line, made with the one nib, one point of the nib, and then it starts down in this way, and then at this point, and at that point it will be heavier than any other. Have the wrong pencil.

That is where the pressure is observed on the last stroke, the stroke to the right.

Now, that "K" has a tendency, in the majority of the "K's", to slant slightly toward the right, and I will try to find a "K" in Exhibit—the request writing, to find out if I can find a "K" that has that.

Q. I notice there is a dash right after that, Mr. Spencer. Is there any significance in whether there are or whether there are not dashes profusely through writings? Has that any significance?

Mr. Breslin: I object to that. Let us get this "K" out of the way.

Q. Take up the "K", and then take up the dashes.

The Court: Judge Zabriskie, if we are going to take up every single letter in every exhibit, we will never finish with it.

Mr. Zabriskie: We are only just taking it up—

The Witness: Pretty near through now, with the "K."

The Court: All right, proceed.

Mr. Zabriskie: Mr. Breslin wanted every letter, you know. That was his suggestion.

Mr. Breslin: I didn't want every letter. You asked him. My experts will take up three or four similarities and let it go at that.

The Court: All right.

A. (Continuing) Well, the "K" in the request writing, the first stroke—the characteristics are the same in this first stroke, but when it came to this one, that corresponds, only it is made a good deal longer, the same quality of line, but here we get just a little more pressure on the down stroke, and this tendency to go to the right.

I will take the "L" next. Capital "L", in any word which you find in this, or in that Exhibit P-29.

In Exhibit P-14 and Exhibit P-29, any "L". Then the word "fool", the last stroke, the word "fool".

Now we have that "L" in the request writing, a very fine example. Here is the request "L" in "fool", very heavy. There is the request writing, the writing which was done in court.

And I will place right under that the Exhibit P-29, the questioned writing, to show you how the

word "fool"—to show you that "L" in the original questioned letter, that "L", the lower part of that "L". I will make it just as it is made in the —has the same characteristics in those two "L's", the first stroke, the same, the second, just the same, showing that the hand that wrote that wrote that. The hand that wrote the "L" in P-29 also wrote the writing we have in court.

Take the "S", capital "S". Now, this "S" in P-29, "So you think," the first word, "So". All those little simulations up there, trying to simulate someone else's "S". Here we have the pen turned this way, and pushing along and making a very blunt ending.

Mr. Breslin: Pardon me. I do not like to interrupt, if your Honor please—but which "S" are you referring to now, Mr. Spencer?

The Witness: The word in P-29, the first word in P-29, Exhibit P-29.

Mr. Breslin: And which was the other "S"?

The Witness: The first "S" made by her, which was this, a duplicate of—well, they are both the same one. I was trying to get it simulated—I was trying to simulate that "S".

Mr. Breslin: Now, if your Honor please, I object. Here is this man representing all these "S's". He represented the "S" in the request writing, and this "S" in the anonymous writing, and now he wants to change it.

The Witness: No, nothing of the kind.

The Court: Just a minute.

Q. Do not discuss it. Just answer the question.

The Court: What was the answer to the question before the discussion took place?

(Last answer read).

The Court: Now, do I understand that the markings on the paper which you have made are different from both, or are they exactly the same as the two that the jury are looking at?

The Witness: I made no reference to the request writing when I made those two "S's". I was trying to simulate P-29.

Mr. Zabriskie: I consent that it be stricken out.

The Court: No, strike it out.

Do nothing of the sort hereafter.

Q. Just show what is in the admitted.

The Court: Just a minute, Mr. Spencer. You are called to testify and give your opinion. You are not called upon to give a demonstration. Now, you are privileged to testify as to your opinion, based upon comparisons, but we do not want any demonstration on your part, not what you think is this or that. You are to pass on the evidence before us, and not make evidence.

Q. Now, there is no question pending, except I will say, proceed to show by reference to the admitted and the disputed what you base your opinion on as to their being written by the same hand. Now, then, take an "S" from the admitted writing as a basis. A. I will try to make that "S".

Q. Supposing you take one particular one, so that—

The Court: No.

The Witness: The one "S" in "So".

The Court: No.

The Witness: The word "So" in P-29, I wish to make a simulation of it, as near as I can make it.

The Court: No.

Mr. Breslin: You have already made two.

The Witness: I am going to try to show all the characteristics on that.

The Court: I will not permit that. You point out. Take one exhibit, or take both of them, and point out to the jury the similarity or dissimilarity.

Q. Now, I would suggest, Mr. Spencer, that you get your exhibit.

The Court: Get the exhibit first.

A. I will. There is the P-29.

Q. Yes, that we have.

Mr. Breslin: That is the third "S" he has made for P-29.

A. There is "So" right there. Taking "S" in "So", second line, Exhibit P-29, and we will compare—I wish to compare that "S" with the request writing, the "S" in "So".

The Court: What exhibit is that?

The Witness: To show wherein the characteristics.

The Court: Just a minute. What is the request writing? What is the exhibit there?

The Witness: That is Exhibit D-33—
Mr. Zabriskie: No.
The Witness: Exhibit P-14.
Mr. Zabriskie: Right.

A. (Continuing) This request writing, in the lower part of the "S" it is made heavier; it is made heavy, and like the capital "G", it is practically made upside down, because it is a disguise, but this part is thrown up a little, and it is made heavy in there, made a little heavy in there, and it is thrown up a little bit farther than in the Exhibit P-29.

The "S" in "sue", in the last word of the request writing, "sue", I wish to compare that, the standard "S", with the question "S" in the same word "sue", "S-U-E", the second line of Exhibit P-29.

In this "S", in this standard "S", we have an ending that is also rather blunt, made in that way (illustrating).

I will show you the same "S", the same kind of an "S", in the word "should". In the word "should" this "S". This is Exhibit P-7. This "S" is similar, very small there. It is very small in this one at the top, very small. And here we have this shaded part again.

Now, that kind of an "S" will be found in P-29, and it is found running all through, in the word "It's", and "so", "It's" and "so". You find the same kind of an "S" in the standard, P-7, which you find in the Exhibit P-29, same characteristics; slight differences in the ending, the height of this stroke, but the pressure is at that point in the request writing and also in the Exhibit P-29.

The "T", capital "T", "so you think", in the Ex-

hibit P-29, the request, standard writing—

Q. Would you say whether that "T" was made by a right-handed person or a left-handed? A. That "S"?

Q. The "T". A. The "T", right-handed writer, in the P-29, the questioned writing. The "T" in "think", "so you think,". I want to compare the "T" in "threat", "T-H-R-E-A-T", in Exhibit P-14, with the "T" in Exhibit P-29, the same word, "threat".

Now, this "T" in this standard writing, this was fast writing in court, and it is on a little slant, but the very fine line is there. But when it comes to the horizontal strokes, the cross over the "T", the cross over that "T", we have just the same "T" here that we have in that Exhibit P-29, the same kind of shading. See, those two crosses on those two "T's."

Q. Proceed. A. The "W". Take the "W", the "W", light line. I will pick out a word to compare. "so now who's", the 8th line, about the 8th line down. We will compare that "W". Or an easier reference would be to the "W" in "will", "he will bank". The "W" in "will", the last line, the last line in the standard writing, the "W" in "will", on the first page, "will". This is the 5th line. That can't be the one. Where it says "he will bank", that is what it is, "he will bank".

We will take that "W" in "he will bank," the 5th line, second page of Exhibit P-29. Well, the first stroke is a little heavier, the next one light, the next one a trifle heavier, and the next one so (illustrating). All these lateral strokes that are a little heavier, they are a little heavier in nearly every stroke in the standard writing, a trifle heavier. There is a tendency to have more pen

pressure there. They are quite heavy, as you will see in P-29, on the downward stroke.

The "X"—you will find the word "expert" in there, which comes to the last of the letter, the very last, over here. It is the first in "expert", top of page 3, top of page 3, the word "expert". The first stroke of the "X" in "expert" is so fain you can scarcely see it—disguised writing. It is like Chinese. And the second stroke in that word "expert" has all the characteristics of the "X" in the standard, in the same word. That stroke is heavy. And that is the only stroke that I can—that may be seen there in the standard writing, as this first stroke. All I see there is just something about like that one stroke in "expert".

The "Y" in all the standard writing of this Exhibit P-14, comes below the line. P-14, the "Y", we well take the second word "you". That lower part of the "Y", the "Y's" we find—the capital "Y" in "you", and the standard, heavy, this light, and this light; and you will notice that in the standard writing, running all through those "Y's," they are carried very, very far below the line. That same thing, that same characteristic maintains throughout the writing that you see in the questioned writing, P-29, that same thing; the "Y's" are brought below the line. The "Y's" are brought below the line, all through this, running all through it, and in "yourself", is the one I wish to show you, where the "Y" in "yourself" is carried not so far below the line as in this request writing, but it is below the line. It is not right plumb on the line in every case. It has a tendency to drop below the line, the last stroke. That word "copy", put a rule over it, photographed and enlarged, would show

quite a good deal of that line below the base line.

Now, the "Z" is made—is not made properly that way (illustrating).

Mr. Breslin: I object to that, "is not made properly". I thought your Honor restricted Mr. Spencer's testimony.

The Court: Strike that out.

The Witness: Well, a "Z" is made like that "Z".

Mr. Breslin: Now, I ask that Mr. Spencer be confined—

The Court: No, just—

The Witness: Pardon me. I will get my letter and copy for comparison.

The Court: No. Now, just listen. I told you to make comparisons, but we were not going to make any evidence to show what was or was not done.

The Witness: Well, I was in a hurry—

The Court: I want you to respect that ruling.

The Witness: —tried to get through, rushing through.

The Court: Well now, never mind that.

The Witness: Find the "Z".

Mr. Breslin: I object to that. Mr. Spencer is saying "Find the 'Z' for the jury."

The Witness: The first line of the writing, "Von Moschzisker," there is a "Z", and we have a "Z" on Exhibit P-14, the request writing, and compare the request writing with the P-29. The same characteristics maintain in each "Z", the top part of the "Z", the first stroke, the second stroke, in the standard writing, is heavy. That stroke is heavy

(indicating), this one light, this one heavy. That is the standard writing, court writing. On Exhibit P-29, we have heavy, light, heavy.

Mr. Breslin: Pardon me for interrupting. The last "Z" was based upon which specimen?

The Witness: "Von Moschzisker", P-29.

Mr. Breslin: The "Z" that you just made was from Exhibit P-29?

The Witness: P-29.

Mr. Breslin: And you had P-14 in your hand when you made it. You had this paper in your hand, which you handed to this jury. That is P-14.

The Witness: All right. This "Z" that I made was for this one, and this one was from P-29. That is the way I said it, I am quite sure. There are in Exhibit P-29 about

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Q. Are you taking up the question of dashes? A. Dashes. The number of dashes that are in P-29.

Q. Will you show the jury whether or not there are dashes in the admitted clipped writing of Mrs. Von Moschzisker? A. "Tuesday", Exhibit P-13, and the dash after "Von Moschzisker" in the writing, in the questioned writing, the dash; and look at the dash in this, after "Tuesday". I count 28 dashes in Exhibit P-29, the questioned writing.

Q. Do you know how many there are in the admitted writings, as far as they have been admitted, Mr. Spencer, or not? A. A letter, Exhibit P-12, there is a dash—there are dashes after "Burnett".

Mr. Breslin: Now, I object to this. Let

him give the number of dashes. He does not have to read the words.

Q. Do you know how many? Have you had a chance? A. I did count them. I did count them and had them on my cards, but everything has been—

Q. I will withdraw that question. Is that a characteristic that aids you in determining? A. Characteristic. One of the most prominent and outstanding characteristics of the whole writing are the dashes. Invariably on the line, invariably. There are only two dashes in the request writing in court, as I recall, two dashes, both on the line, both made like the dashes in the Exhibit P-29. The most outstanding thing of the whole writing are these dashes on the line, always on the line, a dash right on the line. As the word "Burnett" (illustrating). Now, that dash right on the line there—at the ending of every sentence, it is on the line, every time.

Q. Can you say whether or not that was done by a right-handed or left-handed person? A. Oh, that dash could not have been made like that with a left-handed writer. That is held with the pen and made with a stroke that way. It could not have been done successfully. It is done by a right-handed writer.

Every pargraph in all these admitted letters, P-12, P-7, beginning of every paragraph, every first paragraph, in any standard writing of Mrs. Von Moschzisker, "Dear Mr. Burnett,". We have three —"Dear Mr. Burnett." Every one of those first paragraphs start immediately under the last mark of punctuation, or the last letter of the word above, it starts right under it. What do we find

in the request writing?—In the exhibit P-29, in this questioned, what do we find? What do we find there starting that paragraph? It starts right under the "R" or dash, the first word of the first paragraph. There are four paragraphs in this letter. Two of them start to the extreme left, over to the marginal line, over to the line. One of them starts over near the—it is far in—very near the edge, that three, but right over to the left, one, with a quarter of an inch. There is one other that does start under the question mark.

Now then, starting the paragraphs in any of the standard letters that you have, you will find that every new paragraph, not the first paragraph, every second paragraph, practically every one of them, starts to the extreme left.

Here is one, the letter, Exhibit P-12, "We found", "We found her," that is a new paragraph, a new starting, right at the extreme left.

Take the other standard letter. Take this one. Take the letter to "Dear Thelma", the first paragraph starts right under the last letter, a second paragraph directly on the marginal line, directly.

Take any of these envelopes, and these standard letters, and every one of them begins right over to the extreme left of the margin, there, right over, every one of them, and we find in this questioned envelope it starts right at the extreme left. Here is an envelope which starts over to the extreme left, right there.

Now, I want to show you the Exhibit P-29, and show you where that envelope starts. You see, it starts right over to the extreme left there. It follows right out. That is a habit of the writer, it is a habit.

Mr. Breslin: Now, I object to Mr. Spencer repeating, time after time, it is a habit. He has testified that it was a habit, and let it go at that.

The Court: Yes.

Mr. Breslin: But he wants to make a speech, so he repeats it again.

Mr. Zabriskie: I suppose the trouble is it is a habit to him to repeat.

The Court: He seems to forget that he is just a witness today.

Mr. Zabriskie: As I say, it is his habit of repeating. Some of us do that. I do it myself sometimes, not intentionally.

The Witness: The underscoring that you find in these letters, "Dear Thelma", the "Lippincott" letter—

Mr. Breslin: Just a minute. If your Honor please, I would like Mr. Spencer's last statement to be read for the benefit of the jury.

(Last statement read).

Q. Mr. Spencer, may I ask you, have you said everything you want to say to the jury? A. I want to find out what letter has the underscoring in, what standard letter has the underscoring in.

Q. Well, that may not be in evidence. A. Well, it is in evidence, I am sure.

Q. Well, I will withdraw that line of questioning for the minute. I am going to ask you this: Now, do characteristic mistakes in punctuation sometimes assist you in determining whether or not different writings are done by the same hand? A. It has all to do—it has a great deal to do.

Q. With that in view, will you take the anony-

mous letter? With that in mind I turn over to you these exhibits, and call for the four slips. That is easier than to remember the number. A. On page 3 of Exhibit P-29, the word "habit" appears, or "had'nt".

Mr. Breslin: I would like to have that read.

(Last answer read.)

Q. I would suggest, that instead of relying on your memory, that you take a look at the exhibit each time, and take it up in that way.

Mr. Breslin: I object to Judge Zabriskie helping this man out, and I submit—

The Court: This man had something in his hand, and let the jury pass on the credibility of this witness.

Mr. Zabriskie: I withdraw the remark, then.

The Court: The jury is going to pass upon the credibility of everything he says.

Mr. Zabriskie: Yes, surely.

The Witness: I want to change that word "habit" to "had'nt." I have not any copy. The fourth page of Exhibit P-29, "a jury that you "had'nt", and I wish that you would look at the apostrophe in "had'nt".

Q. Is it put in the correct place there?

Mr. Breslin: I object to that. Mr. Spencer is not a student of English or an expert on English. He might be on handwriting.

The Court: That does not require an expert opinion. The jurors can decide that themselves.

Mr. Zabriskie: Yes.

A. In the request writing in court (witness writes), that apostrophe is in Exhibit P-29, right between the "D" and the "N". It is right between the "D" and "N". It is right between the "D" and "N", in the request writing in court, and that is not the place for it.

Mr. Breslin: Well, now, I ask that that be striken out.

The Court: I did not hear what he said.

The Witness: That is a grammatical mistake.

Mr. Breslin: Well, that is for the jury to say.

Q. In your own experience in the past, have you ever found a writer that made that same mistake, Mr. Spencer?

Mr. Breslin: I object to that, if your Honor please.

The Court: I sustain the objection.

Mr. Zabriskie: I will withdraw it.

The Court: We are dealing with comparisons. To know what other people generally do, we are not concerned with that.

Q. May I ask you one thing more about that punctuation? Is there anything that stands out in your mind as to the location of the apostrophe in this disputed and in the admitted? A. It should be between—

Mr. Breslin: No, I object.

The Court: No—

The Witness: Yes, it does. It stands out exactly in the same place.

The Court: Just a minute. Mr. Spencer, when I am making a ruling, you please keep quiet.

Strike that last answer out.

Mr. Zabriskie: I will consent that it be stricken out.

The Court: And I will warn you, Mr. Spencer, if you cannot testify in keeping with the rules, I will not permit you to testify. We will take an adjournment until 2 o'clock.

(Recess)

AFTER RECESS.

BUSHROD H. SPENCER, resumes the stand and testifies as follows:

Direct-examination by Mr. Zabriskie (continued):

Q. You had these standards here, and we were talking about the punctuation shown on the slips, Exhibits P-21, P-22, P-23 and P-24, and comparing with the anonymous letter, P-29, have you made comparisons of the punctuation? A. I have.

Q. And just show the jury what comparisons you have made and what conclusion you reached. A. In Exhibit P-29, line 10, appears the word "could'nt"; page 3, line 10, Exhibit P-29.

Mr. Breslin: We cannot hear him.

The Court: We do not hear you, Mr. Spencer.

The Witness: Page 3, line 10, Exhibit P-29, appears the word "could'nt".

Mr. Breslin: Whereabouts is that?

The Witness: Line 10, page 3, Exhibit P-29.

Q. Mr. Spencer, pardon me for interrupting. Does that indicate the location of the apostrophe as it is in the place you are looking at? A. That is where it is located, in line 10, Exhibit 29, page 3.

Q. I mean in height? A. A little higher than I made it at first.

Q. Now, will you compare that with the standard slip, "I hav'nt gone back to Kingston this winter." I do not mean the whole thing. I just mean the word "could'nt" as it appears in the exhibit.

Q. I see. I was looking at the wrong one.

Q. That one there. A. Yes.

Q. Will you kindly let the jurors have that slip? A. The last word on that slip.

Q. Will you point out the location of that apostrophe on the slip that the jury has. A. (Witness indicates).

Q. What comparison are you going to make now, Mr. Spencer? A. Comparing Exhibit P-23, one of the slips, the word "hav'nt".

Q. How is it spelled here? A. "H-a-v-n-t", "h-a-v-'-n-t".

Q. What are you going to compare that with? A. I am going to compare that with Exhibit P-29.

Q. Suppose you get P-29, so that the jurors can be looking at it. What part of Exhibit P-29 are you going to compare it with? A. It is page 2, line 7.

Q. Does that same mis-spelling appear in that?

Does the same mis-spelling appear? A. Yes. (Witness writes on board). That apostrophe is over the "N", not directly over the "N", it is just about even with the second stroke of the "N", that apostrophe. The question mark—

Q. You say the question mark? A. I would like to show the similarities of the question mark in Exhibit P-29, and after the word "paper", the second page, Exhibit—

Q. Have you Exhibit P-29 there? A. Yes, I have P-29.

Q. And you want to compare it with what? A. I want to compare it with the word "paper" in the "Dear Thelma" letter, but I do not know the exhibit number of it. I don't know what name to call it.

Q. I called it the "Thelma" letter. We know it by that. The "Thelma" letter is Exhibit P-13. A. (Witness writes on board). That is after "paper", in the 6th line, page 2, page—no, that is page 3, that question mark; that question mark. I wish to compare that question mark with the question mark in Exhibit P-29, after the word "bluff".

This question mark was made in a script letter, made in printing, the same characteristics; only difference in slant.

Q. Are there any other characteristics in punctuation that appear in the two that you could point out? A. The quotation marks in Exhibit P-29—I will take that back.

Q. Yes.

Mr. Breslin: What was that?

The Witness: I will take that back.

Q. Well, I will withdraw that question for the time being.

Now, Mr. Spencer— A. No quotation.

Q. —in determing whether or not work is handwriting or handprinting—I will say handwriting or handprinting—was done by the same person, does the comparison of phraseology ever assist?

Mr. Breslin: Well, I object to that. That is for the jury to say. That is exactly what they have been trying to do, to get into evidence these similar expressions, when your Honor has confined it solely to standards of writing.

The Court: Well, the difficulty is I do not know where the similarity of phrases is. I cannot rule unless it is presented.

Mr. Zabriskie: I will withdraw that particular question.

The Court: I am not going to have these letters read, just for the purpose of having them read.

Mr. Zabriskie: No. It is nothing of that sort that I have in mind, if your Honor please.

Q. I will ask you to take the P-29 and turn to the part where it says, "You are the one."

Mr. Zabriskie: No, I think I have to withdraw that question. I will withdraw that question for the time being.

Q. I will ask you to read at the bottom of the page, toward the bottom of the page, the "one" of P-29, and then turn to the letter to "Dear Thelma", and see whether or not the same word appears and used in substantially a similar way.

Mr. Breslin: Oh, I object to that.

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor will allow me an exception.

Q. Then going back to P-29, on page 3, in the 4th line, we find the expression, "You are the one," and in the letter to Mr. Burnett we find the same expression, "You are the one."

Mr. Breslin: I object to that, if your Honor please.

Q. And I will ask you whether or not that similarity in language has any bearing on your conclusion as to these writings being by the same hand.

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor will allow me an exception.

Cross-examine.

Cross-examination by Mr. Breslin:

Q. You say you have testified in 500 court cases? A. Yes.

Q. Name 50 of them.

Mr. Breslin: Well, I will withdraw that.

Q. How many have you testified in during the past year? A. About an average of one or two a week.

Q. Name 25 out of the 50? A. I have to have my book, my record book, and I have not it here.

Q. What courts were you in. You were in about 50 courts. A. I testified that I had four cases last week.

Q. You have not been over here in the last five years.

Mr. Zabriskie: Give him a little time.

The Court: Let him answer the question.

Mr. Breslin: All right.

A. (Continuing) I testified before Judge Porter.

Q. How many times before Judge Porter during the past year?

Mr. Zabriskie: Now, one moment.

A. Three or four.

Mr. Zabriskie: There was one question, within the last week, and he is telling you. Let him finish.

Mr. Breslin: I am referring to the 50 cases.

Mr. Zabriskie: All right.

The Court: The last question was with respect to Judge Porter.

Q. How many times have you testified before Judge Porter in the last year? A. As nearly as I can remember, about four times.

Q. Whom else have you testified before? What other judges? A. Vice-Chancellor Stevens, many, many times.

Q. Vice-Chancellor Stevens has been dead nearly five years. A. You are asking how often I have testified during the past year, you mean?

Q. Yes. I said that expressly. A. Oh. In the past year I did not testify for him, because he is dead.

Q. Yes. A. I am taking in the last fifteen years.

Q. Now, I asked you—

The Court: Just listen to the question.

Q. —a minute ago how many court cases you testified in during the past year, and your answer was, "About once a week." Now, is that correct? A. On an average about once a week.

Q. On an average. How many cases, approximately, did you testify in during the past year? A. I suppose about 50.

Q. About 50. All right. Name the cases and the courts. A. I could not name all the cases.

Q. All right. A. I will name a few. I was in last week. Before Judge Furrey.

Q. District Court? A. District Court, in Clifton.

Q. All right. Will you please name the names of some other judges that you testified before during the past year? A. I testified before Judge Porter.

Q. You have already been over that. A. Three or four times.

Q. And Judge Furrey? A. Judge Furrey. Judge Lewis, I believe.

Q. You believe. Do you not know, during the past year, before whom you testified? A. Yes.

Q. All right. Will you please tell us? A. I have not my book with me, so I can't—

Q. Do you need your book to remember the cases you testified about, during the past year? A. It would assist me very much.

Q. All right. Now, without your book, can you tell us positively whether you testified before Vice-Chancellor Lewis or not during the past year? A. I am sure I did.

Q. How many times? A. I do not recall.

Q. Was it once or a dozen times? A. It might have been once.

Q. What other judges or vice-chancellors did you testify before during the past year? A. Well, I testified in Rutherford.

Q. In the District Court? A. Yes.

Q. How many times? Before what judge? A. Once in Rutherford.

Q. Before Judge Walter Kipp? A. Yes.

Q. Now, what other judges? A. I testified in the Supreme Court in New York, Judge Oberlansky.

Q. What was his name? A. Oberlansky.

Q. Oberlansky? A. I believe that is his name.

Q. You mean Judge Rosalsky? A. Rosalsky, Judge Rosalsky.

Q. How many times did you testify before Judge Rosalsky during the past year? A. Once.

Q. Once. Now, you testified before Judge Porter three times, Judge Furrey once, Judge Kipp once, Judge Rosalsky once. Now, a few more judges and a few more vice-chancellors, to make up the 50. A. I testified in this court about 20 times.

Q. During the past year? A. No.

Q. Well, I am asking you that, and I am confining my question to the past year.

The Court: Just listen to the question.

A. I am not able to tell you every case I had in the past year unless I could refer to my book.

The Court: Have you your book?

The Witness: No, I have not.

The Court: Do I understand that you cannot remember any more?

The Witness: Well, I can remember if you give me a little time to check up on them. I probably would remember some other cases I had when I went back and looked over my record book.

Q. Without your memorandum, and without your record book, those are the only judges that you can remember at this time, as to the cases you testified in during the past year? A. Just at this minute.

Q. At this minute? A. Yes.

Q. Your memory is not so good about that, is it? A. My memory is not maybe so good about cases of that kind.

Q. I see. Now, you testified in 50 cases during the past year. How long have you been in Paterson? A. Since 1904.

Q. Since 1904? A. Yes.

Q. Before you came to Paterson, you only testified in one case prior to that? A. I never made such a statement.

Q. I am asking you if it is not a fact? A. That I only testified in one case? I had many cases, but I did not appear in court, and I couldn't—

Q. In other words, before you came to Paterson you only appeared at the trial of one case in Albany; yes or no; as a court witness; yes or no? A. I was not in a court there in Albany, but I was in a court case in Kingston.

Q. In Kingston. Well, near Albany? A. Yes.

Q. And before you came to Albany there was only one time that you appeared in court as a handwriting expert, and that was at Kingston A. Well, I had many cases.

Q. No. Answer the question.

The Court: Just listen to the question.

A. Yes.

Q. That leaves you testifying in 499 cases in court since the time you came to Paterson. Now, tell us where you testified 499 times? A. I can't any more tell you that than—I can't tell you the exact number of cases, or I can't tell you the cases until I had a book.

Q. Where did you testify? A. I have testified before ex-Governor Fielder, in Jersey City, a half a dozen times.

Q. That is six. Who else? A. I have testified in this City about 15 or 20 times, as near as I can recollect.

Q. In this court room or in Judge Seufert's court-room? A. Judge Seufert's court.

Q. What were the names of the criminal cases? A. Well, there was the Mahler case and the election cases.

Q. The Mahler case and the election cases are two cases? A. And we had—Judge Seufert had a number of cases.

Q. What are the names of the defendants? A. I don't recall the names of the particular parties now, because that is some time back.

Q. How long back was that? A. Well, it is back in the last eight or nine years.

Q. What other courts have you testified in? A. I have testified in New Haven, Connecticut.

Q. Before what court? A. In the Supreme Court.

Q. What judge? A. I don't recall his name, but had—Mr. Carvahlo and I were testifying in the same case.

Q. Never mind Mr. Carvahlo, the other handwriting expert. How many times did you testify

in New Haven? A. One. Three days I was on this case.

Q. One case? A. Three days, yes.

Q. Where else did you testify? A. I have testified in New York City, New York.

Q. How many times? A. Once.

Q. Where else? A. I have testified in Paterson a great many times.

Q. How many times? A. I do not recall how many times.

Q. Well, five hundred times? A. Not five hundred in Paterson.

Q. A hundred times in Paterson? A. I don't know as I have had five hundred cases.

Q. I am talking about court cases, where you appeared in court. A. Oh, I do not recall how many times I have testified in—before the prosecutor's office, and before different judges.

Q. Mr. Spencer, you know there is a difference between going into a prosecutor's office and giving a report, and testify under oath in court, do you not? A. I know there is—

Q. You know there is a difference? Yes or no. A. I know there is a difference, yes.

Q. And you testified this morning you had appeared in 500 court cases? A. I said about 500 cases, and I didn't say court cases. I said cases, not court cases.

Q. Oh, you want to change that? A. No. I said in cases, about 500 cases, and those cases are consultation cases.

Q. How many court cases have you testified in? A. Well, I would not be able to tell you.

Q. You would not? A. Without referring back to my book, because I don't make a perfect record of all those cases.

Q. You said a few minutes ago you testified before Judge Seufert in the Mahler case, Mrs. Mahler, from Alpine. Do you remember that case? A. Yes, I do.

Q. And you testified for the State? A. Yes.

Q. And the jury acquitted the woman? A. Yes.

Q. Yes or no? A. Yes.

Q. Now, do you know a man by the name of Brooks who had a roadhouse or a restaurant in Hawthorne? A. No.

Q. Do you not remember him coming to your office with a specimen of his wife's handwriting, and an anonymous writing, and you telling him that his wife wrote the anonymous letter? Yes or no? A. No.

Q. Will you positively say this man Brooks never appeared at your office? A. If he appeared at my office it is without my knowledge. I have not the faintest recollection of any such a case ever coming to me.

Q. You will not say that he was not there? A. I have not any recollection of such a man coming to my office. Brooks?

Q. Yes, Brooks, from Hawthorne? A. Never recall his name, never.

Q. Will you positively say that you never interviewed a Mr. Brooks with reference to an anonymous letter, and told him that his wife wrote the letter? Yes or no. A. No. As near as I can remember, no. I am positive that no Mr. Brooks ever came to me about an anonymous letter.

Q. And is it not a fact that about a month later Mr. Brooks came back and told you that he consulted Mr. Osborn, and they had ascertained that a third party was the guilty one? Yes or no? A. No.

Q. Juries do not agree with you all the time, do they? A. No.

Q. All right. That is all. Do you ever make mistakes? A. Yes or no? A. Yes.

Q. Now, you remember a criminal case in Passaic County that was either handled by Mr. Stafford, assistant prosecutor, or Mr. Dunne, the assistant prosecutor, at which trial the defendant was charged with forgery, and you went on the stand and testified that the defendant had not written the memorandum in question. Do you remember that case? A. Staff?

Q. Stafford. Bernard Stafford was the assistant prosecutor. You testified for the defendant, and you said that the defendant had not written the memorandum in question. A. I do not recall that case.

Q. You do not recall it? A. No.

Q. Well, do you recall that after you had testified that the defendant had not written the memorandum and the jury disagreed that the following week the defendant came into court and pleaded guilty? Do you remember that case? A. I don't remember a thing about that case, and I don't believe I was on the case.

Q. Will you positively say that you were not on the case? A. I don't remember a thing about that case. I have had many cases with Mr. Stafford, but I do not recall that one.

Q. Now, you said that one of the characteristics of Mrs. Von's writing in the letter "A" was that the "A" was open at the top? A. Yes.

Q. Now, will you refer to P-29? I direct your attention to the letter "A" in the word "threat", the second line, and ask you whether or not the

"A" is open or closed. Yes or no? A. It is nearly closed.

Q. What? A. Very nearly closed.

Q. Very nearly closed. Now, I direct your attention to the word "are", and particularly the letter "A" in the word "are", third line, and ask you whether or not that "A" is open or closed? A. Nearly closed.

Q. Nearly closed.

The Court: What do you mean by "nearly closed"?

Q. What do you mean—pardon me? A. Well, there is a slight, a very slight—I will get my glasses.

Q. You need a microscope to ascertain it, do you not? A. Well, I suppose the microscope would be a help. I will say that that "A" is closed.

Q. Oh, that is closed? A. Yes.

Q. Which one is that, Mr. Spencer? A. That is the fourth line.

Mr. McGinnis: Third line.

The Witness: Well, the third line. The word "are" you are talking about.

Q. Now, Mr. Spencer, without the aid of that microscope—

Mr. Zabriskie: Just go a little slowly on that.

Q. Without the aid of the microscope, I direct your attention to the word "make".

Mr. Zabriskie: One moment. You refer to the "A" in "are" here, Mr. Breslin.

Mr. Breslin: He has already answered it. He said it was closed.

Mr. Zabriskie: Have you looked at that one with the microscope, Mr. Spencer?

Mr. McGinnis: Oh, that is telegraphing.

The Witness: Well, they very nearly touch.

Mr. Zabriskie: Well, all right. Go ahead.

Q. Now, I direct your attention to the word "make", in the fourth line—fifth line, and ask you whether the "A" in that word "make" is open or closed. Yes or no. A. Slight opening.

Q. What? A. Slight opening.

Q. What do you mean by that? A. Well, it does not join perfectly. The first stroke does not come up to the last stroke, and, therefore, it is not closed perfectly.

Q. Perfectly. A. Yes. It is not a perfect joining.

Q. But, for all practical purposes, it is closed? In the eye of a layman it would be closed, would it not? You are an expert, of course. You can pick out these flaws.

The Court: Now, look at this, Mr. Spencer. This is a larger copy (photograph handed to witness). Is that open or closed on there?

The Witness: I should say there was a very slight opening between the—at the top.

The Court: Will you point that out to me? I would like to see that.

The Witness: Well, right here, right—that first stroke, and then the next stroke comes a little too far, and high up, and it is not closed, a perfect joining.

Q. Now, I direct your attention to the word "bank" in the seventh line, and ask you whether or not the "A" in that word is open or closed? A. Well, it comes very close to being closed.

Q. Now, will you please show me with the aid of the microscope—perhaps you have better eyes than I have.

Mr. Zabriskie: I wonder if I may make a suggestion at this time—

Mr. Breslin: I object to any interruptions.

The Court: Counsel will conduct his own cross-examination.

Mr. Zabriskie: All right.

A. That "A" is closed imperfectly, poorly closed.

Q. Now, I direct your attention to the word "are" in the 8th line, and ask you whether that "A" is open or closed? A. In the word "that" do you mean, after "bank"?

Mr. Zabriskie: No, no. "Are".

The Witness: "Are". Oh. 8th line.

Q. 8th line.

The Court: Is that the last word on the 8th line?

The Witness: That is nearly closed.

Q. Nearly closed. All right. A. Much better than the 6th, on the two lines above.

Q. Pardon? A. There are a whole raft of "A's" that are open.

Q. What was that last remark? A. I say there are so many "A's" you are skipping.

The Court: Just a minute, Mr. Spencer.

Counsel has a right to ask you what he sees fit. You are an expert.

The Witness: Yes.

Q. Now, just a minute. I direct your attention to the word "are", the last word in the first line of the second page, and ask you whether or not that "A" is open or closed, the second page on this pamphlet, to the left of— A. What line is it?

Q. Right up there, that word "are". I am directing your attention to the last word in that line, and ask you whether or not that "A" is open or closed? A. Nearly closed.

Q. I direct your attention to the word "hates", in the third line, and ask you whether or not the "A" in the word "hates" is open or closed? A. Nearly closed. I think the—

Q. Never mind what you think. A. I think they touch.

Q. Now, I direct your attention to the word "paper" in the following line, the 4th line, and ask you whether or not the "A" in the word "paper" is open or closed? A. Closed.

Q. Now, I direct your attention to the word "Thelma", in the 8th line, the last word in the line, and ask you whether or not that "A" is open or closed? A. I notice a susceptible opening there.

Q. Oh, you do? A. Yes.

Q. All right. How much is it? A. Very, very narrow.

Q. Very narrow? A. Very close.

Q. Very narrow? A. In close.

Q. Now, I direct your attention to the word "pay", that is a few lines—five lines below that, "You pay Miss Mowell,"—I direct your attention to the letter "A" in the word "pay" and ask you

whether that "A" is open or closed? A. Closed.

Q. Now, I direct your attention to the word "each", on the next line, the last word in the line, and ask you whether or not that "A" in the word "each" is open or closed? A. What line is that?

Q. Well, it is right after the line, "you pay Miss Mowell," and then the next line, "You pay Miss Mowell and Mr. Burnett twenty thousand each." A. The word "pay". I say that "A" is closed.

Q. I am asking you about "A" in "each", "twenty thousand each"? A. I should say that "A" is closed.

Q. Now, I direct your attention to the word "that", which is at the top of the last page," a jury that", and I direct your attention to the letter "A" in that word, and ask you whether that"A" is open or closed? A. Closed.

Q. Now, will you turn to these diagrams that you made this morning, the capital "M" that you made this morning in court? A. They are over in Judge Zabriskie's office.

Q. Well, I want them.

The Court: Just a minute. Were they made before the board here, put on the board?

Mr. Breslin: Yes, surely.

Mr. Zabriskie: Where are those, Mr. Spencer?

The Witness: Right on the mantle.

Mr. Breslin: I object to that.

The Court: Those should not be removed from this court room. They are in evidence.

Mr. Zabriskie: No. I did not know they had gone. I did not know Mr. Spencer had

taken them. We can send over and get them right away.

The Witness: Right on the mantle.

Q. Now, Mr. Spencer, you say that one characteristic of Mrs. Von's writing is the fact that she starts every paragraph to the extreme left. Did you not so testify this morning? A. No.

Q. What did you say the characteristics were about the starting of paragraphs? A. I said that the majority of the paragraphs were started at the extreme left, the majority.

Q. The majority? A. Yes.

Q. The majority of the paragraphs? A. Yes, the great majority.

Q. The great majority? A. The great majority.

Q. Now, I refer you to P-29, the letter in dispute, and ask you whether or not the paragraph which starts "You thought it was pure bragg about Judge Doremus". I ask you whether or not that paragraph is started to the extreme left or not? A. It is not.

Q. Have you any of the papers here that you made this morning? It will save some time. A. They are made this morning, that I made this morning.

Q. Oh, this morning. No. They are all over there. They have gone to get them.

Mr. Breslin: If your Honor please, we cannot proceed any further without those papers.

Mr. Zabriskie: They will be right here.

Q. Mr. Spencer, do you remember the judge

questioning you this morning about the two words "never" and "convince"? A. Yes.

Q. And do you remember the questions that he asked you? A. In regard to the shading of the "N"?

Q. Yes. A. I recall it.

Q. Well, what were the questions? A. In regard to the characteristic that all downward strokes, or all lateral strokes were very heavily shaded.

Q. What was your explanation? A. As I recall, all strokes, horizontal strokes—

Q. No. I want your— A. —and lateral strokes are very heavily shaded.

Q. I want your explanation that you gave to the Judge this morning, repeated now. A. I would like to have the question.

Q. Do you not remember it in substance, the question the Judge asked you this morning? A. I can't remember everything.

Q. You cannot remember everything. A. You ask me the question, and I will try to answer it.

Q. Well, now, is there any difference between the shading between the letter "R" and the letter "C" in "never convince"? A. Pardon me. I thought you referred to Judge Zabriskie's question. I do recall his Honor's question now.

Q. All right. A. That is why I was not able to answer that.

Q. All right. A. I understood Judge Zabriskie.

Q. There is only one judge around here. A. I explained to his Honor that the operation of making an "R" was an entirely different operation than the operation of making a capital "C". The operation of an "R" consists of first a straight per-

pendicular stroke. Next we have a stroke going to the right, in which the upper part is heavier than that first stroke. Then the finishing stroke is another straight stroke.

When it comes to the operation of a capital "C", there the "C" is very—is heavier than the proceeding "R".

Q. Well, how do you explain the difference in the shading? A. The difference in the shading, because the "C" will admit of shading much easier than the—than a stroke composed mostly of straight lines.

Q. You mean to say that the letter "C" has some peculiar characteristics or mystic powers that some other letter has not? A. Well, you cannot put a shade—you cannot put a shade on a straight stroke with the skill or ease that you can on a curved stroke. Curved strokes take shades, and straight strokes do not take the shades so easily.

Q. You can shade a letter, if you want to? A. I certainly can.

Q. You can shade letters, if you want to? A. I can shade a straight stroke as well as a curved, but I say in this particular case where his Honor said that the pen was dry, in his opinion—

Q. Well, is not that the logical explanation—that— A. that—

Q. Just a minute. Is not that the logical explanation, that the pen went dry, and she dipped it in and got more ink? Yes or no. A. No, no.

Q. Now, will you come down here and just pass on this work you did this morning?

(Papers adjusted on board).

Q. Do you write any shorthand, Mr. Spencer? A. I write a little shorthand.

Q. Do you not shade strokes in shorthand work? A. In Pitman, but not in Gregg.

Q. In Pitman you do? A. Yes.

Q. And that is the most used system, is it not? A. No.

Q. Which one is? A. Gregg.

Q. How about the Spencer system? A. Well, that is a splendid system. I made shorthand notes for it.

Q. I see. Now, I direct your attention to the standard that Mrs. Von wrote in court, and direct your attention to the word—this standard here is the one I am referring to at the present time. I direct your attention to the word "so", and ask you to designate on the blackboard which "S" represents the "S" in that standard. Now, will you please mark with a crayon, without any explanations, now, which one? A. This one, in my opinion.

Q. Just mark that one, will you, please? A. This one, in my opinion. What do you want it marked?

Q. Just 1 alongside of it. A. 1 (marking).

Q. Now, will you designate on that diagram which "S" represents the "S" in "so" of P-29? A. This one (indicating).

Q. Make a No. 2 there. A. (Witness writes 2).

Q. Now, Mr. Spencer, do you say that the party who made this S-1, which is Mrs. Von's admitted writing, also made S-2? A. Emphatically, yes.

Q. All right. Go back.

(Witness resumes the stand).

Q. Will you answer this question yes or no? Is the form of the letter "S" in the S-1, as designated on the board, the same as the S-2 on the board?

Are the forms of the letters the same? A. I can't see.

(Witness leaves the stand and goes to board.)

The form is different.

Q. The form is different. All right. That is all. Go back.

(Witness resumes the stand).

Q. Now, I direct your attention to the word "so", second line, in P-29, "so", and ask you if the form of that "S" is similar to the form of the "S" as written in the standard. Yes or no. A. I want to know what standard you are referring to.

Q. Referring to this here, the work that was done by Mrs. Von Moschzisker here in court. A. Oh. The form matters, but—

Q. All right. That is all. The 7th line, the word "has". I direct your attention to the letter "S" in "has", and ask you whether or not the form of that "S" is similar to the "S" made in the standard by Mrs. Von? A. Yes.

Q. The form is the same? A. Not the same, but there is—

Q. All right. That is all. No explanations. Now, go to the 10th line, the word "just". I ask you whether or not the form of the letter "S" in the word "just" in P-29 is the same as the "S" in the standard made by Mrs. Von? Is the form the same? Yes or no. A. I can say yes and no.

Q. Oh, you can? A. Yes and no.

Q. The last page. I direct your attention to the word "is", and ask you whether the form of that "S" is the same as the form of the "S" as made by Mrs. Von in the standard? A. Yes and no.

Q. Now, will you turn to your memorandums about the letter "L", those diagrams you made this morning? You have one there that I will use, and if you will allow me to withdraw the question—right there in your own hand, the "D", I would like you to demonstrate this to the jury. Will you please put that up? A. (Witness leaves stand and adjusts paper on board).

Q. Now, you testified this morning that this "D" represented the representation of the "D" as made by Mrs. Von in court; is that correct? A. Yes.

Q. And you testified that this "D" represented the "D" as in "Dr. Pettit", in P-29, right here. A. Yes.

Q. Do you say that the form of that "D" is the same form as that "D"? Yes or no. A. Yes and no.

The Court: Which is it?

Q. Which is it? Yes or no? Which is it? A. This part yes, and this part no.

Q. In other words, you mean no? A. I do not. The method of production was both the same. The form is a little bit different.

Q. What do you call this here? What would you call it, technically, the absence of that line, not being extended across? A. Oh, that is disguising.

Q. Well, it is—to make it plain to the jury, it is open space, is it not, between this part of the "D" and that part? Yes or no? In other words, the line is not continued over, is it? A. No.

Q. Now, I direct your attention to the "D" in "Judge Doremus" of P-29, at the bottom of the page, and ask you whether or not the bottom line of that "D" is not carried over? A. Yes.

Q. It is carried over? A. Yes.

Q. That is all. Now, I direct your attention to the word "don't", the third line of the first page, and ask you whether or not the bottom of that "D" is not carried over, extended over? Do you have to hesitate on that one? A. Not at all.

Q. Why do you hesitate? A. I am trying to find that "D".

Q. Well, I will help you out, then Right here. A. Oh, the first page. Closed.

Q. It is closed. And the "D" that Mrs. Von made in court is open? A. Yes.

Q. Now, I direct your attention to the "L" that you made this morning. Now, I direct your attention, Mr. Spencer, to the word "fool", on the third line of P-29, and ask you to examine the letter "L". A. The first page?

Q. Yes. A. "Fool".

Q. The letter "L", the bottom line of that letter "L" is straight across, is it not? A. Yes.

Q. Now, I ask you to look at the word "fool" on the exhibit made by Mrs. Von in court, and ask you if it is not a fact that the bottom of that letter "L" is curved? Yes or no? A. Slight curve.

Q. But there is a curve there? Yes or no? A. Yes.

Q. Now, I direct your attention to the letter "G". Now, referring to that Exhibit, what does this "G" represent? A. It represents 2-stroke "G".

Q. Where did you get that from; what exhibit? A. I got that from the request writing in court.

Q. Which did you get from the request writing in court? A. Both "G's".

Q. Well, then, there was not any comparison, was there, with the "G" in the P-29? A. I told—

I made the statement that the "G's" in this request writing was a 2-stroke operation, and that the questioned writing, Exhibit P-29, was also a 2-stroke operation. That is the testimony.

Q. Now, with reference to the letter "S", in substance you testified this morning that there was no similarity; there was just a slight difference in slope? A. The "S"?

Q. The "S", yes. Is that right? A. There was no similarity?

Q. Yes. Is that right? A. No.

Q. There is a slight difference in slope, you say? A. Difference in form, but method of production, the same.

Q. Well, there is a difference in slope, is there not? Yes or no. A. Slant, you mean.

Q. Well, slant and slope are the same, are they not? A. Yes.

Q. All right. What do you mean by blunt ending? A. I mean blunt endings where there is a shade. Blunt ending, where the two points of a stub pen would make the entire width of that stub pen, and where one point—differentiated from a hair-line, where one point of the pen would just touch the paper, one nib of the pen would just touch the paper.

Q. Mr. Spencer, is it not a fact that most of your conclusions in this case are based upon the shading of the letters? A. No.

Q. Well, it is a large measure in making up your opinion, the shading? A. That is one of the great many characteristics that I base my opinion on.

Q. But it has something to do with it? A. Yes.

Q. You say that the shading is the same or dif-

ferent in P-29, throughout the letter? A. It is uniform throughout P-29.

Q. Uniform throughout? A. Uniform throughout. A novice's or amateur's work. It is not perfect.

Q. Is it not a fact that if a person were to use a stub pen between the index and the middle fingers, that the shading, in most cases, would be alike? A. With the pen pointing toward the right, like this; you have reference to like this, like that (illustrating)?

Q. Yes. A. Either that way or that way was the way Exhibit P-29 was done.

Q. Just a minute.

The Court: Just listen to the question.

The Witness: I want to understand the question now.

Mr. Breslin: Read it, please.

(Question read as follows: "Q. Is it not a fact that if a person were to use a stub pen between the index and the middle fingers, that the shading, in most cases, would be alike?")

A. Not at all.

Q. I refer you to P-14, the work that was done by Mrs. Von in court, and ask you if that is not a very poor specimen of penmanship? A. It is terrible.

Q. It is terrible. Then I refer your opinion to P-29, the letter in dispute, and ask you if that does not show the work of an artist? A. No; not by a long shot.

Q. In other words, you say that the lettering or the printing in P-29 is terrible? Yes or no? A.

I didn't say it was terrible. I said I pronounce that medium marking; and this is terrible.

Q. This is terrible, is it not? A. Terrible, terrible.

Q. And this is much better, is it not? A. Much better.

Q. All right. This is all on that one point. Now, with reference to the letter "Y", what did you say was the outstanding characteristic of that? A. In all the request writing, it is brought below the line, and in the standard, P-29, there is slight, a slight difference, so far as the dropping of the last stroke. It is brought a trifle below the line, not in every letter; and in the majority of the letters it comes below the base line.

Q. Did you not say this morning that there was a marked difference, marked characteristic? A. In some of the letters; not in all the "Y's", but in some of the "Y's" there is marked difference, some of those "Y's".

Q. Now, I refer you to the letter "H", and ask you if it is not a general characteristic of the letters, "H", in this request writing, not to be crossed? In other words the line does not go all the way across? A. No, on account of the poor work.

Q. Now, just a minute. Is that a fact? A. Yes.

Q. In P-14, Mrs. Von's writing, the line does not go all the way across when the "H's" are made; is that correct? A. Yes.

Q. Now, I direct your attention to P-29, and ask you if it is not a fact that those "H's" have the line all the way across? A. Yes.

Q. Then where is there any similarity in the "H's"? In form; in form?

A. Similarity in form? Just because they don't connect within a hundredth part of an inch does not mean the form is all agog. The "H's" in "Ha! Ha!", the line, cross-line, is nearly over to the vertical line.

Q. Just look at "Ha! Ha!", and there is no nearly about it. Is it not a fact that— A. I don't mean that one. I mean in the request writing.

Q. I am asking you about this one. A. Well, that is not perfectly crossed, but it is crossed all the way across.

Q. It is crossed all the way over, is it not? A. Yes, sir.

Q. Now, I refer you to the "H" in "Ha! Ha!" on the standard of Mrs. Von's writing, and ask you if the "H" is all the way across? A. No, it is not.

Mr. Breslin: All right, that is all.

Redirect-examination by Mr. Zabriskie:

Q. Did you make any enlarged photographs of the "A's" that are on the standard, on P-29? A. Yes.

Mr. Breslin: I object to that, if your Honor please. We have been over that.

The Court: Just a minute. He can answer yes or no.

Mr. Breslin: All right.

Q. And do the enlargements show more accurately whether or not the "A's" are joined at the top or not?

Mr. Breslin: I object to that. It is before the jury.

The Court: Is this redirect?

Mr. Zabriskie: He has been trying to bring out the fact that the "A's" are not open.

Mr. Breslin: That is for the jury.

The Court: I do not know what he has done, but the jury have both the exhibits.

Q. Are these enlargements of the "A's", which appear in that Exhibit P-29? A. Yes.

Mr. Zabriskie: I ask that that be marked for identification.

(Photograph marked Exhibit P-38, Id.)

Mr. Zabriskie: I offer that in evidence.

Mr. Breslin: I object to it, if your Honor please.

The Court: I cannot see any purpose of this.

Mr. Breslin: It is not proper redirect-examination.

Mr. Zabriskie: Your Honor denies this?

The Court: Yes.

Mr. Zabriskie: Your Honor will allow me an exception.

Q. I call your attention to the "D's" on P-25 and P-27. Are they open or closed?

Mr. Breslin: I object to it, if your Honor please. We have been over the alphabet and the jury has heard both versions of it, and I object to it.

The Court: We are not going to have another direct examination. I am not going to do that.

Mr. Zabriskie: Well, I think that is—

Q. Have you—

Mr. Breslin: I object to any further questioning along those lines.

The Court: There is no question. I have sustained the objection.

Mr. Zabriskie: All right. That is all.

The Court: Those are in evidence. They will be kept in the courtroom (referring to documents).

Judge, are you going to call another witness?

Mr. Zabriskie: Yes. I was just looking over to see whom I would call. My other two experts have not come in.

The Court: You will have to call somebody.

Mr. Zabriskie: Yes. I will call somebody. I will call Mrs. Arthur Mills.

HARRIETT LOUISE MILLS, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mrs. Mills, where do you live? A. Why at the present time in Brooklyn.

Q. Where? A. In Brooklyn.

Q. Did you know Sarah Mowell? A. Yes, sir.

Q. And were you with her on a trip to Atlantic City? A. Yes.

Mr. Breslin: Well now, I object to that, if your Honor please.

The Court: She may answer yes or no. I do not know what it is.

Mr. Zabriskie: I beg your pardon?

The Court: She may answer yes or no.

A. Yes.

Q. Do you remember when that was?

Mr. Breslin: I object to that as being immaterial.

The Court: Sustained.

Q. Were you with her at Atlantic City one week after the finishing of the criminal case?

Mr. Breslin: Objected to as being immaterial.

Mr. Zabriskie: You do not know whether it is immaterial or not just yet, Mr. Breslin.

The Court: I will allow her to answer yes or no.

A. Well, I don't remember whether it was one week or how many weeks.

Q. Well, a short time after the trial? A. Yes.

Q. What was her health at that time?

Mr. Breslin: I object to that on the ground that this woman is not qualified.

The Court: She may tell how she looked. She did not make a professional diagnosis.

Mr. Zabriskie: No, no professional diagnosis.

Q. How did she look and how did she act on that trip? A. Well, she didn't act so well, and she was quite weak.

Mr. Zabriskie: Cross-examine.

Harriett Louise Mills—Cross.

Cross-examination by Mr. Breslin:

Q. Mrs. Mills, you are the mother of Thelma Fritz? A. Yes. No, no; mother-in-law.

Q. I have subpoenaed the marriage certificate. Have you that with you? A. No, I have not.

Q. Well, you had it yesterday? A. No, I didn't.

Q. Well, is Thelma's mother in court? A. Yes.

Mr. Breslin: Is the mother in court? Have you the marriage certificate?

A Voice: Yes.

Mr. Breslin: That is all.

Mr. Zabriskle: I will call Mrs. Bertha Edith Fritz.

BERTHA EDITH FRITZ, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mrs. Fritz, where do you live? A. Ridgewood.

Q. Do you know Sarah Mowell? A. Yes.

Q. And the young lady that is mentioned as Thelma, in one of these cases, do you know who that is? A. My daughter.

Q. Do you know what the reputation of Miss Mowell is in Ridgewood for morality and virtue and honesty in living? A. Very good.

Q. Do you know Mrs. Von Moschzisker? A. Yes, slightly.

Q. Were you ever socially intimate with her? A. Never.

Mr. Breslin: Objected to.

The Court: She can answer yes or no.
Mr. Breslin: She said no.

Q. Did she call to see you and ask you questions about Sarah Mowell? A. Yes.
Q. Had you invited her? A. No, I had not.

Mr. Breslin: I object to this.
The Court: Let us fix the time.

Q. And—

Mr. Breslin: I object, if your Honor please, on the ground that no time has been fixed.

Q. When was that, as near as you can fix the time, Mrs. Fritz? A. Saturday morning, June 5, 1926.
Q. And will you tell the Court and jury what questions Mrs. Von Moschzisker asked you, and what she said about Sarah Mowell at that time?

Mr. Breslin: I object to that, if your Honor please.
The Court: I sustain the objection.
Mr. Zabriskie: I want to say my effort is to show malice.

Q. Had you invited Mrs. Von Moschzisker to call? A. No.

Mr. Breslin: I object to that as being immaterial.

Q. Had you ever been out with her, or anything of that sort? A. No.
Q. And your daughter is under subpoena in this case, is she not? A. Yes.

Q. But is she here today? A. No. I have a certificate from the doctor excusing her.

Q. Who is the doctor? A. Dr. Levitas, of Westwood.

Mr. Breslin: I object to that. That has nothing to do with this case.

The Court: No.

Mr. Breslin: I object to it, if your Honor please.

Mr. Zabriskie: I want to account for her absence, that is all.

Q. Is she home, sick? A. Yes.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. Mrs. Fritz, you brought the marriage certificate? A. Yes, I have.

Q. I show you the page purporting to be the certificate of marrige and ask you, if you know—

Mr. Zabriskie: What is this? Is that cross-examination?

Mr. Breslin: Well, it is to lay the foundation for a standard of Miss Mowell's writing. You admitted it at the criminal trial. Maybe you will admit it now.

Mr. Zabriskie: We will admit all that was written by her, surely.

Mr. Breslin: Then I will not ask Mrs. Fritz any further questions.

Mr. Zabriskie: The part that is apparently written by her is "October, 1926."

Mr. Breslin: Arthur Colesby Mills, Jr."

Mr. Zabriskie: Yes.

Mr. Breslin: "Thelma Fritz."
Mr. Zabriskie: Yes.
Mr. Breslin: "Ridgewood, N. J."
Mr. Zabriskie: Yes.
Mr. Breslin: "State of New Jersey."
Mr. Zabriskie: Yes.
Mr. Breslin: And I think that is all.
Mr. Zabriskie: Yes.

Q. Just a few other questions. Is it not a fact that they had Miss Mowell do this printing because she was very skillful in that line of work?

Mr. Zabriskie: One moment. I object to that.

Mr. Breslin: I will withdraw the question.

Mr. Zabriskie: I withdraw the objection.

Mr. Breslin: I withdraw the question.

The Court: Now, this was not proper cross-examination. I take it this is to be offered as one of your exhibits.

Mr. Breslin: Standards, yes, at the proper time, to save this woman from coming back.

The Court: All right, then.

(Marriage certificate considered as marked Exhibit D-5).

SARAH B. MOWELL, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mrs. Mowell, where do you live? A. Ridgewood.

Q. And are you the mother of Sarah Mowell, the plaintiff in this case? A. I am.

Q. And when did you move to Ridgewood, Mrs. Mowell? A. October, 1923.

Q. And before that where had you been living? A. Paterson.

Q. Now, what was the condition of your daughter's health up until the spring of 1927? A. Very good.

Q. And how old is she now? A. Twenty-four.

Q. Twenty-four now. Had she been employed while she was living in Ridgewood; had she worked? A. Yes, sir.

Q. And where had she worked in Ridgewood, Mrs. Mowell? A. In the two banks.

Q. Do you know when she began work? Was it in 1924? A. No. It was in 1924.

Q. And she was arrested on August 10, 1927, was she not? A. Yes.

Q. Had she been working continuously in one bank or the other from February, 1924, to August 10, 1927? A. Yes.

Q. And during that time, most of that time was her health good? A. Very good.

Q. Did she ever complain to you about her health? A. No.

Q. Now, do you remember the time when Mr. Dawson came up to see her? A. Yes.

Q. Now, from that time on did you observe any difference in her health? A. I did.

Q. And what difference did you observe, Mrs. Mowell? A. She lost her appetite, and she was very nervous, and couldn't sleep.

Q. You say you live in Ridgewood? A. I do.

Q. On what street? A. Walnut Street.

Q. And do you know where Mrs. Moschzisker lives? A. From hearsay.

Q. Yes. Did Mrs. Von Moschzisker ever talk to you at any time? A. Never.

Q. While you were in Ridgewood? A. Never.

Q. Never up to the present time? A. No.

Q. What can you say as to Sarah's diversions? Did she have any athletic diversions? A. She was very athletic.

Q. Did she receive anything in recognition of her ability in swimming and diving?

Mr. Breslin: I object to that, if your Honor please.

The Court: Sustained.

Mr. Breslin: Your Honor ruled on this question the other day, and Judge Zabriskie knows you are not going to allow that.

The Court: I sustain the objection.

Mr. Breslin: He is just doing that to influence the jury. Your Honor overruled him the other day.

Mr. Zabriskie: Your Honor will allow an exception to be noted.

Q. You say she worked regularly during her term of employment at the bank? A. Always did.

Q. After she got out of the banks, where did she spend her time? Did she spend her evenings at home or— A. Sometimes.

Q. And did she ever stay to herself at all when she was home? A. Never.

Q. Did she have any writing desk in her room? A. Never.

Q. Where did she do her writing?

Mr. Breslin: I object to that as being immaterial.

The Court: I sustain the objection.

Q. Did she ever require the services of a doctor before the time that you have mentioned? A. No, sir.

Q. Who was the first doctor whose services she ever had? A. Dr. Fisher.

Q. That is Dr. Fisher of Ridgewood? A. Of Ridgewood.

Q. And about when was it that Dr. Fisher was consulted or otherwise? A. After—I think it was after Dawson had been to see her, perhaps later. I think in the spring after that. I am not sure.

Q. Do you remember August 10, 1927? A. I do.

Q. And will you detail what occurred that day, from the time that Dawson and Mrs. Terhune appeared at your house until the day was finished, so far as your interest in it was concerned? A. They came to the house, and my daughter went to the door. She—they told her what they wanted, and she called me, and I came downstairs, and Mr. Dawson told me that she was under arrest, and he read the warrant to me, and I asked him if I might—he said you would have to have bail. I asked him if I might go her bail. He said no. So I called my neighbor next door, and she said she was a married woman and she couldn't go the bail. I called up Judge Randall in Paterson, who was our lawyer at that time, and he was busy, and he told me to get somebody if I could, but he would do what he could.

Mr. Dawson also called up Mr. Randall and talked to him, and then we got ready, and we went up

to the village with Mr. Dawson and Mrs. Terhune. We went to Mr. Allabough's store, to see if he could go the bail. Mr. Allabough said he was under bond and couldn't go the bail, but he would go and see—

Mr. Breslin: I object to what Mr. Allabough said. We do not dispute what happened on that day. We admit what was said in the examination before trial.

The Court: Well, this is not hearsay. It is testimony as to a fact.

Mr. Breslin: I thought we would save some time.

A. (Continuing) So we waited a while and Mr. Allabough said he could not. Mr. Dawson said we would have to go on to Hackensack.

We went to Hackensack, and we waited a few moments, and they took my daughter in the room, and wouldn't let me go with her.

Q. What room did they take your daughter to? A. I don't know. They would not let me go. She had to go, and they would let neither Mrs. Nevin or I go with her.

Q. How long was she in it, in that room, separated from you, approximately? A. From a half to three-quarters of an hour.

Q. And you were waiting in the outside room? A. Yes. And when she did come out, Mrs. Terhune came in, and Mrs. Terhune said she had to go to jail. Mrs. Terhune and I took her over to the jail, and I think we stopped at the desk, somewhere in the jail, and then they took her through an iron gate and shut the gate, and I went back to the court—came back to the court house, and Mrs. Nevin brought me to Ridgewood, and we went to

Judge Doremus, and he found bail for us. We went back about half past seven at night, and got her out.

Q. And the last that you saw her at the court house, or at the jail, rather, was when they closed the iron door? A. I watched her until she got out of sight.

Q. Now then, when did you next see her after that? A. That evening.

Q. You did not come down with the others, when they took her out, then? A. Yes.

Q. Did you? A. Yes, that same evening.

Q. Did you go to the jail? A. Yes.

Q. Did you get her immediately? A. No. It took her quite a while to get ready.

Q. How long did it take her to get ready? A. Oh, perhaps twenty minutes or more.

Q. And, of course, you could not see what she was doing in those twenty minutes? A. No.

Q. Did they say what was causing the delay?

Mr. Breslin: I object to that.

The Court: Sustained.

Mr. Zabriskie: Your Honor will allow me an exception.

Q. Now, Mrs. Mowell, have you kept any track of the expenses that you have had in connection with defending Sarah, to procure the bond, and the payments for her medical attention, and so on? A. Yes.

Mr. Breslin: Objected to. Just a moment. I object to that, if your Honor please.

The Court: Why?

Mr. Breslin: It is Miss Mowell's case, not Mrs. Mowell's case. We will concede they

paid Judge Zabriskie $1500, they paid $100 for the bond. We concede that. There is no dispute as to that.

Q. Did you take care of the finances for Sarah?

Mr. Breslin: I object to that. Very broad.

The Court: The question is too broad, because there may be expenses which at this time would not be evidential.

Mr. Zabriskie: Of course, I have to connect it up—

The Court: You better be specific. Then we have no difficulty afterward.

Mr. Zabriskie: Yes. Well, I think the testimony is in, what it cost at Saranac Lake.

Mr. Breslin: That is in.

Q. Then you had to pay something for experts at the last trial? A. Yes.

Q. Do you know how much it ran up to? A. I have a record of it, but not with me.

Q. You have not got that with you. I see. And how much you have paid for doctors?

Mr. Breslin: I object to that at this time.

The Court: Sustained.

Mr. Zabriskie: Of course I will connect that.

The Court: You better have the doctors first.

Mr. Zabriskie: Yes. Well, then, I may later on ask that Mrs. Mowell be put on for that purpose.

Cross-examine.

Mr. Breslin: No questions.

Mr. Breslin: Judge Lewis is here from Paterson, and is going to be tied up Wednesday and Thursday in court, and I would like to call him out of turn.

Mr. Zabriskie: Yes.

RANDALL B. LEWIS, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mr. Lewis, you are a member of the bar of the State of New Jersey? A. I am.

Q. And former City Counsel of Paterson? A. I am—I was.

Q. How long have you been a member of the Bar of the State of New Jersey, approximately? A. About thirty years.

Q. Do you know Mrs. Von Moschzisker? A. I do.

Q. About how long have you known her? A. Oh, ever since she was a girl, I guess.

Q. I cannot ask you how long that is. A. No. That wouldn't be fair.

Q. Do you know Mr. Von Moschzisker? A. Yes.

Q. How long have you known him? A. Well, I am not sure of that, but since they have been married.

Q. To come down to this particular controversy, did Mrs. Von ever talk to you about any letters that she had received? A. Yes, she did, some years ago, and showed me a number of them.

Q. Where did she talk to you? A. At my home.

Q. Can you give us, in substance, the nature—

Mr. Zabriskie: I object. Let us get the time.

The Court: Well, could you identify this?

The Witness: I am afraid not, your Honor. It must be three years ago, I should think.

Mr. Zabriskie: One moment. I object. He is fixing the time. Now, let him.

The Court: No, that is perfectly all right.

Mr. Zabriskie: He said some years ago.

Mr. McGinnis: Three years ago.

The Court: Let us find out when.

Mr. Zabriskie: I object to Senator McGinnis saying something about three years ago, because that is not fair practice.

Mr. Breslin: He said that himself, about three years ago.

The Witness: I said about three years ago.

The Court: The witness said that.

Mr. Breslin: He said that.

Q. Was it before the criminal trial? A. Oh, yes.

Q. What was the nature of the conversation? A. Well, I presume she had come—

Mr. Zabriskie: I object, sir. That is before the criminal trial.

The Court: Can you give us some approximation?

The Witness: About what the conversation was?

The Court: No; about the date.

Q. About the date. A. Well, I can say this: that I know it was before any court proceeding had

been taken at all with reference to this matter.

Mr. Breslin: I will couple it up later as to the exact date.

Q. What was the nature of the conversation?

Mr. Zabriskie: I object unless the time is fixed, sir.

The Court: I will permit it, subject to coupling up. I appreciate counsel's position now.

Mr. Zabriskie: Your Honor will allow an exception.

The Court: Of course, if it is not connected up, it will be stricken out.

How many letters were shown to you, Judge?

The Witness: Oh, there were a number of letters, I can say this positively; that I know it was prior to the fall of 1927. How long prior to that, I can't say. It may have been a year; it may have been two years.

Q. Well, what was the nature of the conversation?

Mr. Zabriskie: I object unless the time is fixed, sir.

The Court: I will allow it, subject to further connecting up.

A. Why, Mrs. Von Moschzisker came to me presumably as a friend. I had known her, as I say, when she was Emma Hays, as a girl, and lived in Paterson, and she showed me a number of these letters, and spoke—

Mr. Zabriskie: Now, if your Honor please,

I object to that because we have been trying to get those letters in evidence and the offer has been overruled. Now we are dealing with one letter, and I object to his testifying about a lot of letters that we were not permitted to put in evidence, to show—

Mr. Breslin: Judge Zabriskie knows that he was called out of turn. These letters will be offered, every one of them, on our case, the way we planned. Every one of them will be offered.

The Court: I will allow the question.

(Question read).

Q. About the situation? A. Do you care for my comment at the time?

Q. Yes. Tell us what she said to you and what you said to her with reference to these letters?

Mr. Zabriskie: I object to that, unless he tells us that—unless he relates the circumstances and things that she said, which shows that she made a full disclosure.

The Court: Of course we want the entire conversation.

Mr. Breslin: Yes.

Q. What was said by Mrs. Von and by you? A. Well, those letters were given to me, and I read them.

Mr. Zabriskie: I object to that and ask that it be stricken out as being too general.

The Court: I will allow it.

A. (Continuing) And I remember sympathizing with her and asking her if she had any idea of where they emanated, and if there was any way

she could prevent the thing being carried any further, and my recollection at the time, which is somewhat hazy, is that she was at that time nonplussed as to where the letters came from. Her conversation was general, and I am not sure if, at a later period, her husband came to see us or not. I looked upon the call at the time—it was made at my home—as more of a friendly call.

Mr. Zabriskie: I object. If it was just a friendly call, that is not the kind of call the law contemplates.

The Court: No. We want it professionally.

Mr. Zabriskie: Professionally.

Q. Tell us what you told her with reference to the letters.

Mr. Zabriskie: I object to that, sir. Right up to the present time there is nothing showing this particular letter was even shown to the counsel.

The Court: I take it on the promise of counsel that he will connect it up.

Mr. Breslin: We will couple it up. We will show all the letters she had when she went there and everything else.

A. I have nothing else to offer that I recall, merely a general—

Q. What did you tell her to do about the matter? Did you tell her to go and see anybody?

Mr. Zabriskie: I object to leading.

A. At that time, I believe not.

Q. Well, did you at any subsequent time? A.

I think at a subsequent time I suggested to her that she should get the aid of lawyers, and perhaps detectives who were conversant with criminal cases.

Q. Did you suggest— A. And good trial lawyers.

Q. Did you suggest the names of any trial lawyers? A. Yes. I suggested the name of Ward & McGinnis.

Mr. Breslin: That is all.

Cross-examination by Mr. Zabriskie:

Q. Now then, Judge, when would you say that conversation took place, as nearly as you can say? Was it in 1926? A. Well, Judge, I would merely be guessing at that, I don't know. But I do know this: that this conversation and these letters were shown to me long before there was anything in the newspapers about this case, and, therefore, long before it came to the attention of the authorities. How long before, that I couldn't really say.

Q. Well then, it did come out in the papers in September, 1926; is not that so?

Mr. Breslin: I object to that.

A. I don't know.

Q. What paper did it come out in, that you are referring to? A. I do not know. I say long before it came in the papers at all, to become public property, these letters were shown me.

Q. Now, you read the Paterson papers, do you not? A. I am more catholic than that. I read several papers, New York papers, and—

Q. But you read the Paterson papers, do you not? A. Oh, yes.

Q. And you read the Paterson News, do you not? A. Yes.

Q. And that is the first paper that it came out in; is not that so?

Mr. Breslin: I object, unless this witness knows.

Mr. Zabriskie: That I am asking him.

A. That I could not say. I couldn't say that.

Q. And you read it in the Paterson News, did you not? A. I presume I did.

Q. What was the portent of the letters you read when it broke out into the papers?

Mr. Breslin: I object to that as not being proper cross-examination.

A. I would be merely failing my memory, Judge, to try to answer that.

Q. You remember when it first broke out in the papers, Judge, do you not? A. I don't, Judge. That is the trouble. As a matter of time, I really don't. All I do know is that I had knowledge of these things before they became public property.

Q. Is it not a fact that the letters that you refer to, and the letters that were shown to you became public property, as you say, or call it, in September, 1926? A. I didn't say that, Judge.

Q. No. I am asking you.

(Question read).

Q. When they came out in the Paterson News.

Mr. Breslin: I object to that, as it is not based on facts, as most of the letters are after September, 1926, so they could not have come out in the paper in September, 1926.

(Question read in full as follows: "Q. Is it not a fact that the letters that you refer to, and the letters that were shown to you became public property, as you say, or call it, in September, 1926, when they came out in the Paterson News?")

The Court: Well, he can answer that.

A. Well, I really don't know just to what letters you are referring. All I know are the letters that Mrs. Von Moschzisker showed me, and they were very scurrilous letters.

Q. Now, I will ask you this: Did she ever show you any letters after it came out in the Paterson News? A. I believe not. I believe not. I don't believe that I have seen any letters after it became newspaper property.

Q. When she called to see you, did she show you a paper which is marked Exhibit P-35? A. I don't recall that at all. I couldn't say whether she had or not.

Q. At the time that she had been to see you, did she tell you that she had received something written or a wrapper written, or addressed by Sarah Mowell? A. I couldn't say that, Judge.

Q. She surely did not say she had written the letter, anything to herself, for fun? A. Oh, no.

Mr. Zabriskie That is all.

Mr. Breslin: That is all. Thank you.

Mr. Zabriskie: I think that testimony should all be stricken out on the ground that it all happened long before the letter in question was written, according to the testimony now of the Judge.

The Court: We do not know yet. I admitted it conditionally.

Mr. Breslin: We will couple it up.

The Court: Well, it is four minutes to four. We cannot do much more today.

Adjourned to tomorrow, March 26, 1930, at 10 A. M.

Hackensack, New Jersey,
March 26, 1930.

Trial Resumed.

Mr. Zabriskie: Dr. Hopper.

DR. JOHN B. HOPPER, recalled, further testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Doctor, I show you a photograph in three pages.

Mr. Zabriskie: I will ask to have these marked now for identification.

(Photographs marked Exhibit P-39, Id., P-39-A, Id., P-39-B., Id.)

Q. What are those three pages, Doctor? A. Copy of a communication which I received.

Q. Do you know in whose handwriting the communication was? A. In Mrs. Moschzisker's handwriting.

Q. You were in court when she admitted that at the criminal trial?

Mr. Breslin: I object to that, your Honor.

A. I was not.

Mr. Zabriskie: I offer these in evidence as standards.

Mr. Breslin: I would like to be given the opportunity to cross-examine.

Cross-examination by Mr. Breslin:

Q. Doctor, these are the same sheets that were in court yesterday? A. No, I would say not.

Q. You are sure that they are not the same sheets? A. Not the same sheets that were handed me yesterday.

Q. How long ago did you receive that letter? A. Oh, I don't know. I guess ten years ago.

Q. Ten years ago. Do you mean to say, Doctor, that you can say that that letter is, word for word, of the original letter that you received? A. Yes.

Q. You received this letter over ten years ago? A. Yes.

Q. And you have remembered every word of it? A. I have.

Q. You have no malice or animosity towards the Von Moschziskers? A. No, sir.

Q. What was there that made you remember this letter word for word, if you received it ten years ago? A. Well, I may have read it a number of times, and, of course, two years ago, I read it again, and the subject matter is so clear that it wouldn't be hard to remember.

Q. But the best you can say is that, to the best of your recollection, this is a copy of the letter, a photostatic copy? A. Yes.

Mr. Breslin: I object to it.

The Court: Where is the original?

Mr. Breslin: On the ground that—

By Mr. Zabriskie:

Q. What became of the original, Doctor? A.

You returned it to me. I don't know where it is now.

Q. Have you searched for it? A. I have.

Q. To what extent? Just tell the Court to what extent you have searched? A. Well, I have hunted my office over, and residence, and I have been unable to find the commuication, the original communication.

Q. You had it in court two years ago? A. Yes.

Q. And then it was returned to you by me? A. Yes.

Q. And that is the last you have seen of it that you can recall.

By Mr. Breslin:

Q. But, Doctor, while you had this letter after it was returned, subsequent to the trial, you did not have a photostatic copy made of it, did you? A. I did not.

Mr. Breslin: I object to it, if your Honor please, on the ground that it has not been properly connected up.

The Court: I will sustain the objection.

Mr. Zabriskie: If your Honor please, he says—

By Mr. Zabriskie:

Q. Is that a faithful reproduction of the letter? A. Yes, sir.

The Court: I know, but how was that made? Who had it since that time?

Mr. Zabriskie: Well, I do not think that makes a bit of difference, if your Honor please. The question is, is it a true representation, true reproduction of the original.

I do not think it makes any difference whether the photographer is here or in Chicago. The question is whether that is a true representation.

The Court: Just a minute. I am not saying that the photographer is necessary. He is not a necessary witness, but the doctor said that the letter was given to him, he did not have a copy made of it. Now, I do not know when that copy was made.

Mr. Zabriskie: I do not think that is material, sir.

The Court: In other words, we may still account for the original.

Mr. Breslin: I respectfully submit that they must show what they copied that particular photostatic letter from, and where it was copied, and what letter it was copied from.

The Court: It may account for the original. If the photostatic copy was made, the doctor did not have it made. I do not know when that was made.

Mr. Zabriskie: But he says the original is lost. He says it was returned to him and he has made diligent search and he cannot find it.

The Court: I am not satisfied that a proper search has been made.

By Mr. Zabriskie:

Q. Then will you go more fully into what search was made, Doctor? A. The letter was returned to me. I think in a subsequent conversation you said that you had a registered mail receipt for the delivery of the letter to me. I was under the im-

pression that it was among some of my papers, and when you made a request upon me for the letter, I endeavored to find it.

Q. Now, just tell what you did, what you went through? A. Well, I went through all of my files, letter files in the office, and I did not find it there. I did not find it in my desk. Mrs. Hopper was away at the time, and I thought perhaps she may have known where it was placed. I looked in the box in the Citizens National Bank, and I did not find it there, and thought that perhaps she had placed it in another box. Upon her return she looked for it and did not find it.

Q. How exhaustive a search did she make?

Mr. Breslin: I object to that, unless the doctor knows of his own knowledge.

Q. If you know. A. Well, I know that she has been through everything about the place, and in all the drawers, and most of the desks in our home, the desk in the office, and through the same files that I have been through, but did not find it.

Q. During what period of time have you and Mrs. Hopper been looking for this letter, about? A. Well, I would say about four or five weeks, something like that, sir.

Q. What is the last time you looked for it? A. Yesterday.

Q. What did you do yesterday? A. Went through those same places that I mentioned previously.

By the Court:

Q. Doctor, did you have that copy made? A. This copy? I did not.

Q. When was it made, do you know? A. I do not. The only time it could have been made is—

Mr. Breslin: No. I object to that, if your Honor please.

Q. No, unless you know.

Mr. Breslin: I still press my objection.

The Court: You see, the difficulty, as I see it, is that it may be evidential, but as the proof is before me, and you have accounted for it, the doctor did not have the photostatic copy made. Now, who had it when that copy was made, and when was that copy made?

Mr. Zabriskie: Well, I will answer those matters later on, if your Honor please. I will produce other witnesses who had it made.

That is all, Doctor.

The Witness: Thank you.

By Mr. Zabriskie:

Q. When is the last that you saw the original of that, Doctor? A. About the return of it to me, from your office.

Q. And that was shortly after the other trial? A. Yes.

Q. That was two years ago, practically? A. Yes.

DR. JOSEPH R. MORROW, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Zabriskie:

Q. Doctor, where do you live? A. Bergen County Hospital.

Q. And what is your official position at this time, Doctor? A. Medical Director of Bergen County Hospital.

Q. What kind of a hospital is that? What is the correct title of that? A. It is a County hospital for the care and treatment of communicable diseases, including tuberculosis.

Q. And contagious diseases? A. Yes.

Q. What has been your experience there, Doctor, approximately how many cases and covering what period of years? A. Several thousand cases; between four and five, I believe, to be correct.

Q. Between four and five thousand cases of what? A. Of contagious, communicable diseases, and tuberculosis, extending over a period of thirteen and a half years.

Q. What has been your association with that work with reference to making diagnosis, and so forth? A. I have been very actively associated with the cases, medically, such as being Medical Director, with assistants.

Q. And you have personal contact with cases in that manner? A. Yes.

Q. How many years were you located there, Doctor? A. Thirteen and a half.

Q. Thirteen and a half years. What was your professional experience before that? A. In communicable diseases work for five or five and a half years before; approximately twenty years.

Q. Where were those other five and a half years? A. Health Department of New York City, and Essex County.

Q. How long have you actually been a practicing physician, Doctor? A. Since 1910.

Q. Now, do you know Sarah B. Mowell, the plaintiff in this case? A. Yes, I have examined her.

Q. Do you recall when it was, about, when you last saw her? A. I saw her in November, the 26th; December 24th; and some time in the latter part of January, I believe.

The Court: 1926, did you say, Doctor? What year?

The Witness: November 26th, and December 24th.

The Court: What year?

The Witness: In 1929. And then in January, some time the latter part of January.

Q. As of January— A. 1930.

Q. 1930? A. Yes.

Q. Did you examine her on that occasion? A. Yes.

Q. And during what period of time? What was the first time that you saw her, as nearly as you can recall, Doctor? A. I did not understand the question.

Q. Well, how many times did you see Miss Mowell, that you can recall? A. Three, I believe, December. November and January.

Q. Where did you see her? A. In her home.

Q. Were you in consulation with any other doctor at her home? A. With Dr. Fisher, who was her family physician, I understood.

Q. And Dr. Fisher was present each of the times that you were there, as far as you can recall? A. He was.

Q. Doctor, what conditions did you find at the time you made your last examination of Miss Mowell? A. Far advanced tuberculosis, involving both lungs.

Q. And the first time you examined her, what did

you find? A. A far advanced tuberculosis, involving both lungs.

Q. Now, Doctor, assume that the plaintiff, Sarah Mowell, previous to the spring of 1927, had been enjoying good health, and that prior to that date she was athletic, in that she excelled in swimming and skating; that in September, 1926, her fingerprints were taken; that she was asked to write, and it was otherwise indicated to her that she was under suspicion of an offense of which she said she was not guilty; and that thereafter, and on the 10th day of August, 1927, she was arrested and put in jail, and that she remained in jail for about six and a half hours; that she was nervous and excited, and humiliated and crying during the time that she was in jail; that she was afterwards brought into court to plead to an indictment for a criminal offense; that she was subsequently put on trial and obliged to remain on defense for eight days, when she was acquitted; that after the trial was over she was weak and nervous, and thereafter developed the conditions which you found upon your examination. Doctor, can you state with reasonable certainty whether the arrest and the criminal prosecution were producing causes of the condition that you found?

Mr. Breslin: Objected to, as it does not cover all the facts in the present case. Judge Zabriskie very cleverly has omitted the fact that this girl had a bad cough in the spring of 1927, and that she had a nervous breakdown, and as a result of the nervous breakdown had to go to Atlantic City. Those facts have been omitted in this hypothetical question.

The Court: I think they are important, Judge.

Mr. Zabriskie: I will allow you to add those two elements, if you like, to the hypothetical question.

Mr. Breslin: I am not asking any question.

The Court: Incorporate it in your question.

Mr. Breslin: I object to the question.

The Court: Incorporate it. In view of this claim I think they ought to be incorporated.

Mr. Zabriskie: Just read, Mr. Stenographer, so that we will get that accurate.

(Part of Mr. Breslin's remarks read).

Mr. Zabriskie: I do not think, if your Honor please, that there is any testimony that she had a bad cough.

Mr. Breslin: Well, it is right here, "I had a bad cough." That is what she says in her own language.

Mr. Zabriskie: Then I will insert that.

Mr. Breslin: Before her arrest.

Q. Now then, Doctor—

Mr. Breslin: And I have another objection, that the question does not show when she received the first medical attention for this alleged illness, which is very important.

The Court: Is that in the evidence?

Mr. Zabriskie: No, it is not in the evidence.

The Court: Is that in the evidence?

Mr. Zabriskie: No.

Mr. Breslin: It may not be in at this time. I do not see how the doctor can base an honest opinion unless he knows when she received the first treatment.

The Court: Of course we cannot go outside the evidence for the hypothesis.

Mr. Breslin: All right.

Q. Now, Doctor, assume that the plaintiff, Sarah Mowell, previous to the spring of 1927, had been enjoying good health, and assume that she had a bad cough in the spring of 1927, and a nervous breakdown, and as a result of the nervous breakdown she had to go to Atlantic City, and that prior to that condition of health that I have just referred to, she was athletic, in that she excelled in swimming and skating; that in September, 1926, her fingerprints were taken; that she was asked to write, and it was otherwise indicated to her that she was under suspicion of an offense of which she said she was not guilty; and that thereafter and on the 10th day of August, 1927, she was arrested and put in jail; that she remained in jail for about six and a half hours; that she was nervous and excited, and humiliated, and crying during the time she was in jail; that she was afterwards brought into court to plead to an indictment for a criminal offense; that she was subsequently put on trial and obliged to remain on defense for eight days, when she was acquitted; that after the trial was over she was weak and nervous, and thereafter developed the condition which you found upon your examination. Now, Doctor, can you state with reasonable certainty whether the arrest and criminal prosecution were producing causes of the conditions that you found? Can you? A. In that

physical, mental and emotional strain will activate tuberculosis infection and cause tuberculosis disease, or aggravate—

Mr. Breslin: I respectfully ask that the answer be stricken out.

The Court: No, cause, Doctor. Aggravate presupposes a condition, does it not?

The Witness: I was going to say, or aggravate an existing tuberculosis, or aggravate tuberculosis.

The Court: Just listen to the last part of the question.

Mr. Zabriskie: Yes.

Q. Can you state with reasonable certainty whether the arrest and criminal prosecution were producing causes of the conditions that you found? That is, can you state yes or no? A. They could have been.

Q. The answer apparently is yes.

Mr. Breslin: Wait a minute. I ask that the answer stand as it was and not as Judge Zabriskie wants it.

The Court: "They could have been."

Mr. Breslin: Could have been.

Q. And were they, in your opinion?

Mr. Breslin: I object to that on the ground that he has already answered.

The Court: I will allow it, if the Doctor wants to go any farther.

Q. Were they producing causes of the conditions that you found, Doctor, in your opinion? A. Can that question be qualified or modified?

The Court: Not at this time.

A. Well, without trying to single out this particular case away from the average, I would say that they were.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. Doctor, when you treated this young lady, did she give you a history of her case? A. Most of the history was given to me by Dr. Fisher, if I remember rightly.

Q. Did she tell you when you first examined her that she had a bad cough in 1927? A. I don't remember. I don't remember the past history definitely.

Q. Did she give you a past history? A. I didn't elicit that. I took it largely from Dr. Fisher.

Q. Well, I am asking you, Doctor, whether she gave you herself the history of the case? A. I don't remember that.

Q. Did she tell you that she had diseased tonsils? A. No, not that I remember.

Q. Well, will you say that she told you that, or that she did not tell you that? A. Not that I remember.

Q. Pardon? A. Not that I remember.

Q. Not that you remember. Did she tell you that before her arrest she was not in perfect health and had a bad cough? A. I don't remember that.

Q. Well, if she had stated that to you, would your conclusion be different?

The Court: With respect to which answer?

Mr. Breslin: With respect to the answer that he gave to the hypothetical question, as to the producing cause.

The Witness: Not essentially.

Q. Well, in other words, in your opinion, then, the fact that she was not in perfect health before the arrest, and the fact that she had a bad cough, would not make any difference in the producing cause of the tubercular condition that exists today? A. Will you state that question again?

Mr. Breslin: Repeat it, will you please?

(Question read). A. That would depend entirely upon the length of the disease and of the diseased conditions.

Q. Well, can you tell with any degree of certainty how long this tubercular condition has existed? A. That is very difficult.

Q. Pardon? A. Very difficult.

Q. Very difficult. Now, what are the ordinary causes of tuberculosis? A. The cause of tuberculosis is infection of the tissues with tubercle bacilli.

Q. In other words, in order to have tuberculosis you must have an invasion by bacteria, or what is commonly called germs, and then after you have the invasion you must have an infection? A. Yes.

Q. Is not that the usual history of a tubercular case? A. That is the beginning of tuberculosis.

Q. Is it not true in most instances that there must be a trauma or a direct application of force? A. Not necessarily a trauma or force.

Q. But there must be the invasion of this bacteria? A. An invasion of the bacteria and an en-

ervation or a breaking down of the tissues, from whatever cause that may be.

Q. Then there must be a subsequent infection? A. The infection is first.

Q. Is it not true that invasion is first, and then infection, and then you have the tubercular condition? A. Well, you can place it that way, an invasion with bacteria and then the infection.

Q. Well, that is what I mean. A. But that is essentially one and the same thing. That is the primary infection.

Q. Now, Doctor, you say that you first examined this girl in November, 1929? A. Yes.

Q. Before that time you had never examined her? A. No.

Q. Before that time you do not know of your own knowledge what her physical condition was? A. No.

Q. And when you examined her in November, 1929, you found both cavities of the lungs filled with tubercular germs? A. Both lungs were involved with cavities, with cavitation of each lung, and of course germs were plentiful.

Q. Well, that is— A. I mean—

Q. What do you mean, in plain, ordinary English, when you say both lungs were involved with cavities? In common-day English, that means both lungs were filled up with tubercular germs, does it not? A. Oh, yes.

Q. Now, do you know when the girl was first treated for this condition? A. No.

Q. You do not know. Would not that have some bearing upon the conclusion that you made in response to Judge Zabriskie's question? A. Not essentially.

Q. Well, do you not think, Doctor, before you formed that opinion, or gave that opinion, you should have ascertained when she was first treated by a physician for that condition? A. I was given a history of the case by Dr. Fisher, and he told me that it existed—

Q. Just a minute.

Mr. Breslin: Will you read the question?

A. (Continuing) I don't remember the exact length of time. It may be short or it may be long.

(Question read). A. Not necessarily, when she was first treated by a physician, because I was—

Q. Would it not be helpful in arriving at your conclusion?

The Court: Well, Doctor, by this we mean not your conclusion as to her condition when you examined her, but your conclusion with respect to the statement in the hypothetical question as a producing cause.

The Witness: I was called as a consultant to examine her as to her condition, as I understood it.

The Court: Yes. Well, now, the point is this, the question that I ask: From your observation you could well have made a diagnosis as to her existing condition without any previous history?

The Witness: Oh, yes.

The Court: Now the question is, without taking into consideration her previous history, are you prepared to say the previous history would have no effect upon your opinion as to whether or not the facts related in the hypothetical question were a producing cause?

The Witness: No; they would be a consideration.

Q. Pardon? A. They would be a consideration, as I remember the hypothetical question.

Q. In response to Judge Zabriskie's question you said that her condition, as of November, 1929, was due directly and proximately to her arrest? A. I did not say that.

Q. You did not say that? You did not mean that, did you? A. I didn't say that.

Mr. Breslin: That is all.

Mr. Zabriskie: That is all, Doctor.

Mr. Zabriskie: I will call Dr. Fisher.

DR. PERCY C. FISHER, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Dr. Fisher, where do you live? A. Ridgewood.

Q. Do you live near Sarah Mowell's home? A. About two blocks away.

Q. Do you know her personally? A. Yes.

Q. Have you know her personally for some time? A. Yes, I have.

Q. For about how long, Doctor? A. Oh, three to four years.

Q. Three or four years. Did you know her before anything came up in connection with this case, that is, the criminal prosecution? A. You refer to the trial?

Q. Yes. A. Yes.

Q. Her trial was two years ago? A. Yes.

Q. And you knew her a couple of years before that, would you say, approximately? A. About a year and a half or two years before that.

Q. Did you have a chance to observe her as a neighbor would observe someone they were acquainted with? A. No, I did not. I never had any contact with her except professionally.

Q. You did not see her, then, around Ridgewood, when she was walking around, that you could recall? A. No.

Q. When did you first come in contact with her professionally, Doctor? A. In odd times in 1926.

Q. In what part of 1926 did you first come in contact with her, as near as you can tell? A. Well, I have no accurate record of just particular dates, because I saw her during—probably two or three times in 1926, for minor ailments; and those things I usually don't burden myself with records on.

Q. When you say minor ailments, what does that mean? A. Possibly colds, or something of the kind. I have forgotten now what they were.

Q. Did you examine her, Doctor? A. Yes, I did.

Q. Can you tell approximately when it was that you first examined her? A. The first time that I examined her was in—thoroughly—was in August, 1927.

Q. Now then, were you the family physician of the Mowells? A. Yes, at that time.

Q. You say in August, 1927? A. Yes.

Q. Then you made an examination of her. And where was that examination made, Doctor? A. At her home.

Q. And what was the nature of that examina-

tion? A. It was a complete physical examination.

Q. Was it toward the end of 1927 or the middle? I mean of August, 1927? Do you recall what time in the month it was? A. I think about the 11th.

Q. You think it was about the 11th of August? A. I think so.

Q. Now then, just tell the jury, the Court and the jury, what kind of examination you made at that time, and what you found? A. May I refer to my notes?

The Court: If necessary.

Mr. Zabriskie: I will withdraw that question for the time being.

Q. You are a practicing physician, are you not, Doctor? A. Yes, I am.

Q. And you have been a practicing physician for how many years? A. For nine years.

Q. Are you a graduate of some medical school? A. University of Vermont.

Q. You are now in actual practice in Ridgewood? A. I am.

Q. How long have you been in active practice, Doctor? A. Eight years.

Q. Now then, will you just, by reference to your notes, with the Court's permission, tell what you found at that time? A. Do you want a general outline of the case history as found at that time, or the prysical findings?

Q. Did you take a case history at that time? Did you make a case of it at that time? A. Yes, I did. Or do you want the physical findings, the conditions I found?

Q. Well, the conditions you found. A. Well, I found the patient at that time—her general ap-

pearance was fair. She was thin; skin was pale; and tongue was slightly coated. Her voice was husky and hoarse. Her tonsils were in fair condition. The shape of the chest was flat. Pulse was of fair quality. And the blood vessels were flexible. In the thorax, that is, the chest, I found a normal development, but flat-chested; ribs prominent; and very small breasts. In the lungs I found rales, over the upper parts of both lungs.

Mr. Breslin: What was that, Doctor?

The Court: Rales.

The Witness: Rales. That is—interpreting that, that would be a bubbling sound, indicating moisture, which you hear with a stethescope, and dense breath sounds.

The abdomen was negative. The liver, gall bladder, spleen—

The Court: Not so fast, Doctor.

The Witness: Dense breath sounds.

The Court: You are reading it. We want to hear this. Suppose you start where you spoke of the breath.

The Witness: The dense breath sounds in the lungs.

The Court: All right.

The Witness: I found the abdomen and the—including the liver and gall bladder, stomach, spleen, kidneys, and the congenital organs, negative. The muscular system was slightly disturbed. Her nervous system was very nervous, an external shaking and twitching. The reflexes were normal.

Q. That was on the 11th day of August, 1927?

A. Yes.

Q. Now, then, have you seen her frequently since that time, Doctor, in a professional capacity? A. Yes, I have.

Q. When is the last time that you saw her, Doctor? A. I think the last time was last week.

Q. Can you tell the Court and the jury what the conditions were that you found then? A. When I found her last week?

Q. Yes. A. Well, she is now in a condition of very far advanced tuberculosis, and quite emaciated. I think that is about all, except for the details of her condition, like loss of appetite, and those things, which—

Q. Now, Doctor, assume that the plaintiff, Sarah Mowell, prior to the spring of 1927, had been enjoying good health, and assume that she had a bad cough in the spring of 1927, and a nervous breakdown, and as a result of the nervous breakdown had to go to Atlantic City to recuperate, and that she excelled in swimming and skating, that is, prior to the spring of 1927; that in September, 1926, her fingerprints were taken; that she was asked to write, and it was otherwise indicated to her that she was under suspicion of an offense of which she said she was not guilty; and that thereafter and on the 10th day of August, 1927, she was arrested and put in jail, and that she remained in jail for about six and a half hours; that she was nervous and excited, and humiliated, and crying during the time that she was in jail; that she was afterwards brought into court to plead to an indictment for a criminal offense; that she was subsequently put on trial and obliged to remain on defense for eight days, when she was acquitted; that after the trial was over she was weak and nervous, and thereaf-

ter developed the conditions which you found upon your examination, Doctor, can you state with reasonable certainty whether the arrest and criminal prosecution were producing causes of the conditions that you found? Can you? A. I would say that they were contributing factors.

Mr. Breslin: I ask that that be stricken out.

The Court: Strike it out.

The Witness: What does he want, a definite answer to that, yes or no?

Q. That is yes or no. A. Yes.

Q. And in you opinion were the arrest and criminal prosecution producing causes of the condition that you found? A. Yes.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. In other words, you say that her tubercular condition today is the direct and proximate result of her arrest? A. No.

Q. Well, you just said a minute ago, in response to Judge Zabriskie's question, yes. A. Because you would not let me qualify my answer.

Q. You cannot do that.

The Court: You were asked—

The Witness: Your Honor, we recognize a—

Mr. Breslin: Just a minute.

The Court: No. Just listen. The question to you was that statement framed in the form of the hypothetical question. The question was asked whether, with those

symptoms and conditions surrounding the girl prior to the time you treated her, whether or not those were producing causes?

The Witness: Yes.

Q. Now I ask you again if the arrest is the cause of her present tubercular condition, the sole and proximate and producing cause?

Mr. Zabriskie: I object. He has not said that.

The Court: He can answer that.

A. No, it is not the sole and productive cause of it.

Q. You said just a minute ago, in response to Judge Zabriskie's question, that the arrest was the producing cause of the tubercular condition today.

A. He asked me that among other things.

Q. No, he did not. He asked you the flat-footed question.

The Court: No. The Doctor was asked his opinion, based upon everything contained in the hypothesis.

The Witness: Yes. I can't pick out one thing.

Q. Will you say that the arrest is the cause of her condition today? A. No.

Q. Doctor, you treated her in 1925 for a goiter? A. Yes.

Q. And you treated her in the spring of 1927 for bronchitis? A. Yes.

Q. Had a bad cold. Now in response to Judge Zabriskie's questions you said that the first time that you treated her for anything that you made any note of was on August 11, 1927. A. Of any

note, yes, that I made note of.

Q. In other words, you forgot about this time in the spring of 1927, when you treated her for bronchitis? A. Not at all.

Q. Well, then, the bronchitis has not anything to do with the tuberculosis? A. My memory—I did not say that my memory were notes. I said that I had no notes previous to that—

Q. You remember that you did treat her in the spring of 1927 for bronchitis? A. Yes, I do.

Q. And she had a bad cough then? A. Yes.

Q. And she was run down? A. Yes.

Q. That was before August, 1927? A. Yes.

Q. Now, you did not make the diagnosis of tuberculosis until you had a consulatation with Dr. Hagen, I think his name is, in the spring of 1928? A. No. I made the diagnosis before that.

Q. When was that? A. Possibly two weeks prior to that.

Q. Two weeks? A. Yes.

Q. Well, it was toward the spring of 1928 before you made the diagnosis of tuberculosis; is that correct? A. Some time in the early spring, I presume, yes.

Q. You say when you examined her on August 11, 1927, you found that she had a flat chest; is that correct? A. Yes.

Q. And is not that one of the symptoms of tuberculosis? A. Not necessarily.

Q. Is not that one of the symptoms, preliminary symptoms? A. No, not necessarily.

Q. Is not that one of the preliminary symptoms? A. It could be. There are many conditions in which you may find a flat chest.

Q. How about this condition that you found in-

dicating bubbles; is not that one of the symptoms? A. Not necessarily.

Q. I am asking you if it is one of the symptoms? A. It is one, yes.

Q. Now you treated her for minor ailments in 1926. Do you remember what those ailments were? A. Possibly only the bronchitis, and in reference to a goiter.

Q. But it was along those general lines that you treated her in 1928 for, colds? A. Yes.

Q. How did you find her pulse in 1927 when you examined her? A. Her pulse was 96 in rate.

Q. How about the temperature? A. And the pulse was of fair quality. Her temperature at that time was normal. No. I beg your pardon. I have a note here. Sometimes it arose to 102.

The Court: What was that, Doctor?

Q. What was that? A. Sometimes rose to 102. This is in my notes of August 11, 1927.

The Court: 102?

The Witness: Yes.

Q. What is the normal temperature?

Mr. Zabriskie: Was that the 11th of August, 1927?

The Witness: Yes.

Q. What is the normal temperature? A. 98.6.

Q. In other words, the fact that this temperature was high is one of the symptoms of tuberculosis, not that it may be. I am asking you flat-footedly whether it is or is not? A. Yes, temperature goes with tuberculosis.

Q. In other words, the fact that she had a high temperature is an indication that the lungs were

inflamed with this cough and rales, and bubbling, and so on? A. Yes.

Mr. Breslin: That is all.

Mr. Zabriskie: That is all.

By the Court:

Q. Doctor, you said when you examined her you found that she was nervous. Then you said her reflexes were normal. When you speak of her being nervous, do you mean to say that her—or I will put it this way: How do you account for her reflexes being normal, and then being extremely nervous? A. Well, you can be perfectly normal with your reflexes, the deep reflexes of the deep nerves, and yet have a general nervous attitude, in the sense of being irritated, excitable, emotional.

Q. But this nervousness, as manifested by her, might have come just as a result of your examination at that time? A. I don't think so, because I knew her too well. You can say that with a person whom you are not acquainted with, or, rather, who is not acquainted with you, when they come for an examination. But I think that after you know a person pretty well, you can discount that nervousness.

Q. Then there is no relation in this case between the reflexes being normal and the nervousness as exhibited to you? A. No.

Cross-examination by Mr. Breslin (continued):

Q. And you say that as a medical authority? A. Yes, I do.

Q. You said a few moments ago that you knew her well; is that correct? A. Yes.

Q. And you said in response to Judge Zabriskie's questions that you did not know much about her before you examined her. A. Except professionally.

Q. Except professionally. A. Yes.

Q. And in August, 1927, you were of the opinion that she had all the preliminary symptoms of tuberculosis? A. Probably.

Mr. Breslin: That is all.

By the Court:

Q. Doctor, could you say of how long standing that was? A. That is very hard to tell, because the beginning of a case, an incipient case of tuberculosis, is very hard to detect. She may have had the beginning of the symptoms of her tuberculosis during 1927, during the spring and summer of 1927, when she had bronchial symptoms only.

Redirect-examination by Mr. Zabriskie:

Q. Strain and worry and those things precipitate the disease, is not that so, Doctor? A. Yes, sir.

DR. ORVILLE R. HAGEN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Dr. Hagen, you are a practicing physician of the State of New Jersey? A. Yes, sir.

Q. And how long have you been a practicing physician of this State? A. Twenty-five years.

Q. And where are you located, Doctor? Where is your office? A. Paterson.

Q. How long have you been located there? A. Twenty-five years.

Q. What has been your professional experience, Doctor? A. Well, I was in private practice—

The Court: Speak a little louder, Doctor.

The Witness: Pardon me?

The Court: Will you not speak a little louder?

A. (Continuing) I graduated from Columbia in 1905, entered the Paterson General Hospital as an interne; and entered private practice in Paterson after that, at the end of a year and four months. I was in private practice until the War broke out, when I went into the army, and was in the army for two years, and then went back to private practice after the War was closed.

Prior to going in the army I was Health Officer of Paterson for five years, and after I came out of the army; and I was the Director of the Paterson Tuberculosis Clinic from its beginning up until the present time, or about twenty years.

I am on the staff of the General Hospital now, in general medicine, the major staff.

I am also connected with the Passaic County Tuberculosis Hospital at Valley View, which has been opened just a year.

Q. In what connection there, Doctor? A. I am on the Board of Governors.

Q. Do you know, or have you ever met Sarah B. Mowell, the plaintiff in this case? A. I met her once.

Q. Can you fix the time approximately when that

was, Doctor? A. Two years ago, about.

Q. Did you examine her then? A. Yes.

Q. And can you tell the jury what condition you found by your examination? A. I found the patient was suffering with moderately advanced pulmonary tuberculosis.

Q. Now, Doctor, assume that the plaintiff, Sarah Mowell, previous to the spring of 1927, had been enjoying good health—

Mr. Breslin: Now, I object to that, if your Honor please, in view of the evidence at the present time that she had been treated for colds in 1926 by Dr. Fisher.

The Court: The only testimony as to her good health is the testimony of the mother, who said she seemed to be all right.

Mr. Zabriskie: Well now, I will redraft the question.

Q. Assume, Doctor, that previous to the spring of 1927 she had been treated by physicians for minor troubles, such as colds, but that she had been athletic and that she excelled in swimming and skating, and assume that she did have a bad cough in the spring of 1927, a nervous breakdown, and as the result of the nervous breakdown, had to go to Atlantic City to recuperate; that in September, 1926, her fingerprints were taken; that she was asked to write, and it was otherwise indicated to her that she was under suspicion of an offense of which she said she was not guilty; and that thereafter and on the 10th day of August, 1927, she was arrested and put in jail; that she remained in jail for about six and a half hours; that she was nervous and excited, and humiliated, and crying dur-

ing the time that she was in jail; that she was afterwards brought into court to plead to an indictment for a criminal offense; that she was subsequently put on trial and obliged to remain on defense for eight days, when she was acquitted; that after the trial was over she was weak and nervous, and thereafter developed the conditions which you found upon your examination, Doctor, can you state with reasonable certainty whether the arrest and criminal prosecution were producing causes of the condition which you found?

Mr. Breslin: I object to it, if your Honor please, on the ground that it does not include all of the conditions that Dr. Fisher has outlined as to her condition in August, 1927, all the preliminary indications of tuberculosis, as to her high temperature and flat chest, and so on.

Q. Were you in court just now when Dr. Fisher testified, Doctor? A. Yes.

Q. Assuming that all of Dr. Fisher's testimony be true, added on to what I have said, can you state with reasonable certainty the arrest and criminal prosecution were the producing causes of the condition which you found? A. Producing causes?

Q. Yes, some of the producing causes? A. No; aggravating causes.

Mr. Zabriskie: Cross-examine.

Mr. Breslin: No questions.

CORNELIUS DOREMUS, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Judge, you are a resident of Bergen County? A. I am.

Q. What official position have you held in this County?

Mr. Breslin: I object to that as being immaterial.

Mr. Zabriskie: I withdraw it.

Q. What connections have you had with the Ridgewood Banks? A. I am vice-president of those banks.

Q. And which banks? A. At the present time, the First National Bank and Trust Company, which is a merger of two banks, the First National Bank of Ridgewood, and the Ridgewood Trust Company.

Q. Now, in the period from February 24th until August, 1927, then there were two banks in operation? A. Two banks.

Q. Do you know Sarah B. Mowell? A. I do.

Q. Sarah Mowell, the plaintiff in this case? A. I do.

Q. During that period of time that I have mentioned, was she employed in one or the other of those banks? A. She was employed in both.

Q. First in the— A. In the trust company, and then in the First National.

Q. Was she under your supervision in any way, Judge? A. No, not direct supervision.

Q. Do you know what her reputation was in Ridgewood for morality, virtue and honesty in liv-

ing during the time that she was in your banks? A. I will have to answer that negatively. I know nothing to the contrary, but what she had all those characteristics.

Q. Do you know Mrs. Von Moschzisker? A. Do I? Yes.

Q. Did Mrs. Von Moschzisker ever speak to you about Sarah Mowell? A. Yes.

Q. And do you recall what she said, Judge? A. No, I wouldn't be able to say what she said. I could only repeat possibly the substance of it.

Q. Can you give us the substance, as near as you can? A. As I recall it, she came into the First National Bank, and my impression is that her husband was with her, and said something to the effect that—as I remember it now—that Miss Mowell had been writing letters, and that she thought Miss Mowell ought not to remain in the employ of the bank, as I remember it.

Q. Now, do you recall when there was a meeting of yourself with Mr. Griffiths of your bank, and Mr. Lannuier of your bank? Do you recall a meeting at which Miss Mowell was present? A. I have a very hazy recollection of the fact that there was such a meeting.

Q. Do you know what brought about that meeting? A. I could only give my best impression, and that would be that if it was subsequent to this interview with Mrs. Von Moschzisker and her husband, it was with relation to whether or not she had written letters, because that seemed to be the rumor going about through the town.

Q. You are the President of the combined banks at the present time? A. Yes, I am.

Cross-examination by Mr. Breslin:

Q. Judge, in other words, to the best of your recollection, Mrs. Von Moschzisker came in and complained about the Mowell girl writing these letters? A. That is my best recollection.

Q. And she wanted the letter-writing stopped? A. I won't say as to that. That might be very true, but I won't—

Q. You won't deny that she said that? A. Oh, no.

Q. Then, as a result of this conversation you had Miss Mowell appear before the executive committee, which consisted of Mr. Lannuier, Mr. Griffiths and yourself? A. No. The executive committee consists of seven men.

Q. Did she appear before you and Mr. Lannuier and Mr. Griffiths? A. My recollection is that she did.

Q. Was there anybody else present at that conference? A. You are naming Mr. Lannuier, Mr. Griffiths, Miss Mowell and myself?

Q. Yes. A. I think not.

Q. Did you ever reveal to anyone what transpired at that conference? A. I did not.

Mr. Breslin: That is all.

CLARENCE C. VAN EMBURGH, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Van Emburgh, where do you live? A. 11 South Maple, Ridgewood, New Jersey.

Q. How long have you been living there? A. Do you mean in the same house or—

Q. In Ridgewood? A. 36 years.

Q. And do you know Sarah B. Mowell, the plaintiff in this case? A. I know her, yes.

Q. Do you know what her reputation is in Ridgewood for morality, virtue and honesty in living? A. I have never heard anything against her.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. You have never had any occasion to discuss it, have you, Mr. Van Emburgh, with anybody? She is no particular friend of yours? A. Well, I wouldn't say that.

Q. You have never been out on any social parties or anything like that, with her? A. Hardly.

Q. I mean in the presence of your wife. You are a good friend of mine, and I would not want to insinuate anything like that, but I mean you have never played bridge or anything at any social gatherings at your house or her house? A. No.

ALBERT G. GRIFFITHS, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Griffiths, where do you live? A. Glen Rock, New Jersey.

Q. And what institution, if any, are you connected with? A. First National Bank and Trust Company of Ridgewood.

Q. And in what connection? A. Cashier.

Q. Now, between May, 1926, and August, 1927, what institution were you connected with? A. First National Bank.

Q. Did you have in your employ at that time a girl by the name of Sarah Mowell? A. I did.

Q. The plaintiff in this case? A. Yes.

Q. Do you remember of a conference that took place when Mr. Lannuier, Judge Doremus and Miss Mowell and you were present? A. Yes.

Q. Do you know how that conference was brought about? A. I couldn't say exactly, no.

Q. Was it because of anything that was going on, any talk that was going on about Miss Mowell and anonymous letters? A. Yes.

Q. Did you pronounce that gentleman's name Mr. Lannuier or Lannuier? A. Lannuier.

Q. Do you know where Mr. Lannuier lives? A. Spring Avenue, Ridgewood.

Q. Is there a Mrs. Lannuier too? Mr. Lannuier is married, is he? A. Yes.

Q. Do you know how far from Mr. Von Moschzisker the Lannuiers live?

Mr. Breslin: Objected to as being immaterial.

The Court: I did not hear the question. What was the question?

Mr. Zabriskie: I will withdraw it, to save time.

Q. Now, then, Miss Mowell ceased her connection with your bank, did she not? A. She did.

Q. What was the cause?

Mr. Breslin: Objected to as calling for a conclusion.

The Court: Well, it is a fact, if he knows, if he knows.

Q. Do you know what was the cause of her leaving the bank? A. Rumors that—

Mr. Breslin: I object.

The Court: No, no.

Q. Do you know? That is yes or no. Do you know?

The Court: Did you have anything to do with her leaving the bank?

The Witness: Yes.

Q. And did she report to work after this criminal prosecution was over? A. She did.

Q. What did you say to her? A. An indefinite leave of absence.

Q. You gave her a leave of absence. What was your position at that time? A. Cashier.

Q. Was it up to you to hire or discharge? A. Yes.

Q. How long a leave of absence did you give her?

Mr. Breslin: Objected to as being immaterial.

The Court: I will allow it. How long a leave of absence did you give her?

The Witness: Indefinite.

Q. Did she offer to go to work? A. She did.

Q. Did she come back and ask for her job, or report? A. No.

Q. Did you employ somebody else to fill her place? A. Yes.

Q. Did you tell her so or did you not tell her

so? A. That somebody had taken her place.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. Now, at this conference which Judge Doremus and Mr. Lannuier and Miss Mowell and yourself attended, the general topic of conversation was the writing of these anonymous letters? A. Correct.

Q. And you never revealed to anyone the substance of that conference? A. No.

Mr. Breslin: That is all.

Redirect-examination by Mr. Zabriskie:

Q. I just want to ask one thing more. You did not have anything against her work, did you? A. Not a bit.

Q. Was she regular in her work? A. Yes.

Q. But you let her go on account of this—

Mr. Breslin: Now, I object to that.

Q. Why did you let her go?

Mr. Breslin: Objected to on the ground that he has already answered.

The Court: He said she was given a leave of absence.

Q. May I ask you why you gave her the leave of absence?

Mr. Breslin: That calls for medical opinion, or a mental operation, or some opinion.

Mr. Zabriskie: I am asking him.

The Court: Well, why?

Q. Why did you give her the leave of absence? A. The rumors of the writing of these letters.

Recross-examination by Mr. Breslin:

Q. In other words, you gave her the leave of absence because of the fact that there were rumors about the Village of Ridgewood that she had written the anonymous letters? A. There were rumors around.

Mr. Breslin: That is all.

Redirect-examination by Mr. Zabriskie:

Q. From whom did you get the information about these rumors, Mr.— A. I—

Mr. Breslin: Wait a minute, please.
The Court: I sustain the objection.

Q. Did Mr. or Mrs. Von Moschzisker ever say to you anything about these letters? A. No.
Q. Did she to somebody else in the bank?

Mr. Breslin: I object to that.
The Court: Sustained.
Mr. Zabriskie: That is all.

DR. WILLIAM L. VROOM, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Zabriskie:

Q. Doctor, are you a practicing physician in Ridgewood? A. I am.

Q. And are you connected with one of the banks there? A. Yes.

Q. And what bank, Doctor, have you been connected with before the consolidation? A. The First National and Ridgewood Trust.

Q. Was Sarah Mowell working for your bank while you were one of the directors? A. I knew she was working for us.

Q. Did you ever have any personal contact with her, or speak to her? A. I did not know her personally.

Q. Do you know what her reputation was for honesty and morality and living properly when— A. Nothing derogatory.

Q. Nothing derogatory. Now, Doctor, if I may refer to the Exhibit P-29, it uses this language, "Doctor Pettit has told the directors of our bank that he has treated you for epilepsy, and that you are just crazy enough to write letters to yourself, and Dr. Vroom told them the same thing. So now whose brain is neurotic?" Did you ever tell anybody anything like that? A. Made no assertion at all, never.

Q. Did you tell any director anything like that? A. No.

Q. Or tell Sarah Mowell that? A. No.

Q. No one in the world? A. No one.

Q. Was there any time when you were talking to Mr. Von Moschzisker, when the subject of epilepsy was spoken about? Just answer that yes or no. A. The subject came up—

Q. No; that can be answered yes or no. A. Yes.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. You know Mr. Von Moschzisker? A. I do.

Q. How long have you known him? A I suppose thirty years, I should think.

Q. And you know Mrs. Von Moschzisker? A. Very well.

Q. And how long have you known her? A. About the same length of time.

Q. You never heard anything derogatory concerning them? A. No.

Mr. Breslin: That is all.

Redirect-examination by Mr. Zabriskie:

Q. What do you mean by derogatory, Doctory? What do you mean by derogatory?

Mr. Breslin: You asked him the same question. A. In a professional way.

Mr. Breslin: You asked him the same question, so it is the same result.

Mr. Zabriskie: No, I did not ask that same question.

WALTER J. BURNETT, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Burnett, where do you live? A. Ridgewood.

Q. And do you know Sarah Mowell? A. I do.

Q. Do you know Mr. and Mrs. Von Moschzisker? A. I do.

Q. Have you seen Miss Mowell lately? A. I have.

Q. And been on friendly terms with her for how long? A. Ever since I have known her.

Q. And you have visited her lately frequently? A. Last evening.

Q. How did you get acquainted with Mrs. Von Moschzisker?

Mr. Breslin: Objected to as being immaterial.

The Court: Sustained.

Q. Did you do some work for Mrs. Von Moschzisker back in 1925?

Mr. Breslin: Just a minute.

A. I did.

Mr. Breslin: I object.

The Court: Just a minute. Do not answer a question while there is an objection.

I sustain the objection and strike out the answer.

Mr. Breslin: It has nothing to do with this case.

Q. Do you remember January, 1926, that Mrs. Von Moschzisker came in and spoke to you at the store?

Mr. Breslin: Now, if your Honor please, your Honor has already ruled on several questions.

The Court: Sustained.

Mr. Breslin: Judge Zabriskie is trying to influence the jury.

The Court: This is malicious prosecution,

and we are not going to have any questions get outside of that.

Mr. Zabriskie: I see. Well, that suits me.

Q. Now, do you remember an occasion in January, 1926, when you and Miss Mowell and Mrs. Van Moschzisker had a talk at Mrs. Von Moschzisker's house? A. I do.

Q. Will you tell what occurred at that time?

Mr. Breslin: I object to that as being too broad.

The Court: Sustained.

Mr. Zabriskie: Well, I do not know. If I get leading, then I suppose there will be objection. Counsel in his opening of his defense mentioned things—

The Court: I am not interested in that. I am just ruling on questions that are presented now.

Q. Well, at that time was Mr. Von Moschzisker present? A. No.

Q. The first time that you stopped, the first time that you were all together, you and Mr. Von Moschzisker, when Mrs. Von Moschzisker and Sarah and you were present, was Mr. Von Moschzisker also present? A. Is that the visit in the evening, Judge?

Q. Yes. A. Yes.

Q. Was there anything unpleasant at that time, on that occasion? A. Not in the slightest.

Q. On the day following that, did Mrs. Von Moschzisker give you an opinion as to whether or not Sarah had acted guilty? A. She did.

Q. What did she say? A. She said, "Couldn't

you see how she acted last night? She could not sit still in the chair, and she figeted all over, and she was very nervous. Now doesn't that prove to you who is the guilty one?"

Q. What did you say as to that?

Mr. Breslin: I object to that.

A. I said I—

Mr. Breslin: Wait a minute. I object to that.

The Court: It is immaterial what he said.

Q. Did you notice anything of that kind? A. No, sir.

Q. When was the next time that you were at the Von Moschzisker house when Sarah was present, Mr. Burnett? A. One afternoon.

Q. Can you tell about when that was? A. As near as I can recollect that was sometime in February of '26.

The Court: What year?

The Witness: '26, your Honor, 1926.

The Court: Oh, you did not mean February 26th; you meant the year 1926?

The Witness: The year 1926.

Q. What transpired on that occasion?

Mr. Breslin: I object to that.

The Court: sustained.

Q. Was there anything unpleasant at that time? A. No, sir.

Q. Was Mr. Von there at that time? A. No, sir.

Q. Now, in 1926 did Mrs. Von Moschzisker say

anything about anonymous telephone calls to you?

Mr. Breslin: Objected to as being immaterial.

The Court: Sustained.

Mr. Zabriskie: I will put it this way.

Q. Did she accuse Sarah to you of making anonymous telephone calls, to you? A. Yes.

Q. Did she make a charge of her having done that at a time when you knew Sarah was with you?

Mr. Breslin: Now, I object to that.

The Court: I sustain the objection.

Mr. Zabriskie: That shows malice, if your Honor please. Perhaps your Honor may have a different view of the law, but if a person says something that is not true, to another, it seems to me that indicates—

The Court: Oh, no; there must be some limitation.

Mr. Zabriskie: Of course there must be some limitation.

Was there an answer?

Mr. Breslin: I object to any answer.

The Court: I will sustain the objection. You may take your objection.

Q. Do you recall when they were discussing anonymous letters, that is, when you and Miss Mowell and Mrs. Von Moschzisker were discussing anonymous letters, as to whether or not Mrs. Von Moschzisker said that her mother should not be told about it? A. Yes.

Q. What did she tell her?

Mr. Breslin: Well, now, I object to that.

The Court: Sustained.

Q. How long have you known Mrs. Von Moschzisker?

Mr. Breslin: Objected to as being immaterial.

The Court: I sustain the objection.

Q. Have you called to see him?

Mr. Breslin: I object, if your Honor please.

The Court: Just a minute. I ruled on those questions before. Now do not ask questions that you know that I have ruled on and I will not permit.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. Now, what was the purpose of the visit on the night that you went there with Miss Mowell, and Mr. and Mrs. Von were present? A. The purpose of that visit, Mr. Breslin, was to show Mrs. Von Moschzisker and Mr. Von Moschzisker the type of girl Miss Mowell was.

Q. All right. Now is it not true that before Miss Mowell went in the house that evening, you went in and told Mr. Von that you had had an automobile accident, that you were afraid there was a judgment going to be entered against you, and you wanted him to put—to use a slang expression—a flukey chattel mortgage on your property? Yes or no. A. No.

Q. Did you ever discuss this automobile accident with Mr. Von and ask his advice as to how to get rid of your property? Yes or no. A. I can't answer that with yes or no. Put it in another way.

Q. Did you ever talk to him about this automobile accident that you had? A. I did.

Q. What did you say to him with reference to the automobile accident? A. I told him the details concerning it.

Q. And you did not say anything about putting a mortgage on your property, or trying to get rid of your property? A. No, sir. He suggested that.

Q. You knew he was not a trial lawyer, did you not? A. I did not know anything about what kind of a lawyer he was.

Q. Well, you knew he was a New York lawyer, a real estate lawyer? A. You are telling me now. I didn't know what kind of a lawyer he was.

Q. You did not know that? A. No, I didn't.

Q. You say all you did was discuss the features of the accident?

By the Court:

Q. Mr. Burnett, is this the occasion that you have just referred to as having Miss Mowell there for the purpose of showing the defendants what sort of a girl she was? A. No, sir.

By Mr. Breslin:

Q. When was that, that you took Miss Mowell there, before you discussed the business proposition with Mr. Von or after? A. I think that was before, Mr. Breslin. I couldn't be sure. I think it was before.

Q. When did you discuss the business proposition, before you took Miss Mowell around or afterward? A. I believe that was later in the year, if I am not mistaken. I am not sure of that particularly.

Q. Do you not remember this night that you

went there and Miss Mowell was in your car, and you went in the house and talked over this automobile accident with Mr. Von, and Mrs. Von said, "Bring your girl friend in," and you brought Miss Mowell in? Do you not remember that night? A. Very distinctly.

Q. Well, then you did talk about the automobile accident, did you not, before you brought Miss Mowell in? A. No, sir, not on that evening whatsoever. Miss Mowell only remained out in the car for a matter of about two minutes.

By the Court:

Q. What was the purpose that night, to bring Miss Mowell to the defendants' home or to discuss this automobile accident? A. To bring Miss Mowell to the defendants' home.

Q. Why did you not bring her in? A. Well, I will tell you, your Honor. I wanted to show Mrs. Von Moschzisker that Miss Mowell was not the type of girl that would write letters—

Q. No; that is not my question. If you brought her to the home for the purpose of showing her, why did you not bring her in? A. Well, at that time she hadn't been invited. When we—when I went in Mrs. Von Moschzisker said, "Is there anyone with you?" I said, "Yes, a lady in the car—a young lady in the car." She had never met her.

By Mr. Breslin:

Q. Now, you said a few minutes ago that Mrs. Von Moschzisker said that Miss Mowell acted as if she were guilty, did you not? A. I said Mrs. Von Moschzisker said that Miss Mowell did.

Q. Yes. A. Yes. That was a couple of days later.

Q. Now I direct your attention to the following question and the following answer in the criminal case, page 7 of the direct testimony of Walter Burnett: "Just tell what the conversation was, whether or not the letter was produced there again or not. A. Why, Mrs. Von Moschzisker had been telling, and repeated, that she didn't think that Miss Mowell had anything to do with it. That was in the presence of Miss Mowell. And the conversation seemed to be very pleasant. Mrs. Von Morschzisker was very pleasant to both parties, Miss Mowell and myself, and she said, 'I know you didn't do it,' speaking to Miss Mowell, and we talked of other things."

Did you so testify in the criminal trial? A. Exactly.

Mr. Breslin: That is all. No further questions.

Redirect-examination by Mr. Zabriskie:

Q. I may ask one question more. After that did Mrs. Von Moschzisker call you up then and say something to you about Sarah Mowell?

Mr. Breslin: I object to that. He has already been over that.

A. Yes.

The Court: I sustain the objection. Strike the answer "Yes" out.

AUGUSTUS MOWELL, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Mowell, where do you live? A. I live at 167 Walnut Street, in Ridgewood.

Q. And you are the father of Sarah Mowell? A. I am.

Q. How long have you been living in Ridgewood? A. About six years.

Q. Before that you were living in— A. Paterson.

Q. What was the health of your daughter, Sarah, as far as you know, up until the end of 1925, and early part of 1926? A. Very best.

Q. And she was employed regularly from February 1, 1924, until the time of her arrest? A. She was.

Q. Did you notice any difference in her condition from the time that she was arrested, and down to the present time? A. Yes.

Q. What was the difference that you noticed? A. A very great difference.

Q. In what respect? A. Well, at first she was nervous. Later on she developed a cough, and became very sick.

Q. Was she athletic before? A. Very.

Q. And in what respect was she? A. She was a fine swimmer and diver, and skater, and fine dancer.

Q. Have you been taking care of the business affairs for her during— A. Only in an indirect way.

Q. You advanced money for her? A. I did.

Q. And can you tell whether you paid counsel fees and bond fees amounting to—

Mr. Breslin: I object to that, if your Honor please. We will stipulate on the record that $1500 was paid to Judge Zabriskie, and $100 to the bonding company. I object to any other testimony from this witness.

Q. How about experts? Did you advance money for her benefit for experts? A. We did.

Q. Can you tell about how much that amounted to? I mean the last trial, for the last trial? A. About $1500, approximately.

Q. And did you have to employ doctors? A. I did.

Q. Do you know approximately how much you spent for doctors?

Mr. Breslin: I object, if your Honor please.

A. No, I don't.

Mr. Breslin: I object to it.
The Court: Sustained.

Q. Nurses?

Mr. Breslin: I object to that.
The Court: Sustained.

Q. Did you pay bills for her when she was up at Saranac Lake?

Mr. Breslin: Objected to.
The Court: Sustained.
Mr. Zabriskie: Your Honor allows me an exception to each one of those.

Q. Do you know Mr. and Mrs. Von Moschzisker?
A. Only by sight.

Q. Never talked to either one of them up to the present day? A. No.

Q. Is your daughter right-handed or left-handed? A. Very left-handed.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. You say you paid $1500 for handwriting experts; is that correct? A. I said approximately.

Q. How much did you pay the expert, Mr. Bushrod Spencer? A. I didn't keep the items of those accounts.

Q. Do you not know how much you paid Mr. Spencer, approximately? A. No, I do not. I don't know what each one of them got. I told you that I didn't keep the accounts myself.

Mr. Breslin: Then I ask that that all be stricken out, if your Honor please. He did not keep the accounts himself. It is merely hearsay. It is just guesswork, and, surely, if he testifies to an amount—

The Court: I thought he knew.

The Witness: I said approximately, Judge. I didn't say that I knew at all.

The Court: Of course there is another element you must consider before I will submit that to the jury.

Mr. Breslin: The reasonableness.

The Court: The reasonableness, and I would have sustained the objection, if one were made, and none was made.

Mr. Zabriskie: Of course I could call the doctors—you mean for the experts?

The Court: Anybody. Of course we would

have to call witnesses to establish your $1500 was reasonable, unless it was admitted.

Mr. Breslin: I will concede that was reasonable.

Mr. Zabriskie: That was more than reasonable.

Mr. Breslin: I think so, too.

I respectfully ask that this testimony as to the $1500—

The Court: I will exclude it, subject to being properly connected.

Mr. Zabriskie: You will let it in subject to being connected up?

The Court: No; I will exclude it, subject —of course, the payment of bills is some evidence, but we ought to know on what basis.

Redirect-examination by Mr. Zabriskie:

Q. Have you receipts for those different bills you paid, Mr. Mowell? A. I did not take any receipts, Judge. I had other business to attend to, and I did not attend to these accounts.

Q. Has Mrs. Mowell receipts for some of the bills? A. So far as I know. I believe she has.

Recross-examination by Mr. Breslin:

Q. Your daughter went to an art school in New York, did she not? A. Yes, sir.

Q. And she was quite clever with a pen? A. Always.

Q. Always? A. Always .

Mr. Breslin: That is all.

DR. HARRY HOWARD PETTIT, called as a witness on behalf of the plaintiff, being duly sworn testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Doctor, where do you live? A. In Ridgewood, New Jersey.

Q. Do you live near the Mowells? A. On the same street.

Q. Do you know Sarah Mowell? A. I know who she is, yes.

Q. What was your connection with the bank at Ridgewood by which she was employed? A. I was a director.

Q. Do you know what her reputation was in Ridgewood? A. It was good, so far as I know.

Q. And you live about how far from her? You say on the same street? A. Oh, about a block.

Q. Now, in the letter, Exhibit P-29, there is statement that "Dr. Pettit has told the directors of our bank that he has treated you for epilepsey," this letter being addressed to Mrs. Von Moschzisker, "and that you are just crazy enough to write letters to yourself." Did you ever tell the directors that? A. No. I never had such a communication

Q. Did you ever tell Sarah Mowell that? A. No, sir.

Q. Did you ever tell anybody that? A. No one.

Cross-examination by Mr. Breslin:

Q. Doctor, did you ever discuss the girl's reputation with anybody? A. With no one.

Q. Nobody talked about her with anybody before the trial? A. Never before the trial.

Q. So, therefore, when you say her reputation is

good, you mean that in a negative sense; you have never heard anybody discuss her one way or the other? A. One way or the other, yes. Practically little about her.

Mr. Zabriskie: I would like to recall Mr. Burnett. I omitted something.

WALTER J. BURNETT, recalled by the Plaintiff, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Burnett, when was the first time that you ever discussed with Mrs. Von Moschzisker the question of anonymous letters?

Mr. Breslin: I object to that as being immaterial.

The Court: I sustain the objection.

Mr. Zabriskie: If your Honor please, this is very important. If your Honor wants me to state what it is, or I could—

The Court: Well, you may have a reason, but your question does not indicate the materiality.

Mr. Zabriskie: Of course I can not do it all at once, you know. It has to be done on the instalment plan.

Q. At one of the times when you were discussing anonymous letters with Mrs. Von Moschzisker did you show her a sample of the writing done by Sarah?

Mr. Breslin: I—

A. I did.

Mr. Breslin: I object to that.

The Court: Strike that out. I do not see the materiality.

Mr. Zabriskie: It is very material, because our charge in this case is that the forms that are in these letters are copies of things done by Sarah Mowell. I am going to show you where she got the copy.

The Court: All right. Fix the time, so we will have it.

Q. When was that time? A. That was around January 19th or 20th of 1926.

Q. And did you show anything at that time to Mrs. Von Moschzisker that was in Sarah Mowell's handwriting? A. I did.

Q. What was that?

Mr. Breslin: Objected to—

The Court: I will allow it.

Mr. Breslin: —as the incident is—

A. Christmas card.

Q. What do you say? A. It was a Christmas card?

Q. What was on the Christmas card?

Mr. Breslin: I object to that.

Mr. Zabriskie: I withdraw that.

Q. Where is that Christmas card? A. I don't know.

Q. When is the last that you saw it? A. That afternoon.

Mr. Breslin: I object to that.

Just a minute. I object to that, if he does not know.

The Court: If he can remember where he saw it, I will allow that.

Q. Where is the last place you saw it? A. In Mrs. Von Moschzisker's house.

Q. Did you ever get it back? A. No, sir.

Q. What was on the card?

Mr. Breslin: I object to that.

A. "Merry Christmas from Sal."

Cross-examination by Mr. Breslin:

Q. That was addressed to you? A. Yes, sir.

Mr. Breslin: That is all.

Mr. Zabriskie: I was wondering if we could take a recess at this time. My reason is this: I have not had a chance to talk to one of our experts, and he has just come into the court room. In fact, he has not been able o see some of the standards. And if we could take a recess now—

The Court: Have you not any other witness at all you may call?

Mr. Zabriskie: Well, there are not any that would work in so very well, and that would give me a little opportunity to talk to this man.

Mr. Breslin: If your Honor please, I have a number witnesses on phone call, and I would like some idea when Judge Zabriskie is going to rest, because these people are in New York, and Judge Watson has been here three days now.

The Court: Judge, how many more witnesses have you?

Mr. Zabriskie: Well, I do not think there will be more than two or three called now.

There is a matter I would like to take up in chambers with you and counsel, if I have four or five minutes.

The Court: Well, we will come back a quarter after one, then.

(Recess).

After Recess.

Mr. Zabriskie: May I ask Mrs. Von Moschzisker to take the stand a minute?

EMMA L. VON MOSCHZISKER, one of the defendants, recalled as a witness on behalf of the plaintiff, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mrs. Von Moschzisker, calling your attention to the Exhibit P-9, may I ask you what words on that are in your handwriting? A. Well, everything but the word "Yes" written twice, and this number up here.

Q. Everything but the word "Yes" which is written twice in the lower right hand part? A. And what is this down here?

Q. Well, that is not your writing, apparently? A. I don't know what it is.

Q. But the printing, is all the printing on it yours? A. Yes, the printing is mine, except this "B" here.

Q. Excepting the "B"? A. The "B" on that side.

Q. Opposite the word "description"? A. Yes.

Q. And the "B" opposite 4171? A. Yes. Those are not mine.

Q. And then on the back there is a printing opposite the cross, "Emma Von Moschzisker". Is that in your handwriting? A. That was in my printing, or handwriting, underneath.

Q. That is in your— A. Lettering.

Q. Your printing or lettering, and then underneath it? A. The script.

Q. The script writing? A. Yes.

Q. Then, calling your attention to Exhibit P-8, may I ask you what is in your handwriting? A. You went all over this yesterday. Is it necessary to do it twice?

The Court: What is the question?

The Witness: I say we went all over this yesterday.

The Court: Answer the question.

The Witness: Oh.

A. This written down here is not mine.

Q. Supposing we start with what is yours on P-8. The words "Emma L. Von Moschzisker," is that yours? A. Yes.

Q. "144 Spring Avenue"? A. Yes.

Q. "Ridgewood"? A. "Bergen."

Q. And "Bergen". This "B4171", is that yours? A. That is mine.

Q. Is this "May 16"? A. Yes.

Q. And the word "Packard"? A. "Packard." The numbers are all mine.

Q. "265869" is yours? A. Yes.

Q. "Year 1929," that is yours? A. Yes.

Q. Then the "268854"? A. Right.

Q. "Model 633—" strike out the word "model". "633", is yours? A. Yes.

Q. The word "touring"? A. "Touring" and "ten" are both mine.

Q. The word "yes", is that yours? A. No, that is not mine. And that is not mine. They were filled in by the agent.

Q. Neither one of those is in your handwriting? A. No.

Q. Turning to the back of P-8, is the word "yes" there written by you? A. No, that is not mine. The "no" is at the top.

Q. The "no" is at the top? A. Yes. "United States."

Q. And the word "yes," after "damage", that is not yours, the word "yes" written after the word "damage;" that is not yours? A. No.

Q. This "United States Fire Insurance Company of New York," is that yours? A. That is mine.

Q. That is yours. And then the printing at the end, "Emma L. Von Moschzisker"? A. That is mine.

Q. That is yours? A. Yes.

Q. And then the writing below, that is yours? A. That is.

Q. That is, the writing of the signature below? A. Yes.

Q. And now I call your attention to Exhibit P-28, and will you tell us what is in your handwriting there? A. Nothing.

Q. Nothing on the front? A. Nothing at all, but the signature.

Q. Nothing on the front of P-28, and on the back of P-28? The written "Emma L."

Q. Just the written "Emma L. Von Moschzisker"? A. That is all, yes.

Q. Now, calling your attention to Exhibit P-39 for identification, 3 pages, I am going to ask you if that is a correct copy, a correct photograph, of a letter that you sent to Dr. Hopper? A. Well, not having seen the original in about fifteen years, I don't know whether it is a correct copy or not.

Q. Do you recognize the handwriting as being yours?

Mr. Breslin: I object to any further questions along that line.

The Court: No, Judge, my ruling this morning was not on the theory that a photostatic copy could be used. The difficulty this morning was the testimony of Dr. Hopper, that he had the letter, and it was given back to him. In other words, he could not account for the original.

Mr. Zabriskie: Well, he accounted for the original by saying that he could not find it, that it was lost.

The Court: Yes, but when was this photostatic copy made?

Mr. Zabriskie: Well, after this question was asked, then I was going to put on a witness to prove that, so I just asked this question now. I will not offer it now, but just ask that question.

Q. Is that a copy of that letter? A. I couldn't tell you, after fifteen years, whether it is a copy or not.

Q. Do you recognize your handwriting?

Mr. Breslin: I object to that. Mrs. Von Moschzisker is his witness at this stage of the proceedings.

The Court: No, I will allow it.

Q. Do you recognize this as being your handwriting? A. I think that it is.

Q. You think that it is. That is all.

BUSHROD H. SPENCER, recalled, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. I call your attention to P-39, which is in three parts, P-39, P-39A and P-39B, and I ask you what those three pages are? A. The original of that letter I took to the photographer, Mr. Reid, at 61 Broadway, Paterson, and asked him to make a photograph of it.

Mr. Breslin: I object to that.

The Court: That is all right.

Q. When did you do that? A. Some time in February, 1928, as I remember.

Q. Was that prior to the former trial? A. Prior to the former trial.

Q. Then did you get this back from him? A. I did.

Q. And is this a correct representation, photograph, of the letter that you gave to Mr. Reid? A. It is.

Mr. Zabriskie: I offer it in evidence.

Mr. Breslin: Objected to as not being the proper way to prove the absence of the original. He took it to a photographer. The photographer made a copy of it. Now, the photographer is the best man and the best

evidence as to what the contents of that letter are.

Q. Did you compare it accurately after it came back and see whether it was a correct representation, correct reproduction or representation of the letter that you had given him, the original letter of Dr. Hopper? A. Yes.

Q. And was it? A. Yes.

Mr. Zabriskie: I offer it.

Mr. Breslin: I still press my objection.

The Court: I overrule your objection.

Mr. Breslin: I pray an exception.

Mr. Zabriskie: I ask that it be marked.

Mr. Breslin: With the same restrictions as to all the others.

The Court: Yes.

(Papers marked Exhibit P-39, P-39A and P-39B).

Mr. Zabriskie: I ask to have this envelope marked for identification.

(Envelope marked Exhibit P-40 for identification).

Q. Were you present in court when Mrs. Von Moschzisker was on the stand, in February, 1928? A. I was.

Q. Do you remember her being shown this letter which is now Exhibit P-12, together with this paper that is now marked P-40 for identification? A. I do.

Q. Do you remember whether or not she said those three letters in the envelope were all in her handwriting?

Mr. Breslin: I object to that, as to what

she said. He does not know all the letters that were introduced. He was not there.

The Court: If this witness is willing to swear, of course the jury can take it for what is is worth.

Mr. Zabriskie: I will be glad to produce the record of the former trial, if there is any controversy about it.

Mr. Breslin: I withdraw the objection.

Q. Did she say in whose handwriting it was? A. In Mrs. Von Moschzisker's handwriting.

Mr. Zabriskie: You may cross-examine.

Cross-examination by Mr. Breslin:

Q. Did you see all the letters that were introduced? A. I did.

Q. Were you there all the time? A. During the trial?

Q. Yes. A. All the time.

Q. Every particular session? A. Every particular session, I was—

Q. Where were you sitting? A. I was sitting in the front seat, right down there at that table.

Q. In this room? A. Yes.

Q. Why, the trial was held over in Judge Seufert's room. A. Well, I know, I didn't mean—I had in mind I was in Judge Seufert's court. Of course, I sat in Judge Seufert's court.

Q. You said a minute ago that— A. Well, I—

Q. Just a minute, please. You said a minute ago that the former trial you sat at that table. Now, do you want to withdraw that? A. I wish to withdraw that. I certainly do.

Q. Now, the other trial was held in Judge Seufert's court? A. Yes.

Q. And do you mean to say that every time a letter was offered in evidence that you observed it? A. I was in court all the time, yes.

Q. Were not the letters offered and placed in the custody of the stenographer? A. Yes.

Q. And then when did you see them? A. I saw them passed back and forth, between the lawyers and the stenographer.

Q. And you were sitting on the— A. Right there at that table.

Q. All during the trial? A. All during the trial.

Q. And you saw every letter? A. I may not have had a perfect observation of each and every letter, but I remember the letters as they were introduced in evidence, as the name of the letter, and recall them in that way.

Q. And you recall the names of the letters? A. I will not say that I can recall the name of each and every letter, but as the letter to Burnett was introduced, I recall each and every name, when it was introduced at that time. I remember it.

Q. And yet you cannot remember the names of the fifty court cases that you testified in during the past year? A. I can read them to you right now.

By the Court:

Q. Are you relying on your recollection of what happened at the trial, or has your memory been refreshed by looking at that letter recently? A. No. I remember at the trial, I paid strict attention to each and every letter that was introduced.

Q. And you have not had your recollection re-

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freshed? A. I could not remember a thing of that kind now, two years back, that that one particular letter was introduced, but, it was introduced at the time, and I recall at that time that I did remember all the letters that were introduced.

Q. Do I understand from your testimony that, so far as your present recollection is concerned, you can recall no other letter being introduced except this one that was shown you? A. I can recall the letter to "Dear Thelma", to "Dear Sara", to Ray Lippincott—every one of those letters I recall were introduced.

Q. Have you seen that letter since the last trial? A. I have. I have seen a photograph of it.

Q. I mean the one in the envelope? A. I have.

Q. When did you see it before this morning? A. I have been using it for a week—I have been using the photograph of it. I have been using the photograph of that letter for a week, to make my comparisons.

Mr. Breslin: Nothing further.

Mr. Zabriskie: May I offer it?

The Court: Just the envelope, is it not?

Mr. Zabriskie: Just the envelope, yes.

(Envelope marked Exhibit P-40).

Mr. Breslin: If your Honor please, I would like the Court's permission to ask Mr. Spencer a few more questions.

By Mr. Breslin:

Q. Now you say you remember this letter very distinctly? A. I do.

Q. What was the number of the exhibit in the criminal case, on this particular letter? A. To Burnett?

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Q. Yes. A. The letter to Burnett, I really—I I cannot recall the number of that.

Q. You cannot recall the number of it? A. I can't recall the number of that exhibit.

Q. What letter was offered before the Burnett letter? A. I do not recall that.

Q. What letter was offered after the Burnett letter? A. I do not recall that.

Mr. Breslin: That is all.

Mr. Zabriskie: I will call Mr. Hartkorn.

AUGUST HARTKORN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Hartkorn, where do you live? A. 411 West End Avenue, New York City.

Q. I beg your pardon? A. 411 West End Avenue, New York City.

Q. And what is your occupation? A. Examiner of questioned documents.

Q. Do you devote all your time to that work? A. Yes.

Q. And have you made a special study, then, of handwriting and printing and works of the hand? A. I have, for the past forty-two years.

Q. And what has been your professional experience, Mr. Hartkorn? A. Have been a professional penman, executing every known style of penmanship, engrossing resolutions, memorials, and certificates, making facsimile signatures. I made them by the thousands, both pen and brush work.

I have taught penmanship to thousands of students. I made a special study of individuality in handwriting, and the manner of its production. I have read and studied all the books on the subject. I was also associated and collaborated with the late David N. Carvalho, who practiced his profession for fifty-four years. My services were enlisted in hundreds and hundreds of cases where handwriting was in dispute.

I have appeared in the different courts in this and other states, such cases as the Young will contest, at Schenectady, New York; the Hertz will contest, at Charleston, South Carolina; the Cowan will contest, at Deland, Florida; the Peterson will contest, at Toronto, Ontario; the Pickwith contest, Toledo, Ohio; United States vs. Nicholson, Toledo, Ohio; the State of Florida v. John F. Dwyer; Driscoll v. the Hialeah Construction Company, John F. Dwyer and others, at Miami, Florida; the Waterman v. The Green Estate, at Westerly, Rhode Island; a Carpenter will contest, at Westerly, Rhode Island; the Duke Estate matter, at Somerville, New Jersey; the Hall-Mills murder case, at Somerville, New Jersey; Ruth B. Snyder Estate against the Prudential Insurance Company of America, on the matter of the traced application blanks; and many, many others; United States v. Thompson, Trenton, New Jersey; United States v. Muldoon, Southern District of New York; United States v. Gordon, Southern District of New York.

Q. I suppose many other cases, if you could take the time to think of them? A. Many criminal and civil cases, yes, in different parts of the country.

Q. Now, I show you Exhibit P-29, in this case, and I will ask you to look it over carefully. Now,

do you know Mrs. Emma L. Von Moschzisker? A. Well, I know her by sight.

Q. Have you ever seen her print? A. I have.

Q. Do you know her printing when you see it? A. I do.

Q. In whose printing is that Exhibit P-29? A. In my opinion it is Mrs. Von Moschzisker's.

Q. Now, then, referring again to that Exhibit P-29, you say that, in your opinion, is the work of Mrs. Von Moschzisker, who is sitting here at the table? A. I do.

Q. Now, will you give the Court and jury your reasons for that opinion and—well, before I ask that question, perhaps—I withdraw that question for the time being.

At my request have you made some photographs of some of the standards in this case, Mr. Hartkorn? A. I have.

Q. And for what purpose? A. For the purpose of a ready comparison, so that all interested may see what I am testifying to.

Q. Have you also made photographs of parts of the Exhibit P-29 that you have there by your side? A. Yes. I have clipped from prints made from the original size of documents, both the standards here in evidence, the known writings, and—

Q. Just explain in a detailed way to the Court and jury, just using the standards, and tell them just what you did. You may just take a moment, if you like, to examine the standards, and lay them out, so that you can handle them to your convenience.

Q. Now, have you the photographs with you that you have made, Mr. Hartkorn? A. I have with me the photographs, or some plates of photographs that I have made from the clippings which were

pasted down upon cardboard, and enlarged by photography, side by side, in juxtaposition of arrangement for ready comparison, that is, between the known writings, of which I had the photographs, and the questioned letter or document P-29.

Q. Those photographs were made by you in collaboration with someone else? A. Yes.

Q. And what photographs have you there now? A. I have some of the plates here. There are more that are not yet in my possession here. I have numbered these. I have three sections.

Q. In the first place, this first column here are reproductions of words from what standard? A. That is that headed "request".

Q. And I refer now to the exhibit P-14, and I ask you if they are words from P-14? A. They are, and the next question column headed "Questioned."

Q. The column headed "Questioned", they are a reproduction of words from P-29, from this P-29. That is what we call S-10 in the former case? A. Yes.

Q. Now, then, the next column there, you say, "Request", is that also taken from the Exhibit P-14? Is that also taken from this? A. Yes.

Q. And the next column? A. Is the questioned.

Q. Is the questioned. Where are those words taken from? A. Also from P-29.

Q. Are these the correct representations of those words that are in those two exhibits? A. They are.

Mr. Zabriskie: I offer the photographs in evidence.

Mr. Breslin: No objection. I would be

delighted to have the jury look at them, to see the difference.

Q. That applies to these? A. That applies to those.

Q. How many of these have we, so you can mark them? A. Ten.

Mr. Breslin: Yes, I would like the jury to see those.

The Witness: Ten copies; six for the jury.

Mr. Zabriskie: We will have one marked.

The Court: I take it the first column is the request writing; is that it?

The Witness: Yes.

Mr. Zabriskie: Yes. Those words are written up there at the top.

The Witness: They are written, to determine.

The Court: Oh, I see.

(Photograph marked Exhibit P-41).

Mr. Zabriskie: This will be P-41, P-41-A, B, and so on.

Mr. Breslin: Yes.

(Photographs marked Exhibits P-41A, P-41B, P-41C, P-41D, P-41E, P-41F, P-41G, P-41H).

Q. Now, Mr. Hartkorn, did you make any other photographs in the same way as you made those that have just been marked in evidence? A. I did.

Q. And what were they? A. Similar to the other one that I have—

Q. Were they taken from the same two—the one taken from the letter that is marked in evidence here, the disputed letter, P-29? A. Yes, sir.

Q. And the others taken from the P-14, this request letter? A. Right.

Q. Nothing else excepting those two, or not? Is there anything else excepting that? A. I think not, on this plate, no.

Mr. Zabriskie: I will offer those.

Mr. Breslin: No objection. I want the jury to have those.

Mr. Zabriskie: All right.

Mr. Breslin: They are just as helpful to me as they are to you.

(Photographs marked Exhibits P-42, P-42A, P-42B, P-42C, P-42D, P-42E, P-42F, P-42G, P-42H).

Q. Mr. Hartkorn, I want to correct something here. Of course your answer in one sense was correct. You said it was request writing. But, as a matter of fact, you say request writing—are not some of these from these slips, as we call them, Exhibit P-23? I do not want a misunderstanding about it, that was all. Where is that "Had'nt" from? A. Yes. There are some taken from those that I have marked.

Q. Suppose you just take your time and look this over to see where they did come from? A. They had an identification mark on them. I used the identification mark in some instances in these plates.

Mr. Breslin: In order to save time, I will admit that Mr. Hartkorn took those from some request marks. Otherwise we will never get through.

Mr. Zabriskie: All right.

Q. Now, have we got those all marked? Now,

did you take any other photographs in the same way? A. I did. I have another plate that I have marked 3.

Q. Where are they taken from? A. Also from the request writings, and from these auto license cards that were photographed, that I had in my possession, of 1925, and 1926.

Q. Now, suppose you just—you say 1925, and 1926? A. 1926.

Q. Is this one of them? Just take your time. A. Yes.

Q. When you say "yes", you are referring to Exhibit P-10? A. Yes.

Q. And what other year did you say? A. 1926.

Q. Well, that is the date of 1926. A. And 1925.

Q. Referring to Exhibit P-25, is that? A. Yes.

Q. So that all of those on the left hand side are from standard writings of Mrs. Von Moschzisker that have been admitted in this case? A. Yes.

Q. And on the right hand side, where you say "question", they are all taken from Exhibit P-29 in this case? A. Right.

Mr. Zabriskie: I will offer those in evidence.

Mr. Breslin: No objection.

By the Court:

Q. Are these taken from the questioned document? A. Those are from the questioned document, yes, sir.

Q. Look at these (indicating)? A. Yes, sir.

(Photographs marked Exhibits P-43, P-43A, P-43B, P-43C, P-43D, P-43E, P-43F, P-43G, P-43H).

Q. Now, Mr. Hartkorn, you said that in your opinion this P-29 is in the handwriting of Mrs. Von Moschzisker. Now, will you give us your reasons for that opinion? A. Yes. In the writing of Mrs. Von Moschzisker, and I saw her write, after I had made an examination by comparison of these different documents, she holds the pen so that the concavity faces away from the right shoulder. In other words, in taking a pen in the hand, with those nibs—there are two nibs to the pen—that concave side of the pen faces away from the body, or towards the palm of the hand. Now, that causes a spreading of the pen on the lateral strokes, that is, a shading on the lateral strokes, those carried from left to right.

Now, when the perpendicular strokes are made, or those in the right oblique—by the right oblique I mean from the right upper side to the left lower side—that the pen held in that position will cause the lines that I have just stated, to appear finer than the lines that are on the lateral movement toward the right, from left to right, because the pen carried down in that way, as I have described, from right to left, or on the perpendicular, the pen nibs practically, approximately, run tandem to the other. That is, we get a line that appears as though it is written with one pen nib in place of two pen nibs, and that is the light side of the letter.

If you will refer to plate 3, plate 3 of the photographs—

Q. What exhibit number is that, now? A. That is P-43H. It is marked 3 in the upper right hand corner, on the face of the plate.

Q. Let us look at the last line of that photograph,

the letter "H", the letter is reproduced there, is a letter H.

Q. Now, where is that reproduced from, Mr. Hartkorn? A. On the right, headed "questioned", the right of that perpendicular line that runs through the center of that page. That is taken from the questioned or P-29.

Now, when you examine that "H", we find what I said, that the downward directed stroke that comes from the top to the bottom, or the base, is a lighter line than the stroke that is carried from the left to the right to join those two strokes.

Now, when we look in the left column, those taken from the request writing that I have seen done here in court, why, we find there also that the downwardly directed strokes are light, and the shading is on a lateral stroke, that from left to right. We notice there the heavy stroke.

Now, a heavy stroke like that can be made, as we see it there, from a pen that is a medium point or a stub pen, and a stroke that can be made with a flexible fine point pen. It all depends upon the amount of pressure exerted upon the stroke.

Now, we will note, if we look at the page of all the letters there, that the downwardly directed strokes or those that run from right to left, are lighter than those—I mean from the top down to the base, to the lower left—than those running from left to right in a horizontal direction.

Now, in the request writing, as compared with the—now, we will see the request writing, as the "H", the lower line—

Q. I want to make sure that the jury understand what you mean by the request writing. What do you mean by the request writing? A. That which was written by request here in court.

Q. Written by whom? A. Written by Mrs. Von Moschzisker here in court.

Q. Mrs. Von Moschzisker? A. Mrs. Von Moschzisker, yes.

Q. You say here in court. You do not mean in this court room? A. No. I mean in Judge Seufert's room.

Q. In Judge Seufert's court? A. Yes.

Q. That is the writing you saw done? A. Yes. When that is compared with—on this same plate we are looking at now—with the letters, for instance, those "E's" that we find there, the "E's" on the left hand side, and in the top line the "D's", with the exception of the first one to the left.

Now, those letters, when compared with the request writing, show that there is an attempted dissimulation or disguise in the writing of that written in court, as we find, under an analysis, that they agree in the production, by the manipulation of the pen in the hand of the same writer. For instance, I call your attention to the "D's" on the left hand side of that same exhibit in the first line. Let us look at the fourth "D" from the left hand side, from the end of the plate, the fourth "D". Note the down stroke, the way it is directed to the line. It is a light line. Notice where the pen now is lifted and starts to the right of that stroke at the top, leaving that downward stroke disconnected from the curved stroke that follows it.

Now, I will direct your attention to line 2 on the right hand side, and ask you to compare—

Mr. Breslin: Now, I object to that. He is not here to give any lectures.

The Court: I understand what he means, directing the attention. You may proceed.

A. (Continuing) I direct your attention to the last "D" on that second line, and make the comparison, and see that that stroke is carried down in the same manner, that first stroke, and the second stroke is likewise separated from the downward stroke.

Mr. Breslin: I do not know what "D" you are comparing.

The Witness: I am comparing now—I will go over it. On this line, on the left hand side of this plate, No. 3. That is Exhibit P-43.

Mr. McGinnis: Counting three from the left?

The Witness: No. Four. Counting four, the fourth "D" from the left. I am comparing that, or asking the jury to compare that with the last "D" on the second line, in the second column, to the right, and I am directing attention to the manner in which the downward stroke is formed and the manner in which the curve is made, the separation from the downward stroke at the top from the curved stroke, and likewise the ending of that "D".

You will notice the way the "D" ends there, with heavy stroke, meeting that downward stroke.

Now, also look at the second "D" in that same line on the right. Notice how it ends there.

Q. Which ones do you mean now? A. I mean now the second "D" in the second line on the right.

Q. And comparing that with which? A. Comparing that with the "D", the fourth "D" on the

left of the first line, and also the fifth "D" on the first line.

Q. You mean, comparing that with that and that; is that the idea? That with that and that (indicating)? A. Yes, sir.

Q. All right. A. And also the second "D", compare that second "D" in the left column. Note when the "D", the second "D" in the left column —where it ends, there is a slightly downward directed curve. Now, find that—you will find that there in that second "D", in the second line, on the right hand side.

May I illustrate that on the chart, your Honor?

The Court: Yes.

(Witness leaves the stand).

A. (Continued) What I mean by that is—

Q. Mr. Hartkorn, would you prefer crayon or paper?

The Court: I think you better use paper because what is done there is a part of the evidence. In the event of an appeal you would have to take a photograph of the blackboard.

Mr. Zabriskie: Yes.

(Paper adjusted on the board).

A. (Continuing) I have a crayon here that is split in the middle to show two pen nibs. The upper one represents one pen nib; the lower represents the second pen nib.

Mr. Breslin: I object.

A. (Continued) So I have a crayon split, that represents pen nibs.

Mr. Breslin: I object, if your Honor please.

The Court: Well, I do not think I will permit a demonstration like that. I thought you were going to demonstrate the similarity or dissimilarity of letters.

The Witness: Yes. I was going—that is preceded by explaining when this crayon shows that way, that the crayon is split, the same as the pen nib, making the wide line. I can use a blunt point the same way, if that is objectionable.

The Court: It is not so much that. If it is necessary for the demonstration, you may use that. I am not making any distinction between whether you use the split crayon. What I am anxious to know is what you are going to do now.

The Witness: Well, I am going to show the light line, the shading and the curved stroke.

The Court: All right. You may do that.

The Witness: If I should draw this horizontal—

Mr. Breslin: Now, I object to it, if he should draw, if your Honor please. He is to give a comparison.

Mr. Zabriskie: Well, he is giving the reasons for his opinion. He certainly had a right to demonstrate it to the jury, sir.

The Court: Yes. In other words, he is showing why he is giving that opinion.

Mr. Breslin: Based on guesswork, if he should draw.

The Court: No. That is only a statement.

He is actually drawing. That is surplus, that is all.

A. (Continuing) I have drawn a line, perpendicular line, with crayon, that shows two prongs, and I have drawn them, one in the way that one of those prongs runs tandem to the other. Now, when I hold that in the same position in my hand, and I start the same as that, or make the "D" like that one, the second in the left hand column on the first line, and do that, I get the wide stroke; and as I come down this way, it works up, because of the position of the pen in my hand.

Q. Now, as I continue on down here, I do get the wide stroke again. Now, there is a curve in that stroke at that point, ascending. In other words, there is a slight curvature downward. Now, when we take—when we examine or compare that with the second "D" in the second column, on the second line, and I draw that downward in the same way as I did the other, and again hold my pen in the same direction, drawing it down again, you see the line becomes light there, where it takes a downwardly directed movement.

Now, I carried over in the same position, over toward the right, and we find there the base, a slight bend also where it finishes, that point. That is what the pen will do in the hand, held in that position (indicating).

Now, I call attention to this; that here is where the similarity or the individuality of the writer shows itself. There are places throughout these writings where a letter in the request writing is distorted, so that the pictorial resemblance differs from that in the P-29, in the questioned writing. There are some that do resemble it.

Mr. Breslin: What was that word?
(Last part of answer read).

A. (Continuing) Now, referring to the second line on the left hand side of that plate, those are supposed to be capital letter "D's" written in the request writing, by the same person that I saw write here in court.

Now, we notice how they are made, although we do have the lighter down strokes, and we do have the heavier strokes, as we carry the pen toward the right, and carry it up, we know the angle in those at the base where a sort of return stroke is made. For instance, take the third one in the left hand column, in line 2, the downwardly directed stroke. Then we find the pen in the hand that way, is carried around somewhat like that. Now, that is a "D". Now, this "D" is made by the same person who made that "D".

Now, compare also on line 3, on that same side, the next three letters. They also are written there for "D's". They are in the request writing. They are clipped from words that commence with the letter "D".

Now, we have another letter "D" on the right hand side in the third column—I mean the third line, the fourth letter. You note that is made—

Q. That is the fourth, counting always from the left to the right? A. From the left to the right in each case.

Q. From the left to the right? A. Left to the right. The fourth, just under the "L-1"—that means line 1—taken from line 1 of P-29. We notice again the space between that first down stroke and where the pen again starts to make that curve around the form of that letter "D", and ends simi-

larly to that described in my first illustration.

Now, referring to—going back to the letter "H" at the bottom, the bottom line, we notice, in some instances, the letter "H" is made quite wide. In other words, where the stroke is again made light, the downward direction stroke, both sides of that letter "H", then that horizontal stroke is quite heavy. There are four of those that are quite wide, on the last line in the left column. The first one is narrower.

Now, in the second column, take from P-29, we find also that they are wide, and we have, in the third one, in the second column—we find there that there is a space left after the first down stroke, and a space left between the horizontal and the second down stroke in that letter "H". For instance, like that (drawing), leaving a space on the left and a space on the right. We find that also to be true in the request writings on the left.

Now, in the letter "E". Take up the letter "E", the first line we find in the letter "E" on the left hand side—the first "E" you see underneath is marked "L-4". The second one is marked "L-9", taken from line 4 and line 9 of the request writing. Now, those marked 25, that follow that, are taken from the 1925 or 1926—the 1925 auto license cards.

Q. Now, these more nearly resemble—

Mr. Zabriskie: Just a second. Maybe the jury, with the consent of the other side, would like to have those.

Q. Where are those taken from?

The Court: Judge, have not we the same

thing on this exhibit? Perhaps they could follow it better.

Mr. Zabriskie: Very well.

The Court: Rather than trying to follow half a dozen papers.

Mr. Zabriskie: Yes, I think that is better, and less complicated, too.

A. (Continuing) Let us compare the second "E" in the left hand column in the first line, the second "E". You note that the lighter line, the perpendicular line, goes to the left. Then at the base we have a lateral stroke of a horizontal, with a heavy shade. Now, the second stroke is carried further, is also a heavy line, and an upper stroke is disconnected from the perpendicular stroke.

Now, look at the first one on the same line, on the right, with "L-16" marked under it, or below it. We find that similarly made, with that space there, the stroke not connecting with the perpendicular stroke.

Now, look at the second one on the right hand side, on the same line, under which is marked "L-3". We find that also to some degree where it does not touch that down stroke, and we find it so in the third one, that it does not touch the downward stroke. We find it so in the fourth one, made the same way.

Now, there are none of these letters, if you will compare them all, where one would be exactly like the other. Take any set of them; you would not find them in those marked 25 underneath. They all differ in some respect. The human mechanism is not a perfect machine, and cannot reproduce sterreotyped form.

Mr. Breslin: Now, I object to the lecture. I object to the lecture.

The Court: No. That is too general. That is all right, lecturing to pupils, but now you are—

The Witness: Well, I have to get into the variation, the reason why letters vary.

The Court: No.

Mr. Breslin: I object, if your Honor please.

Mr. Zabriskie: Of course, I think that is a part of how he arrived at his conclusion. He has stated why it is they are not similar, not identical, because human machinery is not perfect.

Mr. Breslin: I object to all these side remarks by the witness.

The Court: I will sustain the objection.

Mr. Zabriskie: Your Honor will allow me an exception.

A. (Continuing) Well, I find variation in these different letters occurring by this writer. They vary, one from the other. But there is a certain way of producing these in the hand of that writer, whether they are identically alike or not.

Now, we note 25 in that second column of "E's", that some of these letters are slanted. We also note that the first one taken from the line 4 of the first column, the first one in that first column of "E's", the line is slanted.

Q. That is the one with L-7 under it? A. L-4 under it.

Q. Oh, I see. A. The first one, the first line of "E's".

Q. Pardon me. A. And that the next one to

there, taken from line 9, is in a vertical position, that the slant does not always agree, also. But we have this similar production, producing these letters; that is, there is something in that production that shows individuality when put on the paper.

Now, there are a number of other "E's" there that may be compared with each other, on the left, with those on the right.

Now, take that question mark we see there, just one place, and we find that is heavily made, starting—take the one on the right, the first one, under which we find 1-14. That is rounded out, something like that, showing again how the pen was held, and the finishing downward stroke is lighter, the dot under it.

Now, note again where the turn is made on the downwardly directed stroke, that that part is lighter than those directed from left to right.

Now, we will take the ones to the left. We find also that those are heavy, and where the stroke is drawn from the left to the right, and the downwardly directed strokes are light, and becomes heavier as the pen is carried over to the left, and the downward stroke is again light.

Now, those are taken—one there has under it "S-1". That is taken from a letter here, the "Dear Sara" letter. That is a letter in script, and is not in lettering or printing, and the next one with "T" under it. That is from this "Thelma" letter, also a letter written in script. Now, coming to the letter "G", the line next to the last—

The Court: Suppose you put your name on that so there will be no confusion between

these papers and the papers used by Mr. Spencer.

(Witness writes name on paper).

The Court: I understand we can have an easel and use that. Probably it will serve us better and be closer to the jury then. You may proceed until we get it.

A. (Continuing) The letter "G" as found in P-29 in the column to the right, that letter "G" is made with two movements of the hand, or two movements—two strokes, I should say, really. The "G" starts in that way, carries an oval around, made upwards, and then there is a stroke put on, similar to a figure "7".

Q. Which one is that, now? A. Well, that applies to those on next to the last line, on the right hand side.

Q. I mean, what numbers are under them? A. "L-15", "L-5", "L-8", and "L-4". That means line number, the "L".

We find again the shading on the lateral strokes.

We find that the downwardly directed strokes are not quite so heavy, not nearly so heavy. Now, on the left we have the "G's" there. They are made with two moves. We find the first one is also a lighter down stroke, and a heavy base, again light, where the two nibs run tandem to each other on the up stroke. And then a heavy line runs across in that form, almost horizontal.

Having those "G's" on the left, we find some taken from the 1925 cards, those that are marked '25. There are four of them. And the other is taken from the request writing, L-11 and L-2. You notice there is some difference there in the way the "G" ends. For instance, in those of the cards,

1925, the license cards, they do not have the stroke carried out to the right in the finish, as in the request writing. In that, of course, there is a difference. There is a difference there by the same writer.

Now, those on the right, of course, they are always a downwardly directed stroke, but they start with that horizontal stroke.

Taking Plate 2, which is marked Exhibit P-42. Now, looking at this plate, we find the writing at first, pictorially, does not have that same picture, the pictorial resemblance to the right-hand column. We have two columns there. They are headed "request" and "questioned" The questioned are taken from this P-29, and the request from the same that we have been talking of.

Now, if we look at the first line on the right of the first column, we find there the words "pure" and "Burnett." What I want to call attention to is the small letter "r", that these two letters in these words are upper case letters, the capitals, but the "r" is a small letter, a small letter "r", a lower case letter. In that it is not consistent with the rest of the letters.

Now, we have to the left in the request writing the word "pure", also upper case letters, but the "r" is a lower case letter. In that, instead of making the "r" as we find it in the word, say "crazy", down a column, the third from the bottom, in the word "crazy", in that same column to the right, we find the "R" made in the upper case form, somewhat like I have just illustrated.

Now note in these I have been just pointing out, the "pure" and "Burnett" on the questioned P-29, we find the "r" start so that there is a slight bend to the right, then carried downward, the pen lifted

and returned, carrying the stroke, a curved stroke, toward the right, and you note, of course, that that stroke is shaded to the right, with the pen in the hand in that position.

Now we examine the word "pure" to the left, in the request column. We find there that the stroke slightly bends, and carried down. There the pen retraces the downward stroke, goes up and makes a curve, finishes with a sort of dot inside of the curve. Now we find the shading is again on the lateral stroke and the pen is carried to the right.

In other words, all through this writing we find that same characteristic and that shading on those lateral strokes.

Now we examine the other "r's", and we find that no two are alike. Take the first one on the left in the first column. That has, of course, the bend, that characteristic bend when it starts at the top, carried over and down, and then up over toward the right in that way (illustrating), as I am illustrating.

Now, the next one—

Q. Just a moment. You said there are no two alike in which, in the request writing? A. In the request writing.

Q. Yes, I see. A. The next one is similarly made but it is not exactly like the one I have just illustrated.

Now, the next letter is a letter "D", in combination with the "R". That is an abbreviation for "doctor," "Dr." So the letter that follows that "D" has another "r." You note that takes a curve to the left. However, we have the same characteristic formation, the same movement of the hand in producing this letter this lower case letter. Then we have a number following on the second line just

below that, and if examine them all, compare them —for instance, take the 5th one, over the mark 1-1, and you have a letter that is made with that characteristic stroke to the right, drawn down in a perpendicular way, and then carried to the right almost at right angles to this stroke, and a down stroke at right angles to that. But that same characteristic formation there at the beginning we find.

Now, we look at the 4th line on the left hand side, under request writing. We find the words there, "look sick," and we find on the right of that, taken from P-29 of the questioned, the words, "look sick."

Pictorially they do not look just alike.

Mr. Brelin: Now, wait a minute. I would like Mr. Hartkorn to use plain, ordinary language for the jury. What does he mean by "pictorially" That is a technical term.

The Witness: The picture, the way they are represented.

Mr. Breslin: In other words, they are not the same.

The Witness: Oh, they are.

Mr. Breslin: They do not look alike. All right. That is all.

The Witness: Well, yes, they look alike in some respects, but pictorially, on the whole, they don't look alike.

Mr. Breslin: On the whole they do not look alike. Is that what you said? Then what did you mean? Do they look alike or do they not?

The Witness: Take the entire combination as "look," it does not look exactly like the "look" under the questioned.

Mr. Breslin: All right.

The Witness: When compared in that way.

Now, let us see what is individual about it. We have, in the first place, after the "sick", we have a dash. We have a dash after "sick", also under the questioned, that mechanical way of doing something. The dash goes down there the same way.

The one under the questioned, of course, has a longer dash. That is not exactly the same length as the one on the request. But it is made with that same heavy stroke on the shading, from the left to the right.

Now, when we examine the letter "K", we find that the letter "K", after the staff is made, the staff being the downwardly directed stroke like that (illustrating), as I am illustrating. Then we find another downwardly directed stroke, a right oblique stroke that is carried from the right upper, where it connects with another stroke. That is carried to the left, connecting with another stroke, carried somewhat to the right, or almost perpendicular.

Now I would like to call attention particularly to the direction of that finishing stroke of that letter "K." That is the direction it takes. And I want to call attention also to the first stroke. Notice where it starts; notice where the staff starts.

I will draw a line there to show that that second stroke of that "K" starts higher than that downwardly directed perpendicular line.

Now we will look at the "K" under the questioned, and we find that it is made more carefully, of course. It is drawn very carefully. And we find that stroke that goes from the right to the left is

likewise higher than that first staff, and we also find the stroke that connects with it has very little slant, and in the same direction carried as that of this "K" in the request.

In other words, it is not a "K" made as some people make them, in that form, where this stroke that comes over from the center, where these two lines should meet and carry over to the right, but it is carried almost perpendicular. In that respect they are alike; that is, the production, placing the strokes there.

Now, in the next word under "look sick", the word "Doremus," we find again the small "r", that is, the lower case "r". This time it finishes with a compound curve. It rides first in an upward direction, then a downward direction, and upward again. It takes a compound curve somewhat similar to that (indicating).

Now in the questioned, there the upper case "R" was used.

Now, I find that in the request writing that mainly this lower case "r" was used, but in the P-29 the upper case "R" was used, with the exception of those two places in the words "pure" and "Burnett", where the writer just reverted back to the habitual formation of that particular letter, the small letter "r."

Now, in the word "Doremus", as the two words are compared, let us consider the small letter "o", the small "o" in the lefthand column. Notice it is smaller than the other letters there. Notice the "o" is smaller also under the questioned than the other letters. Notice also that it is open at the top, and also notice this, which is somewhat microscopic, and I will illustrate it here, that when the letter "o" starts, it starts with an almost straight

or flat side on the left, and when it returns, there is a returning of the stroke toward the left to meet the first stroke. Notice that characteristic in bringing the stroke over toward the left at the top to meet the first stroke, the downwardly directed stroke. Now, you find that in the request, and you find that also in the questioned.

In other words, in the "o" I do find in this particular writer that they are made, that if the line were drawn through that stroke in the center, we would find that on the right is where the curved portion is carried over to meet that line. There is more to the "o" on the right of it than there is on the left of that line.

Now, those are characteristics that are individual, that a writer makes, that, as a rule, he doesn't ——

Mr. Breslin: I object to this, this lecture, "as a rule", and "that a writer makes", and so on.

The Court: Suppose you confine it to the instant exhibits.

The Witness: All right, sir. I will try. Pardon me if I get away. I do not mean to do that.

A. (Continuing) Now we will take the word "thousand" that follows this "Doremus" in that line. Note the dash that follows the word "thousand" in the request writing, on the left, and note the dash on the right, also in P-29, that habit of making a dash after certain words.

Now, while there, I would like to call your attention to the letter "S" in "thousand", that you might note the formation of that letter "S" at this time, as we find it in "thousand."

You note that the top is much larger than the lower part of it; that is, the curve at the top is much larger. Of course, in "thousand" on the right, it is the upper part that is much smaller than the lower part; in that these do not pictorially resemble each other at this particular place.

Note again the capital letter "D" in "thousand." That is, the upper case "D", the way it is formed in the request writing. Note how open it is at the bottom. In other words, it looks made in this form, a downward stroke, and then the stroke directed to the right and made very short, with the return of the stroke somewhat like that, for the letter "D", as found in the request writing.

Now, in comparing the letter "A", note that the letter "A" is open at the top. Notice the heavy shading from the left to the right, in a horizontal stroke, and also that when the "A" is made that, as the pen is held in the hand, that this left oblique stroke is a light line and that the right oblique stroke is the heavy line, because the pen, as it is held in the hand, would make that wider line on the right and also the horizontal. And it is open at the top.

Now, that on the right hand column, under "questioned" is also open at the top, and we also find the heavier line on the right than on the left, and also shaded in the horizontal.

Now we take the next word, "couldn't" in the request writing, and we will study the combination of the letters. That "could'nt" is written as a contraction, with the apostrophe in there, but it happens to be in the wrong place. It is after the "D", between the "D" and the "N" instead of between the "N" and the "T", and the "N" and the

"T" are closer together, where they should be separated, and the apostrophe between those.

Mr. Breslin: I object to Mr. Hartkorn lecturing on the English language. He is not here to tell us where an apostrophe is supposed to be.

The Court: What was the last statement? (Last part of answer read).

Mr. Breslin: I ask that it be stricken out.

The Court: Strike it out.

Q. What do you say about the height of the apostrophes in the two? A. The apostrophe, as carried in the request, in both those combinations "could'nt", quite high above the letters themselves, and about a similar height to that in the questioned on the right. We find that also carried high, and we also notice that the stroke is directed in a similar way, that is, from right to left, not quite vertical.

Q. May I ask one thing more there? What can you say about the method of production of those two apostrophes? A. Well, in the first, in the request, it is about as light as the one in the questioned, and a similar stroke in fineness, which again shows that the pen, when held in the hand, made the stroke in the direction indicated, a light line, with the pen nib running tandem to each other.

Q. Which "could'nts" are you talking about now, the ones that are on the same line? A. The one on the same line, the "could'nt" on the left and the "could'nt" on the right.

Q. Now, the relation between the "N" and the "T" on the "could'nt" on the request and then the

one on the questioned, do you notice anything there that helps you to form your conclusion, as to the location of the "N" and the "T", with regard to proximity? A. Yes; they are carried close together.

Q. And the location of the apostrophe and method of production of the apostrophe which precedes the "NT" in the lower "could'nt", is the method of production there similar to the other two? A. Yes. Just a little heavier, the line.

In the word "now" that follows the word "could'nt", note the letter "W" after the up stroke in the center. We find there is a space that, when separated into parts, those two parts look like two "V's", a down stroke and an up stroke, and repeated. We find that here when you look at the word "now", that "W" in the second column, under the questioned.

In the next word "was", we again find the letter "A" with the open space at the top, and in the one instance here you will notice one of the exceptions, that the downwardly directed stroke on the right is not shaded, but the "A" is open at the top, and a heavy shading in the lateral stroke.

Now, in the word "crazy", we find also that the "A" opens at the top in both the questioned and the request writing, and I would call attention to the letter "Y."

Mr. Breslin: Now, if your Honor please, I do not like to be rude, but I would like to object at this time on the ground that the supposed copy that Mr. Hartkorn has presented is not an exact copy of the questioned document. Your Honor has before you the questioned document, P-29, the word

"now", and in Mr. Hartkorn's exhibit the word "now" is distorted. The lines are much heavier. It is clearly a work of the photographer. And I respectfully ask that he be stopped at this time from going any further.

By the Court:

Q. Mr. Hartkorn, looking at this exhibit which you are now using as the basis of comparison, that "now" is very heavy, is it not? A. Yes, sir.

Mr. Breslin: Much heavier than the original P-29.

The Court: Where is that word "now"?

Mr. Breslin: This print is colored right here.

Q. That "now" is much lighter, is it not? A. Well, that is a lighter print, but the strokes are heavy. You see, there are different prints. Some are light prints.

Q. Are you not making some comparisons by virtue of the shading? A. The shading, yes, sir.

Q. And drawing attention to the heavy stroke and the light stroke, as the basis of comparison? A. Yes, sir.

Q. Now, if the stroke in the exhibt you are now using as the basis of comparison is heavy, then it is not exactly the same as what is admitted to be the questioned document, is it? A. Yes, the relative strokes are the same.

Mr. Breslin: But the shadings are different.

Q. I mean the shading. A. It is darker, yes.

Q. There is a difference? A. Yes, there is a darker print.

Mr. Breslin: I respectfully ask that those exhibits be stricken from the record, and his testimony be stricken out.

Mr. Zabriskie: Oh, I object. That is a foolish objection, if your Honor please.

Mr. Breslin: No. If your Honor please, the majority of his conclusions are based on shading. He admits that there is no similarity in the form of the pictorial representations, and his theories are based upon the shadings. Now, the shadings, as he has made them up, are different than they are in P-29.

The Court: Well, I will not strike it out; but where is the other part? I think the jury might well see this now, and I will permit him to testify, but we will know the difference.

Mr. Breslin: I would like him, if your Honor please, to point it out to the jury, the "now" in P-29, and the "now" as he has represented it with a much heavier shade.

The Court: I think you and Judge Zabriskie ought to do that.

Mr. Breslin: All right. I would like to point it out to the jury.

Mr. Zabriskie: I think the point is this. Of course there are never two prints exactly alike, but they are relative.

The Court: Just a minute. This witness is emphasizing the pressure and the turn of the hand as indicated by the shadings, one heavy and one light.

Mr. Zabriskie: Surely. You take the word

"now", and you can—anybody can see—

The Court: Never mind testifying.

Mr. Zabriskie: But I am arguing.

The Court: No, you are not. There is no question to argue.

You and Judge Zabriskie take that together and show it to the jury.

Mr. Breslin: With your Honor's permission I would like to show to the jury the word "now" in the proper shade as it is in P-29. Now, will you look at this, Judge, so that there cannot be any dispute that that is the original anonymous letter?

Mr. Zabriskie: Which one is that?

Mr. Breslin: The word "now", right there.

Mr. Zabriskie: Well, there it is.

Mr. Breslin: Right. Now, I ask the jury to notice, and take particular notice of the shading of the word "now", as it is in the questioned document prepared by Mr. Hartkorn.

Mr. Zabriskie: Right there.

Mr. Breslin: Yes, right there. Notice the difference in the shading.

Mr. Zabriskie: And I also ask them to notice that the two vertical lines are drawn just about half as delicate as the line of connection, the two vertical lines, just exactly the same as it shows in the photograph.

Mr. Breslin: With your Honor's permission, I would like to leave these here with the jury while Mr. Hartkorn is testifying. Have you any more of them?

Mr. Zabriskie: Yes.

By Mr. Zabriskie:

Q. Now, where is the original photograph itself? Which is the "now" you are using? A. It is not that one.

Q. It is not the same one there? A. No.

Q. Let us have that one.

The Court: Suppose you show the exhibit, the original, to the jury, and show the shading itself.

Mr. Breslin: Have you P-29 there?

The Court: It is right here, where "now" is used more than once.

The Witness: That is the one.

Q. Now, the one that is in question is on the second page?

Mr. Breslin: Now, I object to that, if your Honor please. I say it is for the jury to determine which "now" is in question.

Q. I ask you, Mr. Hartkorn, which is the "now" that is reproduced in the exhibit you have before you? Is it the one my thumb is on now or not? A. On the second page. Yes, that is the "now."

Mr. Breslin: After he got a chance to pick it out.

The Court: Let me see that. The word "now" is used twice, I take it.

Mr. Zabriskie: Yes.

The Court: I had a copy of P-29 yesterday, and I have not received it today.

Mr. Zabriskie: Here is another copy, your Honor. I do not know where that one disappeared last night (handing copy to Court).

Now will the stenographer read back, please, so we just get where we were?

Mr. Breslin: Before this witness proceeds any further, I would like to be given the privilege to cross-examine him as to the differences in shading in the questioned document, as he has prepared it, and in the orig-
10 al. A hurried glance will show anyone that, for instance, the word "sick" on the questioned document is very light, and on this exhibit that Mr. Hartkorn has prepared it is very heavy. Now, there has been some kind of an instrument or some kind of a machine used to accentuate those strokes, and I would like to go into that now, in view of this recent development.

20 Mr. Zabriskie: If your Honor please, I do not think there are any recent developments at all. I think it is just as simple as A. B, C. Let us finish it. And the photographs are proved in the regular way, and the jurors have the original, and they have the photographs. It seems to me it is only a waste of time to start cross-examining Mr. Hartkorn now.

30 The Court: Well, you may go into that later.

Mr. Breslin: All right.

(Last part of answer read).

By Mr. Zabriskie:

Q. Proceed from where you left off. A. The letter "Y"; in the production of that "Y" we find that in the request writing, that the stroke, carried from the right to the left, to where the down-
40 ward stroke meets it, is higher than the first stroke.

That is a stroke carried from left to right.

We find also the stroke is higher in the word "crazy" on the right of it. I have found in other instances where this "Y"—that the second stroke is carried higher, and it is carried from the right to the left, than is the strokes carried from left to right.

In the word "laugh" on the next line, in the letter "A." In the letter "A" the second downward stroke which is open at the top, from the first stroke, is carried in somewhat curved form to the right. That is, it has an inward curve, and then slightly bent inward again, after it takes an outward course, and that stroke is carried longer than the first stroke.

Now, in the word "laugh" in the questioned, we find the same characteristic, not quite so pronounced, where that second stroke is curved somewhat to the left, and it is carried down in a slight bend to the right. It is also open at the top.

Now, in the letter "H" we find that the stroke that connects the two downward strokes, that horzontal stroke, is curved also downward, in a down direction, or an inner curve, somewhat in that form. Instead of a perfectly straight stroke it is curved downward.

In the word "thousand" we find the "H" there in the request writing. The letter is higher than the letter "O". The "O" seems to be shorter. And we find in "O" not quite as high, also in the questioned writing on the right, as the letter "H."

Now, in the second column, the second section to the right, at the top, the word "pay."

The first line and the second line—

Q. Go a little bit slowly.

Mr. Zabriskie: Can the jury follow this?

A. By comparing the request with the questioned, we find that the letter "P" is larger or longer than the letter "A" that follows it; that is, the capital letter "P" in that word "pay."

Now, in examining the letter "Y" in both those request writings, we find that the first stroke is carried with considerable slant from left to right, and in the downwardly directed stroke to the right and curved somewhat at the end. Now, that second stroke is carried higher than the first stroke. And note the slant of the first stroke as campared with the secod.

Now, in the questioned note also the slant of the first stroke as compared with the slant in the "Y" in "pay"; and also that the second stroke is higher than the first stroke.

In the word "twenty", the request writing, note that the "Y" is carried lower than the other letters. Note the "Y" in the questioned writing, the word "twenty," that that stem is also longer than the "T" that precedes it, carried over.

In the word "each" note the "A", note the connective stroke between the two strokes, sort of a compound curve there; and then the dawnwardly directed stroke on the right is a compound stroke.

We look at the word "each" under the questioned. We find the stroke on the right is a compound curve. That is not perfectly straight as it is carried on the line from left to right.

Now, in the word "Miss", in the request writing, we find the "M" is disconnected at the top, the top strokes. We also find disconnection in the strokes, that is, spaces between the strokes to form the "M" at the top also in the questioned.

In the word "of" that follows this word "Miss", we find that the "F" in the second one, in the request, is larger than the "O". We also find that so in the request writing, that the second "F" is larger than the "O", is higher.

In the word "lot" that follows, we find the "T" is carried higher. In the questioned it is also higher, but not to such a degree.

In the word "Audrey" in the questioned, you find the "A" is open at the top, and also open at the top in the request writing, on the same line.

In the word "about" you find there that the letter "A" is again open at the top, in both places, and the letter "A" in the questioned is open at the top; and the "T" is again carried higher than the other letters, the "O" and "U".

In the word "because" I will again call attention to the capital letter "S", the large top, and in the questioned the top is very small. In that they differ pictorially.

In the letter "U" note in the word "because", in the request writing, that it is much the shape of a "V" but we find that that stroke is nearly horizontal and shaded at the base; likewise the "U" is shaded in the "because" in the questioned writing, and in the word "about" above it.

In the word "had'nt"—

Q. Before you take that up, Mr. Hartkorn, I am going to ask you to get from the juror who has the original exhibit there—have him look at the "had'nt" on the original exhibit. Look at the "had'nt" on the original exhibit. I call your attention that on the photograph there is no apostrophe between the "D" and the "N", on the second line from the bottom, on the right hand side. On this reproduction it says, "DNT", but I do not see any apostro-

phe. It is the fourth page of the exhibit? A. Yes.

Q. Why is it there is no apostrophe here in the "had'nt" here? A. Well, in the clipping, in the hurried clipping of these words, the apostrophe was clipped off in the print.

Q. Yes. A. Yes.

Q. Very well. I just wanted to call attention to that.

Mr. Breslin: Just a minute. Did you take these pictures?

The Witness: Did I take them?

Mr. Breslin: Yes. You took them?

The Witness: Yes.

Mr. Breslin: Your name is not "Haring," is it?

The Witness: No. Mr. Haring assisted me. You will find one there has my name on it.

Mr. Breslin: I am talking about this.

The Witness: Yes. Haring's name is on it.

Mr. Breslin: Did you take the picture?

The Witness: Yes, sir.

Mr. Breslin: And your name is not on it?

The Witness: No.

Mr. Breslin: All right, that is all.

The Witness: He pasted the slips on there for me.

Mr. Breslin: You did the work, and he got the credit, all the publicity?

The Witness: That is right. There is one of them has my name on it.

Q. Proceed as you were going to without my interruption. A. Well, this word, "had'nt", the

apostrophe in the original is carried high, similar to that we have on the picture. It is in the first line on page 4, and also appears between the "D" and the "N."

I would also call attention to the capital letter "H", and note the capital letter "H" is quite wide in the request, and also in the questioned writing. That is, the downward strokes are well separated from each other.

In the word "infiuence" on the next line, we find that the "F" is higher than the other letters. We find it is so in the questioned also.

Referring to plate 1, Exhibit P-41, in the first line, we have the words "so you". We find in the request writing that the "S" has a very large top, and in the questioned writing we find the "S" small at the top and large at the base.

Now, when we examine the next word under that, "epilepsy", we find there that the "S" begins to take a larger turn at the base than at the top in this request writing "so." In that these two in the request writing differ, in that the upper one is larger at the top, whereas the lower one is large at the base.

We find also the "P" in "epilepsy", that it carries above the letter "S." That is, it is larger than the other letters. And the "P" in "epilepsy", both "P's" there are carried down below the base. The strokes are carried down below the base line, below the base of the other letters, and also in the request writing the first "P" in "epilepsy" is carried down below the base of the other letters.

In the word "back", that follows on the third line, we find again that formation of the "K", where the stroke after the staff is made, is carried

higher than the staff; and the downwardly directed stroke is again almost perpendicular in both specimens, the request and also the questioned.

Now, we note the letter "B" in this word which has a sort of script form, the letter "B", with this lettering in the request writing, but we have a shading again at the top.

In other words, the relative width of lines between the upstrokes, the down strokes, and the lateral strokes.

In the word "hates" that follows on the next line, we find there a form of "S" that is large at the top; but we have an angle at its base, which is carried with an outward curve toward the left. In that respect that differs from the one at the top, the first "S" we found in the request writing.

Now, in the word "Ridgewood," note there is a "W" in the request writing that is made up of several strokes, but we have the pen lift in the center, for the first up stroke is made before the second down stroke is made. We also have the lift at the top in the "W", in the questioned. In fact, there is also a lift of the base in the second down stroke. There is a space between the two strokes shown there.

Now, in "I will", the next line, we find the "W" there composed in the request writing of two forms similar to two "V's", open at the top, between the two parts, and also open after the second down stroke, before the finish of the last up stroke.

Now, in this questioned writing, the opening, that is, the joints, there is nothing visible as to space between, as in this case, and note that the letter "I" that follows the "W" is shorter than the "W" in the request writing, also in the questioned writing. And notice the downward stroke in the

request writing is a light line, and the lateral stroke carried from the left to the right is a heavy line, the shaded part of the line, and also in the questioned.

In the word "handwriting" we again have the wide "H" in the request as well as in the questioned, and the "A", the second down stroke, is again curved in an inward direction, and is a longer stroke, the second, than the first stroke. That is true in a measure also in the questioned writing, right on the same line.

In the "W" there, in this word "handwriting" note a slant of the two parts of the letter "W" in the request writing. Notice the great slant of the first stroke. Note the great slant of the first stroke in writing the same word "handwriting" in the request writing.

We find there again the small form of "r", the lower case "r" used in the request writing, where in the questioned we find the upper case "r" used. Then we find again in this word—take the second "I" in "writing." In the request it is quite small. We find the "I" shorter also in "handwriting" in the questioned, shorter than the other letters.

In the word "would"—here we have a form of "W" in the request writing where the one stroke that begins the letter is quite short, and the second stroke carried far below that stroke to the base, and the second downwardly directed stroke is also carried to the same base of the letter, and the finishing stroke is carried quite high; and we have there three pen lifts in the making of that letter.

We note that the second stroke of that request letter is curved, an inward curve. We note the second stroke in the middle letter is also an inward curve, and open at the top, between the second and

the third strokes. And we find that the heavier portions, or the shading on that stroke, in the left oblique direction from the left to the right, to the base, and the up strokes are lighter.

In the word "perfectly" that follows, we find again there that the "P" is a larger letter than the others in the word. We find that so in the questioned. We find again the lower case "r" used in the word "perfectly" in the request, where, in the questioned, the capital "R" is used, the upper case.

In "monogram" we find again the lower case "r" used in the request writing, and the upper case used in the questioned.

The "M" in the request writing, the second "M", that is, that finishes the word, as compared with the first "M", has the downwardly directed strokes heavier than in the first "M", but there is an opening between the third stroke and the fourth stroke in the first "M" at the top, and also in the last "M."

There is also an opening at the base of the second down stroke and the second up stroke. And there is one visible between the first downward stroke and the second down stroke in the second "M."

In "monogram" in the questioned we see the opening after the first down stroke and the second down stroke at the top. In the word "Vroom", the lower case "r", we find used there, and in the questioned we find the upper case "R" used.

Now, in the word "some". I call your attention to the formation of the letter "S" in that word, and compare that in the request writing with the first "S" at the top of the page. Note the wide, large loop of the first letter "S" in the word "so", the first line, and this letter "S" with a small top.

The last line of that request writing, in the left column, "your name." We will note the small—the letter "Y", that the second stroke is longer or higher than the first stroke. That is so in the questioned writing.

We find again the lower case "r" used in "your", in the request writing, and the upper case used in the request writing.

In the first line, in the second section, the first column, request, "Dr. Pettit" we find there in the formation of the letter "E" that the shading is on the lateral strokes as found in the questioned also, shading on the lateral strokes and the light line on the downwardly directed strokes; the same way in the three "T's", the downward strokes are light, and the upper strokes carried from left to right are heavy. We find that the "I" is shorter than the letters "T" in the request, also shorter in the questioned.

Now, in the word "bluff", in the capital letter "B", we find that "B" made in three characteristics in the request writing.

As I would illustrate, the stroke in the request writing, the downward stroke is lifted; then the second section is made by carrying the upper oval somewhat like that, and then the pen is lifted, and the third section is made (illustrating), in the request writing.

Now, in the questioned writing, that is made also that way, with the downward stroke and that stroke. The pen is lifted, and the upper oval is made, and the pen lifted, and the third section made.

In the word "people" that follows we find again "P" larger than the other letters.

Mr. McGinnis: What word is that?

The Witness: "People", I think it is. Yes, it is people. The "O" seems to be just one downwardly directed stroke, but I believe the pen was retraced there to make the form of an "O" very narrow in the request.

Q. May I ask you to compare the "L" in "bluff", in the questioned? This "L" and this "L"? Will you do that? A. Yes, sir.

The "L" is higher in the request than the "U", and somewhat higher also in the questioned than in the "U", and it has the heavy line and the shading at the base.

Now, the letter "U" is carried in the request somewhat like this, and that is angled, and a shading, and the stroke carried to the right, and bent in at the top. In other words, it does not take a full round turn at the base.

Now, in the word "bluff" in the questioned, if that line which crosses the "f" is separated from that "U" you will also find that that takes a direction in a modification similar to that in the turn of the "U." That has not the full rounded strokes at the base.

In the word "Mowell" that follows the word "people" we find there a number of strokes that are curved, curved lines, showing a very haphazard way of putting the strokes down, the "O", as in the "M" and the "W" that follows that, also noticeable in the two "L's" at finish of the word "Mowell." Compare those with the "L" in "people" directly above that in the request writing.

And the "M" in "Mowell" in the questioned, we find the separation again between the downward

stroke, the first stroke, and the second stroke at the top.

Now, in the word "bank", we have again this stroke—made in three parts in the request writing. We also have it in three parts in the questioned writing.

Now, in the letter "N" in "bank", note that the third stroke or the finishing stroke in the "N" is carried higher than the connecting strokes at the top. That is, the finishing stroke which is made to finish that letter is above the letter itself, that is, the other direction of the letter.

And again, he letter "K", note the direction of the slant and the finishing stroke of the "K", and that the first stroke—I mean the second stroke, is carried higher than the first stroke of the staff.

You find that also in the second word "bank."

By the Court:

Q. Mr. Hartkorn, at that point, where is the word "bank" taken from, the first one? What page? Here is the questioned P-29. I take it these two words "bank," "bank" represent the use of the word twice in that letter; is that so? A. It should, apparently. There is the first "bank" (indicating).

Q. There is a "bank" over here (indicating). Is that the second? What I am interested in is this: I notice the word "bank" on the exhibit, Plate Number 1. It is very hard, and there is considerable ink. I was looking for that. It could not be the first one, nor is it the second one. We will see if "bank" is used three times.

Mr. Breslin: There is one on the third page, middle of the page. "You have tried to get me in bad with the bank."

The Court: Not that. I am trying to find one that is similar to the use of the word "bank."

Mr. Breslin: The second time on this exhibit.

The Court: Yes, because it is very heavy, and there is very little space between the first loop.

Mr. Breslin: That is the way it has been doctored up in these pictures.

Mr. Zabriskie: Where is the exhibit itself?

Mr. Breslin: Here is the exhibit, right here, a copy of it.

Mr. Zabriskie: I want the exhibit itself. Where is that?

Mr. Breslin: Show me a "bank" as black as that.

Mr. Zabriskie: Is the exhibit itself over here?

Mr. Breslin: It is a very light "bank."

Mr. Zabriskie: We will get one down below here.

There is the first "bank" on the exhibit.

Mr. Breslin: Yes. That is very light.

The Court: What I am interested in and what attracted my attention was the letter "B" very heavily marked, with a very small space in between the upper loop on the word, the letter "B."

Q. Where is that one taken from? A. I am trying to find it. I will say this: We had some very dark prints—

Mr. Breslin: Will you talk up, so the jury may hear it?

A. (Continuing) I say we have had some very dark prints. It may be cut from a very dark print.

Q. Why should that change? Should it not reproduce the original, if it were the original, and not— A. Yes, sir.

Q. That space, what do you call that technically, that upper part? A. That is an oval.

Q. The upper oval? A. The upper oval.

Q. Well, that is almost filled in, is it not? A. In that, yes. That may not be this one.

Q. Is there anything in the original that is almost filled in? A. I have not found a word yet.

Mr. Breslin: There is one on the first page, and that is not filled in. There is one on the middle of the third page that is not filled in. Where is the other "bank"? Did somebody find it?

A. Juror: Right there (indicating).

Mr. Breslin: On the second page. That is not filled in the way it is on this here.

Look on the picture, the way they have it all doctored up, all filled in. Now, if your Honor please, I respectfully ask again that these exhibits be stricken from the record, as they are not true representations of the disputed document. There is nothing in this disputed document to resemble the "B" as they have doctored it on this Exhibit P-41, and I think in all fairness, in view of the fact that this testimony is very important, that everything be stricken out, and these records expunged from the testimony or exhibits, and that his entire testimony be stricken out.

Mr. Zobriskie: Well, I admire Mr. Breslin's courage, anyway.

The Court: I am only interested in finding that "B" at the present time.

Mr. Breslin: Well, it can't be found.

Mr. Zabriskie: Which "B" is that, anyway, when it gets right down to it? Now, which is it?

(Witness examines photographs).

The Court: Well, we will take a recess until tomorrow morning.

Mr. Breslin: Pardon me. I would like these exhibits to be kept in the custody of the Court right now, so there can't be any more shading or coloring.

The Court: Yes, keep all. All those will be given to the stenographer, not taken out of the court room tonight.

Mr. Zabriskie: You mean one copy of each?

Mr. Breslin: No, I want all of these that were offered to the Jury.

The Court: All of these.

Mr. Zabriskie: If your Honor please, you can realize the handicaps we have been working under. We did not know until yesterday which were going to be photographed, because we did not know which were to be standards. You can see at what a great disadvantage my experts have been working under, both Mr. Hartkorn and Mr. Spencer.

The Court: I do not think Mr. Hartkorn has been under a disadvantage. He took those pictures.

The Witness: Last night; during the night. During the night, this appeared.

Mr. Zabriskie: So I think they ought to have some time.

The Court: I am going to insist that the

rule be followed. As a matter of fact, all exhibits should be kept here. I am going to see that every one of these will be handed over to the stenographer and not taken out of the court room tonight.

Mr. Zabriskie: Then, if that is so, I ask that they be closed and sealed.

The Court: Very good.

Mr. Breslin: I am perfectly satisfied.

The Court: Turn them over to the Clerk and seal them.

Well. I suppose Mr. Hartkorn can keep his own copy.

Mr. Breslin: Oh, yes. He can keep his own copy, but I want these kept in court, the ones offered in evidence.

Mr. Zabriskie: Well, that is not marked in evidence. We want the one copy, of course. I would like to have a copy of this to study tonight, just one of them. There are several of them. You see, here are several of them. If there was any alteration on one, then it would not be in harmony with the others.

The Court: You may take one.

Mr. Breslin: Yes. I have not any objection if they take one.

The Court: And I will ask the jury not to speak to anyone about this case. There have been some reports that somebody has talked to jurors, with no thought at all that there was anything wrong about it. But, as a matter for your own protection, do not talk to anyone about this case, or anyone around the court house or the corridors. Do not

discuss the case with anyone or permit anybody to discuss it in your presence.

(Adjourned to tomorrow, March 27, 1930, at 10 o'clock).

Hackensack, N. J.,
March 27, 1930.

TRIAL RESUMED.

AUGUST HARTKORN, resumed the stand, testifies further as follows:

Direct-examination by Mr. Zabriskie (continued).

Q. Have you an exhibit before you, Mr. Hartkorn? A. I have.

Q. Now, we were talking about P-41 yesterday, and we had gotten down to a discussion of the word "bank" which appears on the fifth line of P-41, when the Court discovered the word "bank" immediately below it.

Mr. Zabriskie: As I recall it, there has been no testimony given with regard to that particular "bank" below it, and I have had the stenographer write that out, except the fact that he has already testified that this word "bank" came from P-29, and your Honor wanted to know where in P-29 he could find that word "bank".

The Court: No, it was not so much the word "bank". It was that particular "B".

Mr. Zabriskie: That particular "B".

The Court: Yes.

Mr. Breslin: We say that particular "B" is not in P-29.

Q. Yes. The Court made the inquiry, and apparently it is not in P-29.

Mr. Breslin: Now, I respectfully ask that this be stricken out as leading. Let Mr. Hartkorn testify.

The Court: Well, it is admitted that it is not P-29.

Mr. Breslin: All right. It is admitted, then.

Q. Now, Mr. Hartkorn, will you explain how it got in?

Mr. Breslin: I object, if your Honor please.

Mr. Zabriskie: I wanted Mr. Hartkorn to explain to the jury how that particular slip got in, so as to be photographed.

The Court: First let us establish from the evidence whether it is in P-29.

Mr. Zabriskie: We admit that it was not in P-29.

The Witness: No, it is not in P-29. It is in the document that at the former trial was marked S-14, and in the clipping of these different documents, as I understood and was told—

Mr. Breslin: Now, I object to all this explanation.

The Court: No, you cannot give us any hearsay.

The Witness: No, not hearsay.

The Court: Well, that is.

Q. Suppose you tell your method of preparation in getting ready with these exhibits. A. I clipped from the different exhibits that were used at the

former trial, and had them on the table in different sections, and the assistants who placed these on these documents for me, why—on the plates, or the cards, evidently had one of them mixed with the pile that belonged to P-29. That was with—should have been with S-14 in the clipping. And in that way it got on this card.

Q. And was this S-14 an anonymous letter and testified to at the former trial as being written in the same hand as P-29? A. Yes.

The Court: Is that in evidence in this case?

Mr. Breslin: Not in evidence in this case.

Mr. Zabriskie: As I understand it, Mr. Breslin intends to put it in.

The Court: Until it is offered in evidence

Mr. Breslin: I object to any reference and ask that it be stricken out.

The Court: Yes. Now, we better make a notation on this exhibit that is marked in evidence, some notation, to know that it is not compared with anything that is in evidence yet.

Mr. Zabriskie: Yes. I would be satisfied, so that there could not be any possible confusion about it, just to have it cut out physically.

Mr. Breslin: No, I want it to go to the jury room. Mr. Hartkorn has already testified that it came from P-29. Now he changes his story.

Mr. Zabriskie: Now, let us see. Did he testify to that? I suppose he did, in a general way, yes.

Q. Now, Mr. Hartkorn, will you indicate to the jury in connection with P-41 just what word is represented in each case? You can step down before the jury and show them—take the original exhibit and show them in the original exhibit where these words are there.

The Court: Where are the copies that the jury had? They could follow it just as easily, and it will save time.

Mr. Breslin: They are here.

Mr. Zabriskie: One moment. I do not ask Mr. Breslin to assist in this case.

Mr. Breslin: Well, do you object to my showing the exhibit to the jury? Do you think that I am going to influence the jury by walking over here?

Mr. Zabriskie: No, but I have a right to conduct my own case.

Mr. Breslin: Well, they are for the aid and assistance of the jury, and they were offered yesterday afternoon.

Mr. Zabriskie: But this is the plaintiff's case just now, Mr. Breslin.

Mr. Breslin: Well, they were in the hands

The Court: All right. Proceed. Never mind.

The Witness: On the left hand side of this plate 1, the photograph, we find, in the second column that is headed "questioned", under the head of "questioned", the first line, the words "so you".

Mr. Breslin: If your Honor please, I respectfully submit Mr. Hartkorn has been all over this exhibit, and he is down to the word "them" in the second column.

The Court: There is no use repeating, Judge.

Mr. Zabriskie: No.

Q. I will ask you this, Mr. Hartkorn: have you since you were on the stand yesterday, compared the—I cannot see the Exhibit P-29—but the photograph of P-29 in evidence, with the exhibit that you have in your hand? A. I have.

Q. And have you found out, in so far as the questioned is concerned, that all of those are representations of words that appear in Exhibit P-29? A. Yes, all but the word "bank".

Q. All but the word "bank"? A. Yes.

Q. Now then, I call your attention to the other column, the column that you head— A. "Request".

Q. —"request." Have you checked that up with the exhibit, the request exhibit in this case? A. I have.

Q. Have you found that those were the representations of words that appear in that? A. I have.

Q. Now then, in P-42, which was offered in evidence yesterday, did you take a similar course to determine whether all of the words that are photographed there are representations of words that appear in what you call the request writing and in the questioned, respectively? A. I did.

Q. And you found them to be correct? A. They are.

Q. Did you do the same with both columns of the request and both columns of the questioned? A. I did.

Q. And you found those are correct representations? A. I did.

Q. Can you point out in each case on the origin-

al exhibits those respective words that are photographed on the Exhibit P-42? A. I can.

Q. And now, referring to the other Exhibit, P-43, have you, between the time you were in court yesterday and the present time, checked those over or not? A. I have.

Q. Have you found those to be correct? A. I have.

Q. What are these markings under each of these letters? A. They refer to the line numbers and the year 1925 and 1926 refer to those.

Q. Can you, from the exhibits that are in evidence, show the letters of which all of those are photographs that appear in P-43? A. Yes.

Q. Now, you had gotten down to the word "bank" in your answer yesterday. A. In the word "them", below this word "bank", we find again the relative weights of those lines in the letter "T", the down stroke, a very light line, and the lateral stroke, that is, the stroke, the horizontal at the top of the "T", shaded. That is so in the questioned as in the request writing. We find that also in the letter "H". And we find the letter "H" a wide letter "H", and in the "E" we find the down stroke very light, and the lateral strokes, or the horizontal strokes, shaded.

In the letter "M" in "them", note beside the shading, the construction of the letter "M", in that the first down stroke is shorter than the second down stroke in the request, as also in the questioned; and also note the connections at the top, the joints, where the pen is lifted.

In the next line the word "swear", we find again the large top "S", that in the left hand column, or the request writing, and the letter "W" in the request, we note, appears again like the two "V's".

In the letter "E", the down stroke, or the staff is again the light stroke, and the lateral strokes are shaded.

And the letter "A" we find the pen raised at the top or the joint, showing there where they bend at the very top.

Now, the "r" is again the small or the lower case used in that word "swear" in the request writing. In the questioned, of course, the upper case "R" is used again.

Now, in the next line, in the word "thought", we find the "T" and "H" quite close together, the "H" downward stroke, the first downward stroke, is close to the top of the letter "T". We find the downward strokes rather light, and the shaded portions on the horizontals.

We find the "O" shorter than the "H" in both instances, in the request as well as in the questioned.

In the "H" and "T" that finish the letter, we also find that they run close together, one hooking the other, and that the top rides close to the downward stroke, the last downward stroke of the staff of the "H".

In the next line, "he is", we find again the light down strokes and the shaded, the lateral stroke, and the "H" in both those, you will notice, in the questioned, as well as in the request, that the horizontal stroke extends beyond the second down stroke.

In the letter "E" we again have the light down stroke and the lateral stroke shaded.

In the word "is" we find the "I" a very light stroke in the questioned as well as the request, and a shorter letter than the "S".

You note again the dash after the questioned "he is", and you notice what appears to be a dash after "he is" there, in the request. It is somewhat curved.

In the word "piling", we find the "P" extending again below the base, and we find it in the questioned, the "P" extends below the base.

The "I" is a light letter, light downward stroke.

The "L" downward stroke is light, and the shaded portion is on the lateral stroke.

The next letter is blurred in the request, so I won't refer to that.

In the "N" we find at the top of the first down stroke where the second stroke, the left oblique, is to meet it, there is an open space. We find that so also in the questioned, and if we will study the letter "G" in the request, note how it starts and the dip in the "G" as compared with the dip in the "G" on the questioned. That is at the upper portion, where the oval is started.

In the request, in the line "has told" we note again the wide letter "H" and the lateral stroke shaded, and the downward strokes light.

In the letter "A" the shaded portion is a horizontal stroke, and the second downward stroke is shaded in the request.

In the questioned there is an exception in the shading there, in that the down strokes, both of them, are light, in that instance. And the lateral stroke is shaded.

We find again in the request the large tops in this instance.

In the letter "T" the downward stroke is a light stroke and the lateral stroke is shaded.

The "O" is a smaller letter, in both instances,

in the questioned as well as the request; and the letter "L" that follows the downward stroke is light, and the lateral stroke is shaded.

In the request, the form of "D", similar to the other form that is used in the request, with the angle after the curve of the down stroke. And if we notice in the questioned, in the "D", where the turn is made, there is somewhat of an angular formation after that downward curve, when it turns to the left to finish the "D". In "winning" we find the letter "I" quite light, as the light stroke, and in the "N's" we will notice the second "N" in the request, the left oblique stroke, that it takes a compound curve between those two downwardly directed strokes, or the light lines, and compare the second "N" in "winning". That, in a modified form there, is also a compound stroke.

Now, the "I" that follows is a light stroke in both specimens, and in the "N" that follows that, the downward strokes are light, and the left oblique is again the shaded stroke.

In the letter "G" we have the dip again at the top. We note the start of that letter "G" in both instances.

That completes this plate I have here.

Q. I show you a paper that I will ask to have marked for identification.

(Paper marked Exhibit P-44 for identification).

Q. (Continued) And I will ask you what that is, Mr. Hartkorn? A. That was made from a negative that was produced from cut-outs or clippings, of letters taken from the questioned documents, and—

Q. When you say the questioned document— A. I mean P-29.

Q. Yes. And what other? A. And on the left hand side, those taken from the request writings and the auto cards.

Q. Yes. Now, have you checked those over? A. Those originally were marked. I didn't check these last night.

Q. You did not check those last night? A. Not last night, no.

Q. Can you go over this and indicate to the jury from what exhibits in evidence they are taken? A. Yes.

Q. They are all taken from exhibits that are in evidence? A. Yes.

Q. In this case? A. In this case, yes.

Q. And they were produced the same way as the exhibits you have testified to yesterday? A. Yes.

Mr. Zabriskie: I offer this Exhibit P-44 in evidence.

The Court: How many copies of those have you?

The Witness: Ten.

The Court: Then are you through with these so far as your testimony is concerned?

The Witness: Yes, so far, yes.

Mr. Zabriskie: I will withdraw that, because that has some memorandum on it. I will ask that this be marked P-44, and I will ask the same question. With the Court's permission, I will withdraw that other one.

(Paper marked Exhibit P-45 for identification).

Q. I show you this. That is marked P-45 for identification, and I ask you if what you have said

about the production of P-44 also applies to that? A. Yes.

Q. Is that the same? A. Yes.

Mr. Zabriskie: Then I will offer this one instead, in evidence.

Mr. Breslin: No objection.

The Court: Are there markings on each of those letters, to indicate from what exhibit they were taken?

Mr. Zabriskie: You answer that, Mr. Hartkorn.

The Witness: Yes. Yes, they are all marked.

Q. Some say "auto 1925"? A. Yes.

Q. So we probably better have those exhibits to show to the jury when you come to those particular ones. A. They have the line numbers marked.

The Court: I mean we know from looking at that what exhibit you are comparing with respect to the request writing?

The Witness: Yes, we would.

Mr. Zabriskie: Except—

The Witness: Those that are not on request are marked "auto".

The Court: Yes. Well, I am taking that too. You better have those ready for easy comparison, if you have them. That is, the auto cards and the request writings, from which this is taken.

(Papers marked Exhibit P-45, P-45A, P-45B, P-45C, P-45D, P-45E, P-45F).

Q. Now then, Mr. Hartkorn, you may proceed. A. This plate contains enlargements, of course.

from the originals, and they are, naturally, photographs, from the photograph, clipped.

Q. What does that 1/4 inch down at the bottom mean? A. Why, that is a scale. That is 1/4 of an inch of the scale placed on there, which would show the degree of enlargement. The scale is enlarged, together with the speciments thereon. That is relatively brought up, all these specimens.

In the upper section of this exhibit we find the letter "A". I have been calling attention to some of the open "A's". We have here a number of them, and, of course, there are more. I have not placed all on this plate. There are occasionally some that are close joined at the top, some exceptions as we find there on the left hand side in the photograph here. Some are closely joined at the top. But the majority of them are open "A's".

And we also notice that some of these "A's" in the second downward staff, bend. Now, if we look at the third one on the left hand side of the first line, we find the downward stroke, the second downward stroke, bending outward and ending with a curve to the left.

Now, if we examine in the second line, on the side of the questioned, on the right, the first letter, the second line, we find that similarly constructed, that downward stroke.

Mr. Breslin: If your Honor please, I would like Mr. Hartkorn to refer to the word that he took this letter "A" from, in P-29. He has line 5 at it. I am looking for some of the other "A's" and I cannot find them.

Mr. Zabriskie: Which one are you talking about, Mr. Breslin?

Mr. Breslin: Line 5 he has on the ques-

tioned, second line, on the right. He has an "A" with an "L-5" there. Does that mean line 5?

The Witness: Yes, that means line 5.

Mr. Breslin: What word was that taken from?

The Witness: I will see when I get the document.

Q. When you are counting lines, do you count, for instance, like the address, "Mrs. Von Moschzisker"? Do you count that as one line? A. Yes. That counts as one line, yes.

The Court: He has the questioned document before him, my copy, now.

Mr. Zabriskie: Does that explain that, Mr. Breslin?

Mr. Breslin: Yes, it explains it, but I would like Mr. Hartkorn to speak of the word, and also, if he can tell us, if the letter "A" in the questioned document which he has designated by "L-5" is colored exactly the same way as it is in the original, or if it is not a fact that the "L-5" "A" that he has designated is enlarged much heavier, or shaded much heavier.

The Court: Judge, you have the original there.

Mr. Zabriskie: Yes.

The Witness: That is taken from—

The Court: Let me have my copy. Judge Zabriskie will give you the original.

The Witness: That is taken from line 5, on page 2, I think it is, on the left hand side of this document, on the photograph.

The Court: Page 2?

The Witness: Yes; taken from the word—

Mr. Breslin: What do you call page 2?

The Witness: Page 2, line 5, of the word "says".

The Court: What word is that?

The Witness: "S-A-Y-S", says.

This is an enlargement, considerably enlarged above that in the original size of the original document, and made from a photograph, clipped from a photograph, and re-photographed. Each re-photographing, of course, shows—

Mr. Breslin: Causing more shading?

The Witness: No, it does not, more shading, at all. It causes the darker line, both relatively. There is a light line and a shaded line.

Mr. Breslin: I say shaded. You say dark line. All right.

The Witness: No.

Q. Well, proceed.

Mr. Breslin: All right. That is all.

A. We find also other letters "A" that are curved, or bearing compound curves, as No. 1 on the left hand side of the plate in line 2. We find another on the questioned, the end of the line 2.

The Court: Now you were referring to the "A" on line 2 of the questioned?

The Witness: Line 2 of the questioned, the one on the margin, on the right.

Q. On what page? A. Line 5.

The Court: That is, with the "L-5" underneath? That is the one nearest to the right?

The Witness: Yes.

The Court: And that refers to what in the original?

The Witness: Line 5. I haven't the page.

Mr. Breslin: Which page?

The Witness: I am not sure.

Mr. Zabriskie: Second page.

Mr. Breslin: He has already referred to that once before.

The Witness: No. Pardon me. I didn't refer to that one.

Mr. Breslin: Well, you pointed out this.

The Court: No, it was—

The Witness: I pointed out the first one. Now I am pointing out the last one.

Mr. Breslin: All right. That is, what I want to find. If you will pardon my interruption, Mr. Hartkorn, I think you referred to the second page a few minutes ago.

The Witness: I did. It is found on line 5 of page 4 in the word "Y-E-A-R-S."

The Court: "Years"?

The Witness: "Years".

Mr. Breslin: Now, if your Honor please, I do not like to be captious and take up a lot of time with objections, and I may be blind, but, under the microscope the "A" in "years" is much different than it is in this photograph. This photograph has been smudged, and that has been practically obscured, where, in P-29, it is not. Now, I do not think that the jury should consider this unless they are exact and true representations of P-29.

The Court: Well, the jury will have the original when they come to compare, because,

after all, these photographs were permitted on the theory they are representations, but when the jury considers this case they will have the original letter.

The Witness: What I call attention to, in the shading of the lateral strokes, we find different degrees of shading. Some are wider, some are narrower. But the shading is caused by the position of the pen in the hand, the pen nibs held, as I said yesterday, and carried from left to right. Some are wider shadings than others. But what I am directing attention to is that certain downward strokes are light lines, and that the lateral lines are heavy lines; that the left oblique lines show the shaded lines, whether one is much wider or narrower than the other. Still it has that production, with the pen in the hand of the individual, writing these.

Now, in the word "it" we find "it" under the "A's" on the left hand side. Note again the narrow downward stroke in the "I" and the down strokes in the "T", narrower than the lateral strokes.

And in the word "twenty", directly under that, on the left hand side, we find again the downward stroke of the "T", the first "T" light, and the lateral stroke shaded.

Taking the second "T", you will notice the downward stroke is a little darker. However, it is a narrower line than is the shaded portion.

Now, the pen when it is held in the hand, as I have described, where the two nibs run tandem to each other, without the pressure being placed upon the pen, naturally we get the width of the steel. If the pressure is placed upon the pen, the

right nib will drag after the first nib, causing—

Mr. Breslin: I object to this lecture—if the pen is held in such and such a way. He is here to give us comparisons and reasons, and not lecture.

The Court: Well, that may be the reason. You may proceed, Mr. Hartkorn.

The Witness: When the one pen nib follows the other, and there is pressure placed upon the nibs, that second nib will make, of course, a line that appears ragged, or serrations, as we call them. A serration is—for instance, the edge, one edge, like the tooth of a saw, that extends beyond the line. In other words, the ink flows out into the fibers, a little more, and makes the line a little wider, where the pressure is placed upon that pen. But when there is no pressure placed upon the pen, you get simply the width of that steel as the two nibs come down, and when held in the positions as I have described.

In the letter "W" in "twenty", you will notice on the left hand side we have the formation there of two "V's". They are separated at the base. Now, in the ward "twenty" on the right hand side, you will notice they are joined at the base. However, they are separated at the top. And we have two distinct "V's" appearing there, to form the letter "W".

Also notice that the letters "T"—or the letter "T" in "twenty" rises above the "W" on the left, also on the right hand side, in both specimens.

Now, in the letter "E" that follows the "W", we find again that light downward stroke, and the shaded portions are the lateral strokes.

In the letter "N" we notice that the downward

strokes are light and the left oblique stroke is a shaded stroke, and if you will notice the joint at the top, that the first stroke extends beyond that second stroke; that is, the second stroke starts below the top of that downward stroke. We find that so in both specimens, on the right and on the left.

The next letter "T", we find again the shaded portion on the lateral stroke; and the letter "Y" we find the shaded portion on the left oblique stroke; that is, the first stroke made from left to right.

Now we have some of these "r's" exhibited that I have explained yesterday, somewhat a greater enlargement on the left hand side, and I have already explained that; and we find two on the right hand side, on the questioned.

Those are the two that I have taken, and shown in the words "pure" and another word there—some name there in the document.

Q. Which are you referring to? A. "Burnett." "Pure" and "Burnett".

On the next line we have some "B's" exhibited. In the questioned side, on the right, we note that they were made in three parts. We have the downward stroke. That is one. Then we have the upper oval. That is another. And then we have the finish, where the pen is lifted after that upper oval and completed by ending at or near that downward stroke.

We find that so in these different "B's" represented here on the questioned side.

Now, comparing those with the left hand side, we find those made also in three parts, where the stroke, the first stroke, is started, and then the pen lifted and carried over, and an oval made, and the

pen lifted again, and then the finishing oval is made. There are no two there that are just alike. They are practically all different, but they are produced under the same impulse.

And under those—or those under which we find the word "auto", "auto, 1925"—

Q. Now, just a minute. As I recall it, the "B" in "Bergen" is not in evidence. A. No. I have omitted that.

Q. Where are these "B's" taken from? Auto of 1925. I suppose you refer to Exhibit P-25 or P-26. And where are these "B's" taken from? Here is a "B" in "November". A. The first word is from "November."

Q. That is the dotted line there? A. That is from "November."

Q. I am afraid that one is from that one there (indicating).

Mr. Zabriskie: Of course, I am going to prove before we get through that it is Mrs. Von Moschzisker's.

The Witness: Yes.

Mr. Breslin: Well, I ask that that be stricken out. There is no evidence in the case that that particular "B" was written by Mrs. Von. In fact, she denied.

Mr. Zabriskie: Yes, that is so, at the present time.

The Witness: The second "B".

Q. The second "B" there is apparently taken from the word "Bergen", which Mrs. Von Moschzisker on the stand said was not her "B".

The Court: It will be disregarded.

Mr. Zabriskie: So I will consent that that

be disregarded, although I expect to connect it later.

By the Court:

Q. Mr. Hartkorn, on what line, now, is that? A. The line on the—

Q. No, on the Exhibit P-45. A. Well, that is the first line of "B's". We find that under the "r's".

Q. I see. A. It is that second printed form of "B". That is not admitted. That is not in evidence, so I understand.

And what applies to what I have said in that first line applies to the second line, also "B's", that we have there on the left, and on the right.

In comparing the first "B" that has "auto" marked under it, on the left hand side, with the six specimens represented on the left hand side, three on the same line with that one, and three just below it, if you will note the difference there, as I say, this being a dissimulation or a disguise from a normal writing. But they were made under that same impulse, made in the three parts, and with the shaded portion, as that pen is held in the hand of the writer.

Now, the last line contains the letter "C". We have on the left hand side various specimens of different forms. Of course, there are no two alike. but if we note the shaded portions, and where the light lines occur again in the downwardly directed strokes, and in the lateral strokes, the shading, they compare also with the questioned on the right. And also notice the one that is marked line 12 on the left, the last one on that line, counting from the left over, the 6th one, and comparing that with the last one on the line, on the right, which is

the 3rd one over. Note the start, the dip at the top of that oval, the manner in which it starts, the pressure of the pen as it is put down and carried over to form that oval, and then as the pen is directed downward, we have the light portion in a downwardly directed motion, or the pen releasing its pressure as it comes around the curve.

By Mr. Zabriskie:

Q. I show you an exhibit that I will ask to have marked for identification.

(Paper marked Exhibit P-46, id).

Q. Now, I call your attention to a paper that is marked Exhibit P-46 for identification, and I ask you whether or not they are representations from exhibits in this case of questioned and admitted writing of Mrs. Von Moschzisker? A. Yes.

The Court: I take it, then, we are through with P-45?

The Witness: Yes.

Mr. Zabriskie: This witness is through with 45.

Q. And produced in the same way as the others? A. Yes.

Mr. Zabriskie: I offer that in evidence.

Mr. Breslin: If your Honor please, I would like to object. I do not know when we are going to finish this trial. I notice on the new exhibit there are a number of others that he has been over, and Mr. Spencer has been over, and we will go on for weeks that way. He will point out the "S" that way. He has been over it at least three

times, and he has two rows of "S's" here, and the "P's" and the "R's", and this jury is not going to decide this case alone on handwriting evidence. It is just cumulative.

Mr. Zabriskie: I offer this exhibit in evidence.

The Court: Yes, but I can exercise my discretion and call a halt on the photostatic copies, because you have in evidence the originals, and you cannot take too much time in this. We do not want to spend much more time going over matters which we have already been over.

Q. Well, does this show some things which the others do not? A. They are arranged so for easy comparison by juxtaposition here, in their different sizes and formations, and brought close together, so that they can be readily compared. These were all different letters, clipped, taking the letters of the alphabet clipped from the documents and photographed, the documents.

The Court: Well, the documents are in evidence, so we are not going to spend much more time going over that which is in evidence, and, after all, the jury are the ones that are going to make the ultimate comparison.

Mr. Zabriskie: Yes.

The Court: I will permit you to use this.

Mr. Zabriskie: Suppose we put it in evidence without discussion.

The Court: All right.

Mr. Zabriskie: Then I offer this in evidence.

(Paper marked Exhibit P-46).

Q. Now, is there anything that you have covered in your other examination that you can illustrate there briefly? A. I have called attention to the different capital letters as represented on this plate, only they are all brought under close comparison here.

Q. Have you made any other photographs besides this? A. Yes. I made two more.

Q. Now, Mr. Hartkorn, is there anything particularly on this exhibit that you want to call attention to that has not been referred to in your testimony so far? A. I believe there are "S's" on this plate, taken from the auto license here with a small top and a large lower base.

Q. The jurors have not copies of these, so we will have to indicate so they can see. When you are talking, perhaps you better step down before them just for a minute. A. (Witness leaves the stand): I am calling attention to the large top "S's", and we find this auto license, auto cards, small top "S's", where the upper oval is small, and the lower oval is large.

Q. Now, where is that license card? Can you show to the jury where this "S", for instance, comes from? A. Yes. It comes from the name "E. L. Von Moschzisker", the "S" before the "K" in the name. There is the enlargement of it.

Q. Now, is there anything else particularly that you have not already covered in your testimony, that you would like to illustrate in connection with this photograph, Exhibit P-46, to indicate how you arrive at your conclusions? A. I think I have covered, in a measure, what else is on this plate, yes.

Q. Now, is there anything that helps you to arrive at your conclusion, outside of what you have

already testified to, punctuation, or— A. Yes. There are several things: The contractions with the apostrophe, the habit of the apostrophe in the contractions, and the dashes for punctuation marks; and I would refer to the letters in evidence, called the "Thelma" and the "Sara" letters, and two or three others in the script writing.

And I call attention also to the dating of the letters, dated at the end, and in the questioned, P-29, we find a dash after the "June 29th", the dating at the end.

In the Raymond Lippincott letter, which is marked P-11, I find the dating, a dash after that dating in the letter, at the end of the letter. That is, the dating at the end of the letter—

Q. Will you just show that to the jury, please, Mr. Hartkorn? A. The dash after the dating (showing to jury); the dash after the date (showing to jury).

(Witness resumes the stand).

That is also found in the "Dear Sara" letter, marked P-7.

In the questioned letter, the salutation, "Mrs. Von Moschzisker", we find the dash after "Mrs. Von Moschzisker".

In the letter, "My dear Dr. Hopper", we find the dash after "Hopper". That is Exhibit P-39.

In P-7, "Dear Sara", we find the dash after "Sara".

Q. Just show those to the jury each time, because the jury has no copy of the "Thelma" letter and the "Sara" letter. A. In P-12, "My dear Mr. Burnett", we find the dash after "Burnett", and in P-13, in "Dear Thelma".

Q. How about through the letters? A. Dashes

for periods in the "Dear Thelma" letter, P-13; in the "Burnett" letter, P-12; in the "Dear Sara" letter, P-7. In the "Dr. Hopper" letter, P-39.

Q. For what purposes do those dashes seem to be used there?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Q. Do those dashes appear promiscuously through both one and the other, in both the disputed— A. They do at the end of paragraphs, at the end of sentences.

Q. Have you pointed that out through the letters to the jurors, as well as at the beginning?

Mr. Breslin: I object.

A. In some instances.

Mr. Breslin: The jury has already been over that.

The Court: Yes.

Q. Now, is there anything else that you think of at this time that helps you in arriving at your conclusion that the disputed and Mrs. Von Moschzisker's admitted writing are both done by the same person, that is, by Mrs. Von Moschzisker? A. I think I have covered it, with the exception of pointing out all these individual letters on these plates.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. Did you ever see Mrs. Von Moschzisker before she appeared in Judge Seufert's court in February, 1928? A. I believe I did.

Q. And is it not a fact that she called in the

month of October, 1926, and interviewed you? Yes or no.

Mr. Zabriskie: I object.

The Court: Why?

Mr. Zabriskie: Why, this disputed letter was not written in October, 1926. It was written nearly a year later.

The Court: I do not know what it is yet. I will allow that question. I do not know what the next one may be. We are not relying entirely on a single letter, any letter which this—

Mr. Breslin: In our case, if your Honor please, we will offer a series of letters, and we contend they were written by the same party.

The Court: We are not concerned with that.

Mr. Breslin: All right.

The Court: As I anticipate this, it goes to attack this witness' credit.

Mr. Breslin: That is it, exactly.

The Court: You may answer the question.

Mr. Zabriskie: Your Honor will allow me an exception.

A. My records show.

Q. Just a minute.

Mr. Breslin: Repeat the question. I think it was a yes or no answer required.

(Question read).

A. Yes and no.

Q. Did she come to your office? A. So my records show.

Q. So your records show? A. Yes. I don't—

Q. Is it not a fact that the day she came to your office she brought some anonymous letters and this wrapper which has been marked in evidence as P-35?

Mr. Zabriskie: I object as immaterial.

The Court: Why?

Mr. Zabriskie: If he asked about this particular anonymous letter, that would be something. What difference does it make about some other letters?

The Court: This man is making comparisons from several.

Mr. Zabriskie: He is only to make comparisons from those offered in evidence. Now he is bringing up something that the jurors do not know anything about.

Mr. Breslin: Judge Zabriskie does not want the truth to come out.

Mr. Zabriskie: Yes, I want all the truth.

The Court: Just a minute. What is that exhibit?

Mr. Breslin: This is in Sarah Mowell's handwriting.

Mr. Zabriskie: That is all right. I do not object to that.

Q. Did Mrs. Von offer this to you with other anonymous letters?

The Court: Is that in evidence?

Mr. Breslin: Yes, that is in evidence, P-35.

Mr. Zabriskie: That is in evidence.

The Court: He may refer to that in examining the witness.

Q. Is it not a fact that in October, 1926, Mrs. Von came to your office with some anonymous letters, and this standard wrapper, written by Sarah Mowell, known as P-35, and showed them to you? A. I do not recall that wrapper at all.

Q. You do not recall it? A. No.

Q. Will you positively say that she did not do that? A. My recollection is that she did not.

Q. Will you positively say no, she did not do it? A. Well, it is a long time ago, but I do not recognize that wrapper.

Q. Will you answer my question? Will you positively say under oath that Mrs. Von did not do those things? A. I can't answer that question.

Q. You cannot answer it? A. No.

Q. And is it not a fact that you told her that the same party had written the anonymous letters that had written this wrapper? Yes or no. A. Of course, no.

Q. You did examine some papers for her, did you not? A. No. I examined nothing.

Q. What did she come to your office for? A. To interview me.

Q. What did she show you? A. She showed me a script letter and another script letter, and asked me what I would charge her to make a comparison—that one was anonymous.

Q. Never mind. I am asking what she showed you.

Mr. Zabriskie: One moment.

Q. What did she show you? A. Some script letter.

Q. You remember that, do you not? A. I remember that, yes.

Q. You remember that distinctly, do you not? A. Yes.

Q. When I asked you the question a minute ago, to answer it yes or no, you did not remember it correctly, did you? A. You asked me concerning the wrapper.

Q. Will you say positively that Mrs. Von did not go to your office and show you some letters? A. I said she showed me some letters. She came there with something.

Q. Some letters? A. Yes.

Q. Do you remember the wrapper? A. No, I do not remember the wrapper.

Q. Will you positively say under oath that she did not bring the wrapper? A. I don't recall any such wrapper as that.

Q. But you will not say that she did not bring it?

Mr. Zabriskie: Well, I object to that, if your Honor please. It is all argumentative.

Mr. Breslin: Well, he is hedging.

Mr. Zabriskie: No, he is not hedging.

The Court: Can you answer that yes or no?

The Witness: No, I couldn't answer it.

The Court: What is your best answer?

The Witness: I think not. I do not recall the wrapper at all. I recall a script letter.

The Court: Is that your best answer?

The Witness: That is my best answer.

Q. You testify in a good many court cases? Yes or no. A. Do I?

Q. Yes. A. Oh, hundreds of them.

Q. And juries do not always agree with you? A.

Whether it is me or whether it is the case, I don't know.

Q. But the result is that your side does not win all the time? A. Naturally, as in the Hall-Mills murder case.

Q. And in most of the cases in which you testify there are handwriting experts on the other side? A. Occasionally.

Q. Occasionally? A. Yes, sir.

Q. Oh, I see. In other words, in most of your cases you testify alone as a handwriting expert, and the other side has not any expert to contradict you; is that it? A. Yes. Either alone or with more assistance.

Q. In other words, you take unfair advantage.

Mr. Zabriskie: Well, that is an argument with the witness. I object, sir.

The Court: Strike it out.

Q. You have not been a handwriting expert all your life, have you? You have had other occupations? A. Not when I was a baby, no.

Q. No. You have had other occupations? A. I have so testified. I have been a teacher of penmanship and a professional penman, but I have made examinations ever since 1888.

Q. All right. I will get you right down to facts. Were you not an accountant connected with the circus at one time? A. No, not connected with a circus at one time.

Q. Well, you did work for a circus? A. Yes, in Newman v. The United States, circus case, the same as I am working here.

Q. And you were an accountant at one time? A. And also in the famous Dempsey-Kearns case, and

I was not a prizefighter.

Q. Never mind about that.

The Court: We will get along better if you just answer questions. Mr. Zabriskie will take care of anything he wants to clear up after, but just answer questions, no matter how annoying.

Q. You said yesterday afternoon that there was not much resemblance in the form of Mrs. Von's writing and the form, or the general forms of the letters in the anonymous letter? A. In the request.

Q. Yes. In other words, the forms of the letters are different? A. Not entirely.

Q. Well, they are, to a large degree? A. They are disguised forms.

Q. No. I am asking you whether or not the forms are not different, the forms of the letters in this script that Mrs. Von wrote and in the anonymous letter. You said yesterday that the variations in the writing of Mrs. Von, admitted, and the anonymous writings, were noticeable, did you not? A. The variations in Mrs. Von's writing were very noticeable, I said.

Q. In other words, there are variations in the forms of the letters, as she made them, in this Exhibit P-14, I think? A. Yes.

Q. And in the anonymous letter? A. No, I didn't say that. I said the variations within themselves, the letters, themselves, in this request writing.

Q. Yes. A. That was what I testified to, and that this is a disguised hand, and I saw it written. I saw the manner in which it was written—

Q. Just a minute. You say you saw that written? A. I certainly did.

Q. Where was it written? A. In Judge Seufert's court, at the table, and I sat right near Mrs. Von Moschzisker when she wrote it.

Q. Mr. Hartkorn, is it not a fact that the writing was made in the prosecutor's office? A. Part of it.

Q. Now, just a minute.

The Court: Listen to the question.

Q. At the 1 o'clock recess, on the first day of the trial, in the presence of Mr. Dawson, Miss Feld, and Mr. Hendrickson? Now, is not that a fact? Yes or no. A. No.

Q. Now, please answer that question. A. No and yes.

The Court: Now, just a minute.

Q. No and yes?

The Court: We cannot have yes and no to a single question.

The Witness: It can't be answered, then, your Honor.

Q. Just a minute.

The Witness: It can't be answered, your Honor. It was started here. The first page was written in Judge Seufert's court, at the table.

Q. The first page was written in Judge Seufert's court? A. I think the—

Q. Was it all written in Judge Seufert's court? A. No.

Q. How much did you see Mrs. Von write yourself? A. A page or more.

Q. And you did not see the rest of it written, did you? A. That is so.

Q. Why did you say you saw it written in court a few minutes ago? A. I did see it written in court, the first page of it.

Q. Why did you not qualify that answer a few minutes ago? A. Well, I will qualify it now.

Q. Yes, when you are forced to. A. Thank you.

Q. Now you say that one of the characteristics of Mrs. Von's writing is the fact that the "A's" are open. You have pointed that out repeatedly. Is not that correct? A. In the majority they are open, right.

Q. Majority? A. Yes, sir.

Q. All right. Now, I refer you to P-29, the original. I direct your attention to the letter "A" in the word "threat". That would be the third line. Is that "A" open or closed? A. Lines just meet, but one rides higher than the other.

Q. They just meet. What do you mean by that? A. By that I mean that—

Q. Never mind.

Mr. Breslin: I will withdraw the question.

Q. I ask you again whether or not the "A" in the word "threat", in the 3rd line of P-29, is open or closed? A. Yes. There is no opening there.

Q. No opening? A. No.

Q. So, therefore, it must be closed? A. Yes.

Q. Now, I direct your attention to the letter "A" in the word "are", on the 4th line, and ask you whether that "A' is open or closed? A. That is open.

Q. That is open? A. That is open, yes, sir.

Q. All right. The word "make", the letter "A", in the 6th line? A. "Make"?

Q. Yes. "Make you look". A. 6th line.

Q. Well, 6th, according to your schedule. A. That is open.

Q. That is open? A. Right.

Q. A great deal, to a large extent? A. No, a small extent.

Q. Small extent? A. Right.

Q. Very small extent? A. Yes.

Q. "Bank", the 8th line. A. That is open.

Q. To a great extent? A. No, a small extent.

Q. Very small extent? A. Correct.

Q. So much so that you need a microscope to ascertain it. I direct your attention to the word "are" in the 9th line, the letter "A". A. Open.

Q. To a large extent? A. Small extent.

Q. Very small extent? A. Right.

Q. The word "about", in the last line. I direct your attention to the letter "A" and ask you whether it is open or closed? A. That is closed.

Q. Closed? A. Yes.

Q. Mr. Hartkorn, you were not in court the other day when your good friend Spencer testified, were you? A. My good friend Spencer?

Q. Yes. A. No.

Q. And you did not hear him testify that all these "A's" which you now say were open, were closed, did you? A. No.

Mr. Breslin: I withdraw the question.

Q. I direct your attention to the word "are" on the second page, the letter "A", the first line. Pardon me, Mr. Hartkorn, do you need a microscope to make these answers? A. You are asking me to tell you something. Let me make it my way.

Q. Just a minute. I am asking you if you need a microscope to make these observations? A. Some of these things, yes.

Q. Well, will you please put the microscope down, away, and see if you can tell us without the aid of the microscope?

Mr. Zabriskie: I object to that. I suppose you may as well say, "Take off your glasses."

The Court: No. I will allow him to use the microscope.

Mr. Breslin: All right.

The Witness: What is it? What is the question?

Q. Are you not paying attention to what I ask you? A. You interrupted me.

The Court: No argument. Ask another question.

The Witness: Ask what is the question, and I will answer it.

Q. I direct your attention to the word "are", the first line in the second page, and ask you whether that "A" is open or closed? A. It is really open.

Q. What is it? A. It is really open.

Q. To a large degree? A. No, a small degree.

Q. Very small degree? A. Yes.

Q. Now, to the word, "hated" in the 3rd line. A. The word "hates".

Q. "Hates", I think it is, and ask you whether or not the "A" in that word is open or closed? A. That is closed.

Q. "Thelma", the 8th line, "A"? A. That is open.

Q. Pardon? A. That is open.

Q. To a small extent or a large extent? A. Well, we will call it small.

Q. Small? A. Yes, sir.

Q. Now, Mr. Hartkorn, you said this morning the exhibits you prepared for court have been photographed and re-photographed? A. Certainly. I couldn't clip the originals.

The Court: Just answer the question.

Mr. Breslin: Now, if your Honor please

The Witness: Yes, sir.

The Court: That is all you have to do.

Q. Would you not say that as the result of this method of reproduction, that the letters, as you have them on your exhibits, are much heavier, or more shaded than the other, in the original of P-29? A. They are larger and, of course, heavier. The lines are wider in the enlargement, and become wider, but some prints are darker than others. That is true.

Q. You have been basing your conclusions upon these exhibits that you prepared? A. Oh, no. I based my conclusion not on the exhibits I preprepared. This is prepared for you and the jury and his Honor to see.

Q. In other words, the letters on your exhibits are much heavier than they are in P-29? A. Yes. They are larger, and there are some prints that are darker. That is true, yes.

Q. Now, you said that there was a pen drop when Mrs. Von usually made a "W", a pen lifting, I think you called it? A. Yes. There are many pen lifts in the "W".

Q. And that is one of the characteristics of Mrs.

Von's writing upon which you based your conclusion? A. No, no—

Q. Just a minute. Did you not use it in coming to this conclusion? A. Yes.

Q. This characteristic? A. Yes.

Q. Now, I direct your attention to the "W" in the word "we", the 3rd line of P-29? A. Page 1?

Q. Yes. "We are".

The Court: That is the 4th line.

Mr. Breslin: Pardon me. The 4th line.

The Witness: The 4th line, yes.

Q. Now, I ask you if you can see any pen lifting there? A. Yes. I see three pen lifts; after the first down stroke, after the second down stroke, and after the third down stroke.

Q. Are they very noticeable? A. No. I wouldn't say they were very noticeable.

Q. But they are very noticeable in the work that Mrs. Von did in court? A. Oh, yes.

Q. They are very noticeable in that? A. Oh, yes, yes.

Q. And in this anonymous they are very indistinct; is not that correct? A. In this particular one the opening is not much.

Q. No. It is very indistinct, and you need a microscope to examine it? A. And it is carefully made.

Q. Now, I direct your attention to the letter "W" in the word "who's". I guess that would be the 12th or 13th line.

The Court: What letter is that?

Mr. Breslin: The "W" in "who's", if your Honor please.

The Witness: 13th line.

Q. "So now who's brain is neurotic", and ask you whether or not you can discern a pen lifting there? A. Yes. Two of them.

Q. Two of them? A. At the base.

Q. Pardon? A. Two at the base.

Q. At the base, and it is very evident? A. No, I wouldn't say it is very evident, no.

Q. Can you observe it without the aid of a microscope? A. Yes, with good light, I can.

Q. Did you not say that when Mrs. Von made a "W" she constructed two "V's"? A. A good many times, yes..

Q. And you said, in order to construct this "W", the pen lifting was at the top? A. Also at the bottom.

Q. Did you not say in direct examination that the pen lifting was at the top? Yes or no. A. Yes, I said that.

Q. The pen lifting that you now discover in this "W" is at the bottom? A. As I also stated.

Q. All right. That is all. Now, I direct your attention to "when". That is on the second page, the 8th line, "I laugh when I think about", "when", the "W". Is there a pen lifting there, in the constructing of that "W"? A. Yes, but it can't be noticed. They are not very noticeable. You have to take the glass to see it.

Q. And the pen liftings at the bottom? A. At the top, too.

Q. It is at the bottom? A. At the top.

Q. Did you not say at the top, too, just a minute ago? A. Yes.

Q. It is at the bottom also? A. It is at the bottom of the second down stroke, and at the top of it.

Q. I am not asking you about the top. I am asking you if it is at the bottom? A. Yes, sir.

Q. All right. Now, you said that one of the characteristics of Mrs. Von's writing or script, was the fact that she made a number of dashes. Now, I ask you to compare the number of dotted "I's" in P-14 with the number of dotted "I's" in P-29. I ask you to count the number of dotted "I's" in P-14 and the number of dotted "I's" in P-29. A. I believe there are none in P-29 dotted.

Q. Just count how many there are in P-14? A. They are nearly all dotted in P-14.

Q. Will you please count them up? A. I count 59.

Q. 59 dotted "I's"? A. If I am correct, I believe 59.

Q. In that document there are 59 dotted "I's", and in P-29, there is only one dotted "I"? A. I will see.

Q. Well, I will not mislead you.

The Court: He has the original.

Mr. Breslin: All right.

Q. Do you find any in P-29? A. I am not through yet. No.

Q. Pardon? A. I do not find any.

Q. You do not find any dotted "I's" in P-29. And in P-14, the one that Mrs. Von wrote partly in Judge Seufert's court and partly in the prosecutor's office you find 59 "I's" dotted? A. Right.

Q. Now, Mr. Hartkorn, in all fairness, is not that an outstanding characteristic? In other words, if she made 59 "I's" in this exhibit, would she not have slipped once when she wrote the anonymous letter, as you claim? Is not that probable? A. No. That is copied from a model.

Q. What is copied from a model? A. That P-29.

Q. What model? A. What model? I know the model.

Q. What model? What model was that copied from? A. From the wrapper.

Q. From the wrapper? A. Yes.

Q. That is your opinion? A. Yes, that is my opinion.

Q. And the fact that— A. Very strong opinion.

Q. And the fact that there are 59 dotted "I's" in the P-14 does not—

The Court: Let me see that wrapper. Is that marked in evidence?

Mr. Breslin: Yes, sir.

Q. Why, there are no dotted "I's" on this wrapper at all. Take a look at it. A. Of course not.

Q. Take a look at the wrapper. A. That is what I said—

Q. Just a minute.

Mr. Zabriskie: Let him answer.

A. —to you. I said there are no dotted "I's" in the wrapper and there are no dotted "I's" in P-29, I see.

Q. So you do not attach any significance to the fact that Mrs. Von made 59 dotted "I's" when she copied that letter in court? A. Because that is a disguise and this is a copy, a simulation.

Q. Will you answer the question? Do you attach or do you not, any significance to the fact that Mrs. Von made 59 dotted "I's" when she wrote this in court? Yes or no. A. Yes, there is a significance.

Mr. Zabriskie: What is the significance?

Mr. Breslin: Wait a minute. I am not through.

The Court: One minute. This is not your witness.

Mr. Breslin: Never mind, just because he is in a jam.

Mr. Zabriskie: He is not in a jam.

The Court: Never mind. No arguments.

Q. Now, Mr. Hartkorn, is it not a fact that if the condition were reversed, the situation were reversed, you would be in here telling the jury today that that was one of Mrs. Von's characteristics? A. What do you mean by the situation reversed, please?

Q. Well, that is plain English, is it not? A. No, it is not.

Q. Suppose there were 59 dotted "I's" in the anonymous letter and none in this, would your answer be the same? A. That depends. If this were not disguised.

Q. So you resort to that old answer, that you claim that is disguised? A. Oh, yes. I have been through all that many times.

Q. Dissimulation. Now, you said yesterday that the slant of some of Mrs. Von's letters and the slant in the letters of the anonymous, P-29, do not agree; is that correct; the slant of some of the letters? A. I don't know that I said that.

Q. Well, I took it down as you gave it to the stenographer yesterday. You said the slant of some of the letters in Mrs. Von's admitted writing do not correspond with the slant in the letters in P-29. A. Well, if I did not say it, I say so now, that they don't.

Q. They do not agree? A. No.

Q. The slant does not agree? A. Some of them, no.

Q. And the forms of the letters do not agree? A. Some of them, no.

Q. And the variations are quite noticeable at times in form results? A. Variations between the anonymous and the—

Q. Yes. A. Yes, there are noticeable variations.

Q. Are they not factors that should be considered before you come to the conclusion that the handwriting is Mrs. Von's? A. That is the smallest factor to consider. The pictorial resemblance. It is the production of it.

Q. You base most of your opinion upon shading? A. And upon pressure, the handling of the pen, the methods in production.

Q. Did you not say yesterday you based your opinion partly on shading? A. That is—yes, that enters into the production.

Q. You please answer the question whether or not— A. Yes, sir.

Q. All right. You said yesterday the shading had something to do with your opinion. A. Right.

Q. Now, is it not a fact that shading depends on the position of the pen and the position of the writer? A. Oh, yes.

Q. What about these "O's" that you said were open, a characteristic of Mrs. Von's? Do you still insist that that is a characteristic? A. Oh, yes. That is one characteristic of the "O", but the other characteristic, the principal one—the principal—

Q. Now, I direct your attention to the letter "O" in the second line, the first page of P-29, right at the top, "so you think." Now, I ask you whether

that "O" is open or closed? A. That "O" is closed.

Q. That "O" is closed? A. Right.

Q. I direct your attention to the "O" in "fool", 4th line, the first "O". I will ask you whether that is open or closed? A. That first one is open.

Q. To a large extent? A. No.

Q. Very slight? A. Right.

Q. And the second "O"? A. That is open.

Q. The same extent, very minute? A. Less than the other.

Q. I direct your attention to the word "you" in the 6th line, the letter "O", and ask you whether that "O" is open or closed? A. In the word "you"?

Q. Yes. A. Closed.

Q. Closed? A. Right.

Q. And the word "you", in the 8th line? A. Yes, that is closed.

Q. And the next line, "enough"?

The Court: "Just crazy enough"?

Mr. Breslin: Yes, "crazy enough".

Q. (Continued) I ask you about that "O" in that case. A. Well, it is really closed, that is right.

Q. Oh, that is right. I see. A. Yes. Closed is right.

Q. Yes. How about the next line too? A. That is closed.

Q. And you do not need a microscope to come to that conclusion, do you? A. Well, yes, it is closed. It is really closed with a touch.

How about "Vroom" in the next line, the first "O" in "Vroom"? A. Well, it is a question whether it is closed.

Q. Pardon? A. It is a question. It might be a fiber lift, that shows it is an opening.

Q. It is practically closed, then? A. I think we would call it closed, yes.

Q. How about the next "O"? A. In "told"?

Q. No, "Vroom"? A. Well, the lines meet. The ceiling under the roof meets.

Q. What does that mean? A. Well, it means the first line is higher up than the second line.

Q. Would you say it is closed or open? A. Well, it just touches. The upper portion of one line touches the lower portion of the other.

The Court: There is no space open?

The Witness: There is really no space between the two.

Q. Does not that distinguish a thing, when it is open and closed, when there is space in between? A. Yes.

Q. You said a few minutes ago, in response to his Honor's question, there was not any space, so, therefore, it must be closed? A. Yes, it is closed.

Q. And "who's", in the next line. I ask you about that "O". A. Yes, that is closed.

Q. It is closed, and you do not need a microscope. And "neurotic", the next line. A. Yes. That one is closed.

Q. And "you thought", the 14th line, or 15th, I guess, "O"? A. Yes, that one is closed.

Q. How about 'thought", the "O" in "thought"? A. That is the one I referred to.

Q. How about "you"? A. Oh, "you"?

Q. The "O" in "you". A. "you" preceding "thought", you are referring to. Yes, that is closed.

Q. I could go on to the second page, but I suppose I will waste a lot of time. It is all the same.

Does not the fact that you have just found all of these closed "O's", change your opinion of the authorship, or are you still going to stand up and say there is no question about it? A. As to the opening?

Q. Yes. A. The majority are open.

Q. Well, then, you go on to the second page, and we will find out if the majority are open. How about the first page? Will you say that the majority on the first page are open in this anonymous letter that you have just been offered? A. I don't know. I am just looking at what you are showing me. I would have to examine them all.

Q. We will not waste any more time on that. Now, I direct your attention to P-41, "so you", in the request writing, and "so you" in the questioned writing, and ask you if the form of the letter "S" in the request writing is the same as the form of the letter "S" in the questioned writing? A. No.

Q. No. A. That is the distinguishing feature.

Q. Just a minute, please. I am asking you about the form. And that is one of the distinguishing features, is it not? A. That has been avoided.

Q. No, I am asking you if it is not a fact that that is one of the distinguishing features in the anonymous letter, in Mrs. Von's letter? A. In one; the one.

Q. Well, this one. A. All right.

Q. Do not do me any favors. I am asking you if it is not so. A. You know, I am—I can hear very well, Mr. Breslin.

Q. Can you? A. Yes.

Q. Mr. Von cannot, and I am just getting ready when he goes on the stand, so you will pardon me.

It is one of the characteristics, is it not? A. What do you mean by one of the characteristics?

The Court: You said it is. What do you mean by "it is"?

Q. In other words, the formation of that letter "S" is different?

The Witness: Speaking to me, your Honor?

The Court: Yes.

The Witness: Oh, pardon me. I said that the "S" differs; that is, the different part of the document itself where the "S"—the "S" is large at the top, but there are times when I find the small "S", the small oval at the top; and this "S" that I refer to in the questioned has the small top, and that is the small top that is on this wrapper, the small top, is the copy of that.

Q. So, in other words—

The Court: Then do I take it there is no question in your mind of the similarity of the "S" on the questioned document and the "S" on P-35?

The Witness: In form there is a similarity, but there is quite a difference in its production.

The Court: Oh.

The Witness: I can explain that very, very well.

Mr. Breslin: Just a minute, please.

The Court: Never mind.

Q. In other words, you say that there is a re-

semblance between the "S" on the wrapper and the "S" in P-29? A. In form.

Q. In form, yes. A. Yes.

Q. And you say that there is a difference in the form of the "S" in P-29, as compared with the "S" as made by Mrs. Von in court. Now, I am talking about form. Yes or no. A. That is true.

Q. In other words, there is a difference in the form of the "S's"? A. Yes, in that disguise handwriting.

Q. The refuge of sinners, "in that disguise handwriting."

Well, I will ask you this question: that is a pretty low grade calibre of handwriting, Mrs. Von's, is it not? In other words, when we went to school, we would call it "chicken scratching", or something like that? A. She has facility with the pen.

Q. Now, just a minute. Please answer the question.

The Court: Answer the question. Pay attention to the question.

Q. That is a low grade of penmanship, is it not? A. I saw it done, yes, in a haphazard way.

Mr. Breslin: Now, if your Honor please

The Court: Will you not listen to the question?

A. I don't know that that is low grade. There are haphazard strokes.

The Court: You understand when somebody writes well and writes poorly. If you were marking penmanship, how would you mark that? What grade would you give it?

The Witness: Well, poor.

Q. Poor? A. Yes.

Q. Now, I direct your attention to P-29 and ask you, if you were marking that paper for one of your students, what would you classify that as? A. Good.

Q. Good? A. Yes, sir.

Mr. Breslin: That is all.

Redirect-examination by Mr. Zabriskie:

Q. Mr. Hartkorn, when Mrs. Von Moschzisker came to see you in October, 1926, did she retain you? A. She did not.

Q. Did she pay you a five cent piece or any amount of money? A. Nothing whatever.

Q. Did you give her a written report? A. I gave her no report whatever, neither written nor verbal. She was only in my office a few minutes.

Recross-examination by Mr. Breslin:

Q. Do you remember that now, that she was in your office?

The Court: Are you through, Judge, on your redirect?

Mr. Zabriskie: I think so.

Mr. Breslin: I will withdraw the question. That is all.

Mr. Zabriskie: I will call Mr. Haring.

JOHN W. HARING, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Haring, where do you live? A. 114 Park Avenue, Newark.

Q. And what is your business? A. Examiner of questioned handwriting and pen-lettering, typewriting.

Q. And how long— A. Commonly called a handwriting expert.

Q. How long have you been engaged in that line of work? A. I have been in the penmanship profession for forty years. I have been examining handwriting and lettering for thirty years, and giving opinions. But I have testified regarding these subjects since 1912, in court.

Q. What has been your professional experience, Mr. Haring? A. With regard to testifying and examining as to handwritings?

Q. Yes. A. Well, I have testified in a number of states. I have testified in New York, New Jersey, Pennsylvania, Maine, West Virginia, Florida, South Carolina, Massachusetts, Connecticut. Maybe some other states. I have examined and rendered opinions for a number of other—cases in a number of other states. Do you want some cases I have been in?

Q. Yes. A. I was called by the Government in the case recently tried, within the last few months, the United States against the Chamber of Commerce, Poultry Chamber of Commerce, or Live Stock, New York City, ninety defendants. I was in the case and testified in the case of United States v. William and Fred McClellan, New York City.

I was in the Hall-Mills case. I was in the James B. Duke two hundred million dollar will case. I was in the Kearns-Dempsey case. I was in the ambulance chasing cases in New York City; for the New York State Legislative Committee, Industrial Survey Commission. I also testified—examined and testified for the Bar Association, in New York City, regarding ambulance chasing cases. I have been doing the work for the last two years, in America, for the German Government, regarding disputed documents. I have handled thousands of documents for them.

Q. Have you ever been— A. I was in the Van-Sicle murder case at Newton, New Jersey. I was in the Patsy Debeari case, at Somerville, New Jersey, the Nelson W. Barley murder case, tried at Skowhegan, Maine, and a large number of other cases. I made examination and reported in the Jackson will case, New York City, and a number of other cases.

Q. Have you ever been employed by the prosecutor of this County to examine cases? A. Yes, a number of cases. One, the Mahler case, a couple of years ago.

Mr. Breslin: What case was that?

The Witness: Mahler, I think was the name of it.

Mr. Breslin: How long ago?

The Witness: I think it must have been two or three years ago; maybe three or four.

Mr. Breslin: Longer than that.

The Witness: Well, it was my work that caught the person.

Q. This Mowell case, were you sought to be employed by the prosecutor of this County?

Mr. Breslin: I object to that.
The Court: Sustained.

Q. Were the exhibits in this case, in the criminal case, some of them, turned over to you for examination?

Mr. Breslin: I object to that.
The Court: Sustained.

Q. By the prosecutor of this County?

Mr. Breslin: I object.
The Court: Sustained.

Q. Have you examined the Exhibit P-29? A. I have. I didn't know it. Yes, I have recognized the number now.

Q. When did you first see that, Mr. Haring? A. The original of this letter I first saw at your office.

The Court: Now, just a minute.

Q. No, I am talking about the envelope. The envelope on there. A. Oh.

Q. Did you see it before or after the trial of the criminal case, of the State v. Mowell, if you know? A. I know. I saw it before the trial.

Q. Have you examined it since, carefully? A. Yes, sir.

Q. Now, have you examined the standards that are in this case, that are admittedly written by Mrs. Von Moschzisker, and I refer now to all of these exhibits, like the "Thelma" letter and the "Sara" letter, and the "Burnett" letter, and the "Dr. Hopper" letter, the Exhibit P-23, the Exhibit P-24, the Exhibit P-21, the Exhibit P-22, the Exhibit P-40, the Exhibit P-9, the Exhibit P-8, the Exhibit P-10, the Exhibit P-27, the Exhibit P-15,

P-17, P-19, P-18, P-16, P-14, and the Exhibit P-11? A. I have.

Q. Now, in your opinion, is the Exhibit P-29, and these standards that I have just referred to in the same handwriting or in the same printing, done by the same hand? A. In my opinion the pen lettering on the exhibits which you have presented to me was made by the same person who made the lettering on P-29.

Q. And will you give the Court and jury the reasons for your opinion? A. The manner of distribution of words, the spacing, the adaptation of lines to the page of words; the punctuation, size and dimension, and direction of the punctuation, the forms of letters, the spacing between letters in words, the relative size of letters in words, the pen pressure, the manner of production, the way in which the pen was held, as exemplified by an analysis of the lettering on these documents, the use of abbreviating or shortening of words, contractions, the margins of the writing, as compared to the edge of the paper. That covers it in general.

And, in detail, I have some photographs which I have arranged for the explanation.

Q. Are they with you there, or are they here on the table, the ones to which you refer? A. I have one here.

Q. What number is that, in your numbering, if I may ask? A. The number I have on here is 7.

Mr. Zabriskie: I ask that that be marked for identification.

(Paper marked Exhibit P-47, Id.)

Q. Now, how many of those have you? A. There are nine, with the one you have.

Mr. Zabriskie: I will ask that those be marked.

The Witness: Then I have my own marked copy here, making ten.

(Papers marked Exhibts P-47, Id-A; P-47, Id.-B; P-47, Id-C; P-47, Id-D; P-47, Id-E; P-47, Id-F; P-47, Id-G; P-47, Id-H.)

On the photographs which I have arranged I find on the left side of the line described through the center, perpendicularly—at the top you find the name "Von Moschzisker", and on the right you find the heading "Questioned"; and the first word on the left is the word "crazy", taken from the request writing. That instrument was written in the court. Then on the photograph is an enlarged form, and I will call your attention to the "A" in the word "crazy" on the questioned, and on the acknowledged, and call your attention to the way that it is split open at the top in each instance, one in the questioned and one in the known writing.

I call your attention also to the way in which the bar, or the uniting part of those two downward strokes is made, the increased weight, showing the manner in which the pen was held off to the right, away from the shoulder, when that stroke was made.

The two down strokes, or the two staffs, or side of the "A", forming a tent, are narrow, and fine lines, comparatively speaking.

I call your attention to the same thing, as to the relative weight of lines of the letter "Z" in the same word.

The horizontal lines, those passing from left to right, or right to left, on the top and bottom of

the letter "Z" are heavy, as compared with the stroke connecting the top and bottom, which is lighter.

In the known writing it is considerably lighter, while in the questioned writing it is lighter than the top or the bottom line, but it is lighter. The principal is the same. That is to say, that stroke connecting the top and bottom is a lighter stroke than the top and bottom strokes themselves.

I also call your attention to the same word, in the letter "Y", how the right limb of that letter is higher than the left limb.

I call your attention also to the word "you", directly under the word "crazy." The letter "Y" in that word "you", particularly. That is under the known writing. And I call your attention at the same time to the "Y" in "crazy", and call your attention to the angle of the left limb, or the "V" part of the "Y".

I call your attention to the strength of the stroke in each instance, the "Y" in the "you", and the "Y" in "crazy". And I call your attention to the fact that they are typical, one and the other, and they are both known writings, and they are typical in this respect; that the left limb, which I have been calling attention to, is heavier in each instance in the "Y" in "crazy" and the "Y" in "you." And yet there is a great difference as to size of these letters. There is a great difference as to the form of the letters themselves, as they are both "Y" characters in our alphabet.

The reason I call your attention to that point is this; to show that this writer, the known writing, has a great variability in making that letter "Y" as well as in all of the other letters of the alphabet that appear on this request writing.

I call your attention to the questioned word "your", appearing on the second line, on the right, under "questioned", and I call your attention to the same principal as regarding the strength of stroke and the general direction of the—what we might say is the right hand side of the "Y", continuing up to the top of the "V" part and down.

And I call your attention to how the "Y" in the questioned word "you", and the questioned word "your"—how the "Y" descends below the base line established by the "O" in "you" and in the "R" in "your". And I call your attention to the way that the "Y" descends below, under the known writing, in the word "you", in each instance.

Now, I call your attention to the 3rd line down, under the known writing, to the word "you", and I call your attention particularly to the "Y", the first down stroke, which would form the "V", is entirely isolated and away from the other part of the letter.

In fact, if that were standing alone, no one would know whether it was a "Y" or what letter. It looks as much like Chinese or any other foreign alphabet as it does that of a "Y". Standing alone it would not be recognized as a "Y."

Now, I would like to call your attention to—may I step down before the jury, your Honor?

The Court: Yes.

(Witness leaves the stand).

The Witness (Continuing): I want to call your attention to the word "your", the 4th line from the bottom, on the 3rd page, and I call your attention to the "Y" in that word. There the "Y" is a good, clean cut letter, very ably distributed, and yet it is distinctly a "Y" and looks as though it did not

belong to the rest of the writing on the page at all, if taken alone, the "Y" at that point in the word "your".

(Witness resumes the stand).

I call your attention particularly to that, three ways of making the "Y", and yet they are a "Y". The last one is distinctly a "Y", unmistakably a "Y", while the third one down on the photograph, under the known writing, as I said, if it was taken alone, would not be recognized as the letter "Y".

It will also be observed that the shading or emphasis in the "Y" on the last word, which I have just shown the jury, on the original, is the lack of shading, there also showing a different emphasis, although the left hand stroke forming the "V" is just a trifle heavier, but nothing in comparison to the other letters which are distributed through these three pages, and the one which I have shown you on the photograph.

Now that was one of the things that passed through my mind on studying these three pages of pen lettering, to show to me that this person who created these three pages had excellent control of the pen, had a good mental knowledge of the forms of letters. I have been designing letters for alphabets for school purposes and educational purposes, letters and designs for alphabets, and lettering—

Mr. Breslin: I object to this speech. Judge Zabriskie has gone into his qualifications.

The Court: No, you cannot go into that, Mr. Haring.

The Witness: And an examination of this docu-

ment showed me, convinced me that this person was a master of the pen, had a great many varieties of the same forms of letters, and was what might be called a skilled writer.

The page as a whole, as I was not present when it was written—it shows nervousness and, at the same time, there is considerable skill manifest on the production of these letters.

I notice particularly that the—that there seemed to be a striving to create an "S" that looked upside down, top-heavy, and then when I examined some other writing of this person, in other documents, I find that the "S" was made in the relative manner in which it should be made, artistically, the smaller part of the loop at the top, the large oval at the bottom, and it seemed to be also in the letter "D", a particular striving to make that a deformed letter, of that letter "D", particularly at the base of the letter "D". The lines were far apart.

Now, the person who creates a "Y" in this skillful manner in which I have shown you, and then produces a "D" in this manner, wide apart, deformed, and, if it stood alone, in many instances it could be just as well taken for a capital letter "N", it led me to the opinion that this was disguise writing and was not the natural writing of this person. The same thing is true regarding many, many of the other letters.

There has been the small letter "r"; the lower case "r" has been used repeatedly through this.

And in the word "Ridgewood", the 10th line down, on page 2, there seems to be a more mixed up arrangement and throwing together of the letters of that word "Ridgewood" than there were in

many other words on this page. There seems to be a lack of harmony.

This page—none of these pages displays the ability of the person unless it is analyzed, the writer, unless it is analyzed very thoroughly and analytically. It takes a great deal of time to do that, and that is what I discovered on due analysis of the penmanship exhibited here.

Returning to the photograph, take the "B" in the word "Bank", the 4th one down under the known writing. We find that that "B", the lower or bottom of that "B" extends clear to the left beyond the staff.

Now, the other "B", I think, with one or two exceptions—and there may be no exceptions—I don't recall at this moment. The others are made with an opening at the bottom, similar to the "D", a wide opening from the bottom of the left hand staff to the bottom of the right hand part of the "B". So that the 5th one down, we will say, counting the word "crazy", if that were in the word that required an "R", it could be just as well taken for an "R", and that is made by the same person, who has exhibited a knowledge of lettering and writing in these three pages.

There is another "B" on this page 1, the 3rd line down, in the word "bluff". There the "B" is carried across past the staff. That is on the request writing.

Having found that this writer was not giving us a fair example—

Mr. Breslin: I object to that. That is a conclusion on his part.

The Court: Strike that out.

A. (Continuing) I then examined the—take the word "just", the one on the extreme left, and the one on the extreme right of the photograph. I found that while the habit of this writer, in making the lettering on the request writing, was to conform to a great degree as to size in making one letter with another in a word, to the letters, a normal size; and the "J" is the exception. The "J" has been made relatively longer than the other letters. For instance, you take in the word "bank", that has been made sometimes the exact size—the "B" has been made sometimes the exact size of the "A"; sometimes the "A" has been made lower than the "B". In the word "back", on the 5th, down on the right, under the questioned, there the "B" and the "A"—the "B" starts it. The "A" has about the same size as the "B". But when we come to the word "just", it is very observable that there is a long stroke to the staff of the "J". In one instance, the request writing, the "J" has been dotted, but in the questioned writing, the "J" is undotted.

In each instance, the questioned and the known writing, the "J" descends below the line established by the rest of the word "ust". In the request writing it goes away below the line, but in the questioned writing the "J" descends just below the base.

I call your attention to the words appearing on each side—in the column under the questioned, and under the known, "to get", the two words, "to get", and I call your attention to the way the "T" has been crossed on the request writing. It is crossed. The horizontal stroke is way above the staff or perpendicular stroke of that letter. And then compare that with the "T" staff, and crossing

on the questioned. They are typical, one and the other, as to weight, impulse and as to general effect, except that one is longer than the other.

The word "Ridgewood" is also enlarged on this photograph, under the request and under the questioned.

I call your attention to the "Rid" and the"G" in the request writing. I call your attention to the size of the "G" there, how it rises above the "D", and I call your attention to the size in the request writing, to the size of the "D" as compared with the size of the "G"; and I call your attention to the heavy stroke forming the top of that letter "D" in each instance, on the questioned and on the request.

And I call your attention then to the difference in size of the "D" and "G", the "G" in each instance having the stronger stroke at the bottom of the oval. And then I call your attention to the "E" in each instance, under the known and the questioned writing, how much bigger that "E" is in each instance than the "G", and how much heavier it is in each instance, and one is in the questioned, and the other is in the known writing.

And I call your attention to the small "o" on the photograph, grouped, one under the questioned and one under the known writing, the strong similarity as to the manner of holding the pen by the writer of each, the questioned and the known, and the little openings at the top in each, the questioned and the known. And they are grouped there, and they speak for themselves.

This writer made the "O" sometimes closed at the top, sometimes open at the top, but the peculiar way in which this "O" is fonud, as placed in the word, is that the "O" is narrower than the sur-

rounding letters. For instance, in the word, going again to the word "your", and the word "you" at the top of the photograph on each side—that is, I say each side. I mean the questioned and the known. If you take the word "you", we will find that the "O" is narrower than and smaller than the "U". We take it in the word "your"—we take the word "you" on the unknown or questioned, and we find that the "O" in that word is narrower than the "U."

In the word "your" on the photograph, second one down from the top of the questioned, we find that the "O" is narrower than the "U". That is another identifying point, and a point that maintains throughout this writing.

Q. Mr. Haring, if I may—how about the "W" in the Mrs. Von Moschzisker admitted writing of "Ridgewood" and the "W" in the questioned? What is the similarity there? A. Well, in the word "Ridgewood", on the photograph, there seems to be some additional strokes, pen strokes, attached to that "W", additional, but if they were taken away, we would see that the pen was lifted on the questioned and on the known.

Q. I was looking at those two, that "W" there and that "W" there. A. Yes.

Mr. Zabriskie has called my attention to the "W" in "Ridgewood," the second "Ridgewood", under the known writing, and it is made in four distinct strokes of the pen, with a good sweep.

Q. I mean the one above that. That is the one that struck me; the one above that I was referring to, the first "Ridgewood." A. The first "Ridgewood."

Q. Well, that second—there are three there, I see, in a row. It is the middle one. A. Yes. I

was speaking, when Mr. Zabriskie called my attention to this one—I was speaking of the first "Ridgewood."

I now call your attention to those three names, "Ridgewood", one appearing directly under each other on the known writing.

I call your attention to the great variability of this writer in making that "W" in the word "Ridgewood."

At the same time I will call your attention to the combination "GE", and particularly to the "E" in each of those three. And then I will call your attention immediately to the "E" under the questioned, and call your attention to the same principle existing in each of these words, the questioned and the known, as to the relative size.

Now, for instance, the last "Ridgewood" on the known writing, we find that the line runs from the top of the "I", "IDGE", right upward. Now, if we pass immediately to the questioned, and we start at the same place, we go, "IDGE" upward, as those letters are found in that word.

Then coming to the "OOD" in Ridgewood, we find in all these three, on the known writing, and one on the unknown or questioned writing, that the "O" is small in each instance, as compared with surrounding letters.

Q By the way, can you tell, Mr. Haring, whether this is the work of a right handed writer or a left handed writer? A. This is the work of a left handed writer. It is not always—able—I am not always able to tell—

Q. Do you say the work of a left handed writer or right handed writer?

Mr. Breslin: I ask that the stenographer read the answer.

(Answer read).

Mr. Breslin: I respectfully ask that the answer be permitted to stand.

The Court: There is no objection to that. That is his testimony.

Q. I am referring now to this Exhibit P-47, and I ask you whether that is in the handwriting of a left-handed writer or a right-handed writer? A. P-47?

Q. I asked you if you can tell. Can you tell? A. Not from this alone, no.

Q. What are the indications? A. And when my answer was that there was—left-hand writer was relating to the questioned writing? No. There are many other letters "O" on this Exhibit P-29. There are many other letters that are open at the top. They are not all assembled here on this photograph.

I call your attention to the way in which the "D" is made in "Ridgewood" in the questioned. I also call your attention to the way the "D" is made in the last "Ridgewood", under the known writing. There is a little opening at the top in each instance and there is a little increased pressure of the pen at the top, as it goes around, forming the top oval, and then starts to descend on the right hand side of that oval, and then it comes down to the base, and crosses over to the left, and passes the staff, and then the staff enters it at that point, the downward staff, showing a similarity of those letters.

Recess.

After Recess.

JOHN V. HARING, resumes the stand and testifies further as follows:

Mr. Zabriskie: I am going to ask the stenographer to go back to where I interjected a question into Mr. Haring's testimony there. If you will just read that where I said, "By the way."

(Question and answer read as follows:

"Q. By the way, can you tell, Mr. Haring, whether this is the work of a right handed writer or a left handed writer? A. This is the work of a left handed writer. It is not always—able—I am not always able to tell ——")

By Mr. Zabriskie:

Q. What did you mean by that?

Mr. Breslin: I object to him testifying, if your Honor please. The answer is in.

Q. I ask you this: Do you want to correct the testimony that was just read to you, in the first part, Mr. Haring? A. I do. I want to correct it, if it is taken that this letter in question was a left hand work, or this request writing was left hand work, then it must be corrected, because that is not what I meant.

Mr. Breslin: What was that answer?

The Court: Let us have the answer read. There is some confusion.

(Answer read).

Q. What I am referring to is the Exhibit P-47. That is the same that you have. So, now, what is

your answer to the question? A. My answer to that question is that is the work of a right handed person, but not judging from this alone, judging from the material which I had before me, of which this is only a small part.

Q. Well, then, proceed. Now we will go back to where Mr. Haring was before the interruption. We will proceed with the answer.

The Court: He is down to the word "Ridgewood." He was discussing "Ridgewood".

Mr. Zabriskie: Yes.

The Witness: Your Honor, I think I completed this group of "O's", if you recall.

The Court: Yes.

The Witness: So I completed this chart.

Q. You say you had completed this? A. Yes, sir.

Q. Now, have you any other chart that you have made? A. I have.

Q. You have how many, just one? A. But one of those.

Mr. Zabriskie: I will ask to have this marked for identification.

The Witness: I have some of those.

The Court: Now, this No. 47 was that what you were using before recess?

The Witness: Yes, sir.

Mr. Zabriskie: I will ask to have this marked for identification. I offer these in evidence.

Mr. Breslin: No objection.

(Papers marked Exhibits P-48, P-48A, P-48B, P-48C, P-48D, P-48E, P-48F.)

Q. Then you will proceed?

The Court: That is 48. Your plate No. 6 is 48?

The Witness: Yes.

Q. At the outset I want to call your attention to this line here, the second line from the top, on the left hand side, and have you some explanation to make as to that? A. Yes. Under the column, request writing, or known writing, Mrs. Von, you will find on the second line down, on the extreme left is a character there that looks like a "W". That has been placed on by error, upside down. If you will just invert the sheet and look at it in that manner, you will find that that is "M".

I call your attention to the top line of "K", in the right and left column, I call your attention to the right hand stroke at the top of that "K", how it rises above the staff, or the back of the letter "K". That is true of the request writing, and true of the questioned writing, and is a point of identification.

I call your attention to the second line down, the "M's", and call your particular attention to the manner in which they are constructed, being in four distinct pieces, forming that letter on the request writing, and in the questioned writing it is made in the same manner, four distinct strokes of the pen.

I call your attention next to the letters in combination, "OSCHZI", being part of a name, under the request, and on the right column, just below that, the same letter, same combination of letters, "OSCHZI", and I call your attention particularly to the spacing between the "S" and "C" and the "C" and the "H", being a greater space between the

"C" and the "H" than there is between the "S" and the "C".

I call your attention also, as a point of identity, between the small or lower case "h" in each instance, in that combination of letters, to the particular formation of the turn at the right top of the lower part or end part of the "h", and to the extension below the base line of the finishing stroke of that letter.

I also call your attention to the relative size of the small letter "h" in the request and the "Z" which follows it, and also in the questioned, the same combination, the "h" and the "Z", the relative width of those letters.

You take the "C"—take the first, that is, the first one we come to—by the way, on this, as I come under the known writing, there are two combinations of those letters. On the questioned writing there is but one.

Now, we will take the first of the two appearing on the known writing, and I call your attention to the strong horizontal lines forming the "Z", while the line which connects the top and bottom line of the "Z", those horizontal lines, is a lighter line in each instance.

I call your attention to the word "Spring" in each column. The thin stroke for the staff of the "P" in "Spring", the emphasis or shade or strength of a line on the "R" coming on the right hand side of that letter, the small "I", small compared with the other letters as to weight and length; the rising of the finishing stroke of the "N" above the first part of the "N"; the disconnection between the top of the "N" in the questioned and the disconnection of the top of the "N", and the first down—second down stroke of the "N" in the questioned.

And immediately below that one word "spring" in the questioned, we have another combination of "N's" in the questioned, and you will find, on examination, that the heaviest line in the "N", as made by the writer of the request writing, is where it joins the—the line which joins from the top of the "N" the first stroke, to the bottom of the second stroke, that weight of line varies, sometimes heavy in one letter, and sometimes lighter, but it is always heavier than the side strokes. The same is true in the "N's" on the questioned column.

I call your attention under the—to the word "the" in each column, and you will observe that the capital—that the "T" is taller in each word than the letters which follow the "H" and the "E", and on this page we also have a group of small letter "o's" on each side, on the request and on the questioned, and they are typical, one with the other. That is to say, the request writing is typical of the questioned writing.

And then there is the matter of punctuation or use of the forms for punctuation on the questioned letter, with that of the standards, using an extended line for a punctuation as a period. That is true in the questioned letter, in a number of instances, and it is also true in a number of instances on the known writing of this writer.

By the Court:

Q. Mr. Haring, I notice a very heavy marking on the admitted writings. Is that similar to the original, or has the photographing intensified the heavy lines? A. May I have the original?

Q. Yes. The notation there, what is that? A. "1925, auto." My answer to that, without seeing the original, would be that it has intensified it, being larger, and different color.

Mr. Zabriskie: Of course, we have not the original, because that was destroyed. We have the photograph of it. That was destroyed in 1925 by the Motor Vehicle Department.

The Court: Yes.

Q. Has there been— A. I have the original photograph.

Q. The original photo? A. Yes. I am showing it to your Honor.

Q. And you would say there that this copy here has intensified the markings, even looking at that? A. Looking at the photograph, it has intensified, that is, enlarged; it has enlarged the field. But this itself is rather strong. When I say "this", I mean the photograph of the natural size.

Q. Yes.

By Mr. Zabriskie:

Q. These are the standards? A. I think the jury's attention has been called to this point, of the use of and following the sentence?

The Court: Yes.

A. (Continuing) So I will just say that that is my observation also, to cover it briefly.

Q. Did you make any other photographs, or have we all the photographs that were made? A. I think there is another one. Is there another one on your desk there?

Q. I do not think there is another on my desk.

Mr. Zabriskie: I think that is all. You may cross-examine.

Cross-examination by Mr. Breslin:

Q. Mr. Haring, when you used the word "left handed" this morning, you had before you Exhibit P-47? A. Yes, sir. I always had—

Q. No. Just a minute, please.

The Court: Just listen to the question.

Q. You had Exhibit P-47 before you; is not that correct? A. That is correct.

Q. Now, do you say now that the admitted writings of Mrs. Von Moschzisker are made by a left handed person? A. I say not.

Q. You say not. That is all. Now, you have talked over this case with Mr. Hartkorn, have you not? A. Yes.

Q. You have held conferences about it? A. Yes, sir.

Q. In the preparation of it? A. Yes, sir.

Q. And you have prepared photographs together; you have worked jointly? A. Yes, sir.

Q. And is it not a fact that when these photographs are produced and reproduced, that certain lines will become larger and other lines obscured, as the result of the photography? A. It could be carried on to that extent so that it would be, as you say.

Q. In fact, referring to P-45, the last "A" on the second line is a good illustration of the fact that certain lines can be obscured or almost blotted out, by photography, referring to this line of the "A" (indicating)? A. Let me have the original, please.

Q. Well, that is line— A. 5.

Q. Line 5.

The Court: Was that taken from P-29?

Mr. Breslin: P-29.

The Court: You have that.

Mr. Zabriskie: Yes. (Handing photograph to witness).

The Witness: This is it here.

The Court: What line is that?

The Witness: Line 5.

The Court: What page?

Q. I think it is supposed to be the "A" in "that". I do not know. A. It is not that "A". We had it this morning. We found it this morning Well, I looked at that this morning, and that is a pretty good reproduction of that "A", in an enlarged form.

Q. Is it not a fact that this reproduction has almost wipe out this stroke of the "A", made it very indistinct? A. The first stroke is indistinct.

Q. That is P-45, the last "A" on the second line.

The Court: Corresponding to what in P-29?

The Witness: It is not in the 5th line there.

Q. You cannot find that "A"? A. Yes, that "A" is on here, but it is hard to find with this—there are a great many of these very much enlarged.

Q. I know, but it is designated right there on this photograph that it is in line 5, that "A", that you have been trying to copy correctly. A. Yes, sir.

Q. Pick out that "A" in the questioned document. A. I had it this morning.

Mr. Zabriskie: Which one are we talking about?

Mr. Breslin: We are talking about this "A" in 45.

Mr. Zabriskie: Suppose you start at the end and go back. You will probably find it quicker.

Mr. Breslin: It says there line 5.

Mr. Zabriskie: Yes, but it does not say what page.

The Court: There is only one "A", as far as the line is concerned.

The Witness: I have it.

Mr. Zabriskie: You say you have it?

The Witness: I have. It is line 5 in the word "years", on the 3rd page.

Q. But you do concede that the photograph has rather obscured that first stroke? A. The stroke is there, but perhaps not as clearly as it is on the original. The stroke shows on the photograph, yes, sir.

Q. In other words, the stroke does not show as clearly on the photograph as it does on the original? A. I will say perhaps that is true.

Q. Pardon? A. I would say perhaps that is true.

Q. Now you said this morning that this work done by Mrs. Von Moschzisker in court was made by a master of the pen? A. Yes, sir.

Q. I would like to show that to the jury.

Now, I show you the wrapper and ask you what kind of a penman made that? A. You are referring to the lettering?

Q. I am referring to the quality of the penmanship on that wrapper, admittedly written by Sarah

B. Mowell? A. That is extremely artistic and beautifully spaced.

Q. This is very artistic? A. And beautifully spaced.

Q. This is artistic work, the work of the plaintiff, Sarah B. Mowell? A. Yes, sir.

Q. And this is the work of a master? A. That is the work of a master, as to formations of letters.

Q. Now, you said a few minutes ago that one of the characteristics of Mrs. Von's admitted writing was that she made a small case "r"; is that correct? In other words, all of her "r's", her small "r's"? A. I don't think that is the fact.

Q. Will you go through your exhibits and just see if it is not so, that the majority of her "r's" are small case "r's"? A. That is true.

Q. The majority of Mrs. Von's "R's" are "r"? A. Lower case "r's", yes, sir.

Q. And the majority of the "R's" in the questioned document are large case "R's"? A. I think there are only one or two exceptions in the many "R's" that are in there. One or two exceptions.

Q. But most of them are large case "R's"? A. Yes, sir, the upper case.

Q. In other words, there is a difference in the kind of "R's" in the questioned documents and in Mrs. Von's writing? A. Whether it is upper or lower case, yes.

Q. Well, that is a difference, is it not? A. I was specifying the difference.

Q. Now, with respect to the letter "S", is not that a substantial difference, in the form of the letter "S", as it appears in Mrs. Von's writing, and as it appears in P-29? A. In the request writing, yes.

Q. In other words, the "S's" are different. A. Yes. They are upside down on the request writing.

Q. Is it not a fact that there is a greater resemblance between the "S" on the standard wrapper and the "S" in the anonymous letter? A. That is so.

Q. Now, I direct your attention to the word "Spring". That is on 6, which is P-48, and ask you if there is not a very marked space between the letters "P" and "R" in Mrs. Von's writing? A. In that particular word you are calling my attention to, the "SPRI".

Q. No. Please. Just a minute. I am asking you if there is not a very large amount of space in that word, between the letters "P" and "R", in Mrs. Von's writing? A. Yes, there is.

Q. All right. And in P-29, the questioned document, the "P" and the "R" are much closer together than they are in Mrs. Von's standard writing? A. That is true. It is always the comparative form.

Q. That is all I am asking you at this time. Is there not a great difference in the slanting of letters, as they appear in Mrs. Von's standard writings and in the anonymous letter? A. Yes.

Q. In other words, the slant of the letters is different? A. In a measure, yes, that is true.

Q. And there are variations in the production of the letters? A. In the slant?

Q. In the general production, or the pictorial results? A. Variation between the request and the questioned?

Q. Yes. A. There certainly is; vast difference.

Q. You have testified in a good many handwriting cases? A. That is the only kind I have testi-

fied in, except typewriting, and paper and inks. I have testified in a great many, yes, sir.

Q. You said you testified in this County during the past four years, in the Mahler case? A. Yes, sir.

Q. You are not correct about that, are you? A. I am correct about the Mahler case, because—

Q. But away longer than four years ago? A. I do not know. I do not recall just the date.

Q. Will you positively say now it was within the past four years? A. I just told you, and when I say a thing I mean it.

Q. Will you say under oath that during the past four years you have testified in the Bergen County Court of Quarter Sessions, in the case of State v. Mahler? Yes or no? A. Yes and no. I don't know when the time is.

Mr. Breslin: That is all

Mr. Zabriskie: I think that is all.

The Court: Judge, have you not any other question you want to ask this witness?

Mr. Zabriskie: None at this time, no.

The Court: I thought we were waiting for the experts on some question of services.

Mr. Zabriskie: Well, I was going to prove what bills have been rendered, and then I was going—

The Court: Maybe he can tell.

Mr. Zabriskie: Yes. Well, we might do that.

The Court: It will save the time of calling the witness back.

Mr. Breslin: Bills are not evidence.

The Court: They refresh his recollection, that is all.

Mr. Zabriskie: Of course, these are not his bills.

Mr. Breslin: Then I object to them.

The Court: Oh, I thought it was.

Mr. Zabriskie: No. I say his bill is not here, no. But I suppose he could testify as to the reasonableness of others; but the others could do it more easily.

I think that is all, Mr. Haring.

I will call Mr. Joseph McCabe.

JOSEPH H. McCABE, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. McCabe, where were you located in November, 1925? A. What time?

Q. Well, the 30th of November, 1925? A. Motor Vehicle Agency in Paterson, New Jersey.

Q. I show you Exhibits P-25 and P-26, which are photographs of an automobile application, the original of which has been destroyed, as usual, in the office of the Commissioner of Motor Vehicles. Is that your signature on the back of that? Is it a reproduction or a picture of your signature? A. Yes.

Q. You recognize that, do you? A. Yes.

Q. Now then, do you know Mrs. Von Moschzisker? A. I can't say that I do.

Mr. Breslin: What was the answer?

The Witness: I can't say that I do.

Q. Is there some writing there in your handwrit-

ing? A. On the back of this application?

Q. Yes. A. Yes.

Q. What is that? What is yours? A. This here.

Q. There is the word "Passaic"? A. Yes. "She" and my signature here.

Q. And your signature. Now, on the front of the application, which is Exhibit P-25, is there a photograph of any of your writing? A. Yes.

Q. What is in your writing there? A. This here (indicating).

Q. If you will just read it off, so the stenographer can get it. A. 1925, registration number "10739". This here (indicating)—no, no, this here.

Q. What is that? A. Horsepower rating.

Q. Now, I call your attention to the remainder of the printing on there, and I ask you if the word "Bergen" or the word "Yes" or the word "Yes" are in your handwriting, are pictures of your handwriting? A. No.

Q. What is the practice about filling those in, in the regular order, in the agency there, Mr. McCabe?

Mr. Breslin: I object to that.

A. Every applicant is supposed to—

Mr. Breslin: Objected to, if your Honor please.

The Court: Sustained.

Q. Is there anyone else that did any filling in there besides you, on these applications? A. Why, yes.

Q. Did work with this application? A. Yes. Somebody had that application after I had it.

Q. Who was that? A. Mr. Hannan, the agent.
Q. Is he in court? A. He is here, yes.

Mr. Zabriskie: Cross-examine.
Mr. Breslin: No questions.

JOSEPH A. HANNAN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Hannan, I show you Exhibits P-26 and P-25, being front and back of an application for the year 1925, and I ask you if that is your signature, stamp, a picture of your stamp? A. Yes, sir.
Q. What does that indicate to you?

Mr. Breslin: I object to what it indicates to him.

Q. What does that represent?

Mr. Breslin: He says it is a stamp.

Q. Can you identify it by that? A. Yes.
Q. Is any of the writing on either one of those exhibits in your handwriting, Mr. Hannan? A. No, sir.
Q. Look also on both. A. Mr. McCabe's (indicating).
Q. And there is nothing there in your handwriting? A. (Witness shakes head).
Q. Did they go through the hands of any other person than you and Mr. McCabe, before being— A. No, sir.

Mr. Zabriskie: Cross-examine.
Mr. Breslin: No questions.

AUGUST HARTKORN, recalled, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Hartkorn, have you examined P-25 and P-26, and with special reference to the word "Bergen" and the word "yes", and the other word "yes"? A. I have.

Q. In your opinion whose handwriting is that? A. The same hand that wrote the rest of the lettering on there.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. You did not see her write it? A. No.

Mr. Breslin: That is all.

Mr. Zabriskie: I offer the entire exhibit in evidence, that is, with that additional printing on the exhibit I offered in evidence the "B" which was left out of the sample which was photographed from that before. Is there any objection?

The Court: Mark them.

(1926 card marked Exhibit P-49).

(1925 card, which was marked P-25, marked Exhibit P-50).

By Mr. Zabriskie:

Q. Mr. Hartkorn, in connection with the criminal prosecution of Sarah Mowell, you were employed as an expert, were you? A. I was.

Q. And I show you a bill for $471.

Mr. Zabriskie: I ask to have that marked for identification.

Mr. Breslin: I object to that. The bill is not evidential.

The Court: The bill is not evidential. He can testify as to the reasonableness of it.

Q. Were you paid $471 for your services? A. I couldn't tell until I looked at my records.

Q. Can you refresh your recollection?

The Court: Whether he was paid or not, it does not make any difference.

Q. You supervised the preparation of the bills? A. Yes. Yes, that is right, $471.80.

Q. Was that a fair charge for the services you rendered? A. Well, it is less than usual.

Q. It was less than usual? A. Yes.

Mr. Zabriskie: Cross-examine.

Cross-examination by Mr. Breslin:

Q. You are interested in the result of this case? A. I? No, sir.

Mr. Breslin: That is all.

Mr. Zabriskie: I will call Mr. Spencer.

BUSHROD H. SPENCER, recalled, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Do you recall, Mr. Spencer, what was the amount of your bill for services rendered in connection with the Mowell case? A. I do not remember.

Q. Will this refresh your recollection, if I show

you the bill (handing paper to witness)? A. My impression was it was $700.

Q. Yes. Your impression was the whole bill was $700? A. About $700.

Q. Was that a reasonable charge? A. I think so.

Q. Was it paid? A. Yes.

Q. The bill was paid? A. Yes.

Q. $700? A. Yes.

Cross-examination by Mr. Breslin:

Q. How much is the bill for? A. I don't—I am quite sure that bill is for $600.

Q. How much? A. $600.

Q. The bill you just saw is for $600? A. I think it is $600 there.

Q. You say you got $700? A. With no bill rendered.

Q. Pardon? A. There was not any bill rendered for the additional.

Q. There was not any bill rendered? A. No. I was paid by check.

Q. By check. How many days did you work on this case? A. About thirty.

Q. Thirty days. And you figure your services are worth about $25 a day.

Mr. Breslin: That is all.

Mr. Zabriskie: One moment, now. He did not say that. That was your argument.

The Witness: I did not say what my services were worth.

Redirect-examination by Mr. Zabriskie:

Q. What were they worth?

Mr. Breslin: I object to that.

The Court: Sustained.

Mr. Breslin: What he charged.

Mr. Zabriskie: Before I close my case, I would like to reserve the right to put the doctors on, and merely to prove the value of the services in and about effecting, or attempting to effect a cure.

The Court: Why did you not ask about that yesterday?

Mr. Zabriskie: It slipped my mind, to tell you the truth.

The Court: What?

Mr. Zabriskie: I say it slipped my mind. As a matter of fact I did not have the bills here and did not have the data before me, so

---

The Court: I will rule on it when the occasion arises.

Mr. Zabriskie: Yes.

Now, I think it is admitted in the record, Mr. Breslin, that Mr. and Mrs. Von Moschzisker, these two defendants, are husband and wife? Is that in the record?

Mr. Breslin: That is correct.

Mr. Zabriskie: Suppose we get it in the record, so that there is no argument about that.

Then I would also like to have it stipulated, or call Mr. Breslin to the stand for one other admission, and, that is that in the former trial there was absolutely no evidence of Miss Mowell having had this Exhibit P-29 in her hand, either by fingerprints

or by anybody seeing her carry it or otherwise. Is that admitted or not?

Mr. Breslin: That is admitted.

The Court: Now, just read that admission. I do not understand it.

Mr. Breslin: I object to what the evidence showed at the other trial. That has not anything to do with this case.

Mr. Zabriskie: I think it does, under the cases.

The Court: Oh, no.

Mr. Breslin: It is a matter of proof, a matter of argument.

Mr. Zabriskie: What I mean to say is that nobody saw her with this letter.

Mr. Breslin: I object to that.

The Court: No, no; of course not.

Mr. Zabriskie: Well, I offer to prove that, and your Honor overrules that?

The Court: I still stand by my ruling.

Mr. Zabriskie: Well, there is no ruling. It was consented to. Now, is the consent withdrawn?

Mr. Breslin: The consent is withdrawn, positively. I thought it was something else entirely.

Mr. Zabriskie: Then I will offer to prove it, in order to save time.

The Court: All right. State your offer.

Mr. Zabriskie: My offer is to prove by a witness who was present, or a person who was present, throughout the criminal prosecution, and to ask that person that question, whether or not Miss Mowell was ever seen to have this letter, P-29, in her hand, and whether or not there was any finger print in

evidence, by finger print, that she ever had it in her hand.

The Court: That is not the controlling issue in this case.

Mr. Zabriskie: And then I would—

The Court: In other words, as I see this, whether Miss Mowell wrote this letter or not, that is not the controlling factor.

Mr. Zabriskie: No, but it is one.

The Court: In other words, if the jury is satisfied that someone else, other than Miss Mowell, wrote this letter, and Mrs. Von did not they have a right to hold probable cause —in other words, your offer seemed to indicate that that is absolutely essential.

Mr. Zabriskie: Well, I thought it was one of the things that is a part of this case.

The Court: No. I will charge the jury at the proper time that they do not have to necessarily hold that Miss Mowell wrote this letter.

Mr. Zabriskie: Well, then, reserving the right to reply and offer the testimony of the doctors, why, the plaintiff rests.

DEFENDANTS' CASE.

JOHN B. KNOWLTON, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mr. Knowlton, you are connected with the First National Bank and Trust Company of Ridgewood? A. Yes, sir.

Q. Do you know the plaintiff in this case, Sarah B. Mowell? A. Yes, sir.

Q. What was your connection with the institution in which she was employed? A. Vice-president and treasurer.

Q. I show you a paper purporting to contain the following account, "Business Men's Association," and ask you if you know whose printing or writing is at the top of that? A. Yes, sir.

Q. Whose? A. Miss Mowell's.

Q. And I show you the back of that same sheet and ask you if you know whose writing that is? A. Yes, sir. Miss Mowell's.

Mr. Breslin: I will offer this, if your Honor please.

I have some more here. May be we can agree on all of them. They are all the same (handing papers to Mr. Zabriskie).

The Court: Well, if this witness is willing to testify that is her signature, there is no use of having them examined.

Mr. Breslin: All right.

The Court: It makes it evidential, if he testifies to that.

Mr. Breslin: I will offer this, if your Honor please.

Mr. Zabriskie: Well, just let me examine that. Is that the one on the top?

Mr. Breslin: Yes.

Mr. Zabriskie: All right.

(Paper marked D-6).

Q. I show you a statement purporting to be the statement of Katherine Burnside and ask you if you know in whose printing or writing the words

Katherine Burnside are? A. Yes, sir. Miss Mowell.

Q. And I show you the reverse side, and refer to the two words again. A. Yes, sir. Miss Mowell.

Mr. Breslin: I will offer that.

(Paper marked Exhibit D-7).

Q. I show you an account purporting to be the account of A. & Emily L. Carlton, and ask you if you know in whose writing these letters or words are printed? A. Yes, Miss Mowell.

Q. And I show you the reverse side, and direct your attention to the same writing, and ask you if you know in whose handwriting that is? A. Yes, Miss Mowell.

Mr. Breslin: I will offer that.

(Paper marked Exhibit D-8).

Q. I show you a statement purporting to be the statement of the Blauvelt Auto Shop Co., and ask you if you know in whose handwriting the words "Blauvelt Auto Shop Co." are? A. Yes, sir. Miss Mowell.

Q. And I show you the reverse side? A. Yes, sir, the same, Miss Mowell.

(Paper marked Exhibit D-9).

Q. And I show you an alleged account of the Certified Ice & Refrigeration Co., Inc., and ask you if you know in whose handwriting that statement is? A. Yes, sir. Miss Mowell.

Q. And I show you the reverse side, and ask you concerning the same words. A. Yes, sir. Miss Mowell.

Mr. Breslin: I will offer this.

(Paper marked Exhibit D-10).

Q. I show you a small card purporting to have the name of Susie G. Abresch, and ask you in whose handwriting those words are? A. Miss Mowell.

Mr. Breslin: Now, I offer this, if your Honor please.

(Card marked Exhibit D-11).

Q. Under what circumstances did Miss Mowell make this, or what is this in connection with? A. These were formerly used as tabs on our check files. Each bookkeeper, it was their business to make out their own tabs for the account which they controlled in the ledgers.

Q. To save time I will ask you to look at all of these exhibits, and tell us whether or not you know in whose handwriting they are? A. That is not, on the back of that.

Q. Is the handwriting on the face of all the small pieces of papers which I have just shown you, in the handwriting of Sarah B. Mowell? A. Yes, sir.

Q. All on the face? A. All on the face.

Q. And referring to the paper purporting to bear the name of "Marion R. Abercrombie, special", is Miss Mowell's handwriting on the back of that? A. That I can't say, whether it is Miss Mowell's or not.

Q. The Bedell one you say is not in her handwriting, the back of it? A. That is not.

Q. And the names on the front of all these cards are in her handwriting? A. Yes.

The Court: Why not exclude those?

Mr. Zabriskie: Yes. We could rub it out or take a lead pencil.

The Court: So that there will be no confusion, so that we have the one hand all the time.

Mr. Breslin: You mean rub these out on the back?

The Court: Anything that is not her handwriting. We have no interest in anyone else's writing at this time.

Mr. Breslin: No.

With these corrections, if your Honor please, I offer these.

Mr. Zabriskie: I would like to ask when those were written.

Mr. Breslin: Well, that is a matter of cross-examination, I think.

The Court: Yes, it is a matter of cross-examination.

Mr. Zabriskie: I mean as a question of materiality. Does your Honor hold that they are material, whether they were written before or after the dispute?

The Court: Yes. I admitted writings of yours made twelve or fifteen years ago.

Mr. Breslin: These are being offered as standards.

Mr. Zabriskie: Yes.

(Papers marked Exhibits D-12, D-13, D-14, D-15, D-16.)

Q. I show you a sheet purporting to be a detail of checks and deposits dated November 6, 1926, and ask you in whose handwriting the letter in the upper left hand corner is? A. That is a part of the record of the First National Bank of Ridgewood, with which I was not connected officially.

Q. Mr. Griffiths was? A. Yes, sir.

Mr. Breslin: That is all from Mr. Knowlton at this time.

Mr. Zabriskie: No cross-examination on those points.

The Court: You might save time by putting all those in an envelope.

Mr. Zabriskie: I have an envelope. If there is no objection we can seal them and mark them as some other exhibit. Does your Honor wish it marked that way?

The Court: Keep them all as one exhibit.

ALBERT G. GRIFFITHS, called as a witness on behalf of the defendant, having been previously sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Were you connected with the First National Bank at Ridgewood at the time Sarah B. Mowell worked there? A. I was.

Q. I show you a sheet purporting to be a detail of checks and deposits and ask you if you can identify the handwriting of the letter in the upper left hand corner? A. It is Sarah Mowell's.

Q. And "Approved by", in whose handwriting is that? A. Miss Mowell's.

Q. The word "checks"? A. Miss Mowell's.

Q. The words, "Nov. 6, 1926"? A. The same.

Q. The names and the following amounts at the bottom of the page: "E. DeYoung, 106.06"? A. Miss Mowell's.

Q. "F. Halstead, 3.07"? A. Miss Mowell's.

Q. "N. Board"? A. Miss Mowell's.

Q. "4.81". The total of "113.94"? A. Miss Mowell's.

Q. "Q. Baldi, 130.60"? A. Miss Mowell's.

Q. "Total, 244.54"? A. Miss Mowell's.

Q. Referring to these figures towards the right of the center, "21,204.83"? A. They appear to be Miss Mowell's.

Q. "213.75"? A. The same.

Q. "20,991.08"? A. The same.

Q. I show you the back of the page, and ask you in whose handwriting the word "Credits" is? A. Miss Mowell's.

Q. And the letter "A" on the other side? A. Miss Mowell's.

Mr. Breslin: I will offer that.
(Marked Exhibit D-17).

Q. Now, referring to the report sheet of November 9, 1929, I ask you in whose handwriting the letter "M" is, at the upper left hand corner? A. Miss Mowell's, November 9, 1926.

Q. And this script, this very small script to the right of "Approved by"? A. Miss Mowell's.

Q. And the word "checks"? A. Miss Mowell's.

Q. And the dates, "Nov. 9, 1926"? A. The same.

Q. And the name and the amount opposite "R. B. Murphy"? A. The same.

Q. And the name and the amount opposite "W. Robertson"? A. The same.

Q. And on the other side I ask you whose initial is that? A. Miss Mowell's.

Q. And the word "Credits"? A. The same.

Mr. Breslin: I will offer that.
(Marked Exhibit D-18).

Q. I ask you to look at all of these remaining

reports and ask you if the letter in the upper left hand corner and the designation, or the initials of "S. B. M.", after the clause, "Approved by", and the word "checks", and the dates and the printed names in the lower right hand corner of each sheet, and the words "Credits" on the opposite side, and this designation on the left hand side, on the back, and ask you if all those writings are not in the hand of Sarah B. Mowell? A. They all appear to be in Miss Mowell's writing.

Mr. Breslin: I will offer them, if your Honor please.

Mr. Zabriskie: Of course, we always have a right to cross-examine on them before they are in evidence.

By Mr. Zabriskie:

Q. You did not see any of these written by Miss Mowell, did you? A. I do not believe so, no.

Q. Yet you do not have any hesitancy in saying they were written by Miss Mowell, do you? A. No.

Q. And why is that, Mr. Griffiths? A. Because there was nobody else in the bank that could do that work like that—or write like that.

Q. In other words, that work has an individuality so that you immediately say, "That is Sarah Mowell's", is not that so? A. Yes.

Q. You pass on signatures a great deal, do you not, and you get so—are these all exactly alike? A. Appear to be, yes.

Q. Exactly alike, letter for letter? A. Well, I have not examined them closely. As far as glancing at them, I would say they were.

Q. As a matter of fact, is a person able, ever, to reproduce exactly?

Mr. Breslin: Wait a minute, I object.

The Court: I sustain the objection.

Q. Now, will you point out two that are exactly alike?

Mr. Breslin: I object to that, if your Honor please.

The Court: Just a minute, Judge. A witness's statement to the effect that that is somebody's signature makes it evidential. Now, the effect may be destroyed by cross-examination at the proper time, but I will stop the cross-examination at this time.

Mr. Breslin: I offer them.

Mr. Zabriskie: I will admit them; I have no objection to them, but what I want to get at—

The Court: You may do it when he is turned over to you for cross-examination.

Mr. Breslin: I am not entirely through with him. I was going to have them marked.

Mr. Zabriskie: Then, proceed, and when you get through, let me know.

Mr. Breslin: Go right ahead. I do not want to break your line of thought. Go ahead with your cross-examination.

Cross-examination by Mr. Zabriskie:

Q. Now then, are there any two, for instance a letter "M", that are exactly the same there? A. Well, no; they are all smaller. I wouldn't say they are exactly the same.

Q. And that is why you distinguish handwriting, not because they are exactly the same in form, but

because there is some characteristic of the writer that is written in the signature? A. Yes, that is right.

Mr. Zabriskie: That is all.

Redirect-examination by Mr. Breslin:

Q. Now, you say that Miss Mowell was the only one in the bank who did this very artistic printing; is that correct? A. As far as I know, yes.

Mr. Breslin: That is all.

Recross-examination by Mr. Zabriskie:

Q. You could pick that writing out of not only those who were in the bank, but out of a thousand signatures, could you not, Mr. Griffiths, in your opinion?

Mr. Breslin: I object.

The Court: This man is not qualifying as a handwriting expert. He is testifying with respect to certain exhibits, that is all.

Q. Mr. Griffiths, I will ask you this: if there had been mixed in with those, 25 or 50 other specimens of writing, would you not still have been able to pick out those? In your opinion, would you not have been able to pick out those which were done by Miss Mowell?

Mr. Breslin: I object to that.

The Court: I will allow that question.

A. I wouldn't say that.

Q. You do not just testify they were Miss Mowell's because they happen to come out of your bank, do you?

The Court: Have you ever seen Miss Mowell write, print?

The Witness: I don't believe I have.

Q. You do not simply say now those are Miss Mowell's because they say they came out of your bank records? A. I know she did that, because she was in the bank, I know she did the work.

Q. But there were others in the bank, too? A. Yes.

Q. You do not know whether there were others capable of doing that same or similar type of work, do you? A. No.

Q. But those would not have quite the same individuality that these signatures have? A. No.

Q. There would be some unexplainable something that would differentiate the one from the others; is not that so? A. Yes.

(Papers marked Exhibits D-19, D-20, D-21, D-22, D-23, D-24, D-25).

EMMA L. VON MOSCHZISKER, called as a witness on behalf of the defendants, being previously sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mrs. Von Moschzisker, where do you live? A. Ridgewood.

Q. Will you please try to talk up louder? A. Louder?

Q. Yes. Where do you live? A. Ridgewood.

Q. And are you married or single? A. Married.

Q. And whom are you married to? A. Frank A. Von Moschzisker.

Q. Is he in court today? A. He is.

Q. Where is he sitting? A. At the end there, at the end of the table.

Q. How long have you been married? A. Thirty-two years.

Q. How old are you? A. Fifty-three.

Q. What is your occupation? A. Housework.

Q. Did you ever take any special courses in penmanship in school? A. Never.

Q. Do you know the plaintiffff, Sarah B. Mowell, in this case? A. Yes.

Q. Can you tell us approximately the first time that you ever met Sarah B. Mowell? A. Mr. Burnett brought her to the house one Sunday evening. Do I talk loud enough for the jury to hear?

Q. I think so. A. He came in first and talked business with Mr. Von Moschzisker, and I went out and asked Miss Mowell to some in.

Q. What was the nature of that conversation? A. Well, just general conversation, after she came in, general topics.

Q. How long did they stay there that evening? A. Well, I should say about three-quarters of an hour.

Q. When was the next time that you saw her? A. Mr. Burnett brought her to the house one afternoon.

Q. What was the nature of that visit? A. Well, I had received the first anonymous letter, and I had shown it to Mr. Burnett and asked him what he thought about it.

Q. Now, you cannot tell us what you told him. A. Well, tell me what to say. I don't know.

Q. Just tell us what was said that afternoon that she came there with Burnett? A. I see.

Q. In his presence? A. In his presence.

Q. Yes. A. We showed her this anonymous letter and asked her if she had any idea as to who had written it, who might have written it, asked her if she had ever seen the stationery before, and she said she hadn't seen the stationery, but she suggested two people, a Mrs. Mortimer Inglis, in Paterson.

May I have water here?

And Thelma Fritz, as a possible writer.

Q. Was there anything else of importance that afternoon that was discussed? A. No, I think not.

Q. Now, did you ever see her after that? A. Yes. She came another afternoon.

Q. About how soon after that other visit? A. About a month, I should say.

Q. Do you recall at about what time she got to your home? A. About half after four, as near as I can remember.

Q. Was there anybody else present? A. Not when she came in.

Q. Now, just tell us, in substance, the conversation, as you remember it, as of that afternoon. A.

Q. Well, she came in reference to a talk about anonymous telephone calls, and said she had had a peculiar call at the bank, had had a peculiar telephone call at the bank, and she called me up and asked me if I would be interested in hearing about it, and I told her "Yes." And we talked over that call, which amounted to nothing. Some woman had called the bank and asked for Sarah Mowell.

Q. Tell us what Sarah said and what you said. A. Well, I am trying to.

Q. What did she say with reference to this phone call that she had received? A. Well, that was all that there was to it.

Q. And what did you say? A. I asked her what

connection she thought that had with the anonymous telephone calls that I had been receiving.

Q. And what did she say? A. She said nothing.

Q. All right. Now, what happened then, after that? A. Well, she asked me if I had heard anything that would connect up the first anonymous letter, whether I had any clues as to who had written it, and I told her no.

Q. And then what happened? A. Well, she picked up this book that was written by Larry Foster.

Q. How did you come to get that book? A. Mrs. Foster sent it to me after he died, his mother.

Q. Go ahead. A. She picked up that book and asked me how well I knew him, and I said that I knew him slightly, that I knew his mother very well. And she said that she knew him, had met him at Greenwood Lake, I believe, and what a fine boy he was, and asked me if she might take it home and read it, and I told her yes.

Q. Did she take it? A. She took it.

Q. What happened after that, that afternoon? A. Well, she talked about general things, and suddenly said, "Mrs. Von Moschzisker, I do not like Mr. Burnett coming here so much." And I said, "Well, that is a simple matter. There are other electricians who can work here, I think." And she she said, "That be damned for a tale. You are just rotten."

Q. Then what happened? A. Just then a car drove in the driveway and she said, "Oh, here comes Walter Burnett now, and you asked him to come."

Q. Who was it that actually came? A. Mrs. Mallaby.

Q. All right. Was Burnett there? A. No.

Q. That afternoon? A. No.

Q. Then did she leave? A. She left shortly after that.

Q. In the company of whom? A. Mrs. Mallaby and myself.

Q. Did you ever have any animosity or malice toward this girl? A. Why, no.

Q. What did you say the day that you signed the criminal complaint with reference to Sarah Mowell? A. I said nothing that I can remember.

Q. Do you remember signing—

Mr. Zabriskie: Now, one moment. She said "nothing." That is the answer.

The Court: No, no. You may—

Q. Do you remember signing a complaint?

The Court: Just a minute. The question was objected to. I say you may refresh the recollection of the witness.

Mr. Breslin: That is what I am trying to do.

Q. Do you remember the day you signed the criminal complaint? A. Yes.

Q. Did you express any animosity toward Sarah B. Mowell? A. I did not.

Q. What did you say, if anything? A. You asked me if I realized what the signing of the complaint meant, if I had read over the complaint, and I said I had.

Q. Did you say anything else?

Mr. Zabriskie: Well, now, if your Honor please—

A. Nothing.

Mr. Zabriskie: Well, she said "nothing."

The Court: I will allow this.

Mr. Zabriskie: All right.

Q. Did you not say, in the presence of Mr. —

Mr. Zabriskie: I object to leading, sir.

Mr. Breslin: I will withdraw the question.

Q. What did you say in the presence of Mr. Dawson when you signed the complaint, about the arrest of this girl? A. Mr. Dawson was not there.

Q. Did you ever say you wanted the girl sent to jail? A. No.

Mr. Zabriskie: If your Honor please, I object to that as being leading.

Mr. Breslin: I will withdraw it.

Mr. Zabriskie: That is not proper, to put the answer in the mouth of the witness.

Q. What did you say?

Mr. Zabriskie: And then ask it in another form.

The Court: Well, the testimony is in, anyhow, from the previous witnesses.

Q. Do you remember what you said? A. To Mr. Dawson?

Q. Or when you signed the complaint, do you remember what you said? A. I said, "I would not like this girl to go to prison, but this stuff must stop."

Q. Now, I show you a letter and ask you if that is the first anonymous letter you received? A. No, I received a script letter.

Q. But you did receive that one? A. Yes, I did.

Q. Where did you receive that one? A. It was stuck in the letter box, at the back of the house.

Mr. Breslin: I will offer that letter for identification at this time. It has already been offered on the plaintiff's case for identification.

(Envelope containing letter marked Exhibit D-26, Id.)

Q. And I show you another letter. Look at the outside. Is that an envelope that you received in the mail, dated July 3, 1926? A. Yes, I did.

Q. Will you look at the contents inside, and see if that is the letter that came in that particular envelope? A. It is.

Mr. Breslin: I ask that that be marked for identification.

(Envelope containing letter marked Exhibit D-27, Id.)

Q. And I show you another envelope with the contents and ask you if you received that through the mail? A. I did.

Q. I show you the contents. A. Yes.

Mr. Breslin: I ask that this be marked for identification.

(Marked Exhibit D-28, Id.)

Q. I show you another letter, August 19, 1926, and ask you if that is the letter that you received in that envelope? A. Yes.

(Marked Exhibit D-29, Id.)

Q. And I show you another envelope and a paper alleged to have been in that envelope, and ask you if you received that through the mail? A. Yes.

(Marked Exhibit D-30, Id.)

Q. I show you another letter dated November 26, 1926, with a piece of written paper, and ask you if you received that through the mail? A. Yes.

(Marked Exhibit D-31, Id.)

Q. I show you this letter in question, P-29, and ask you if that is the envelope you received through the mail, and show you those sheets, and ask you if those sheets were in the envelope? A. Yes.

Q. Now, after you received these letters, did you at any time consult any lawyers? A. Yes.

Q. Who was the first lawyer you consulted? A. Judge Watson.

Q. Do you recall when you first consulted him? A. In the summer of 1926.

Q. Can you relate in substance the conversation?

Mr. Zabriskie: I object.

The Court: Why?

Mr. Zabriskie: Because the letter on which this prosecution is based had not been written at that time.

The Court: Well, he is going to show it is part of the entire transaction, and I take it this is to negative any malice.

Mr. Zabriskie: To meet the question of probable cause.

Mr. Breslin: Probable cause.

Mr. Babriskie: Is there anything in evidence at this time to show those other letters were written by the same one that wrote the one that is in question here?

The Court: Well, we are going to see the letter.

Mr. Zabriskie: I think at this time the question is premature.

The Court: Oh, no. Suppose ten different people wrote letters to this woman. Certainly you could not say she made a full disclosure if she only brought one.

Mr. Zabriskie: Well, of course, that may be so. But if she received, say, ten different letters, and one of them she suspected Miss Mowell of writing, and Miss Mowell was a girl of good reputation in Ridgewood, the fact that she had consulted lawyers about the nine preceding letters would not be any evidence that there was a lack of malice on her part in making the complaint on the tenth.

The Court: Well, I am going to let—

Mr. Zabriskie: Your Honor will allow an exception to be noted.

Mr. Breslin: Will you repeat the question?

(Question read).

A. Well, I showed him the letters that I had received up to the time that I went in there.

Q. What was that date again, please? A. I didn't fix the date.

The Court: Summer of 1926.

The Witness: It was the summer of 1926.

Q. When you went to Judge Watson at that time did or did you not bring with you all the anonymous letters you had received up to that time? A. Yes.

Q. What was the substance of the conversation pertaining to the letters? A. Pertaining to the letters, he said, "Well, put them away and see what happens. Perhaps whoever is annoying you may tire of it, and we will see what happens later."

Q. After that conversation, did you receive other letters? A. Yes.

Q. After you received these new letters, did you go and see him or anybody else? A. Yes. I went to see him again.

Q. Can you tell us approximately what time? A. Well, later in the summer. Possibly September.

Q. Of what year? A. 1926.

Q. What was the nature of the conversation? A. Well, he said, "If these are continuing to come, I think we should hunt up a reliable handwriting expert, and see if we can trace the writer of the letters."

Q. In response to his advice, did you yourself—I am not speaking about your husband—interview any handwriting experts? A. Yes, I did.

Q. Whom did you interview? A. I interviewed Mr. Hartkorn first.

Q. Now, just a minute. When you say Mr. Hartkorn, you mean the Mr. Hartkorn that sits here at the counsel table? A. Yes.

Q. And when you went to him, did you bring all the letters that you had received up to that time? A. All that I had at that time.

Q. Now, Mrs. Von Moschzisker, can you tell us with some degree of certainty the approximate date of that visit? A. It was about October 14th.

Q. What year? A. 1926.

Q. And when you went there did you also take with you the admitted standard writing of Sarah B. Mowell? A. I did.

Q. And did you show the anonymous letters, together with this standard of Sarah B. Mowell, to Mr. Hartkorn? A. I did.

Q. And what did he say to you? A. He said,

"Well, you hardly need a handwriting expert to tell you that these were penned by the same person. But if you are going to have any litigation over it, of course you would need a report."

Q. Did he look at it, Mrs. Von Moschzisker? A. Yes, he looked at it.

Q. Did he look at the anonymous letters? A. Yes, he looked at them.

Q. And where did you go? What city did you go to? A. New York.

Q. Now, after you went to Hartkorn, did you go to anybody else? A. Yes. I went to Mr. Osborn.

Q. Which Osborn is that, do you know? A. Albert D.

Q. And where is his office? A. His office is in the Woolworth Building, but he was not there. And I went to his home in Montclair, on October 12th.

Q. What year? A. 1926.

Q. Did you submit at that time all the letters that you had received, together with this standard wrapper? A. Yes.

Q. Now, do you know what Mr. Osborn's occupation is? A. He is an expert on—he is an examiner of questioned documents.

Q. Like Mr. Hartkorn? A. Yes.

Q. What did you say to him and what did he say to you? A. He said if I would leave the things there, he would examine them and send me a report.

Q. Did he send you a report? A. He did.

Q. What did that report show? A. The report, I believe, read that, in his opinion—

Mr. Zabriskie: One moment. I suppose the best—

Mr. Breslin: I have the report right here.

Q. Now, I show you a report dated October 18, 1926, signed by Albert D. Osborn, and ask you if that is the report you received in response to your submission to him of the anonymous letters that you had received up to that date, together with the standard wrapper? A. Yes, that is it.

Mr. Breslin: I offer this report, if your Honor please.

Mr. Zabriskie: I would like to see it. May I cross-examine on this a moment?

Mr. Breslin: I offer it, if your Honor please. It is a matter of probable cause, if she went to handwriting experts, and got opinions in writing, and she says that is the report she received. I offer it.

Mr. Zabriskie: I want to know how she remembers it.

Mr. Breslin: That is a matter of cross-examination.

The Court: You may do that on regular cross-examination.

Mr. Breslin: I offer it, if your Honor please.

The Court: Admitted.

(Report marked Exhibit D-32).

Q. Now, did you go to any other handwriting experts, other than Mr. Hartkorn and Mr. Osborn? A. I didn't. Mr. Von did.

Q. Mr. Von did Now, when was the next time that you consulted Judge Watson, if you did consult him, with reference to these letters? A. Well, I consulted him at various times through the winter.

Q. Winter of what year? A. Well, beginning 1926, and starting 1927.

Q. Now, when I say you consulted him, did you consult him as a friend or as a lawyer? A. As a lawyer.

Q. Did you pay him for his services? A. I did.

Q. What did he say at the subsequent conversations, in substance? A. Well, he said—"Think it over."

Mr. Zabriskie: I object to that, if your Honor please.

The Court: No. It all goes to—

Mr. Zabriskie: But in substance can she draw her conclusions of what a lawyer says?

The Court: No. If she can state the conversation, well and good. If she cannot, then she is permitted to state the substance.

(Question read).

A. Well, the substance of his conversation was to wait a little longer, see whether they continued to annoy me.

Q. Did the letters continue to come to your residence? A. Yes.

Q. Now, I direct your attention to the letter upon which the indictment was based, P-29, and ask you what you did after you received that letter with it? A. Well, Mr. Von took it to Mr. Osborn.

Q. You cannot tell what Mr. Von did; but you gave it to Mr. Von? A. Yes, I gave it to Mr. Von.

Q. As a result of what Mr. Von told you—you cannot tell us what he said, but you can tell us what you did as a result of what he told you. Did you consult any other lawyer than Judge Watson? A. I went to Ward & McGinnis.

Q. Before you went to Ward & McGinnis, did

you go to anybody else? A. I went to Randall Lewis.

Q. And where did you talk to Judge Lewis? A. At his home.

Q. In what city? A. Paterson.

Q. Now, can you relate in substance the conversation that you had with Judge Lewis? A. Yes. He asked me if I were still being annoyed by anonymous letters, and I told him that I was, and he asked me what I was going to do about it, and I told him that I did not know; and he advised that I see the foremost criminal lawyers in the State, people that he considered were foremost, and get an opinion from them.

Q. Did he mention their names? A. Ward & McGinnis. He made an appointment with Mr. Ward for me.

Q. As a result of this appointment did you go to the office of Ward & McGinnis. A. I did.

Q. With whom did you talk? A. I talked with both of them.

Q. What was the nature of that conversation, the first time you went to their office? A. Well, they asked me for all the facts in the case connected with the things that I took there, the letters and the standard.

Q. When you went there, did you take with you all the letters that you had received? A. Everything up to that date.

Q. And the standard? A. Yes.

Q. What else did you tell them? A. Well, I gave them a brief history of the case, as far as I had any knowledge of it.

Q. Did you tell them about the reports from the handwriting experts? A. I had them with me, I think.

Q. And you showed them to whom, Mr. Ward or Mr. McGinnis? A. Both of them. I left them there.

Q. Do you recall approximately what date that was? A. About the middle of July.

Q. Now, did you ever go back to the office of Ward & McGinnis? A. That was 1927.

Q. 1927. After the first time you went there, did you ever go back? A. Yes, I went back. They were to look over the thing, and I went back to them for their opinion.

Q. Where did you go? A. I went to the office.

Q. Whom did you see? A. I saw Mr. McGinnis that day.

Q. What did he say? A. He said, "Well, in my opinion, it is a case for the prosecutor."

Q. Did he advise you as to making a criminal complaint? A. He told me to think it over, talk it over with my husband, which I did.

Q. Did you go back to him the third time? A. In the mean time another letter came in, and I took that to him, and he said, "Mrs. Von Moschzisker, there is no one but the prosecutor who will stop this letter writing, and I advise you to go to him."

Q. Did he advise you to make a criminal complaint? A. He did.

Q. Now, before you signed the criminal complaint, did you go to Judge Watson again for his advice? A. Yes, I did.

Q. When was that, approximately? A. Well, that was toward the end of July. I couldn't tell you the exact date.

Q. What did you say to him and what did he say to you? A. Well, I put the facts before him again, let him see our latest reports from Mr. Os-

born and Mr. Stein, and he offered to come over to the prosecutor's office with us.

Q. For what purpose? A. To make the complaint.

Q. Did you sign a written complaint? A. I did.

Q. What was it based upon, in general, whose advice? A. On Judge Watson's, on the firm of Ward & McGinnis.

Q. What else? A. Well, the conversation with Randall Lewis, of course, had some bearing on it.

Q. Did you have all your reports from the handwriting experts at that time? A. Yes.

Q. Did the second report of Osborn confirm the first report? A. Yes.

Mr. Zabriskie: I object, sir. The reports will speak for themselves.

The Court: Sustained.

Q. Now, I show you this and ask you if that is the copy of the report that you received from Mr. Osborn?

The Court: Is it a copy or is it the report?

Mr. Breslin: The report.

A. The report.

Q. Is that the report you received from Mr. Osborn as to the nature of the author of the letter dated June 30, 1927, the one upon which the indictment was based?

Mr. Zabriskie: What is the date of that report?

Mr. Breslin: The date of the report is July 13, 1927.

A. Yes.

Mr. Breslin: I will offer that report, if your Honor please.

(Report marked Exhibit D-33).

Mr. Zabriskie: I might say at this time, when your Honor rules, I would like to have a chance before we close, to make a notation of these different exhibits that have gone in. It will only take a moment to make a notation of what they are, for our record, before they are sealed up.

The Court: I thought Miss Feld was making the notations as they are offered.

Mr. Zabriskie: Not of the letters. They came too fast. Nobody could take those. And we can refer to them by dates, and probably—I just wanted to say that I would like to do that after the end of the testimony.

Q. Mrs. Von Moschzisker, did you write the letter dated June 30, 1927? A. No.

Q. Did you write any of these letters to yourself? A. No, I did not.

Q. Have you any malice towards the Mowell girl? A. Why, no.

Q. Did you ever have any? A. No.

Q. Did you ever express any throughout the Village of Ridgewood? A. Never have.

Mr. Breslin: That is all.

Mr. Zabriskie: Do you think, if your Honor please, we should cross-examine at this time? I would rather use the five minutes getting the exhibit numbers. It would not amount to anything, to just start.

The Court: All right, then.

Adjourned to tomorrow, March 28, 1930.

Hackensack, N. J.,
March 28, 1930.

TRIAL RESUMED.

EMMA L. VON MOSCHZISKER, resumes the stand and testifies further as follows:

Mr. Breslin: If your Honor please, there is one question that I omitted yesterday to ask Mrs. Von. I would like the Court's permission to ask it at this time.

By Mr. Breslin:

Q. Mrs. Von Moschzisker, Burnett has testified in this case that on one occasion when he came to your home he showed and left with you a Christmas card written by Miss Mowell. Is that so or not? A. No.

Mr. Breslin: That is all.

Cross-examination by Mr. Zabriskie:

Q. Well, Mr. Burnett and you did have some talk about this anonymous handwriting on quite a number of occasions, did you not? A. Well, now, just what do you mean by that? Before I received this letter, or after, or when?

Mr. Zabriskie: The stenographer will please read the question.

(Question read). A. I talked about that first letter with him.

Q. Yes. Where is that first letter? A. Well, the last time I saw it it was in your hands.

Q. And you want the jury to see that letter, do you not?

Mr. Breslin: Now, I object to that, if your Honor please.

The Court: I sustain the objection.

Q. Well, did you ever show that first letter—is this the letter?

Mr. Zabriskie: I ask to have it marked for identification.

(Letter marked Exhibit P-51, Id.; envelope marked P-51, Id.-A).

Q. I show you that letter, P-51—when did you see it in my hand, by the way, Mrs. Von Moschzisker? A. The morning that we came to Hackensack, when you were going to question me before trial.

Q. Oh. Not in the prior case. A. That I can't remember.

Q. That is the letter, is it not (handing paper to witness)? A. Yes.

Q. And that is the envelope, is it not? A. Yes.

Q. And that is the very first anonymous letter, is it not? A. Yes.

Q. That was received in January, 1926, you say? A. Yes.

Q. And after you had received that letter you and Mr. Burnett talked, did you not, about anonymous letters? A. Yes. I met him in the village, talked to him about it, asked him if he had any idea who the author might be.

Q. And that being the first anonymous letter, that was the first conversation you had with Mr. Burnett about anonymous letters; is not that so? A. It is.

Q. Did you take this letter to your handwriting experts? A. I did.

Q. Did you take it to Mr. Osborn? A. I took it to Mr. Hartkorn. I took it to Mr. Osborn.

Mr. Zabriskie: Answer the question, please. I ask that the answer be stricken out as not responsive.

The Court: She has answered, the last part of it.

Q. Now, did you take it to Mr. Osborn? A. I did.

Q. Did Mr. Osborn refer to this letter in any way in his report that you had in court here yesterday? A. I can't remember.

Q. Now, just take the time to read that over (handing papers to witness). A. (Witness examines papers). Well, this seems to refer more to the wrapper than anything.

Mr. Zabriskie: I am not asking that question. The stenographer will please read the question.

(Question read).

The Court: Can you answer that yes or no?

The Witness: I can't answer it, because I can't tell from this report whether he did or not.

Q. Has not this case engaged a lot of your attention, Mrs. Von Moschzisker?

Mr. Breslin: I object to that on the ground that it calls for a conclusion, and it is argumentative.

The Court: It is argumentative.

Mr. Zabriskie: Now, if your Honor please,

I am going to say right now that I am not going to ask any question that I do not personally think is admissible. Now, then, of course, I understand it is entirely discretionary with your Honor, but I wish that your Honor would give me as much latitude as your Honor's discretion would allow in cross-examination, because we know it is a matter of discretion with the Court.

The Court: But, under proper objection, I have to make a ruling, and that is my ruling.

Mr. Zabriskie: Yes.

Q. You have read the report before today, have you not, Mrs. Von Moschzisker? A. Yes.

Q. And that report refers to the dates of the letters, does it not? A. Yes.

Q. And the first letter, the script letter that you received, was dated or post-marked "January 18, 1926", and there was no date on the letter itself, was there? A. On the envelope only.

Q. There was on the envelope? A. Yes.

Q. Now, does Mr. Osborn refer to that letter in any way, that you can recall, either from reading that now or at any other time? A. I don't know that he does.

Q. When you read that over, did not that strike you as unusual, that he did not refer to that letter, if you had given it to him?

Mr. Breslin: Wait a minute. I object, if your Honor please.

The Court: I sustain the objection, what she thought about it.

Q. Did you ever ask Mr. Osborn to incorporate his opinion of the script letter in any of his opinions? A. Well, I don't think the script letter, no, sir.

Q. Answer the question, please.

Mr. Zabriskie: Read the question.

A. Did I ask what, or did you ask what?

Mr. Zabriskie: The stenographer will read the question to you.

(Question read as follows:

"Q. Did you ever ask Mr. Osborne to incorporate his opinion of the script letter in any of his opinions?")

A. No, I didn't.

Q. Now, you had asked the report from Mr. Osborn.

Mr. Breslin: It is right here.

Q. You have read that little, short report, have you not? A. Yes.

Q. Does that refer to the script letter in any way? A. No.

Q. Where has this report been since July 13, 1927? A. Well, it has been in the large envelope that we had, that it came in.

Q. Large flat envelope? A. Yes, a large flat envelope.

Q. Well, you say you went to see different lawyers? A. Yes.

Q. And you took this report with you? A. Yes.

Q. And you left it with some of these lawyers? A. Yes.

Q. That was back in June, 1927; that is going

on three years ago. A. I didn't say June. I said July.

Q. Or July. I beg your pardon. July, 1927. A. Yes.

Q. And that is the report that you left with Ward & McGinnis, is it? A. Yes.

Q. And what other lawyers did you leave this with? A. Judge Watson.

Q. And it has not been folded until today? A. Well, I don't know what they did with it.

Q. Well, it has not been folded; you can see that, can you not? A. Yes, I can see that.

Q. Now, returning to this script letter—

Mr. Zabriskie: I am going to say now I offer to put it in evidence at this time, if the other side will consent.

Mr. Breslin: Of course, we wanted it yesterday. I asked Miss Feld to give me all the letters you had subpoenaed from the prosecutor's office, and that was kept out for some reason, not intentionally, but it was.

(Letter marked Exhibit P-51; envelope marked Exhibit P-51A).

Q. Now, just tell us what the conversation was which you say you had with Mr. Burnett on the street. A. I showed him the letter. As near as I can remember, he said, "Well, I don't know who might have written that. I am not engaged to anyone. The only person I go about with is a Miss Mowell."

Q. Up to that time did you know Miss Mowell? A. Never heard of her.

Q. Never heard of her in any way at all? A. Never.

Q. Then what further conversation did you have?

Mr. Breslin: Wait a minute. I object, unless the time is fixed.

Q. When was that conversation that you had with Mr. Burnett on the street? A. It was after I received the letter. I couldn't tell you just when.

Q. Well, how long after, about? A. Well, approximately a week or ten days.

Q. And where? A. On the street.

Q. I know, but near what intersecting street? What street was it on, to begin with? A. Near his shop. That is all I can tell you.

Q. On what street? A. On Godwin Avenue.

Q. On Godwin Avenue? A. Yes.

Q. Of course Godwin Avenue is on the opposite side of the track from where you live, is it not? A. Yes, I do go there.

Mr. Zabriskie: Please read the question, Mr. Stenographer.

(Question read).

The Court: Answer that yes or no.

The Witness: Yes.

Q. And do you recall, were you walking or riding?

Mr. Breslin: Now, if your Honor please, I object to this. I fail to see the relevancy of it.

The Court: I will allow it.

A. Well, at the time I saw him, I was standing just by our car.

Q. And where was your car standing? A. Our

car was standing, as near as I can remember, right by the Bon Ton Cleaning Establishment.

Q. And where was the chauffeur then? A. He had gone across the street.

Q. And you were out of your car, standing there, while the chauffeur had gone across the street? A. Yes.

Q. And the side of the street where the chauffeur had gone to was where Mr. Burnett's store is; is not that so? A. No. It was over by the Playhouse.

Q. What was over by the Playhouse? A. My chauffeur.

Q. Oh, your chauffeur was over by the Playhouse? A. By the Playhouse, going into the bakery.

Q. But, in order to get where you were—you say you were on Godwin Avenue? A. Yes.

Q. In order to get where you were, he had to go on the side of the street that Mr. Burnett's shop is now; is not that so? A. He had to cross at the corner.

Q. No. Will you please answer the question?

Mr. Zabriskie: Read it, Mr. Stenographer.

A. No, unless I can show you a diagram of the street.

Q. Which way was your car pointed? A. Our car was pointed east.

Q. That is toward Ridgewood? A. Yes. It was right by the railroad track.

Q. Now then, is there any way of getting from the east side of Godwin Avenue over to the Playhouse without getting on the side of the street that Burnett's store is on? A. Well, if you cut across the street.

Q. Is there any way to get there? A. Yes.

Q. You had your car on the extreme right side of Godwin Avenue, did you not? A. Yes.

Q. The Playhouse is just around the corner, but you have to go on the left side of the street to get to it; is not that so? A. Not if you cut across the road, if you jaywalk. You have to jaywalk to do it.

Q. But you have to get on that side of the street? I do not say you have to go right up to his door. But you have to go to the side of the street that Burnett's store is on? A. Yes.

Q. Now, is it not a fact that you sent your chauffeur into the store? A. No.

Q. And asked Mr. Burnett—and told him to tell Burnett to come out? A. No.

Mr. Breslin: I object to that, if your Honor please.

The Court: I will allow it.

Q. And did you not send the chauffeur off on an errand while you talked to Burnett there? A. No. Burnett came up after my chauffeur had gone on the errand.

Q. Then he crossed the street to where you were? A. I suppose so. I did not watch him. I didn't watch him. I presume he did.

Q. Why were you out of the car, standing there? A. I don't know, only that I had to get out of it.

Q. You were by your car, standing there, while your chauffeur had gone around the corner? A. Yes.

Q. How long had you stood there before Mr. Burnett showed up? A. Two or three minutes.

Q. And that was about how far from Burnett's store, in feet? A. I would say 150.

Q. 150 feet? A. I would think so.

Q. And you cannot give any reason for standing there on the street, opposite Burnett's store, 150 feet away, measuring across the street, at this time? A. Except that I was thinking whether I had any more errands on that side of the track before I got in.

Q. Now then, you said, "any more errands". What errands had you had on that side of the track?

Mr. Breslin: If your Honor please, I think there ought to be a limit to this.

The Court: I will allow it.

A. I can't remember errands four years ago, Judge Zabriskie.

Q. Can you now tell this jury of any errand that you had on that side of the street that morning? A. I was trying to think what I had to do. I had sent my chauffeur to the bakery.

Mr. Zabriskie: I ask that the answer be striken out, and I ask that the question be read.

(Question read). A. Yes.

Q. What was it? A. I went into the Bon Ton Cleaning place first, and I sent our chauffeur to the bakery, across by the Playhouse.

Q. Oh, you did send him to the bakery? A. Yes, I sent him to the bakery.

Q. Now, then, as a matter of fact, about nine-tenths of the business section of Ridgewood is on the opposite side of the railroad track, is it not? A. Not now.

Mr. Breslin: I object to that.

The Court: I see no purpose in this.

Q. Just give the details of the conversation that you had with Mr. Burnett that morning. A. I showed him the letter and asked him if he knew anything about it.

Q. Was that the way you started the conversation? A. Yes. I pulled the letter out—

The Court: Just a minute. Is Mr. Burnett's name mentioned in that letter?

The Witness: Yes. I took the letter out of my bag and said, "Will you read this and tell me what you think of it?"

Q. Yes. A. And he said, "Well, I am not engaged to anyone. The only person that I go about with is a Miss Mowell."

Q. What did you say? A. And I—and he said, "I don't think she could have written it."

Q. What did you say? A. I said nothing.

Q. What did he say? A. I don't think he said anything.

Q. Then what did you do? A. I got in the car.

Q. Then what did he do? A. I don't know. I didn't watch him.

Q. And that was all there was to it? A. Yes.

Q. When was the next time you talked to Mr. Burnett about that letter? A. One of the times that he came down to service the refrigerator.

Q. And when was that? A. A few days after that.

Q. And then what was the conversation? A. He said he had mentioned the letter to Miss Mowell, had I any objection, and I said no.

Q. Then what did you say—what did he say then? A. He said, "Of course Miss Mowell was

probably upset about it." And I said, "Well, if she didn't write it, why be upset?" He said, "Could I bring her down to see that letter?" And I said, "Yes."

Q. And what did he say then? A. He said, "Very well", he would talk to her about it, and see when she could come down.

Q. And then did he bring her down? A. Yes.

Q. And did you have any talk with Mr. Burnett over the telephone between the time that he was servicing the Servel and the time that she came down? A. That I can't remember.

Q. That you do not remember? A. No.

Q. Now then, can you tell the date when he came, or approximate date? A. No.

Q. What time did he get there, as near as you can— A. Around half after four or a quarter of five.

Q. After her working hours? A. Yes.

Q. Was Mr. Von Moschzisker home? A. No.

Q. Just Mr. Burnett? A. Miss Mowell and myself.

Q. Yes. Did they all come in at the same time? A. That I can't remember. It seems to me they did.

Q. I mean both of them come in at the same time; you think they did come in at the same time? A. Well, it seems to me they did. I don't remember.

Q. What was the conversation then, among you and Mr. Burnett and Miss Mowell? A. Well, I got the letter out of the desk and handed it to Miss Mowell, and she commented on the peculiar writing. She first said she thought that it looked like the writing of a very old person. I asked her if

she had seen any of the stationery before, and she said no.

Q. Well now, what else was said? A. Well, then, they talked about a Mrs. Mortimer Inglis, in Paterson, she might have written it. Mr. Burnett said that. And I said, no, I thought not. He said that he had had trouble with her over a check.

Q. Now you testified in this case, in the criminal case, two years ago, did you not? A. Yes.

Q. And this question was put to you and you made this answer? Isn't it so?

"Q. And what did she (meaning Miss Mowell) say to you, and what did you say to her (meaning Miss Mowell)", and did you not answer, "Well, she denied having written it and said that she thought Thelma Fritz had written it."?

A. She mentioned both of them, both Mrs. Inglis and Thelma Fritz.

Q. Did you at any time, when you were in this court, or the court across the way, two years ago, in any way mention Mrs. Mortimer Inglis as having been one who was mentioned at that conversation?

Mr. Breslin: Objected to on the ground that it calls for a conclusion.

The Court: No.

Mr. Zabriskie: That is memory.

The Court: I will allow that. Did I not hear this witness say that Mr. Burnett said it was Mrs. Inglis who did it?

Q. Did you not yesterday make this answer, "But she suggested two people, a Mrs. Inglis of Paterson and Thelma Fritz, as a possible writer"? A. They both suggested these people.

Q. Answer the question?

The Court: Did you make that statement yesterday?

The Witness: Yes, I made that answer yesterday.

Q. You know Mrs. Mortimer Inglis, do you not? A. I do.

Q. She lives in Paterson, does she not? A. Yes.

Q. She lives on the east side of Paterson, does she not?

Mr. Breslin: I object to that, if your Honor please. I fail to see the relevancy. I object on the ground that it is immaterial.

The Court: I sustain the objection.

Q. And you have known her for a number of years, have you not?

Mr. Breslin: I object to that as being immaterial.

The Court: I sustain the objection.

Q. Now, was or was not Mr. Von Moschzisker present when this conversation was going on?

Mr. Breslin: I object to that, if your Honor please, on the ground that Mrs. Von has already answered that he was not home, that there were only three people present.

The Court: That was her testimony. There is no need of repeating.

Q. Did you not two years ago, in response to this question, in referring to the same incident, make this answer:

"Q. Who else was present? A. Mr. Burnett and Mr. Von Moschzisker."

On page 2 of your direct-examination. A. Well, that was the evening that they came.

Q. I asked you the first time they came? A. Well, if I said that, I didn't mean it.

Q. How many times was Miss Mowell at your house? A. Three times.

Q. Three times? A. Yes.

Q. And was not the first time the time when Mr. Von Moschzisker was there? A. No. It was in the afternoon.

Q. And was it not, as a matter of fact in the evening? A. No, as I recall it now. It is four years ago.

Q. Do you remember now better than you did two years ago? A. No.

Q. The first time she came to your house you talked to her, did you not? A. Yes, I suppose so.

Q. Do you not remember on the former trial, when this question was put to you, that you made this answer:

"Q. Do you recall the first time that you talked with her?"

And in the reply, in your answer, did you not say:

"Yes. She came in at my request."

A. Well, then, that must have been the evening call.

Q. And then, did not I follow it up with this question:

"Q. Who else was present?",

and did you not reply: "Mr. Burnett and Mr. Von Moschzisker"? A. If it were the evening that you referred to, I did reply, "Yes".

Mr. Zabriskie: Read the question, Mr. Stenographer.

(Previous two questions read).

A. Well, I can't remember which call she made first.

Q. I will ask if these three questions were not asked of you, and in this order, and if you did not make the corresponding replies. First, "How long have you known him, (that is, Walter Burnett)? A. Well, since the criminal proceeding, that case.

"Q. Have you ever talked with this Mowell girl at your home? A. I have.

"Q. Do you recall the first time that you talked with her? A. Yes. She came in at my request.

"Q. Who else was present? A. Mr. Burnett and Mr. Von Moschzisker."

Are those the questions that were put to you and the answers that you made? A. I don't recall.

Q. You do not remember any of those? A. Well, I remember such questions, yes.

Q. Do you deny that you made those answers to those questions, and in that sequence? A. I don't know.

Q. That is not the question I asked. Do you deny? A. No, I don't deny anything.

Q. Now then, to go on with that first conference, whenever it was; have you told all that occurred? A. Well, they talked general topics, and Miss Mowell said she must be going home, and they put their things on, and went.

Q. Was the letter discussed at that time or not? A. Well, the letter was discussed the afternoon that they came. That is all I can tell you. Now, whether they came in the afternoon first or in the evening first, I don't know.

Q. That you do not remember? A. No.

Q. Now then, according to your theory, there was a time when Mr. Von Moschzisker was present, was there not? A. Yes.

Q. How long do you say that was after this afternoon visit that you tell about now? A. I don't know whether it was before or after.

Q. Well, that was after the anonymous letter, was it not? A. Yes.

Q. Now, at that time when Mr. Von Moschzisker was sitting there with you, was this anonymous letter of January 18th discussed? A. That I can't recall.

Q. Well now, Mrs. Von Moschzisker, you were there? A. Yes, I was there, four years ago, but I don't recall anything about the visit.

Q. You do not recall anything about that visit? A. Well, it did not make any deep impression on me, nothing that I can remember that was outstanding.

Q. That was after the anonymous letter had been received; is not that so? A. Yes.

Q. Can you not say whether the anonymous letter was discussed that evening? A. I can't recall.

Q. Is that evening an absolute blank to you? A. Well, it is very nearly a blank. It was not anything that impressed me.

Q. How long did they stay that evening, Mrs. Von Moschzisker? A. Well, I should judge about an hour.

Q. Of course, yesterday you said about three-quarters of an hour. Now you say about an hour. As a matter of fact, was it not over two hours that they were there? A. No, it was not.

Q. If the evening is a blank, how do you remem-

ber how long it was? A. Well, they couldn't have stayed that long. As nearly as I can remember, it was nearly nine when they came.

Q. Nearly nine? A. Yes.

Q. And they left between 10:30 and 11, as a matter of fact, did they not? A. I don't know what time they left. I told you nearly an hour.

Q. Then you do not know how long they stayed, do you, Mrs. Von Moschzisker? A. Not to be accurate.

Q. Now, can you not tell the jury something that was done or something that was said, or how you spent your time, whether you played cards? Can you not tell them something about that? A. I don't play cards.

Mr. Zabriskie: Read the question.

(Question read). A. Well, we discussed general topics. Mr. Burnett—

Q. Just give one of the general topics you discussed. A. I can't remember now.

Q. You cannot remember a single thing? A. I can remember Mr. Burnett talking about the prospect for a Servel, and asking whether the Mrs. Wells that he had heard wanted to buy one, was my friend on Heights Road, or whether it was the one on Monroe Street. He asked me if I knew.

Q. That is the only thing that you can remember? A. Well, that is just about all.

The Court: Let me see that letter.

Q. I show you the letter that we have called the "Thelma" letter, and I am going to call your attention to the word "that".

Mr. Breslin: Now, if your Honor please,

I object to any reference to this letter, except in the sense that it is being used as a standard.

The Court: That is the purpose.

Mr. Zabriskie: That is all. Is your Honor through with that letter there?

The Court: Yes.

Q. And I am going to ask you if, in your opinion, be it worth what it may, the "that" in the word "Thelma" is similar to the word "that" in that letter of January 18, 1926?

Mr. Breslin: Just a minute. I object to that.

The Court: I sustain the objection.

Mr. Breslin: That is what we have the jury here for.

The Court: I sustain the objection.

Mr. Zabriskie: Does your Honor want this?

Q. Now, did you go to see any handwriting expert with that letter alone? A. No.

Q. Or did you go to any lawyer with that letter alone? A. Yes.

Q. To whom? A. I went in to Judge Watson that day.

Q. And anybody else? A. I don't remember that I did.

Q. Up till the time that you had received that letter, had you seen any writing or script done by Sarah Mowell? A. No.

Q. And after you showed the letter to Judge Watson, what did he say? A. He said, "Forget it."

Q. He said, "Forget it"? A. Yes.

Q. You did not take his advice, did you?

Mr. Breslin: I object to that, because the evidence is that she received a series of letters thereafter.

Q. Well, as to that letter, you did not take his advice?

The Court: What do you mean by that?

Mr. Breslin: I object to that.

The Court: I do not know.

Q. Did you forget it, or did you start talking to people about it? A. No, I did not start talking to people about it. I tried to forget it. It seemed just like a spiteful letter, and that is all.

Q. Then what did you do with the letter? A. I kept it.

Q. You are interested in writing, are you not? A. Not in the least.

Q. Well, this letter you wrote Dr. Hopper, fifteen years ago, you made a copy of it before you sent it to him, did you not? A. Yes.

Q. And you have that copy yet, have you not? A. No.

Q. Well, you had it two years ago when you were on the stand in the courtroom across the hall? A. Possibly, possibly.

Q. You said so at that time, did you not? A. Yes.

Q. What has become of it in the meantime? A. I don't know.

Q. You kept it for about thirteen years, and then when this pen case comes up, then you got rid of it? A. No, I didn't get rid of it. I just lost track of it.

Q. What happened to it? A. I don't know, any more than Dr. Hopper knows where the original went.

Q. And you did not write that with a typewriter, did you, the copy? A. No, I wrote it with the pencil.

Q. Wrote it with the pencil, full three pages? A. Yes.

Q. And you kept it all these years, until now it has been lost, since the last trial? A. I think it has.

Q. You saw the original of the Dr. Hopper letter in court here two years ago, did you not? A. I didn't read it, I just looked at the front page.

Q. You saw it here in court, did you not? A. Yes.

Q. And you read it, your copy of it, at home, about that time, did you not? A. No.

Q. Oh, you did not? A. No.

Q. Yet you said here on the stand a couple of days ago, or this week, that you had not seen the letter in fifteen years, did you not, or words to that effect? A. Well, have I said anything that contradicts that?

Q. I am asking the question.

Mr. Zabriskie: Read it, Mr. Stenographer. (Question read).

A. I did.

Q. Now, when is the first time that you went to see a handwriting expert? A. October 14th—October 13th—October 11th, the day before the 12th. October 11th—may I look at my notes?

Q. Yes, to refresh a date. A. 1926.

Q. October 11, 1926? A. Yes, sir

Q. Then you say you went to Mr. Hartkorn? A.

I went to him the day before. I went to Mr. Hartkorn the 11th. And I went to Mr. Osborn on the 12th.

Q. How much did you pay Mr. Hartkorn for his opinion, if anything? A. I didn't pay him anything.

Q. And what did you take down to him on that occasion? Well, now, can you not tell that without your notes? A. Well, if I could, I would not look at them.

Mr. Zabriskie: I object. We are testing memories, sir. It is not much of a test of memory—

The Court: Now, now.

Mr. Breslin: I do not think Judge Zabriskie could tell where he was on the day before October 12, 1926.

The Court: I will permit it. If that is your only objection, I will overrule the objection.

Mr. Zabriskie: Read the question. Let us see just in what shape it is on the record.

A. I took five blank letters.

Q. You took five letters? A. Yes.

Q. Have you those five letters in court? A. Yes.

Mr. Zabriskie: May they be marked in evidence now? They went through in the last case, all the way through, and they have only been marked for identification.

Mr. Breslin: We are proceeding in the regular way, and to connect up with the handwriting experts in the proper way.

Mr. Zabriskie: I waived a lot of that regularity, and I call upon you to offer to have

them go in evidence right away.

Mr. Breslin: I am proceeding in my way. It is part of the defense, and I will hook it up.

The Court: It is part of the defense.

Mr. Zabriskie: They will not do my friend much good.

Mr. Breslin: Well, they are here, if you want to look at them. I want to offer them when I think it is proper.

Q. That is what you call the second letter, is it not, Mrs. Von Moschzisker? A. I can't see it from here.

Q. Oh, I beg your pardon? A. Yes, that is the second letter.

Q. And that you received, as nearly as you can tell, on what date?

The Court: Now, do not get these confused with the other exhibits.

A. About July 3rd.

Mr. Zabriskie: You object to the jury seeing this letter at this time, Mr. Breslin?

Mr. Breslin: No, I have not any objection to the jury seeing it.

Q. Your testimony, now, is in relation to this exhibit that is marked D-26? A. Yes.

Q. You say that letter you found where? A. At the letter box, at the back of the house, stuck in the flap of the letter box.

Q. Your house stands away in back, away from the street, does it not? A. Not very far.

Q. You are on the corner, are you not? A. Yes.

Q. On the corner of Spring and— A. Irving.

Q. And Irving Street? A. Yes.

Q Now, what would be the natural way for a person to get from the street to that box? Is there a driveway that goes there, or is there a lawn?

Mr. Breslin: Objected to, if your Honor please.

Mr. Zabriskie: I will withdraw it, if you do not understand it.

Mr. Breslin: Just a minute.

Q. How far is that letter box from Irving Street? A. Well, I would say about 50 feet.

Q. About 50 feet. There is nothing in between, nothing to hide, is there, to obscure a person walking? A. There are a great many bits of shrubbery and trees about there.

Q. This was received in what month, do you say? A. Well, I can't remember now. I have the letters marked that came through the mail, and I don't remember the date, exactly, of the one that didn't.

Q. I see a memorandum on here "6/24/26". Do you think that is the date?

Mr. Breslin: I think that is in Mr. Von's handwriting, if I might interrupt. Is that not?

The Witness: Yes, that is it.

Q. Can you tell us about what month it is?

Mr. Breslin: I think that is pretty good indication. Would that be June 24th?

Mr. Zabriskie: Yes.

Mr. Breslin: I think that is about right.

Q. Who found that, you or Mr. Von Moschzisker, or your chauffeur? A. I found it.

Q. At what time of the day did you find it? A. I found it when I came down in the morning.

Q. Before Mr. Von Moschzisker was taken to the station? A. That I couldn't recall.

Q. And nobody present when you took it from the box? A. No.

Q. And you did not have it examined, or did you have it examined for finger-prints? Did you have finger-prints taken of it, attempt? A. I didn't myself, no.

Q. Did somebody later on? A. It looks so. I don't know.

Q. And you were surprised to find that? A. Well, naturally.

Q. Very much surprised? A. I was.

Q. Now, Mrs. Von Moschzisker, I call your attention to P-50, and when you were on the stand you said that you had written the word "Spring", and you had written the words "Emma Von Moschzisker," and "Ridgewood," and all the other writing, but you denied the writing of the words "Bergen" and "yes", and "yes"? A. Yes.

Q. Now, in view of subsequent developments, do you want to change your testimony on that point? A. No, I do not.

Q. You say "Bergen" is not in your writing? A. It is not.

Q. But "Spring" is in your writing? A. Yes.

Mr. Zabriskie: I would like the jury to compare these two before I continue with the cross-examination, because we have only that one number.

Mr. Breslin: I object to that.

The Court: No, you cannot do that, be-

cause, after all, the jury is going to compare these when they retire.

Mr. Breslin: Whenever that may be.

Mr. Zabriskie: But I would like to have them together. If you will just look at this "Von Moschzisker" here.

Mr. Breslin: I object to that.

The Court: No, no. Just a minute. No summing up.

Mr. Zabriskie: All right. I will withdraw it.

Mr. Breslin: And I respectfully ask that Judge Zabriskie be warned now that in the future, with these exhibits, he keep within the ruling of the court.

Mr. Zabriskie: Well, now, the Judge will take care of that, Mr. Breslin.

Q. Now, Mrs. Von Moschzisker, when you end the signing of your name somtimes you use a capital "R" and sometimes a small "r", do you not? A. A capital "R" in the ending?

Q. Yes. When you print your name? A. I don't print it.

Q. You do on motor vehicle applications, do you not? A. Yes.

Q. And sometimes you use a capital "R", do you not, and sometimes a small "r"? A. I couldn't tell you.

Q. You are rather inclined to use small "r's", are you not? A. I couldn't tell you. I don't print much.

Q. Now, I call your attention to Exhibit P-10, and I ask you whether the name "Von Moschzisker" there ends with a large "R" or a small "r"? A. It ends with a large "R".

Q. Did you not first make a small "r" and then change it to a large "R"? A. No, unless you have a microscope, that I could see it. It does not look so to me.

Q. Now then, this morning you have testified about the first call that Sarah had at your house. Now, there was a second and third? A. Yes.

Q. Or was there a first, second, third and fourth? A. No; three calls.

Q. Do you remember the incidents of the second call? A. Well, I was a bit confused as to which was first and which was second. Now, what call do you refer to?

Q. The second one; what you call the second one. A. The afternoon call?

Q. Yes, the afternoon call. A. The afternoon call.

Q. Yes, the time Mrs. Mallaby was there? A. That was the third.

Mr. Zabriskie: No. I withdraw that.

Q. The second call, yes.

Mr. Breslin: I respectfully submit he has been over that. He has been over the afternoon call and he has been over the night when Burnett was there.

The Court: The question is too general.

Q. Well, when was the second call? A. As nearly as I can remember, in February, 1926.

Q. And who was present at that time? A. Mr. Burnett. That was the afternoon call. Is that what you are referring to?

Q. Yes. A. Yes. No one but Mr. Burnett and Miss Mowell.

Q. And what transpired at that time? A. Well, that was the call I just described, when we talked over the letters.

Q. Then there was a call after that, wasn't there? A. Yes.

Q. And when was that? A. Approximately March; some time in March.

Q. And that call was in response to a letter that is in evidence here, written to Sarah, is it not, P-7? A. In response to it?

Q. Yes. A. I don't know. Miss Mowell called me on the telephone.

Q. You wrote that letter to her, did you not? A. Yes.

Mr. Zabriskie: And I think, if your Honor please, this ought to go in evidence. It is between the parties. There seems to be nothing improper about this letter going in evidence, generally.

Do you object to that letter going in?

Mr. Breslin: Of course, I object to it. I am here to protect my client's interests, and I object to it.

The Court: Let me see it. The only purpose of any of these letters is for the purpose of comparison.

Mr. Zabriskie: Well, they throw a little light.

The Court: I see no reason for this. I looked at it the other day.

Q. You did write this letter, did you not? A. I did.

Q. And she came after the letter was written? A. She did.

Q. That is the letter addressed to "Sara", and

marked Exhibit P-7, and how did she come to your house that day? A. I don't know whether she walked or not.

Q. What time did she get there? A. About 4:30, a quarter of five.

Q. Was there anybody else there? A. No.

Q. Besides you and her? A. No, not in the beginning.

Q. Anybody else in the house at that time? A. Yes. I think I had a dressmaker there that day, upstairs.

Q. Well, was that person anywhere near where you were when the conversation was going on? A. Well, we were downstairs, and she was up.

Q. Answer the question, please.

Mr. Zabriskie: Please read it.

The Court: She answered it. It is an answer.

Mr. Zabriskie: Well, all right.

The Court: Proceed with your answer.

The Witness: How would I answer? I don't know how to answer.

(Previous answer read).

Q. What was the name of that person? A. Miss Foster.

Q. Mrs. Von Moschzisker, when you were in the court room across the way, two years ago, were not these questions put to you, and did not you make these answers: "About what time did she get there, (meaning Miss Mowell)?" and was not the answer, "between half and after 4 o'clock."

"Q. Was there anybody else there? A. Someone else upstairs at the time, someone sewing.

"Q. Who was that person? A. That person was

Mrs. John Wallstock, of Paterson. She is now dead."

A. Well, that—

Q. What do you say? A. Yes, that was her married name. I called her Miss Foster by mistake.

Q. Oh. A. She was Miss Foster.

Q. That was the same person on the prior occasion? A. The same person, yes.

The Court: Just a minute. What was her maiden name?

The Witness: Miss Foster; Mary Foster.

Q. You say Miss Mowell stayed until about half past five? A. I think so.

Q. And your chauffeur, James Mann, took her home? A. Yes.

Q. With Mrs. Mallaby and yourself accompanying her? A. Yes.

Q. Now, then, up till that day—and when do you say it was? A. Some time in March.

Q. Some time in March? A. Yes, as near as I can recall.

Q. 1926? A. Yes.

Q. And up until that day you had not seen any of the handwriting of Sarah Mowell? A. I had not.

Q. Or printing? A. I had not.

Q. And on that day you had a nice, social tea together, did you not? A. In the beginning.

Q. In the beginning? A. Yes.

Q. And you discussed this young man, Larry Foster? A. Yes.

Q. A boy of about ninteen who had recently—

A. I don't know how old.

Q. —died; is not that so? A. Yes.

Q. And he was just about Sarah Mowell's age,

was he not? A. I really don't know that. I suppose he was.

Q. And you had a pamphlet there which was called "The Torch of Youth"? A. Yes.

Q. That was sort of a memorial to Larry Foster? A. Yes.

Q. And Miss Mowell said, "May I take that home and read it?" A. Yes.

Q. And you said she could have it? A. Yes.

Q. And then after a while Mrs. Mallaby came? A. Yes.

Q. Now, up until the time that Mrs. Mallaby came was not everything pleasant there? A. No.

Q. You testified yesterday that Sarah used the word "rotten"? A. Yes.

Q. Is not that word "rotten" your word? A. No. I don't think I coined the word "rotten."

Q. Is not that word in your vocabulary? A. Well, I think most words in the English language are in my vocabulary.

Q. Answer the question.

Mr. Zabriskie: Read the question, Mr. Stenographer.

(Question read).

The Court: Do you mean by that that she uses it habitually?

Mr. Zabriskie: Frequently, the same as we get in the habit.

A. No, I don't think I do.

Q. This is the "Torch of Youth"; this is the little booklet, is it not, that she borrowed on that occasion? A. No, it is not. That is not the original. The original was a white book. Where did this come from? The original was a white book.

Mr. Breslin: All right. That is the answer.

Q. Look at the printing.

Mr. Breslin: I object to that.

Q. Was it similar?

Mr. Breslin: If the Court please, I object to that.

The Court: I sustain the objection.

Mr. Zabriskie: Well, I will withdraw it. It does not amount to much anyway.

Q. Now, then, getting to this word "rotten" Mrs. Mortimer Inglis had some trouble about her Servel? A. Yes.

Q. And she stopped payment on the check to Mr. Burnett; is not that so?

Mr. Breslin: I object to that. That has not anything to do with this case at all.

The Court: I sustain the objection.

Mr. Breslin: And Judge Zabriskie well knows it.

The Court: No.

Mr. Zabriskie: I ask that that be stricken out.

Q. And did you not tell Mrs. Inglis that the stopping of the payment of a check was the rottenest thing that a person could do?

Mr. Breslin: Objected to.

The Court: I sustain the objection. We are just trying one case here, that is all.

Q. Now, was the word "rotten" used on that oc-

casion or not? A. Yes. Do you mean on the occasion of this visit?

Q. When Mrs. Mallaby was there? A. Yes. It was used before she came in.

Q. When Mrs. Mallaby got there, it was all pleasant on the surface again, was it not? A. I tried to make it so.

Q. Nothing unusual, was there? A. Not after she came.

Q. And yet did you not go to Mrs. Mallaby and ask her to be a witness for you, to say that there had been something unpleasant that she saw when she was there?

Mr. Breslin: I object.

Q. Answer the question yes or no.

The Court: She could answer that.

The Witness: Shall I answer?

The Court: Yes.

A. No, I did not.

Q. Well, after she used this language which you testified to yesterday, did you not take her home in your own automobile, with your chauffeur driving the car? A. I did.

Q. Now, then, did you have some talk with Mr. Burnett after this call?

Mr. Breslin: Objected to as being immaterial.

The Court: I sustain the objection.

Mr. Zabriskie: Well, I may make it specific.

Q. Did you not tell Mr. Burnett—

Mr. Zabriskie: Well, I will withdraw that.

Q. What is the next thing that had to do with anonymous letters or exhibits in this case, of ananymous letters, that you can recall now, after that call that you have just testified about? A. Well, I received a number of letters after that.

Q. Did you receive any anonymous letters before the Larry Foster pamphlet came back to you? A. That I don't remember.

Q. Now, Mrs. Von Moschzisker, take time. Consult your notes.

The Court: Let her look at the memorandum.

A. I was going to see if I might look at my—

Q. All right. Show us this. Here is the wrapper, P-35? A. No. The next letter was that—

Q. I am not asking you about letters. I am asking you if, up until the time you received P-35, the wrapper, if you received any anonymous letters? A. No.

Q. Not a one. How long after Sarah's call did you get this Larry Foster pamphlet back, the Larry Foster pamphlet back in this wrapper? A. A short time.

Q. Can you tell about how long, Mrs. Von Moschzisker? A. I should think about a week or two.

Q. In about a week or two? A. Yes.

Q. And then what did you do with it? With the wrapper? A. I dropped the whole thing on the hall table, as nearly as I can remember.

Q. You say you had not received a single letter. Of course, you had received the one in January? A. Yes.

Q. Of course that is always— A. Yes.

Q. Now you say that you remember receiving this, do you not? A. Yes.

Q. And you remember looking at it? A. Yes.

Q. And it interested you, did it not? A. Not specially. I thought it was typewritten.

Q. You thought that this was typewritten? A. Yes.

Q. What did you do with it? A. I put it on the hall table.

Q. On the hall table? A. Yes.

Q. How long was it on the hall table, Mrs. Von Moschzisker? A. Well, I couldn't tell you that. It became—

Q. When did you first have it in your possession, knowingly, after that? A. Well, I think it was in the summertime that I found it.

Q. Now, this was, we said, in April. You can look at your memorandum. A. March or April.

Q. March or April? A. Yes.

Q. And then it was some time in the summer? A. Yes.

Q. Before you found it? A. Yes.

Q. And before you found it, along came this letter; is not that so? A. Yes.

Q. So that when you received this Exhibit P-30, you did not knowingly have the wrapper, did you? A. No.

Q. Can you tell exactly when this wrapper turned up? A. No. Some time during the summer. That is all I can tell you.

Q. Well, did you look for it sometimes? A. No.

Q. Is it not a fact that, Mrs. Von Moschzisker, when you wrote this letter— A. I didn't write it.

Q. —or at the time you received this letter, that you did have in your possession a card that had been inadvertently left at your house, "Merry Christmas" from "Sal"? A. No, I did not.

Q. And did not that "Merry Christmas" have an "M" of a similar type to that "M" in "Mrs. Von Moschzisker" there? A. No; I have never seen such a card. I have never seen such a card.

Q. Well, since this case has been going on you have seen samples that have been admitted, of Miss Mowell's writing, have you not?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Q. Now, I show you again Exhibit P-21, and I ask you whether or not that is in your handwriting? A. Yes.

Q. Do you recognize it now? A. Well, I think it is mine.

Q. Well, do you not recognize the writing that you do, Mrs. Von Moschzisker? A. I do, usually, but I was very nervous the day I was in court, and whatever I did then, I wouldn't know whether it was mine or not, positively.

Q. But this case has been pending a long while, has it not? A. I would say so.

Q. You have had consultations and consultations with counsel, have you not? A. Yes.

Q. The other day I put this question, did I not, "You do not recognize it?" And you said, "I don't", but now you do? A. I don't know whether I do or I don't. To say positively, that that is mine, I can't. I think it is, but I don't know.

Q. Do you not remember writing that in the presence of Judge Seufert, in the court room? A. I wrote something.

Q. In the other wing? A. I wrote something. What, I don't know.

Q. You remember that I dictated to you, and

dictated slowly; is not that so? A. I don't know that. You dictated.

Q. Do you not remember this now, Mrs. Von Moschzisker? "Will you write something for me? Probably for freedom of action it would be better to take the glove off, if I may request that (and witness does). Now, will you please print with pen and ink? Write "I". And did you not say, "How do you make a capital 'I'?"

Do you remember that? A. No, I don't remember that.

Q. Then did not Judge Seufert say, "Never mind. Do not ask any questions. If you cannot do it, do not do it."

Mr. Breslin: I object to that.

Q. And then I asked you, "Don't you know how to make a capital 'I'?", and you said, "No, I am sorry. I don't know much about printing. I never did any printing in my life, except on my automobile application."

Now, does that refresh your recollection? A. Well, I still say I don't.

Q. You still say you do not know whether that is in your handwriting? A. I still say I can't swear to it, that it is. I say it may and it may not be. I do remember printing something here, or at least in the court, for you.

Q. Yes. A. Some little slip.

Q. Would you recognize your ordinary, natural printing?

Mr. Breslin: I object to that.

The Court: Just a minute. I sustain the objection.

Q. Is that written in your natural printing? A. Well, it would have been natural if I hadn't been nervous, possibly.

Q. And the other day, with reference to P-23, I asked you whether or not that is in your handwriting, and you said you did not know whether it was or not. Now, what do you say about that now, Mrs. Von Moschzisker? A. I say the same that I said the other day, that I don't know.

Q. You do not know. And that was with all the opportunity that you have had of refreshing your recollection; you do not know?

Mr. Breslin: Wait a minute. I object to these speeches.

The Court: I sustain the objection.

Q. This Exhibit P-22, that was written by you on the same occasion, was it not? A. That I don't know.

Q. You cannot say whether that is your writing or not? A. No, I can't swear to it.

Q. You cannot swear to it. Is your recollection better or worse than it was on the facts in this case two years ago? Is it better today or better two years ago? A. I couldn't say that, unless you ask me the same questions.

Q. Now then, on the former trial, when I showed you this letter of Burnett's and the envelope, did you not attempt—did you not say that this letter was the letter that this—or the envelope that this letter came in? A. Well, I think that is a different envelope.

Q. No. I am asking you about this one. A. I don't know whether I identified that or not. I say it does not look the same.

Q. Were not they all fastened together at that time? A. That I don't remember.

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Q. You do not remember? A. No.

Q. Did not I at that time put this question, "May I show you another letter, bearing date 4/10/26, with the envelope fastened to it, and I ask you if letter and envelope are not in your handwriting, and if the letter is the one that was put inside the envelope when it was sent by you?" And was not the answer, "Yes"? A. Well, I think it was then, but I don't think that is the same envelope.

The Court: Is that in evidence?

Mr. Zabriskie: It is in evidence, yes, sir.

Mr. Breslin: As a standard.

Mr. Zabriskie: A standard.

Q. You do sometimes use commercial envelopes, the same as that, Mrs. Von Moschzisker, do you not?

Mr. Breslin: I object to that.

The Court: I will allow that.

A. Why, I might, I suppose.

Q. No, not "I might, I suppose". But do you or do you not? A. I simply have to say I may and I may not. I couldn't say.

Q. Prior to April 10, 1926, and after April 10, 1926, around that period, a year each way, did you or did you not occasionally use commercial envelopes, the same as there is on that exhibit that I have just called to your attention? A. How could I say?

Mr. Zabriskie: Read the question, Mr. Stenographer.

A. I do not know.

Q. Is that your answer, you do not know? A. That is my answer, yes.

Q. You do not know? A. No, I don't know.

Q. Well, is your recollection better now than it was two years ago? A. I don't think anything is better than it was two years ago.

Q. When you were in court before, did not I put this question, and did not you make this reply, "I call your attention to the paper marked for identification, D-8, being that envelope that the juror has in his hands now, and accompanying envelope, and I ask you if that is not the kind of envelope you used?" "A. I have occasionally used stamped envelopes, the same as other people do."

A. Well, if I made that answer, it was the truth. I don't remember.

Q. Mrs. Von Moschzisker, is it not a fact that when you were on the stand here this week and denied the authorship of that envelope, that you did so because P-29, the disputed document in this case, has a commericial envelope?

Mr. Breslin: Objected to.

The Court: I sustain the objection.

Q. Now, when you got this first letter in January, 1926, what did you do with it? A. What did I do with it?

Q. Yes. A. Well, in reference to what? Do you mean where did I put it?

Q. Just what those words mean. What did you do with it? A. I think I put it in the table downstairs, in the drawer, in my sewing table.

Q. Whom did you show it to? A. I showed it to my husband.

Q. And all these letters, just as fast as you got them, you showed them to your husband? A. Yes.

Q. No question about that? A. No question.

Q. Mrs. Von Moschzisker, you knew that Sarah

Mowell lived in Ridgewood, did you not? A. Not when I received that letter. I had never heard her name.

Q. But on this wrapper, at the time you received that wrapper from her, you knew it, did you not? A. Yes. I had taken her home.

Q. You had taken her home? A. Yes.

Q. Where did she live at that time? A. Walnut Street.

Q. On Walnut Street, Ridgewood? A. Yes, sir.

Q. Did you ever go to see her mother or her father about any suspicion that you had against her? A. Not after she had insulted me in my own home.

Mr. Zabriskie: Read the question.

Mr. Breslin: That is a proper answer.

The Court: That is the answer.

Q. Did you ever, up to the present time, go to see her father or her mother about your suspicion that she had sent an anonymous letter? A. No.

Q. Why not, Mrs. Von Moschzisker? A. Well, why would I, after the girl had insulted me? Why would I expect her father or mother to take any interest in it?

Q. Is that the best answer you can make? A. It is.

Q. You are a woman fifty-three years old, are you not? A. Yes, I am.

Q. And at that time Sarah Mowell was a child, we might say, of nineteen or twenty, was she not? A. I don't know how old she was. She didn't tell me her age.

Q. You went down to Mrs. Fritz and had a lot of talk about her, did you not?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Q. Were you not interested enough in this young lady to find out how old she was? A. No, I was not.

Q. How old did you think she was? A. I had no idea.

Q. Did you think that she might be thirty or forty, or about your age? A. No, not that old.

Mr. McGinnis: I object to that.

Mr. Breslin: That is going to far.

The Court: That has nothing to do with it.

Mr. Zabriskie: I would like to ask this one question.

Q. Why did you not at some time go to her father or her mother?

The Court: That has been answered.

Mr. Breslin: It has been answered.

Q. Is that answer that is in the best answer you can make, Mrs. Von Moschzisker? A. The very best.

Q. The very best. You suspected her, even before she insulted you, as you say, did you not? A. No, I didn't.

Q. You had no suspicions of any kind against her before? A. I didn't suspect her of writing that first letter.

Q. You knew that she did not write it, did you not? A. I didn't know. Nobody seemed to know.

Q. You did not. A. I said I didn't suspect her.

Q. Did you not tell her, Miss Mowell, that you knew she was innocent of any such thing, the first

time that you looked at her? A. I said, "I don't think that you could have written it."

Q. You knew she did not, did you not? A. I didn't say that. I didn't know who had written it.

Q. I am asking you now, honestly, do you not know that she did not? A. No, I don't know.

Q. When is the very first time that you suspected Sarah Mowell of writing any anonymous letter? A. When the letters came with bank information was the first that I felt that she might be implicated in it.

Q. Why, had you not written to Mr. Frederick Van Blarcom, a lawyer of Paterson, in April, about this, in 1926?

Mr. Breslin: I object to that, why had she not done it.

Q. Not why. Did you not, in April, 1926, write, or go to see Mr. Frederick W. Van Blarcom, a lawyer in Paterson, and tell him of your suspicions, and did he not write a letter after you had communicated with him? A. I don't know what he did.

Q. When did you go? Did you go to see Fred Van Blarcom? A. I talked to him about it, yes.

Q. When? A. I don't remember.

Q. Were you not in the office of Frederick W. Van Blarcom, a well-known counsellor at law of Paterson, on April 7, 1926, and did you not at that time ask him to write a letter to Miss Sarah Mowell? A. No, I did not.

Q. Then if Mr. Van Blarcom in his letter says, "Mrs. Frank—"

Mr. Breslin: I object to what Mr. Van Blarcom says in his letter.

The Court: No.

Mr. Zabriskie: I want to get that clear on the record.

Q. Will you state at this time that on April 7, 1926, you were not in the office of Frederick W. Van Blarcom, a counsellor at law, at Paterson? A. I can't say what date I was there.

By the Court:

Q. Were you there? A. I have been in there, yes.

By Mr. Zabriskie:

Q. But on April 7th. Will you say that on April 7, 1926, you were not there? A. I won't say I was or I was not, because I don't remember.

Q. Were you there in April, 1926? A. I don't remember.

Q. Now, do you still say that you did not suspect her until the bank letter came along? A. I do.

Q. Where is that bank letter? Where is that letter? A. I don't know.

The Court: Is it in evidence?

Mr. Breslin: All the letters are there.

The Witness: They are all there.

Mr. Breslin: Here is one addressed to her husband. I think that is the one it is based on. It has not been offered yet.

Mr. Zabriskie: There is no objection to using it, is there?

Mr. Breslin: No. I just wanted to prove it in the proper way. You can use it, if you want to.

Mr. Zabriskie: This is away in 1927.

Mr. Breslin: Well, there was one of them before that that speaks about bank. Judge Doremus is mentioned in all these letters.

Mr. Zabriskie: I would like to see the first one. Of course, these are not in our control. We have not got them. We have to depend on charity.

The Court: Well now, just a minute. That can be stricken out.

Mr. Zabriskie: Well, I will strike it out. That is improper. I admit it.

Q. Now, where is the letter that you referred to? A. Is that the first one?

Mr. Breslin: I do not know whether that is the first one or not. There are so many of them.

The Witness: Well, there was information in more than one. I don't know which one came first.

Mr. Breslin: Talk up, so the stenographer can take it down.

The Witness: I say there was more than one letter with bank information in it.

Q. I want the letter to which you referred? A. Well, I can't tell you, without seeing it. I don't know which one came first.

Q. Your counsel has all these letters, has he not? Between you and your counsel, you have all the anonymous letters you received, have you not? A. I thought they were in the court record.

Q. Well, you have that letter somewhere in court, have you not, Mrs. Von Moschzisker, have you not? A. Well, I am up here. I can't search for it.

Q. You have seen it in the last day or so, have you not? A. No, I have not read any of these letters since I have been in court.

Q. That is the only way you can fix the time when you started suspecting Sarah, when that letter from the bank came along, is it not? A. Yes.

Q. Now, I would like to have the letter. The letter came by mail, did it not? A. Yes.

Q. And it had a postmark on it? A. Yes.

The Witness: Was it on of those to Mr. Von?

Mr. Breslin: About Mr. Lannuier. That is the one. You see, several of these letters at the last trial were taken by Judge Zabriskie, and when we got them back Miss Feld took most of them, and all we had left here are these letters here.

Mr. Zabriskie: Every letter that was in the last case got back to the court O. K. I can guarantee that.

Mr. Breslin: Judge Zabriskie, have you the letter that refers to Mr. Lannuier about the girl going away, about the conference at the bank meeting?

The Court: You referred to that yesterday or the day before.

Miss Feld: I gave that to you.

Mr. Breslin: Where is it?

Miss Feld: It was to Mr. Von Moschzisker.

Mr. Breslin: What is the date?

Miss Feld: May 19, 1927. It was S-14 in the other case.

Mr. Breslin: Let me see.

The Court: What is the date of this letter of Mr. Van Blarcom?

Mr. Zabriskie: April 7, 1926.

The Court: We want a letter before that, if it is around.

What date is that?

Mr. Breslin: May 19, 1927 (producing letter).

The Court: Now this letter, you are referring to one before that.

Mr. Zabriskie: I want the first one that she said fixes the time now when she began to suspect Miss Mowell by a letter with the word "bank" in it.

The Court: Bank information.

Mr. Zabriskie: With the word "bank" in one anonymous letter.

The Court: She said she fixed the time of going to Mr. Van Blarcom's office after receiving that.

Mr. Zabriskie: I did not hear her say that.

Mr. Breslin: No, she did not say that.

The Court: I thought so.

The Witness: I think—

The Court: What did you say?

The Witness: I think I said—

Q. Just say it so the jury can hear. A. I think I said that I did not suspect Miss Mowell until after I had received a letter about bank information, but I did suspect Mr. Burnett of being implicated in some way.

Mr. Zabriskie: I ask that it be stricken out We are not trying Burnett.

The Court: Strike it out.

Mr. Breslin: You tried to bring him in all the time.

Q. Now, will you get the bank information? You got that through a letter, did you not? A. Yes.

Q. And that is the letter I want.

Mr. Breslin: Well, they are all filled with Judge Doremus' name about the bank matters, addressed to Mr. Von.

Mr. Zabriskie: Let us have the first one.

Mr. Breslin: Here is one, February 18, 1927, another one, "Judge Doremus".

Mr. Zabriskie: But that is a good many months afterwards, however.

The Court: We are working from cause to effect, and probably we are not in the proper premises. The witness has not admitted anything in so far as that letter is concerned.

Mr. Zabriskie: No.

The Court: She has just answered your question, when she first suspected Miss Mowell.

Mr. Zabriskie: Yes.

The Witness: Well, this is one that has bank information in it.

Mr. Breslin: Here is another one.

Is that another one?

The Witness: Yes. You can't see the date on that.

What date is that?

Mr. Breslin: February 18, 1927.

The Witness: What is that last one?

Mr. Zabriskie: There is another anonymous letter that is lying here.

Mr. Breslin: Here is one, November 26th. That refers to the bank information.

The Witness: Those all refer.

Mr. Breslin: All right.

Q. Now, which is the one that you fix the time by, Mrs. Von Moschzisker? A. I don't fix it by any of that. I can't tell you.

Q. What do you say? A. I can't tell you. The dates are blotted out—some of them. I can't tell you.

Q. Can you not tell? You are quite familiar with these anonymous letters, are you not? A. I have not seen them in a long time.

Q. Can you not pick out the one that you used to— A. No, I can't.

Q. Well, now, what is the occasion when you first suspected Sarah Mowell; what occasion if you can give the date? A. There is no special occasion. It was just connected with this.

Q. When did you come to the conclusion that she was writing? A. I did not come to any conclusion until after I had this one letter, the first one, from—

Q. When was that? A. I don't know. I am trying to find out.

Q. You have a memorandum there. A. I have not it marked as to what was in the letter. I have the date that the letters were mailed. Post-marked.

Q. You have a slip there that you are using to refresh your recollection, have you not?

The Court: Now, just a minute. She said that that does not indicate the contents of any letter.

The Witness: No. It is nothing but the dates.

Q. Does not that tell you when you went and saw Mr. Van Blarcom? A. No.

Q. I do not want to read it. A. Read it.

Q. Then it is not complete, is it?

Mr. Breslin: Of course it is not complete.

A. No.

Mr. Breslin: She is not a stenographer or bookkeeper.

The Court: Complete as to what?

Q. Complete as to the incidents that went on in this case, so far as you were connected with it?

The Court: Now, she used that, as I recall, to refresh her recollection as to the dates of certain letters, nothing else.

Mr. Breslin: Letters, that is all.

Mr. Zabriskie: Well, of course, I did not look at it.

The Witness: Well, that is all it is.

Q. Now, can you say that you came to the conclusion or suspected Sarah Mowell in May, 1926, or June or July or August or September? Can you mention the month? A. Well, I should think toward the fall.

Q. Toward the fall of 1926? A. I think so. I won't be sure of it, but that is as nearly as I can tell you.

Q. And then after you suspected her, then you went to see the lawyer, did you? A. Yes.

Q. And the lawyer was who? A. Well, I first talked to Fred Van Blarcom about it.

Q. He is the first one? A. Yes, thinking that

possibly he could find some solution to stop the letters.

Q. He is a man of about your own age, is he not? A. I don't know how old he is.

Q. You used to be— A. I think he must be.

Q. Now, when was that? A. I don't know, I tell you.

Q. Can not tell? A. No; I have no recollection.

Q. No way of fixing that time? A. No.

Mr. Breslin: If you will show her the letter, maybe it will refresh her recollection, that you say Van Blarcom wrote to Miss Mowell.

Mr. Zabriskie: No, that would not be of any service in the testimony now.

Mr. Breslin: If your Honor please, it is in Court and I respectfully ask that we be permitted to use it.

The Court: No, never mind.

Mr. Breslin: If he wants to cover it up, all right.

The Court: Never mind.

Q. Well now, I will show you this letter.

Mr. Zabriskie: I will ask to have it marked for identification.

(Letter marked Exhibit P-52 for identification).

Q. Now I show you P-52, and I will let you read that thoroughly and see if that refreshes your recollection (handing Exhibit to witness). A. November 21, 1927.

Mr. Breslin: What date, please?

The Witness: November 21, 1927.
Mr. Breslin: November?
The Witness: Isn't that November?

Q. Now, you just take your time. A. Well, I am taking my time. What does this mean? Here are two dates. April 7th.

Mr. Breslin: What is this, a date mark on the side?
The Witness: What?
Mr. Breslin: This November 21, 1927.
Mr. Zabriskie: I suppose that is the day it landed in my office.
The Witness: April 7, 1926.

Q. Now then, do you want to change your testimony as to when you first suspected Sarah Mowell? A. I didn't tell Mr. Van Blarcom I suspected Sarah Mowell. I told him the little that I knew about it. It was the first anonymous letter. Do you want me to go on and tell this? Is it proper that I should?

The Court: Well, there is no question.

Q. I am satisfied to have you tell. What did you tell Mr. Van Blarcom? A. I told him about receiving that first letter and about what Mr. Burnett had said, and about bringing Miss Mowell down, and that I had had all these annoying telephone calls, and I wondered if there was any way he could possibly put a stop to it, would he send for Mr. Burnett to talk to him.

Q. You did not ask him to send for Miss Mowell? A. No.

Q. So he did that, then, on his own initiative, so far as you know? A. I suppose he did.

Q. But you did mention Miss Mowell's name, then, did you not? A. Well, I mentioned it as in connection with the time they came there to talk over that first letter. He asked me if I suspected her, and I said no.

Q. Then you did not suspect her even when Mr. Van Blarcom wrote that letter? A. No.

Q. You still did not suspect Sarah Mowell? A. No.

Q. Is this the first time you knew that Mr. Van Blarcom wrote for her to come down? A. It is.

Q. This is the first time. You had no idea that Fred Van Blarcom, the counsellor at law, at Paterson, was suggesting— A. Well, I don't remember what he told me, whether he had sent for both of them, or whether he had sent just for Mr. Burnett.

Q. Then you want to change your testimony a little? Now you do remember? A. I can't remember things perfectly two or three years back. I am sorry.

Q. You went down to see Mr. Van Blarcom quite often about this matter, did you not? A. Oh, no, I did not. Mr. Von Moschzisker went with me the second time we went in.

Q. Had you talked to Fred Watson—Judge Watson, up to that time? A. Yes.

Q. And you were to see him repeatedly about it, were you not?

Mr. Breslin: Who is "him"?

Mr. Zabriskie: Judge Watson.

A. No, not at that time.

Q. Not at that time? A. Not at that time.

Q. But you had seen him to some extent? A. I had seen him once.

Q. Had you mentioned Miss Mowell's name to him? A. I don't know.

Q. Now, on one of these occasions when you were talking with Miss Mowell, she said that Mr. Randall, Judge Randall, was the family lawyer, did she not? A. I don't remember that.

Q. You would not say that she did not say so, would you? A. I can't remember. How can I say?

Q. You lived in Paterson a great many years, did you not? A. Yes, but that does not tell me who the Mowell family lawyer is.

Q. And you are familiar with a great many Paterson people, leading Paterson people, are you not?

Mr. Zabriskie: I object to that.

The Court: I sustain the objection.

Mr. Breslin: I do not think Judge Zabriskie means it in the sense it might be interpreted. I object to it on the ground that it is immaterial, anyhow.

Mr. Zabriskie: I withdraw it.

Q. Do you not remember, now? Just refresh your recollection. Do you not remember that you and Miss Mowell talked, and she told you, when discussing different Paterson people— A. We talked about Mrs. Randall.

The Court: Just listen.

Q. You talked about whom? A. Mrs. Randall.

Q. Who is Mrs. Randall? A. She is Judge Randall's wife.

Q. Judge Randall's wife? A. Yes.

Q. Then you did? A. We talked about Mrs. Randall.

Q. You did talk about Mrs. Randall? A. Yes.

Q. What did Sarah say? A. She asked me if I knew her, and I said yes.

Q. Now it is beginning to come to you a little, is it not, about that conversation? Is it not? A. Well, I remember that.

Q. And one or the other said that Mrs. Randall was a lovely woman; is not that so? A. I don't remember whether we did or we didn't.

Q. Do you not remember that Sarah told you that her youngest brother was named after the Randalls?

Mr. Breslin: I object to Judge Zabriskie shaking his finger at Mrs. Von.

The Witness: I do too.

Mr. Breslin: Just a minute.

I object to Judge Zabriskie standing up there and shaking his finger.

Mr. Zabriskie: Well, I will turn my back, then.

Mr. Breslin: She is not in a gridiron. She is in the courtroom.

The Court: How important is this, whether or not—

Mr. Zabriskie: Well, I may—

The Court: Now, just a minute. Listen to me. How important is it whether or not Miss Mowell told Mrs. Von that her attorney or the family attorney was Judge Randall?

Mr. Zabriskie: Well, the next question will probably show it. I would like to have that question answered.

A. No, she didn't tell me.

Q. That you are positive of? A. Yes, I am positive.

Q. Well, did she not tell you that Judge Randall was the Mowell family lawyer? A. No, she didn't.

Q. And after she told you that, did you not go down to Judge Randall and tell him that you suspected Sarah Mowell of writing anonymous letters to you? A. I met Edmund Randall and showed him this letter, and asked him if he had ever seen Sarah Mowell's writing, and he said no, he hadn't.

Q. You met Ed Randall? A. I met him.

Q. Where did you meet him? A. I met him in his office building.

Q. In what part of that office building? A. Well, one of the corridors, I couldn't name it now, because I don't know.

Q. Why, did you not go to his office— A. Why didn't I? Because I had not occasion to.

Q. Why, did you not? A. No.

Q. Did you not go to his office— A. No.

Q. —and sit there and wait for him, until his secretary announced that you were there? A. No.

Q. And did you not go into his private office? A. No.

Q. And talk over this case at length? A. No.

Q. That you are positive of? A. That I am positive of.

Q. And did you not say, "Well, what would you do?" You called him, "Ed", did you not? A. Yes.

Q. And you said, "What would you do, Ed?", did you not? A. No, I didn't.

Q. What did you say? A. He read the letter and he said, "Sarah didn't write that", and I said, "Well, who do you suppose is playing such tricks

on me?" He said, "I don't know." That was our conversation.

Q. Is that all? A. That is all, so far as I can remember.

Q. And did not Judge Randall say, "I can't represent you because I am the Mowell family lawyer"? A. No.

Q. And that you are positive of? A. Yes, I am.

Q. You did not consult Mr. Randall as counsel at all, did you? A. Why, no.

Q. Which letter was it you showed him? A. The first letter, the script letter.

Q. What were you doing in the corridor in the building that day? A. I went in to see someone else.

Q. Who? A. Well, I went in to see another lawyer there, and not about that business.

Q. Who? A. I can't tell you the name offhand. If you can tell me the name—

Q. Now, Mrs. Von Moschzisker—

The Court: Just a minute.

Mr. Breslin: Now, wait a minute. I object to Judge Zabriskie putting on an act before the jury.

The Court: Let her finish.

Mr. Zabriskie: All right. I will withdraw the act.

Read the question, Mr. Stenographer.

(Record read).

Mr. Zabriskie: You say there is an unfinished answer? Finish the answer, if you have any more to say.

Mr. Breslin: Wait a minute. There is no question pending.

Q. Now, who is the lawyer you were going to see? A. As near as I can remember, it was Horton & Tilt. It had to do with some affair of my mother's. Aren't they in that same building?

Q. Are you sure it was Horton & Tilt? A. Yes, I am sure it was Horton & Tilt.

Q. Whom did you see, Mr. Horton or Mr. Tilt? A. I couldn't tell you that. I don't remember. I don't think I saw either one of them that day. I don't think they were in.

Q. Then you did not see either one that day? A. I don't think I did. I went there several times.

Q. Now, did you meet downstairs, or did you meet on Judge Randall's floor? A. That I couldn't tell you.

Q. Do you know whether that conversation took place on the first floor or the second floor? A. No, I do not.

Q. Or the third floor? A. No.

Q. Or the fourth floor? A. No.

Q. Or the fifth floor? A. No. The floors were not marked.

Q. Did Judge Randall have his hat on? A. Well, he took it off when he talked to me.

Q. Then he did have it on? A. I couldn't say.

Q. When you first saw him? A. I think he had it in his hand.

Q. Was he near his office door? A. I can't tell you.

Q. Well, have you not a mental picture of— A. No, I have not.

Q. —where that conversation took place? A. I have no mental picture of that bank building. I am not sufficiently familiar with it.

Q. Did you ride in the elevator with Judge Ran-

dall? A. No, I didn't ride in the elevator with him.

Q. Now, are Horton & Tilt and Judge Randall on the same floor in that building? A. That I don't know.

Q. That is the United Bank Building in Paterson, is it not? A. No, it is not the United Bank Building.

Q. What is it? A. It is the Paterson National Bank, as near as I can remember it.

Mr. Breslin: Same thing.

The Witness: No, it is not the same place.

Q. You do not agree with your counsel, do you? A. Well, I try to.

Mr. Breslin: Not about that, but she does about everything else.

Mr. Zabriskie: And I think it is quite highly improper for a counsel to try to help out the witness.

The Court: Now, just a minute, Judge. You seemed to be perfectly satisfied when that was going on. Now you are objecting. It is not proper, of course, but we are not making any point of it.

Mr. Zabriskie: Yes.

Q. Can you tell in what month that was, Mrs. Von Moschzisker, that you talked to Mr. Randall? A. No, I can't.

Q. Or Judge Randall? A. I couldn't tell you.

Q. Can you tell us within three or four months of when it was? A. No, I couldn't tell you that, unless I could find the bill that my mother had. That would give me some idea.

Q. And did you carry that letter around with you wherever you went? A. No.

Q. You do not live in Paterson? A. No.

Q. You live in Ridgewood? A. Yes.

Q. Why did you take that letter with you that day? A. I am sure I don't know, unless I expected to go in to see Fred Van Blarcom. That is the only thing I can think of.

Q. You were not going to see Fred Van Blarcom that day, were you? A. I don't know where I was going—three or four years ago.

Q. Mrs. Von Moschzisker, is it not a fact that at that time your whole being was so filled with malice against Sarah Mowell that you wanted to get her in wrong with everybody that you possibly could? A. No.

Q. And in order to do that, did you not show that letter to lots of people? A. No, I did not.

Q. And did you not even call up Mr. Burnett's mother on the telephone— A. No.

Q. Did you ever call up Mr. Burnett's mother on the telephone? A. Once, when I was trying to get him to do some work.

Q. Is that the only time? A. Yes.

Q. And is it not a fact that you told Burnett's mother that if her son continued to associate with Miss Mowell that he would be thrown out of certain organizations, which I will not mention, and that in addition he would lose his business in Ridgewood? A. No.

Q. When did you call up on the telephone? When did you call up Mrs. Fox on the telephone?

Mr. Breslin: I object to that. We are going off into this tangent again. I object to that.

The Court: I sustain the objection.

Q. And now you are positive that the only conversation that you had with Mrs. Fox, Mr. Burnett's mother, was about business? A. I am.

Q. You remember testifying in the case across the way two years ago? A. Some parts of it I remember.

Q. And do you not remember my asking you this question, and did you not make this reply:

> "Now, you say you did talk to Mrs. Fox, the mother of Mr. Burnett, and say something about your putting flowers in his bedroom? A. Yes. I asked her if she had ever made a remark to anyone that I had done that."

Now, is not that the question that I asked you, and is not that the reply that you made in this very court-house, two years ago? A. Possibly it is.

Q. Is that a business— A. Well, it was my business.

Q. Well, it was your business. Yes, that was very important business in your mind, was it not?

Mr. Breslin: Wait a minute. If your Honor please—

Mr. Zabriskie: I will withdraw the question.

Mr. Breslin: I object to Judge Zabriskie doing a summing up now.

The Court: Now, just a minute.

Mr. Zabriskie: May I withdraw that question?

The Court: This case is taking long

enough without putting extraneous matter in it.

Mr. Zabriskie: Yes.

Q. Mrs. Von Moschzisker, what is the nature of the building right next door here?

Mr. Breslin: Well, I object to that. What has that got to do with the case?

The Court: I sustain the objection.

Mr. Breslin: We will never be finished.

The Court: I sustain the objection.

Q. Is not the word "prison" the word that you use habitually instead of "jail"?

Mr. Breslin: I object to that.

The Court: Sustained.

Mr. Zabriskie: I want to show now, if your Honor please—I want to take up the anonymous communication, and I offer to show—at least bring out as far as I can with this witness, that the words in there are words habitually used by her.

The Court: Go ahead and ask it.

Mr. Breslin: All right.

The Witness: The word "prison" habitually used by me?

Mr. Breslin: All right. Answer the question.

The Witness: I don't know what he means.

Q. When you talk about a person being locked up, do you say, "Sent to jail", or "Sent to prison"?

A. Sent to jail, if they are locked up.

Q. Now then, did you not say yesterday—did

you not say, "I said, 'I would not like this girl to go to prison'"? A. I did.

Q. Yes. You did not say "jail". A. Now, I didn't—can I ask just one question?

Mr. Breslin: No.

The Court: No.

Mr. Breslin: That does not mean anything.

Q. The word "neurotic", is that used by you?

Mr. Breslin: Now, just a minute. If your Honor please—

The Court: Sustain the objection.

Mr. Breslin: —Mrs. Von has denied the authenticity and the authorship of that letlet.

The Court: Sustain the objection.

Mr. Breslin: This is another way to create a little atmosphere.

The Court: I sustain the objection.

Mr. Zabriskie: That is not atmosphere.

The Court: I have ruled, and that is the end of it. You can take your exception.

Q. You know Judge Doremus well, do you not? A. I have known him a great many years. I don't know that I know him well.

Q. Do you know how long Miss Mowell was a resident of Ridgewood when this trouble started? A. No.

Q. You never found that out? A. No.

Q. Judge Doremus is considerably older than you?

Mr. Breslin: Now, I object to that.

The Court: I sustain the objection. Maybe Judge Doremus would not like that.

Q. Did you ever know Thelma Fritz until she came—until you met Sarah Mowell?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Q. Have you tried to get Thelma Fritz in this proceeding, to come to court as a witness?

Mr. Breslin: If your Honor please, if I may interrupt, a subpoena was served on Thelma Fritz, and Thelma Fritz' husband came to me personally, and said that she was sick in bed, and that her mother would take her place, which she did.

The Court: That was the testimony of her mother the other day.

Mr. Zabriskie: Yes, that is right.

Q. Do you know somebody by the name of Audrey?

Mr. Breslin: I object to that. She might know a million people. She might know President Hoover.

The Court: I sustain the objection.

Mr. Zabriskie: Of course, I do not know whether your Honor gets what I have in mind, and I think it is proper. Of course, if I am wrong, I submit, but it seems to me

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The Court: What was the first name?

Mr. Zabriskie: Audrey.

The Court: What was the other name?

Mr. Zabriskie: Thelma, which is Thelma Fritz. Now, we know relatives—

The Court: You mentioned some other name with the Audrey name?

Mr. Zabriskie: Her name is Fitzpatrick now. I asked her whether she knew her.

What I wanted to show, if your Honor please—

The Court: You may ask her that. That is in P-29.

The Witness: Yes, I know her. She came to my house once.

Q. Only once? A. That is all.

Q. So you did not really know her— A. She was brought there by Mrs. Mills. I didn't know her.

Q. She is married, is she, now?

Mr. Breslin: I object to that.

Q. She is down south now, is she not? A. I don't know where she is.

Q. All right. But you know who Audrey is; you know who she is, I say? A. Do you mean this Audrey Fitzpatrick?

Q. Yes. A. I know who she is, yes.

Q. You use monogrammed paper, do you not?

Mr. Breslin: I object to that.

The Court: I will allow that question. It is in P-29.

A. Yes. I use monogrammed paper.

Q. Now, then, prior to the letter that is in this case, June 30, 1927, you had gone to see how many experts on handwriting? A. I had been to Mr. Osborn myself. I had been to Mr. Hartkorn first, but not with any result, except the few words he said about it positively being the same, and I asked his fee, and went on.

Q. Now, you say you went to Mr. Hartkorn? A. Yes.

Q. And that is the gentleman who was on the stand in this case? A. Yes.

Q. And at that time how many experts on handwriting did you know the names of? A. Well, I was looking for a Mr. Carvalho when I went to Mr. Hartkorn's office, and found Mr. Carvalho was dead.

I also had been recommended to Mr. Osborn, by the United States Mortgage & Trust Company of New York.

Q. How did you ever hear of Carvalho? A. Well, who hadn't heard of him?

Q. I am going to ask you how you heard of him?

Mr. Breslin: I object. How has that anything to do with this case. She went to see him.

Q. You had been thinking of seeing handwriting experts, to the extent that you learned of the name of the best, Carvalho; is not that so? A. Well, I had always known that he was considered the best, from people who knew him personally.

Q. Did you know people who knew Mr. Carvalho personally? A. Yes.

Mr. Breslin: I object. We are getting off into a new field again.

Mr. Zabriskie: You are a little afraid of some of these fields.

Mr. Breslin: I ask that that side remark of Judge Zabriskie be stricken out, that I am afraid of side fields.

Mr. Zabriskie: I did not say side fields, I said new fields.

Mr. Breslin: I am not afraid of anything.

The Court: Never mind.

Mr. Zabriskie: I told you some time ago you had a lot of courage.

Mr. Breslin: And I will have it right until the end of this case, when the jury comes in.

Q. And you saw Mr. Hartkorn, the gentleman who was sitting here?

The Witness: Your Honor, can't he talk without pointing his finger at me? It is disconcerting.

Q. Well, is there not a sufficient distance between you and me? A. I know, but I feel as if I am in school, and I am much too old.

Q. Well, you went down to see Mr. Hartkorn? A. Yes.

Q. About what time of the day did you get there? A. After lunch.

Q. What time, about? A. Well, I don't know. After lunch. Shortly after lunch.

Q. Whom did you first meet when you got there? A. Well, he was in there, and a small deformed person, a man.

Q. And what time did you start talking, as nearly as you can tell, to Mr. Hartkorn? A. I couldn't tell you. Do you mean the date or the hour?

Q. The hour of the day. A. After lunch is all I can tell you.

Q. Do you not know whether it was closely after lunch, or whether it was late in the afternoon? A. No. It was not late in the afternoon.

Q. Were there other people waiting to see him? A. No.

Q. Were you ushered into the office by an assistant there? A. I didn't see any assistant.

Q. You did not see any assistant? A. No, except this man who was sitting there.

Q. What was he doing? A. Doing some writing.

Q. Doing some writing? A. Yes.

Q. Then you went into Mr. Hartkorn's office? A. Yes.

Q. What did you take with you at that time? A. I took whatever letters I had at that date. I think five.

Q. Now, please tell me which ones you took?

Mr. Breslin: What date is that?

A. January 18, July 3rd, August 6th, August 19th, and September 20th, 1926. The last date I am positive of is August 19th.

Q. Did you show to Mr. Hartkorn Exhibit P-51, being the letter and envelope of January 18, 1926? A. I think so.

Q. Why do you say, "I think so", Mrs. Von Moschzisker? A. Because that is the best answer I can give you.

Q. Do you not know? A. I think I did. I had the letters with me. I would not be sure about September 20th, but I had the others.

Q. Then you say that you are positive that you did have this letter? A. Well, I remember dropping the letters on the table with the standard. Now, how many, to be exact, I can't possibly say.

Q. Did you have a single script letter with you at that time, Mrs. Von Moschzisker? A. I did. I am quite positive I did.

Q. That one (indicating)? A. Yes, that is the only script letter I had.

Q. That is not the only script letter you have received through all this series of anonymous letters, is it? A. Yes.

Q. That is the only one? A. Yes, I think it is.

Q. That you are sure of? That you are sure of? A. I think so. I wouldn't say positively.

Q. Well, a minute ago you did say positively. Now, are you sure or are you not sure? A. Well, I have not looked over these letters in nearly four years. How do I remember?

Q. I do not know. Then you say you showed to Mr. Hartkorn Exhibit D-27; you showed him that? A. Yes, I did. I did.

Q. Then you showed him P-34, being a commercial envelope, with a stamp on it? A. What date is that?

Q. These are the ones you just said to your counsel you had given him, are they not? A. Yes, I think I did.

Q. Then you gave him this D-31 for identification? A. No. I had not received that at the time I went to him.

Q. That one you did not give him? A. No.

Q. And then D-28 for identification? A. Yes, that one.

Q. And D-29 for identification? A. Yes.

Q. And how long did Mr. Hartkorn look over those exhibits or those letters? A. Well, he spread them out before him and took out his microscope and looked at them, each one, and compared them with the pamphlet, and just gave me a verbal report on it, that, in his opinion, they were all written by the same person, the standard, and the letters that I had with me.

Q. Now you had still some more, did you, one more besides what you have mentioned? A. I am

not positive whether I had the September 20th letter with me or not. I think I did.

Q. You think you did. How long a time were you in his office? A. Possibly twenty minutes.

Q. And in that time he examined how many letters? A. Four.

Q. And did he look them all through, read them all through? A. As nearly as I can remember now.

Q. And looked at the standard? A. Yes.

Q. And then told you that he thought they were written by the same hand? A. Yes.

Q. And then did he render a bill for his opinion? A. Well, that was an offhand opinion.

Q. No, no. Answer the question.

The Court: Answer yes or no.

A. No.

Q. Then what did he say? A. He said that. And he said, of course, if I expected to go into any litigation over it, I would have to have a written report, and that would be $50, that would be his fee for an examination, a thorough examination of those letters and the standard.

Q. For a thorough examination. Then he did express some doubt about the proposition, did he not? A. No, he didn't express any doubt in his reply to me. He said, "You do not need a handwriting expert to tell you that those were all penned by the same hand."

Q. And that you are positive and clear about? A. Yes, I am very clear about that.

Q. That is one of the things you are absolutely sure about? A. Yes, I am sure of that.

Q. So you left Mr. Hartkorn's office with the feeling that there was a man who was 100 per cent.

satisfied that the same hand wrote these letters that you submitted that wrote the wrapper that was addressed by Sarah Mowell; is not that so?

Mr. Breslin: I object to that.

The Court Sustained, as to the form of the question.

Q. Then you left Mr. Hartkorn's office? A. I left with the feeling—

Q. With the firm conviction that there was a man who was absolutely satisfied— A. I left—

Q. One moment—that the letters that you submitted to him for examination were written by the same hand as the wrapper that was admittedly written, addressed by Sarah Mowell; is not that so? A. Now, may I answer?

The Court: Yes, you may answer the question.

A. I left with the feeling that any man who would give an offhand opinion on anything as serious as anonymous letters, and make a statement like that, was thoroughly unreliable, and that is why I didn't go back to him.

Q. And so, I suppose, that is the reason that you did not employ— A. Mr. Hartkorn.

Q. —Mr. Hartkorn? A. Exactly.

Q. And did you ask him if he would render a bill for the services that he had rendered? A. No, because I did not feel that it was a service. I thought it was a joke.

Q. Then you felt, so far as that was concerned, that his opinion was worth nothing, and so you paid nothing for it? A. Exactly.

Q. That is it, exactly? A. Exactly.

Q. And you say you were there on the 14th of

October? A. No. I said I was there on the 11th.

Q. You said yesterday on the 14th, did you not? A. Did I? Well, I did not mean it. I was there before I went to Mr. Osborn. I went directly from his office, directly down to Mr. Osborn.

The Court: This morning she said the 11th, the day before the 12th.

Mr. Zabriskie: Well, we will see what she said.

Q. Well, you said about October 14th, yesterday, did you not? A. I did, I think. But I have it fixed in my mind, because October 11th was Columbus Day, and that was the day we went over to Montclair to see Mr. Osborn.

Q. You say "we". You mean you and your— A. Me and my husband. My husband and I.

Q. You went over with your chauffeur in the automobile?

Mr. Breslin: Now, if your Honor please

A. No, we did not go with any chauffeur.

Mr. Breslin: —if I may make an objection. This is just an attempt to influence the jury, about the car and the chauffeur, just a small town trick.

Mr. Zabriskie: Well, I am very glad that my friend knows what is going on in my mind.

Q. Then you went to the Woolworth Building to see Mr. Osborn? A. I did.

Q. And you knew that, next to Carvalho, came

Osborn, did you not? A. I had been given that opinion.

Q. And you knew that Mr. Osborn had written books, even, on this subject of handwriting; you knew that, did you not? A. No, I didn't know anything about that. I didn't know anything about Mr. Osborn's—history.

Q. When did you first learn about Mr. Osborn, the great handwriting expert?

Mr. Breslin: Just as great as Mr. Hartkorn.

The Court: She testified to that before, in response to one of your questions.

Mr. Zabriskie: Well, I did not recall it. It would not do any harm to answer it again.

Q. Do you know what the question is, Mrs. Von Moschzisker? A. When did I hear about Mr. Osborn?

Q. Yes. A. Just before I went to him.

Q. From whom? A. From the United States Mortgage & Trust Company, Mr. John W. Platten, vice-president.

Q. What did he say? A. He said that, in his opinion, and the bank's opinion, as employing people, that they considered the Osborns, meaning Mr. Osborn and his father, the outstanding experts in New York City.

Q. Now, then, did you go to see Mr. Osborn, senior? A. I have seen both of them.

Q. Did you go to see Mr. Osborn, senior, as a result of that advice? A. I went to the home of both of the Osborns. They were living together, and we talked to both of them.

Q. From whom did you get the report? A. From Albert D.

Q. And which is that? A. The younger.

Q. How old is he, approximately? A. I don't know the ages of people.

Q. Then when you got that report, what did you do next? A. I took it in to Judge Watson.

Q. Of Ridgewood? A. Yes.

Q. That same day? A. No. I couldn't say I took it in the same day.

Q. And what did you say to Judge Watson then? That is the Judge Watson you testified about yesterday, is it not? A. Yes.

Q. What did you say to him and what did he say to you at that time? A. He told me to leave the report, and to let him read it over, which I did.

Q. Is that all there was to that conversation? A. Just about.

Q. Well then, later on you saw him, you said? A. Yes.

Q. What conversation was had then? A. Relative to these letters that were coming in and distressing me so.

Q. But what was said? A. Well, I can't tell you word for word.

Q. Did he give you any advice at that time? A. He did. He said, "Just go slow and see if they won't tie themselves up with this more thoroughly, whoever is doing it."

Q. Did he not say, "Forget it; they don't amount to anything," or something like that? A. No. That was in the beginning. That was in the beginning.

Q. Then he did say something like that at some time? A. Yes.

Q. But when you came back with the report from Osborn, he did not tell you to go and get this girl locked up, did he? A. Nobody has ever told me to go and get this girl locked up.

Q. Nobody told you, as a matter of fact, to make a criminal complaint? A. Yes, they told me.

Q. So that she would be arrested and locked up? A. They told me to turn the matter over to the prosecutor for investigation.

Q. For investigation, right. But none of these lawyers ever advised that you should make a criminal complaint whereby she would be apprehended and put in prison, as you called it; is not that true? A. Nobody ever had any idea of the girl being put in prison. They wanted me to sign the complaint, of course.

Mr. Breslin: When you say "they", whom do you mean?

The Witness: I mean Judge Watson and Ward & McGinnis.

Q. Neither one of them had any idea of your making a criminal complaint? A. Yes, they did.

Q. Oh, they did? A. I think they can understand English. I explained it to them, what I—was about to do. They wanted to come with me.

Q. You told them what you were about to do? A. Oh, no.

Q. Did you not just say so?

The Court: Just a minute. Just a minute.

The Witness: If this man does not stop shaking his hand at me—

The Court: No. Just a moment.

Read the question, the last one and the one before that.

(Several questions and answers read).

Q. Do you understand that question? A. Yes.

Q. Can you answer it? A. Yes.

Q. What is the answer? A. I mean to say that first Mr. John McGinnis of Ward & McGinnis, and also Mr. Ward, told me that these letters would never cease unless I turned the matter over to the prosecutor; it was a case for him to investigate.

Q. And you knew that they would not cease until something was done to somebody, did you not? A. Who would not cease?

Q. What? A. Who would not cease?

Q. Well, whoever was doing it. You knew that, did you not? A. I didn't know. They didn't cease. They kept coming.

Q. Did Judge Watson ever tell you or advise you to sign a formal criminal complaint— A. He did.

Q. One moment.

Mr. Breslin: All right.

Q. —of the kind that would result in Sarah Mowell's being locked up and put in prison?

Mr. Breslin: Wait a minute. I object to that.

The Court: Sustained.

Now, I do not know of any criminal complaint, if there is a conviction, that is going to guarantee that somebody is not going to jail.

Q. How did you understand the word "complaint", Mrs. Von Moschzisker? A. That is what

I wanted to ask you yesterday. I don't think I completely understood a question that was put to me by Mr. Breslin. I didn't know whether he meant when I came to the prosecutor's office to turn the matter to him for investigation, or whether he meant the day that I came in to sign the complaint.

Q. Yes. A. Now, how do you word those two?

Q. That is what I want to know from you.

Mr. Breslin: Wait a minute.

Q. When Senator McGinnis said to you that you should go to the prosecutor and make a complaint — A. He said, "Turn the matter over to him."

Q. One moment—did you understand that he meant for you to go and sign a complaint on which a warrant would issue, or did you think that he meant to go there and complain about it, the same as you would go and complain any place about something going wrong? A. I suppose that is what he meant.

Q. The latter? A. Yes.

Q. You did not know, then, when he said to you, "Make a criminal complaint", that it was the intention that you should sign something on which this young girl should be apprehended and locked up until she could get bail, did you?

Mr. Breslin: I ask that the last part be stricken out.

The Court: Strike it out.

After somebody signs a complaint, you know, Judge, that party has not any more control over the proceedings, and if they attempt it, they might be charged with compounding a felony, if one were committed.

Mr. Zabriskie: Of course I know that is true. But what I am getting at is what was in this woman's mind. I want to draw out from her whether or not anybody ever advised her to make a complaint in writing that would result in the issuance of a warrant. Now, you can make a complaint in the colloquial sense of the term and, of course, anyone has a right to make a complaint in that sense.

Mr. Breslin: Objected to.

Mr. Zabriskie: But I want to know whether she knows the word technically, or whether she just has it in the ordinary sense that we say we are going to make a complaint to the Board of Health or—

Mr. Breslin: I object to it. She has already testified that Senator McGinnis and Judge Watson advised her to make a written complaint. She has already answered that question.

The Court: And I think she testified that one or two of them volunteered to go with her.

Mr. Breslin: With her when the complaint was made.

The Witness: Judge Watson came with Mr. Von Moschzisker.

Q. With you? A. No, he came with my husband.

Q. But I mean you were in the party? A. Not that day.

Q. Then how do you know that he went down? Just what somebody told you, I suppose? A. No. I saw him. That is how I know.

Q. Where did you see him? A. I saw him in the car with Mr. Von Moschzisker.

Q. But you do not know where they went? A. Well, I think they are both reasonably truthful.

Q. But you only rely on what they say.

Mr. Zabriskie: So I ask that that be stricken out.

Mr. Breslin: Oh, I object to this.

Q. That was not the time the complaint was made, was it? A. Well, that was the time it was turned over to the prosecutor.

Q. You were not here.

Mr. Zabriskie: So I ask that that be stricken out.

Q. You do not know anything about that excepting from what somebody told you, do you? A. It was turned over to the prosecutor first for their investigation.

Q. Were you there when it was done? A. No.

Mr. Zabriskie: Then I ask that that part of the testimony be stricken out.

The Court: Strike it out.

Mr. Breslin: I consent that it be stricken out. Mr. Von will testify along this line.

Q. So, as a matter of fact, Mr. Von Moschzisker, in your opinion, was the one who was instrumental in having the complaint made?

Mr. Breslin: I object to that.

The Court: Strike it out. It is not founded on any fact from which to draw such an inference.

Q. When you came down and made the complaint where did you start out from? A. From home.

Q. With whom? A. My husband.

Q. And who else? A. No one.

Q. No one else? A. No, sir.

Q. And you drove from Ridgewood down here to the prison?

Mr. Breslin: Prison?

A. That is your word, not mine.

Q. To the prosecutor's office? A. Yes.

Q. Who was the first one that you saw there? A. Mr. Breslin.

Q. That is the same Mr. Breslin who is now representing you? A. The same one.

Q. You had a talk with him? A. Yes.

Q. What was said? A. Well, I talked still about not wanting this girl to be put in jail, and he said, "Well, what are you going to do to stop it? We have all these opinions as to the guilty person."

Q. Now up until that time had you shown Mr. Breslin the script writing? A. Yes. Mr. Breslin had everything.

Q. Did he have everything that is in evidence in this case?

The Court: For the purpose of identifying Mr. Breslin at that time, we might as well get in the record what his official position was.

Mr. Zabriskie: Yes.

Q. What was Mr. Breslin's official position? A. He was assistant prosecutor.

Q. Assistant prosecutor of this county? A. Yes.

Q. Now, did Mr. Breslin see all the exhibits that were in this case? A. I think he did.

Q. Of course he did not see the automobile license applications? A. No, he couldn't have.

Q. But you think he saw all the other exhibits that are in this case, outside— A. I suppose so.

The Court: Now, just a minute. In the nature of things, that could not be, because I take it some of the exhibits in this case were made during the criminal trial.

The Witness: During the trial.

Q. What did you show to Mr. Breslin that day, Mrs. Von Moschzisker? I will put it that way. A. What did I show him?

Q. Yes. A. Well, he had all the stuff there that Mr. Schwartz had been examining.

Q. Who is Mr. Schwartz? A. Well, he is the State handwriting expert.

Q. He did not testify in the last trial, did he?

Mr. Breslin: I object to that, if your Honor please. He will testify in this trial. He will be here.

Q. The State's expert, he was there, was he not? A. Yes, he was there.

Q. And for what purpose, if you know? A. Do you mean at the trial?

Q. No. A. In the office or the prosecutor's office?

Q. Yes. A. Well, he was there for the purpose of assuring me that these letters were penned by Sarah Mowell.

Q. For the purpose of assuring you? A. Yes, according to his best knowledge of the examina-

tion of the letters, and the standard.

Q. Now, then, just tell us, so there will be no uncertainty about it, what letters were in the prosecutor's office that day that you saw? A. Well, all the letters—

Q. Now, just get them all together.

The Court: Now, wait a minute. She said all of the letters. Then you interrupted her.

A. (Continued) All of the letters that had come up to that date were there.

Q. How many? A. I don't know. I have not kept count of every letter, and how many, and kept it in my mind all these years.

Q. How many anonymous letters did you receive all told, up to that time? A. Well, I have down here ten.

Q. Is that correct? A. I don't know whether I had another one or not, or whether that came after.

Q. Well, then, you had either ten or eleven? A. I had ten anyway, that I am positive of.

Q. You have all those ten letters in court here now, have you? A. I don't know what you have in court.

Q. If you have not, you will produce them, will you not?

Mr. McGinnis: Wait.

Q. Will you not? You are willing, as far as you are concerned? A. Of course. I am not keeping anything out.

Q. You want this jury and the Court—

The Court: Now, never mind.

Mr. Breslin: Another speech.

The Court: That is not a question.

Q. While you were there you were not asked to write at all, were you? A. I can't remember.

Q. Now, just let the Court and Jury know just about how the conversation went there, please, Mrs. Moschzisker, without my asking specifically. A. The morning that I signed the complaint; is that what you mean?

Q. That is the time. A. Well, Mr. Breslin asked me to read over the complaint.

Q. How soon was that after you got there? A. Well, now, how can I tell you that? I would like to answer—

Q. How long had you been there before they presented the complaint to you? A. I don't know. The men all talked for a few minutes.

Q. Had you been there five minutes when they came there with the complaint prepared? A. I don't know how long it took them to bring it.

Q. Have you not any idea? A. Not very much.

Q. What was the conversation that preceded that point where the complaint appeared? A. Well, I talked to them about the—

Q. What did you say? I have no doubt you talked, but what did you say? A. Well, I often talk without saying anything. Now, that must have been what I did.

Q. And you often talk without saying anything? A. Just about.

Q. What do you mean by that remark, if I may ask, Mrs. Von Moschzisker? A. Well, you wouldn't know.

Q. What do you mean by that remark, that you often talk without saying anything?

The Court: Well, that is immaterial in this case. Let her tell us what she did say.

The Witness: Well, I said that I hated to sign the complaint, but I didn't see any other way out of it; was there any other way, or any other way of stopping the letters without it; and Mr. Breslin said that he didn't think there was. Apparently they had been coming for nearly two years. They had about wrecked me.

Q. Well, did you not treat those letters as a joke? A. No, I didn't treat them as a joke.

Q. Any of them? A. The first one I did. That was just a funny story.

Q. How about the second one? A. No, I didn't treat that as a joke. I don't think it is any joke to be threatened.

Q. Why, did you not meet Mrs. Fritz on the street, in Ridgewood, and were you not all keen with excitement, when she was with her daughter, and were you not just itching to show her that second letter, because you thought it was such a joke? A. No. I don't itch.

Mr. Breslin: Oh.

The Court: Just a minute. I do not see the materiality of that now. You are confronted with the problem of establishing the elements of malicious prosecution. That is this case.

Mr. Zabriskie: Well, I am testing the veracity also.

The Court: Oh, no, no.

The Witness: I think you have tested that.

The Court: Never mind.

(Recess.)

AFTER RECESS.

EMMA L. VON MOSCHZISKER, resumed the stand, testifies further as follows:

Cross-examination by Mr. Zabriskie (continued):

Q. Mrs. Von Moschzisker, did you take any samples of handwriting of anybody other than Miss Mowell to handwriting experts? A. No, I think not.

Q. Why do you say "I think not"? A. Because I do think not.

Q. Surely you are sure, are you not? A. I don't remember to have taken any.

Q. As one of the persons that you say was mentioned was Thelma Fritz, who is now Thelma Fritz Mills, you did not take any of hers to any handwriting expert, did you? A. I didn't suspect Thelma.

Q. Oh, you did not suspect— A. No.

Q. And you did not take any of Mrs. Inglis', that is sure, did you? A. No.

Q. Those two names were mentioned, and, so far as you knew—

Mr. Zabriskie: I am going to object to Mr. Breslin indicating to the witness whether it is yes or no, and that sort of thing, and I am told that is what is going on in back of me.

Mr. Breslin: I am just standing the way I am now.

Mr. Zabriskie: You are standing the way you are now. That we will admit. I understand this morning you were repeatedly saying yes, yes, and no, no. If it is not correct, then I withdraw it. But, on the other

hand, I think it would be proper for Mr. Breslin to take his appropriate place at the counsel table, which is over there, while the witness is on the stand.

The Court: Well, I think he is within his rights standing there.

Mr. Zabriskie: Well, then, probably I better stand up beside him.

Mr. Breslin: All right. I will sit down here, then; all the better.

Q. Why is that you only took the handwriting of Miss Mowell to experts? A. Well, I was having that checked on at the time. If that had been eliminated, that would have been the end of that. If the experts had told me there was no comparison, that would have ended that part of it.

Q. But you did not try to get anybody else's writing as a standard, did you? A. Well, I didn't know anyone else—

Q. That is yes or no. A. No.

Q. Now you said this mornng, if I recall correctly, that the first letter you took—what did you say? Did you take that seriously or otherwise, the first letter? A. Only as a joke.

The Court: That does not make any difference.

Q. Well, the second one, did you take that seriously or not?

Mr. Breslin: I object to that.

The Court: Same ruling.

Mr. Zabriskie: I will withdraw the question, then.

Q. Now you say Senator McGinnis told you to go to see the prosecutor in 1927, was it? A. Yes.

Q. But as a matter of fact, you had been down to the prosecutor's office around 1926 some time, had you not? A. No.

Q. Well, did you learn of the fact that Mr. Dawson was taking some fingerprints and having some writing done by Miss Mowell in 1926? A. Yes. Let us see—

Q. Did the prosecutor move, so far as you know, on his own initiative, or did you go down, or did you communicate with the prosecutor's office, so that that was done? A. I think Judge Watson communicated with him.

Q. When was the first time, then, that you went to the prosecutor's office? A. In the month of July, 1927.

Q. But, Mr. Dawson, representing the prosecutor's office, had been in touch with you a few times before that; is not that so? A. He had come to my house once, yes.

Q. And you and he talked the situation over, did you not? A. Yes.

Q. And he made some suggestions?

Mr. Breslin: I object to any suggestions that Mr. Dawson may have made.

The Court: I sustain the objection.

Q. Well, did not Mr. Dawson tell you (this can be answered yes or no) that you should not open any of the letters, anonymous letters, that might come in the future, so that fingerprints could be taken, and thus the writer determined?

Mr. Breslin: I object to that on the ground that—

The Court: I will allow that.

A. No, he didn't.

Q. He never told you that? A. No, he didn't tell me that.

Q. Did anybody ever tell you that? A. No.

Q. As a matter of fact, you did open all of the anonymous letters yourself, did you not, that came to you? A. I think I did.

Q. Now, you said this morning this word "Spring" on Exhibit P-50 was in your handwriting. That is true, is it not? A. Yes.

Q. Now, will you write at my dictation, and using the style that was used on the Exhibit P-50—

The Court: No, I will not permit any more—

Mr. Breslin: If your Honor please, we have had enough handwriting in this case.

The Court: That would be for the purpose of comparison, and we have had enough exhibits before the jury, without doing any more.

Mr. Zabriskie: May I test the witness' own frame of mind on that subject? Of course, I understand your Honor's position, but may I ask—

The Court: No. I am ruling, whether she wants to or not, I will not let her.

Mr. Zabriskie: Can I not determine what she would like to do?

The Court: No. I am ruling, and I will not let her whether she wants to or not.

Q. When Mr. Dawson had taken the George Murphy slip, did he show it to you, Mrs. Von Moschzisker? A. No.

Q. Did you not ever see that? A. No.

Q. Never in your life? A. Well, when Mr. Von-Moschzisker had gotten it from the prosecutor's office and took it to—or Judge Watson got it, I think, and it was sent to Mr. Osborn, I saw it then for the first.

Q. And that was about— A. That was October 12, 1926.

Q. May I ask you how you spell the word "disease"?

Mr. Breslin: Objected to as immaterial.

The Court: Sustained.

A. D-i-s-e-a-s-e.

The Court: No, never mind. I have sustained the objection.

Mr. Zabriskie: She did answer it.

Q. Did you learn to spell that word since the last trial?

Mr. Breslin: I object to that, if your Honor please.

The Court: I sustain the objection. This case must end some time.

Mr. Zabriskie: Yes. That is all.

Has the Court any objection to my calling Dr. Fisher where he is now, to prove his bill? Have you any objection to his bill being proven?

Mr. Breslin: I have not any objection to his bill being proved, but we still insist, as a matter of law, it is not evidential, unless it can be connected up.

The Court: Well, then, you will stipulate that he will testify to a fact.

Mr. Breslin: Yes.

Mr. Zabriskie: What was the amount of the bill, Doctor?

Dr. Fisher: $380.

Mr. Zabriskie: We will stipulate that is the amount.

Mr. Breslin: That is the amount, but we dispute the legality of the evidence, because it has not been properly connected.

FRANK A. MOSCHZISKER, one of the defendants, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. What is your full name? A. Frank A. Von Moschzisker.

Q. How old are you? A. I am in my sixty-ninth year.

Q. What is your business? A. I am general agent, Real Estate Department, Pennsylvania Railroad.

Q. How long have you worked for the Pennsylvania Railroad? A. Twenty-five years.

Q. Where do you live? A. Ridgewood, New Jersey.

Q. How long have you lived there? A. Twenty-six years.

Q. Do you know the plaintiff in this case, Sarah B. Mowell? A. I know who she is.

Q. Have you ever met her? A. I have.

Q. Where did you meet her? A. In my house.

Q. Mr. Burnett has testified that he came to your house one night and he talked about an accident. Is that so? Yes or no. A. Yes.

Q. He has further testified that he did not seek your advice concerning the placing of a chattel mortgage on his property, so, in case a judgment were recovered against him, the injured party could not collect. Is that so? A. That he did not?

Q. Yes. A. It is not so.

Q. What did he say with reference to this mortgage? A. Mr. Burnett came to the house one evening and said he wanted my advice in relation to an accident in which he was involved. I asked him to give me the facts, which he did. I—among the facts he stated that he had insurance, and he also stated that the boy who had been hit by his machine was only in the hospital one day, and was out again and around. I advised him that he was fully covered, in my opinion, and that there was nothing for him to worry about, aside from the fact as to what the proof might show in order that there might be a recovery.

He said, "Well, I am afraid they will get a deficiency judgment." He said, "I want to look out for things. I am just starting in business, and wouldn't it be possible for you to draw up a chattel mortgage in favor of yourself and put it on record?"

Q. What did you say to that proposition? A. I said, "No." I said, "No, that would be a fraud." I said, "I would not have anything to do with it."

Q. At the time that conversation took place was Miss Mowell in the house? A. No, she was not in the house at that time.

Q. Did she subsequently come into the house that same evening? A. She did.

Q. Do you know where she came from or where did Burnett go? A. Why, my wife came in the

room, and looking through the window, saw somebody in a car under the portecochre. She asked Mr. Burnett who was in his car, and he said, "Miss Mowell." Or, he said, I think, "A girl friend of mine."

And my wife went out and called her in.

Q. Did she come into the house? A. She came in the house.

Q. Was any business concerning Burnett discussed in her presence after that? A. Not that I remember.

Q. Can you tell us, in substance, what the nature of the conversation was, how you spent the rest of that evening? A. Why, it was just a general conversation. I have no particular recollection of what was said.

Q. Did you ever see her after that? A. I think I saw her once again after that.

Q. Where was that? A. In the house.

Q. Now, when your wife received these letters, did she show them to you? A. She did.

Q. Now, I show you a letter dated February 18, 1927, and ask you if that—

The Court: What exhibit is that?

Mr. Breslin: I am going to offer it now. It is something new, if your Honor please.

Q. I ask you if that is a letter you received in the mail, in the envelope, the written sheets which were in the envelope? A. Written sheet, yes, sir.

Mr. Breslin: I will offer it for identification, if your Honor please.

The Court: Offer it for identification?

Mr. Breslin: Yes, on our case.

The Court: Well, this is your case, is it not?

Mr. Breslin: Yes, but we are going to prove by the handwriting experts that the same party wrote this letter.

The Court: Why not mark it in evidence as being received?

Mr. Zabriskie: No objection.

(Letter and envelope marked Exhibit D-34).

Q. I show you another letter dated, I think, March 15th, 1927, with the envelope and sheets attached thereto, and ask you if you received that letter with those sheets in the mail? A. I did.

Mr. Breslin: I will offer that, if your Honor please.

The Court: Is that 35?

(Letter and envelope marked Exhibit D-35).

Q. I show you another letter, dated May 19th, postmarked May 20th, and ask you if that is the envelope and the sheets that were contained in the envelope at the time you received them? A. Yes, sir.

Mr. Breslin: I offer that, if your Honor pease.

(Envelope and letter marked Exhibit D-36).

Q. I show you another letter dated July 29, 1927 addressed to you at the Pennsylvania Station, New York City, and ask you if you received that envelope and sheets contained therein, in the mail? A. I did.

Mr. Breslin: I will offer that in evidence.

(Envelope and letter marked Exhibit D-37).

Q. Now, I direct your attention to D-34, and ask you if that was addressed and received by you at the Pennsylvania Station, New York City? A. It was.

Q. I show you these envelopes and ask you if it is not so, that all of those letters were addressed to you at the Pennsylvania Station, in New York City? A. Yes, sir.

Q. Now, I show you a letter dated, I think it is, July 16, 1927, and ask you if that is the envelope and sheets contained in the envelope that you received at the Pennsylvania Station in New York City? A. It is.

Mr. Breslin: I will offer that.

Mr. Zabriskie: What is the date of that?

Mr. Breslin: July 14th, the date of the letter. I think it is post-marked July 15th.

(Letter and envelope marked Exhibit D-38).

Q. Now, when was the first time that you consulted any handwriting experts concerning the authenticity of the letters in question? A. October 12, 1926.

Q. And whom did you consult? A. Mr. A. S. Osborn and A. D. Osborn, I think they—

Q. Where did you talk with them? A. Talked with them in their home at Montclair.

Q. And at the time did you have the letters with you that you had received up to that date? A. I did.

Q. What else did you have? A. I had that brown wrapper.

Q. When you say the wrapper, do you mean this wrapper? A. That wrapper.

Q. Did you have anything else? A. I think I had two—I had a slip of paper.

Q. That George Murphy— A. With two names on it—George Murphy, yes, this slip.

Q. Did you show all the letters that you or your wife had received up to that time, together with these two standards, to Mr. Osborn, Jr.? A. Every one.

Q. After you had your conversation with him subsequently did you receive a written report from him as to the authenticity of the authors of the letters in question? A. I did.

Q. I show you a number of sheets purporting to be the report that you received from him on October 19, 1926, and ask you if that is the report you received? A. It is.

Mr. Breslin: I will offer that, if your Honor please.

The Court: That is in evidence, is it not? I think it was admitted yesterday. There is a mark on it.

Mr. Breslin: It is the same as this other.

The Court: Is not that an exhibit mark on that?

Mr. Breslin: D-32. It is the same thing. I had another copy of it.

Q. Is that the same one? Compare it with this, if you want to (handing papers to witness). A. Well, this office copy is dated October 18th, and this copy that was used, is dated October 19th.

Q. Which one is the first one you received? A. This one.

Mr. Breslin: Well, then, I will offer this one. Is there any objection? It is the same as the other.

Mr. Zabriskie: No, no objection.

(Papers marked Exhibit D-39).

Q. Did you consult any other handwriting expert, other than Mr. Osborn? A. Yes. I consulted Mr. Stein.

Q. Where is Mr. Stein's office? A. 15 Park Row, New York.

Q. Do you know his first name? If I show you this sheet, will it refresh your recollection? A. Elbridge, I think; Elbridge Stein.

Q. Do you know what his business is? A. He is an examiner of disputed documents.

Q. Now, at the time you went to Mr. Stein, did you present to him at that time all of the letters that had been received up to that date? A. I did.

Q. What standards, if any, of Sarah B. Mowell, did you also submit? A. The same standards that I presented to Mr. Osborn.

Q. Did you receive a report from Mr. Stein? A. I did.

Q. I show you a paper purporting to be that report, and ask you if this is his report (handing paper to witness)? Is that his report? A. It is.

Mr. Breslin: I will offer the report.

Mr. Zabriskie: I would like to see that.

Mr. Breslin: Surely (handing papers to Mr. Zabriskie).

(Papers marked Exhibit D-40).

Q. Without the aid of Mr. Osborn's first written

report, can you tell us in whose handwriting he told you the anonymous letters were? A. Why, he stated that, in his opinion, the handwriting in the anonymous was written by the person whose standards had been presented to him.

Q. Now, after you received this report from Mr. Stein, in November, 1926, did you secure another written report from Mr. Osborn at a subsequent date? A. I did.

Q. And I show you a report dated December 8, 1926, and ask you if that is an additional report that you received from Mr. Osborn? A. It is.

Mr. Breslin: I will offer that.

The Court: Then I take it there are two reports of Mr. Osborn?

Mr. Breslin: Two of Mr. Osborn, one in October, 1926, and one in November, 1926.

The Court: What was that single sheet?

Mr. Breslin: That is the last one, based upon the letter in dispute, P-29. In other words, Mr. Osborn makes three reports.

(Papers marked Exhibit D-41).

Q. Now, at the time you went to Mr. Stein's office, was Mrs. Von along with you? A. What is that?

Q. Was Mrs. Von Moschzisker with you at the time you went to Mr. Stein's office? A. No, sir.

Q. In other words, the report that you received from Mr. Stein was due to your own work? She had nothing to do with it? A. She had nothing to do with it. My reason for going to Mr. Stein was that I thought it advisable to get the opinion of two men on the question of these disputed letters.

Q. Now, did the letters continue to come on?

Did the letters continue to come in? A. They did.

Q. Now, before the criminal complaint was signed, based upon P-29, did you secure another written report from Mr. Osborn, based upon that letter of June 30, 1927? A. Yes, sir, I got that report.

Mr. Breslin: This is the original and this is an office copy of the same thing.

Mr. Zabriskie: I wonder if we could get copies of that some time.

Mr. Breslin: Positively. I suppose there is no useful purpose in offering the duplicate.

The Court: That has already been marked.

Mr. Breslin: That has already been marked.

The Court: What number is that?

Mr. Breslin: That is D-33.

In order to clear up an ambiguity that Judge Zabriskie raised about the paper not being folded, I would like to submit this one, because this is the original one, and this is a copy of the same thing. I mean this shows folds that were not evident in the other one.

Is there any objection if we substitute this original and have it marked?

The Court: The original ought to be in.

Mr. Breslin: Yes.

(Papers marked Exhibit D-33 in place of D-33 previously marked).

Q. Did you ever consult any lawyers before the written complaint was signed in this case? A.

Why, I consulted Judge Watson.

Q. Do you recall when you first consulted him? A. No, I can't tell you. When these letters first commenced to come, we went to Judge Watson with this stuff, and asked his advice, as to how the matter could be stopped, and the Judge said, "Well, an anonymous letter is the lowest thing there is. I wouldn't pay any attention to it." But they kept coming, and the effect on my wife of these letters coming every few days, was something fearful. It almost wrecked her constitution. A letter would come, and she would read it, and, for several days, she would hardly eat or sleep, she was so worried about it.

Q. Well, as a result of her nervous condition, did you go to see Judge Watson again? A. Yes, she consulted the Judge several times.

Q. Well, did you? A. And I did.

Q. What did you say to him at the subsequent conferences, and what did he say to you? A. Well, finally, after these letters had accumulated, and we had had quite a number of them, especially the blackmailing letters, the Judge said—in the first place, he suggested the getting of a handwriting expert to look at them, after we had a standard which apparently resembled the writing on the letters. That, as I have testified, was done. Then, as they kept on coming, he suggested that the matter be taken to the prosecutor's office for investigation.

Q. Do you know of your own knowledge whether or not it was reported to the prosecutor's office? A. It was.

Q. Did you come down with Judge Watson? A. I did.

Q. And whom did you see? A. I saw Mr. Breslin, assistant prosecutor.

Q. Did you see Schwartz? A. I saw Schwartz.

Q. After you received this report of Osborn, dated July 13, 1927, did you also get another report from Stein concerning this letter upon which the whole case hinges, June 30, 1927? A. No, but I arranged with Stein, who had been retained by me, to consult with Mr. Osborn, and if he—if their opinions were alike, Osborn could make the report; if there was any dispute or difference between them, I wanted individual reports.

Q. Did you advise your wife to sign this written complaint? A. We, after having left the matter with the prosecutor, who held it some time, making an investigation of his own, I understand, and having the handwriting passed upon by one of his own experts in that kind of matter, wrote to Judge Watson and stated that if a complaint was signed, they would go ahead with the case.

I advised my wife that the only way the prosecution could move would be on a complaint.

Q. And did she sign a written complaint? A. She did sign a written complaint.

Q. Were you with her that day? A. I was.

Q. And you have been with her in most of the proceedings all the way through? A. I have.

Q. And in your mind there is no doubt that she did not write these letters? A. Absolutely none.

Q. Your married life up to this time has been the usual happy married life? A. I have been married thirty-two years and my love and respect and admiration for my wife is greater today than the day I married her.

Q. In other words, there is not the slightest

doubt in your mind that your wife did not write these letters? A. Why, no, not the slightest.

Q. And you advised her to make this complaint because of the fact that she was receiving them spasmodically, and she was suffering this nervous disorder? A. I was afraid if the stuff did not stop coming, it would kill her.

Q. Have you any malice against Sarah B. Mowell? A. Why, no. I have not cause to have any malice against Sarah B. Mowell.

Mr. Breslin: You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Mr. Von Moschzisker, you are a member of the Bar? A. I am.

Q. And you belong to a family of lawyers? A. Well, my brother is Chief Justice of Pennsylvania.

Q. So that you understood law to some extent? A. To some extent, yes.

Q. And yet, notwithstanding that fact, you consulted lawyers of less years of practice than yours? A. I did. I think that is safe practice.

Q. Well, you know what you are doing; you are engaged in actual legal advising at the present time, are you not? A. Well, my legal work is quite limited. We are confined. My practice has been confined to commissions and municipal bodies, tax bodies, Interstate Commerce Commission, and things of that kind.

Q. And for the Pennsylvania Railroad? A. Yes.

Q. And prior to that you had a similar position with the Erie Railroad? A. I did.

Q. Now you are really familiar with this case, Mr. Von Moschzisker, right from the start, are you

not? A. Well, I know of the letters being received, yes.

Q. And, as you just said to Mr. Breslin a few minutes ago, you have been married thirty-two years, and you have never once had any reason to believe that your wife had anything to do with the preparing of these letters? A. Certainly not.

Q. Is it not a fact, Mr. Von Moschzisker, that you asked Osborn to make a report on certain writing of hers to you? Yes or no? A. No.

Q. Do you mean that, Mr. Von Moschzisker? A. Why, yes. I can explain what you have got in your mind. There was a letter came along in script, not in printing, in which there was some doubt who it—who had written it. It didn't look like Sarah Mowell's work, who had been using printing, and I asked for a report in relation to that letter.

Q. And did you not ask to have your wife's handwriting used as a standard to see whether or not it was her work? A. I did, because some question had been raised on that point. Not that I had any doubt.

Q. Now then, let us have all these exhibits that you say were taken down to the expert. Can you get them all together for me now, and, while being gotten, I will ask you how many of them were there, how many separate pieces of handwriting letters and enclosures did you take down to the experts when you went.

Mr. Breslin: I object to that. He went at various times, and these letters were received at various intervals.

The Court: They are all marked.

Mr. Breslin: All marked. The dates are on them.

Q. How many were there altogether that you submitted to experts? A. I don't know. I submitted all the letters that came in, as they came in.

Q. Do you not know the number of them, Mr. Von Moschzisker? A. No, sir, there may have been twelve, fourteen or fifteen; not to exceed fifteen, I don't think.

Q. Now, will you look those over and see if that covers them all, to the best of your recollection? A. I can't tell you that. I can look these over and count them, if that is what you are after.

Q. And then after you have counted them, will you tell me whether, to the best of your judgment, that is all? A. Here is a document with apparently something missing. I don't know whether that belongs to that or not.

Mr. Breslin: Yes, it belongs to that.

The Witness: Well, there are twelve letters in that pile, and I have got a memorandum here that shows 15 letters were received. I don't know whether I have got them all or not.

Q. And this receipt of anonymous letters was a matter that you gave a great deal of concern to, Mr. Von Moschzisker, was it not? A. I certainly did. As I have said before, it was making a wreck of my wife, this thing.

Q. And you thought of all the different ways you could possibly stop it, did you not? A. Yes, I did.

Q. And you are a lawyer? A. I am permitted to practice.

Q. Well, to the extent that Mr. Burnett consulted you in your practice at one time? A. Yes, he did.

Mr. Zabriskie: I object to counsel sitting down here.

A. (Continuing) By the way, he offered to pay me.

Mr. Breslin: I came up here and then down here. He is never satisfied. I am perfectly willing to stand here, and then he objects.

Mr. Zabriskie: Well, I do not go over to his side of the table and read over exhibits or his notes.

Mr. McGinnis: You are welcome here, though, Judge.

Mr. Zabriskie: Well, I appreciate the courtesy anyway.

Q. You have no children of your own, Mr. Von Moschzisker, have you? A. Sorry to say I have not.

Q. What plans did you disucss with your wife, ending this trouble, if any? A. I did not duscuss with my wife about ending the trouble. I endeavored to end it.

Q. What do you say? A. I endeavored to end it by getting the best advice I could.

Q. You have been living in Ridgewood a great many years, have you not? A. I have.

Q. How many years? A. Twenty-six, I think it is.

Q. And you have a great many people that you know there; you know practically all of the old timers in Ridgewood, do you not? A. The old timers, yes.

Q. Men like Judge Doremus, Mr. Lannuier, so you could go through all of the— A. I know them both.

Q. And you are well acquainted in Ridgewood, are you not? A. Well, I was.

Q. And when was it that Miss Mowell's name first came to your attention as being a possible author of these letters? A. Why, the contents of the letters mention Miss Mowell so often in connection with this name Burnett, that the reaction on my part was that one of the two of these persons was the author of the letters.

Mr. Zabriskie: Read the question, Mr. Stenographer.

(Question read).

A. Well, as I say, the repeating of the name of—

Q. When was the first time that it came into your mind that she might be connected with it? A. After we had received a half a dozen of these letters. It was after that we—it was after we had discovered this standard and its resemblance to some of the letters we were receiving. That was when I first really thought of Miss Mowell.

Q. Did you know Mr. Mowell? A. No, sir.

Q. When did you learn that Miss Mowell was a Ridgewood girl? A. I never knew where she lived, even after she came to the house.

Q. When is the first that you learned that she lived in Ridgewood, Mr. Von Moschzisker? A. Well, it must have been after she had her address on this standard.

Q. She made a call and spent an evening at your house? A. She did.

Q. Months before that, did she not? A. She did.

Q. And did you not know that night that she was a Ridgewood girl? A. No. It didn't interest me one way or the other, where she came from.

Q. When did you find that she was a Ridgewood

girl, why did you not say to your wife, "Let us go around and see the father and the mother of that girl?" A. Well, the fact is I didn't say it. Why I didn't say it I don't know whether I can give an answer to.

Q. Did it ever occur to you that it might be a decent thing to do?

Mr. Breslin: Wait a minute. I objcet to this speech.

The Court: I sustain the objection.

Mr. Breslin: I object to the speech.

Mr. Zabriskie: I withdraw it.

Q. Did it ever occur to you that it would be a good idea?

The Court: No, we are not interested in that.

Mr. Breslin: I object to the "idea" part of the question.

The Court: Never mind that.

Q. Did you ever give any consideration at all to that idea?

Mr. Breslin: I object to that on the ground that it is argumentative—

The Court: Sustained.

Q. Mr. Von Moschzisker, when you went down to the handwriting experts, did you take this letter, and I am now referring to P-51, and show that to the expert? A. I took all the letters that we had received.

Q. Please answer my question, sir. A. Yes.

Q. You are positive of that? A. To the best of my recollection.

Q. Now, will you point out to me in any one of these reports of handwriting experts, where they make any reference to that letter?

Mr. Breslin: Now, I object to that. That is for the jury.

The Court: Sustained. He did not make that report.

Q. Do you recall, when looking over these reports, whether or not—

Mr. Breslin: I object to that.

The Court: Just a minute.

Mr. Zabriskie: That is testing memory, sir.

The Court: No, no. That is not your purpose.

Mr. Zabriskie: Where are the other reports that were just put in evidence with this witness?

Mr. Breslin: The jury has them.

Q. You read over these reports when you got them, did you not, Mr. Von Moschzisker? A. I did.

Q. And you gave them very careful consideration, did you not? A. I did.

Q. And the reports seem to indicate there was more than one person writing these letters; is not that so?

Mr. Breslin: I object to that, if your Honor please.

The Court: I sustain the objection. The report is there. It is in evidence.

Q. Now you have testified about Mr. Burnett

coming to your house and asking for some legal advice? A. I did.

Q. And what was the amount of insurance that he said that he was carrying at that time? A. Why, he said he was carrying a $10,000 indemnity policy, I think he called it.

Q. What did he say to you was the nature of the accident that had occurred? A. The boy had run into his machine, or the machine had run into a boy. His automobile knocked the boy down.

Q. And you say he asked you for your advice? A. He did.

Q. And he used the expression "deficiency judgment" in talking to you, did he? A. Yes, sir.

Q. How did he use that word "deficiency" judgment? A. Deficiency judgment.

Q. Yes, but in what sentence did he use that? A. Why, I told him I thought he was fully covered by insurance. Well, he said he was afraid he might— he was afraid there might be a greater finding, judgment, than his insurance covered, and that there would be a deficiency judgment obtained against him.

Q. That is, over and above the amount of the policy? A. Yes.

Q. And he wanted to know what was the best thing to do? A. He wanted to know how he could be protected.

Q. Then you say he suggested to you that it might be well to put on what you call a fake chattel mortgage? A. He asked me if I would draw a fake chattel mortgage in favor of myself, and put it on record.

Q. And he suggested that? A. Certainly, he.

Q. When he came to you for advice? A. Yes.

Q. Have you had other clients that come and ask you to do the same thing?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Q. Do you hold that against Miss Mowell, because Mr. Burnett came to you with that transaction, Mr. Von Moschzisker?

Mr. Breslin: Oh, I object to that.

The Court: Just a minute. Now, let us try this case.

I sustain the objection.

Q. Now, the night or the time Miss Mowell came to your house, you say that was in the night time; was it not? A. It was, yes.

Q. And she was sitting out in the car? A. Yes. You are talking about the time that Burnett consulted me?

Q. Yes. A. Yes, sir.

Q. And did he not say he had somebody ouside? A. He did not.

Q. But notwithstanding the fact that it was dark outside, it was night, your wife could see that there was somebody in the car? A. She could: light on the porch.

Q. Was it an enclosed car or an open car? A. I don't know. I didn't look at the car.

Q. As a matter of fact, it was a rainy night, was it not? A. I don't know that.

Q. You do not remember that? A. I was inside.

Q. You did not look out the window and see somebody outside, did you? A. I did not.

Mr. Breslin: He did not say that he did.

Q. But you say your wife went peering outside to see who was in the car? A. She did.

Q. How long do you say you had a social evening that night with Mr. Burnett and Miss Mowell, after she came in? A. Oh, I don't know. I don't remember that.

Q. Well, they were there quite a while, were they not? A. I don't remember anything about it. We talked and passed the time away, but I was not particularly interested in neither one of these people.

Q. There was nothing unpleasant that night, was there? A. No, nothing unpleasant.

Q. And nothing in the girl's conduct to attract your attention particularly, was there? A. No.

Q. Just regular? A. Just what?

Q. Just—everything was just regular and proper and polite; is not that so?

Mr. Breslin: Wait a minute. Regular has rather an ambiguous meaning nowadays. It may mean a lot of things that it did not mean in Mr. Von's time.

Q. Well, there was not anything out of the way, was there? A. No. Everything was very ordinary.

Q. And the girl acted like a perfect lady, did she not? A. As far as I could see, yes.

Q. And she was vivacious and healthy, was she not? A. Well, not particularly vivacious.

Q. Then you did notice? A. The girl was very quiet.

Q. What do you say? A. The girl was very quiet. She did not have much to say. I noticed that.

Mr. Breslin: She was an exception to the general rule.

Q. She did not have much to say? A. No.

Q. Do you remember anything that she said? A. Not a thing.

Q. Do you remember anything that your wife said that night? A. I don't remember a thing that she said.

Q. Was she very quiet, too? A. Not particularly. She kept up her end of the conversation.

Q. She always does, does she not? A. In fact, she tried to carry the conversation.

Q. And Burnett, was he very quiet, too? A. I don't remember anything about Burnett, what his actions were.

Q. There is nothing that makes that incident stand out in your mind at all? A. No. It was rather a dull evening. That is the only thing I can remember about it.

Q. If it had not been for your wife being the life of the party, it would have been a Quaker meeting, would it not?

Mr. Breslin: I object to that, if anyone was the life of the party.

The Court: Objection sustained. Judge, we are taking up time unnecessarily.

Mr. Zabriskie: Well, this girl is in—

The Court: Now, I do not want any argument. You know the question is just wasting time.

M. Zabriskie: Well, I want to get him feeling at home there before I ask him a few more questions later on.

Q. You say you saw her another time? A. Yes.

Q. How long was that after the first? A. I couldn't tell you that.

Q. Where did you see her? A. In my house.

Q. Was she under suspicion by you at that time? A. No.

Q. How many anonymous letters had you received up to that time? A. Three or four, I think. Maybe only two or three.

Q. And every one of those had the name of Sarah Mowell, did it not, in the body? A. Well, that I don't remember.

Q. Do you remember reading any of those letters that did not have the name of Sarah Mowell in? A. I couldn't tell that. You have the letters there.

Q. Do you remember any of them that did not have the name of Walter Burnett in? A. I think most of them had both names in there.

Q. Most of them had both names? A. Yes.

Q. Now, these letters had threats in, did they not? A. They did.

Q. But there was never a single threat carried out in any way, was there?

Mr. Breslin: I object to that, your Honor.

The Court: Sustained.

Q. Well, as a lawyer—

Mr. Zabriskie: Never mind waving your hand.

Mr. Breslin: I want to warn him to give me an opportunity to press an objection.

Mr. Zabriskie: I object to counsel standing back there warning the witness what to do. The Court is here. The man is a lawyer. And I submit, sir, that the counsel's side of the table is over there.

The Court: Stay over there for the time being.

Mr. Breslin: If your Honor please, I respectfully insist that Mr. Von Moschzisker wait until—

The Court: Do not answer until we see. It may not be objectionable.

Mr. Breslin: Well, I think it is, the way it starts off. A good many of them have been this afternoon.

Q. Now, as a practical lawyer—

Mr. Breslin: I object to that.

Q. —do you not know that the way to catch a man who writes anonymous letters containing threats, is to set a trap, to see whether he tries to carry out the threat? Do you know that or not?

Mr. Breslin: Now, if your Honor please, I respectfully—

The Court: I sustain the objection.

Mr. Breslin: —submit that that is argumentative.

The Court: I sustain the objection.

Q. Now, Mr. Von Moschzisker, how many names were there mentioned in these letters that were not familiar to you and your wife.

Mr. Breslin: I object to that. It is the same line of argument.

Mr. Zabriskie: I will tell you what my line of argument is, sir. I say, sir, that he and she knew the names of practically all the people that are mentioned in these letters, and I think that means something.

Mr. Breslin: Well, so did the Mowell girl.

The Court: I see no importance in that.

Mr. Breslin: I object to it on the ground that it is immaterial.

The Court: The issue now is whether or not as the result of the acquittal, these two defendants instituted the suit, as we know it now, with malice and without probable cause. Whether there was ten names in there, I see no importance to that. I attach no importance to it.

Mr. Zabriskie: I think, under the whole line of cases, the point is this, because if the affidavit was false, then malice, and want of probable cause must be inferred.

The Court: Well, you cannot take out names and ask why he did not do that with respect to one name or another name.

Mr. Zabriskie: Well, I was going through them all.

The Court: No.

Q. I will ask you this general question. With the exception of Thelma Fritz and Audrey Fitzpatrick, were not practically all the names mentioned in these letters the names of people fifty years old or older?

Mr. Breslin: Now, I object to that, if your Honor please.

The Court: I sustain the objection.

Q. You do not take this matter very seriously, Mr. Von Moschzisker, do you? A. Yes, sir.

Mr. Breslin: Oh, I object to that.

The Court: Just a minute.

Mr. Breslin: I object to that.

Mr. Zabriskie: I will withdraw the question, but—

Mr. Breslin: I ask that it be stricken from the record.

Mr. Zabriskie: I call attention to the fact that the man sits there laughing at me.

The Court: What difference does it make?

The Witness: Who can help laughing?

Q. You cannot help laughing, can you? A. I can't help laughing at your line of examination.

The Court: Never mind.

Redirect-examination by Mr. Breslin:

Q. Mr. Von Moschzisker, do you know who the United States District Attorney for the State of New Jersey was during the month of July, 1927?

Mr. Zabriskie: I object as immaterial.

A. Mr. Winne.

Mr. Breslin: I am laying the proper foundation.

Q. Winne? A. Mr. Winne.

Q. Do you know where his office is?

Mr. Zabriskie: If the Court please, this certainly is not—this is starting something entirely new.

Mr. Breslin: I am going to connect Mr. Winne up, Mr. Walter Winne of Hackensack, whom I will call as a witness.

Mr. Zabriskie: You can ask Mr. Winne when you put him on the stand.

The Court: Just a minute. This is his examination.

Q. You say Mr. Walter Winne was United States District Attorney for the State of New Jersey during the month of July, 1927? A. Yes, sir.

Q. Did you consult him concerning these letters? Yes or no. A. Yes.

Q. What did he say? A. He said it was a case for the prosecutor's office in the county in which I lived.

Mr. Breslin: That is all.

Mr. Zabriskie: That is all.

FREDERICK V. WATSON, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Judge, you are an attorney at law, licensed to practice in the State of New Jersey? A. I am.

Q. And how long have you been admitted to practice law? A. Since the June term, 1900.

Q. And where do you live? A. Ridgewood, New Jersey.

Q. And where is your office? A. Ridgewood, wood, New Jersey.

Q. A the present time, for the next two weeks, you will be District Court Judge in Ridgewood? A. I am the District Court Judge of Ridgewood.

Q. How long have you been,District Court Judge of Ridgewood? A. Ten years.

Q. Do you know Mrs. Von Moschzisker? A. I do.

Q. How long have you known her? A. Approximately forty years.

Q. Do you know Mr. Von Moschzisker? A. I do.

Q. How long have you known him? A. Approximately twenty years.

Q. Did Mrs. Von Moschzisker consult you concerning these letters? A. She did.

Q. Do you recall the substance of the first visit that she made to your office? A. Not distinctly.

Q. Can you tell us what you remember about it? A. My best recollection is that she brought some letters in and said she was receiving them, and asked me what she could do about it and how they could be stopped.

Q. What did you tell her? A. Well, I told her that they were anonymous letters. I think I told her to forget them. I said, "If you wait long enough, murder will out, and the people themselves will expose themselves."

Q. Subsequent to that conference, did she come in with more letters again? A. Yes, she came in for a period of a year and a half, repeatedly, with letters.

Q. Do you know under what circumstances the exhibit "George Murphy" was secured? A. Where is it?

Q. I think it is right there. A. My recollection is that that is the sheet that I got from the prosecutor's office, which was taken by Mr. Dawson.

Q. Were you the one, the party, who came to the prosecutor's office and requested that a specimen of Sarah B. Mowell's handwriting be secured, or suggested it? A. I don't know that I made any such particular suggestion, but I went to the prosecutor's office in July of 1926, and asked the prose-

cutor if he would use his offices to ascertain who was the writer of these letters.

Q. And when you say the prosecutor, do you mean the big boss? A. I spoke—my recollection is, to Mr. Hart, at that time.

Q. After you spoke to Mr. Hart at a subsequent date did you see the "George Murphy" standard? A. Oh, it was some time later, I think, when the prosecutor's office had possibly discontinued that particular investigation. These papers were returned to me, when I had some letters which they had.

Q. After these specimens were returned to you, did Mrs. Von come in after that? A. Oh, yes. She was coming in off and on.

Q. When the letters were received? A. Yes, I should say so, or approximately. I don't know. But she came in for—oh, a period of a year and a half, I guess.

Q. Do you recall whether or not at any time you advised her to secure the opinion of handwriting experts? A. I did.

Q. After you advised her to receive the advice of handwriting experts, did she report back to your office and tell you the nature of their reports?

Q. She did. I think they brought the reports.

Q. Did you examine the reports? A. I read the reports at the time.

Q. Now, in order to save time, the letters were still coming in, and we get down to this letter of June 30, 1927. Did you examine Mr. Osborn's report with reference to that letter? A. Well, I did not—I can't specify the letter, but I read the report concerning the letters. It is so long ago now, that the identity of letters has skipped my mind.

Q. Do you recall approximately when the complaint was made? A. I think it was in the summer or the fall of 1927.

Mr. Breslin: We have the complaint here, if it will refresh your recollection. It is August 10, 1927.

Q. In order to save time, did you at that time, as a result of the opinion of the handwriting experts, and the letters that have been received, have an opinion? A. I had reached a conclusion.

Q. You had reached a conclusion? A. I had.

Q. Now, was your conclusion based solely upon the opinion of the handwriting experts, or was it buttressed by your own observations as a layman? A. Primarily by the report of the handwriting experts, supplemented by conclusions which I drew myself, from facts which had been submitted to me, and conversations that had taken place, and such as that.

Q. And in your opinion, this letter of June 30, 1927, had been written by the same party as wrote the standards? A. If that is one of the letters that was written in the early part—

The Court: This is it. Look at it.

A. Yes, I saw this standard. Mrs. Von Moschzisker brought it in to me.

Q. Now, as a result of the opinion or the conclusion that you had, did you tell Mrs. Von Moschzisker that she had probable cause to make a complaint? A. No.

Q. What did you tell her? A. I told her to go see the prosecutor and be guided by what they told her, take her proofs there.

Q. Do you recall any communications you received from the prosecutor's office? A. I do.

Q. What was the communication? A. I got a letter from you.

Q. Have you got the letter? A. No. You had it. I have got a copy of it. No, I have not got a copy. I have a copy of the letter I wrote Mr. Von Moschzisker. I don't think it was a letter. I think you telephoned me, but I wrote a letter. I wrote a letter to Mr. Von Moschzisker.

Q. Now, I show you this letter to refresh your memory, and ask you what kind of a communication you received from the prosecutor's office? A. Telephone communication.

Q. And as a result of the telephone conversation did you communicate with Mr. Von? A. I did.

Q. And to what office did you advise him to go? A. The prosecutor's office, Bergen County.

Mr. Breslin: That is all.

Cross-examination by Mr. Zabriskie:

Q. You then were the personal, private counsel of Mrs. Von Moschzisker for that year and a half, at least? A. I thought I was. Senator McGinnis said that he was consulted during that period.

Q. Well, she was waiting there at the door for you a great many mornings in Ridgewood, was she not? A. I would not say that. Mrs. Von Moschzisker never waited. She came in hours that I was there.

Q. Did she not frequently get there before you did? A. I doubt it.

Q. Did you not find her there when you got there? A. I doubt it. She might have, once or

twice. She came in the same as any other client came in.

Q. How many calls do you figure she made in that year and a half, at your office? A. Impossible for me to tell.

Q. Did they average one a week? A. Well, I suppose a good average for one a week, the year around, but they would not be successively one each week. Some weeks she was there two or three times. Other times there was a stretch of two or three weeks she was not there.

Q. And you were her personal and private counsel, and as such were paid for services rendered, right down to the finishing of the criminal prosecution, is not that so, Judge Watson? A. Correct. At least, I thought I was. I assumed I was.

Q. And did you read over the reports of Stein and Osborn? A. Yes, when they were submitted at the time.

Q. Did you notice the omission to mention any script letters in these reports? A. No, I didn't.

Q. You saw this script letter that was supposed to have been received anonymously by Mrs. Von Moschzisker, did you not? A. I don't think so. I have no recollection of having seen a letter that looked like that.

Q. I am now referring to P-51. You do not recall having seen either one of those before the present time? A. May I read it?

Q. Surely. A. The letter and the handwriting is unfamiliar. The contents are familiar. I don't know whether I read the letter or whether I was informed of the contents, but I have a recollection of that being a part of the statement that was brought to me or communicated to me somehow.

Q. But you do not remember seeing this Exhibit

P-51? A. At this time I can't remember. I won't say I didn't. I won't say I did.

Q. Did you receive letters from Mrs. Von Moschzisker about this? Did she ever write you instead of calling to see you? A. I don't think so.

Q. Did you have any of her writing in your office? A. I have not any recollection of having any writing. I did get some letters from Mr. Von Moschzisker, and they were typewritten letters.

Q. And, as a matter of curiosity, you never had Mrs. Von Moschzisker do any script writing, did you?

The Court: I sustain the objection.

Mr. Breslin: I object to that.

A. No.

The Court: I sustain the objection..

Mr. Zabriskie: He said no.

I want to ask this question for the purpose of the record.

Q. Did she ever say to you that she ever had done any writing herself of anonymous letters?

Mr. Breslin: I object.

The Court: I sustain the objection.

The Witness: Objected to, your Honor?

The Court: Sustained.

Mr. Zabriskie: Your Honor allows an exception, just for the purpose of the record.

The Court: As a matter of fact, he would not be privileged to tell anyhow, whether she did or not.

Mr. Zabriskie: Well.

JOHN J. LANNUIER, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mr. Lannuier, where do you live, please? A. 349 Spring Avenue, Ridgewood, New Jersey.

Q. Is that near the Von Moschziskers? A. About a block; a little more than a block away.

Q. How long have you lived in Ridgewood? A. Thirty-three or thirty-four years.

Q. What is your business? A. I am a manufacturer of wood specialties.

Q. And where is your business? A. In Paterson, New Jersey.

Q. Do you know the plaintiff in this case, Sarah B. Mowell? A. I do not—well, yes, I do, yes.

Q. Were you ever connected with any banks of Ridgewood? A. The First National Bank.

Q. Was Judge Doremus the head of that bank? A. Yes, and still is.

Q. Was Mr. Griffiths a director also? A. He was not—well, he was the cashier. I think he possibly was a director.

Q. Do you remember a conference held at your bank, at which time the plaintiff, Sarah B. Mowell, Judge Doremus, Mr. Griffiths, and yourself were present? A. I do.

Q. And what was the nature of that conference? A. We had these letters that Mrs. Von Moschzisker were getting—was getting, and we took the matter up with her to see if she knew anything about them.

Q. Now, did you ever reveal to anyone what transpired at that conference? A. I did not.

Mr. Breslin: That is all.

Cross-examination by Mr. Zabriskie:

Q. Now, at the criminal trial you were a character witness for Sarah Mowell, were you not? A. Well, you might put that that you called me.

Q. Yes. A. Yes, sir.

Q. And you could—you could not say a thing against the girl's reputation? A. No, sir, I could not. I don't know anything about it. I don't know anything today.

Q. You live about a block away from Mr. Von Moschzisker, do you not? A. Just a trifle more than a block, Judge.

Q. And you are among the people that visit back and forth to a certain extent, are you not? A. That is right.

Q. And, at the last trial, when the criminal trial was going on, your wife and Mrs. Von Moschzisker palled together, did they not? A. What do you mean by that?

Mr. Breslin: Just a minute.

The Court: Strike it out.

Mr. Breslin: I object to that.

Q. Well, she accompanied her to the court house and associated with her at the court house; she chatted with her at the court house? A. She did not.

The Court: Just a minute. Do not get nervous.

Q. Mr. Lannuier, is it not a fact that your wife and Mrs. Von Moschzisker were repeatedly together while the criminal trial was going on?

Mr. Breslin: I object.

Q. Excepting when she was actually in the witness chair or at the counsel table?

Mr. Breslin: I object.

The Court: Just a minute. I ruled on that objection, and I ruled against the question. Do not repeat it.

Q. You did say that you do visit back and forth? A. That is right.

Q. And your wife enjoys your full confidence, does she not?

Mr. Breslin: I object to that.

The Court: Sustained.

Mr. Breslin: We hope so.

Q. And you sit there evening after evening with nobody but you and your wife in the house; is not that so?

Mr. Breslin: I object to that.

The Court: Now, Judge, if that is your line of questioning, this witness will leave the stand.

Mr. Zabriskie: But, if your Honor please, he asked him if he disclosed that to anybody.

The Court: Now, wait a minute. Your last question, I am surprised you asked it.

Mr. Zabriskie: I think, sir, it is a fair question.

The Court: I do not, and I am ruling against it, and you can have an exception, if you think it is worth taking an exception to.

Mr. Zabriskie: Well, I take an exception.

Q. You say you took the matter up with her? A. Took what up?

Q. I do not know. That was your language. A. What?

The Court: Refer him to the question. We have been talking about many things.

Q. With Miss Mowell; you took up the matter with her, you say? What did you have the conference for? A. Who did I take it up with, Judge Zabriskie? Who are you talking about?

Q. Mr. Griffiths, Judge Doremus, Miss Mowell and yourself. A. I was present at that meeting, yes.

Q. What was said at the meeting? A. Why, Judge Doremus did most—in fact, he did all the questioning.

Q. And he questioned Miss Mowell, did he not? A. Absolutely.

Q. Now, what did he say to her? A. Now, Judge I don't remember. I did not memorize it.

Q. Do you not remember a single question? A. Yes. Well, certainly. I asked her if she had written these letters.

Q. What did she say? A. No.

Q. What other question was asked? A. Well, it all pertained to the writing or to these particular letters, and she denied it time after time.

Q. Continuously and repeatedly? A. Yes, sir.

Mr. Zabriskie: That is all.

WALTER E. WINNE, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mr. Winne, you are duly licensed to practice law in the State of New Jersey? A. I am.

Q. And your office is in Hackensack? A. That is correct.

Q. During the year 1927 did you hold any official position connected with the Government of the United States? A. I did.

Q. What was that position? A. I was United States Attorney of the District of New Jersey.

Q. Do you know the defendant in this case, Frank A. Von Moschzisker? A. I met him once, probably twice.

Q. Where did you first meet him? A. He came to the office of the United States Attorney in Newark, and met me in that office, which was my office.

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

Q. Can you tell us in substance the nature of the conversation? A. Mr. Von Moschzisker presented a letter of introduction from Judge Frederick V. Watson of Ridgewood. He had with him anonymous letters, and asked me if I thought, under the laws of the State of New Jersey, these letters constituted a crime, that is, the mailing of these letters. I think they were addressed to his wife.

Q. What did you tell him? A. I told him I didn't think they did constitute a crime against the laws of the United States, and I gave him my—

The Court: Just a minute. Your answer was against the State of New Jersey. Do you mean the United States?

The Witness: I mean the United States of America, not the laws of the State of New Jersey.

I told him that under the statute the letters to be criminal, the mailing of the letters, to be criminal, under the Federal laws, they must be obscene, salacious; and these letters were not of that character. And I examined the state statutes and told him I thought he should see the prosecutor of the State—County, of Bergen County, that I thought they were objectionable under the State statutes.

Mr. Breslin: That is all.

Cross-examination by Mr. Zabriskie:

Q. You did not advise him to make any criminal complaint anywhere, did you? A. No, I did not advise him.

Q. And the letters that were shown to you, do you recall with any particularity about them? A. I would say, Judge, that they were of an insulting and threatening character, but not—

Q. But I mean as to character of writing, script or printing, do you remember? A. I am reasonably certain that the envelopes were printed.

Q. All of them that he showed to you? A. That is to my best recollection.

Mr. Zabriskie: That is all.

Mr. Breslin: If your Honor please, I respectfully ask for an adjournment at this

time because of the fact that we have our handwriting experts, and I do not want to break into part of their testimony. We could not finish this afternoon anyhow.

The Court: Suppose we start 9:30 Monday morning?

Mr. Breslin: Fine.

The Court: I have to leave at three on Monday.

Mr. Zabriskie: Have you any other witnesses besides experts now?

Mr. Breslin: The doctor.

The Court: We will adjourn to Monday morning at 9:30.

(Adjourned to Monday, March 31, 1930, at 9:30 A. M.)

Hackensack, N. J.,
March 31, 1930.

TRIAL RESUMED.

PETER J. McGINNIS, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Senator, you are a member of the bar of the State of New Jersey? A. I am.

Q. How long have you been licensed to practice law? A. Thirty years.

Q. You are in partners with John Ward of Paterson? A. I am.

Q. How long have you been a partner of his? A. Twenty-five years.

Q. During that time your firm has specialized

principally in litigation work; is that correct? A. Yes, correct.

Q. Now, do you know the defendant, Mrs. Von Moschzisker, in this case? A. I do.

Q. Do you recall where and at approximately what time you first met her? A. In July, 1927, at my office.

Q. Can you tell us in substance the nature of that conversation? A. She came, complaining of having received anonymous letters, covering a period of, I think, a year or more, and she exhibited a bunch of letters to me, which I read. She told me that her object in calling was to see if something couldn't be done to stop the letters, that they were driving her mad, or words to that effect.

I went through the letters rather hastily then. My partner, Mr. Ward, came in. I introduced him. He looked them over. And I then suggested that she leave the letters and call again, and she did so, I think, about, perhaps, three or four days later.

I had gone over the letters in the meantime, and I advised her that several of the letters, but one in particular, this one referred to here as S-29—

Q. P-29. A. P-29, S-10, was criminal in its nature, and that she would be justified in making a complaint.

Q. Now, did she also submit to you either orally or in substance the reports of a handwriting expert? A. She did. She exhibited to me a number of reports, one from Mr. Osborn—several from Mr. Osborn, and I think one from Mr. Stein. I am not so sure about the Stein report.

Q. Then, after you had examined the written opinion of the handwriting experts, and examined

the letters, in your opinion did she have probable cause to make this complaint? A. I certainly thought so, and so advised her.

Pardon me. I saw her again after that a third time.

Q. Oh, you saw her another time? A. Yes.

Q. When was that? A. Two or three days after. I told her on this second occasion that I would be glad to accompany her to the prosecutor's office, if she desired.

On this third occasion she came up—I was trying a case in the Court of Chancery, in Paterson. She wanted me to come over to the prosecutor's office, and I told her I couldn't go, but I suggested, if it was necessary, why, they could call me up.

Cross-examination by Mr. Zabriskie:

Q. Senator, did you know at that time that she already had a counsel? A. I did not.

Q. Did she say to you that Judge Watson had been handling the matter for her for a year and a half? A. No.

Q. Or any length of time? A. No. She referred to Mr. Randall Lewis, that was all, but not—I do not recall her mentioning Judge Watson. She may have, but I do not know that Judge Watson at that time was active with her.

Q. Did she not mention Judge Watson to you at all, as near as you can remember? A. I can't recall one way or the other on that, Judge.

Q. Can you produce here the letters that she showed to you the first time she called? A. No.

Q. Could you identify them, if you saw them? A. Only in a general way. I remember a number of those letters, this block lettering, and one let-

ter that I think is that first letter. I would recall more easily the contents rather than the appearance of it, as addressed to my eye.

Q. Did you read over, for instance, the report by Mr. Stein here? A. I do not recall so clearly the Stein. The Osborn I recall more, because I knew of the Osborns and had been—had them in work of ours, and I thought very highly of the Osborns, and so told her. I told her that I didn't think that she needed an expert to see the similarity of the—I may say she brought this wrapper along with the letters, you know.

Q. Yes. How carefully did you go into the conversation, into the matter with her, Senator? A. Well, you mean in detail?

Q. In detail. Did you go in any great detail? A. She went over—she expresed her state of mind very clearly in detail to me, how she was suffering. I read the letters at the time.

Q. You knew her quite a while before that by reputation, did you not? A. No, I never met the lady before she came in on this occasion; did not know who she was.

Q. Now, Senator, I call your attention to the pleadings in this case. That is, I call your attention to the first answer in this case, of the defendant, Emma L. Von Moschzisker, "The defendant, Emma L. Von Moschzisker, says, prior to the signing of said written complaint, she consulted a competent attorney at law of the State of New Jersey, and the signing of said written complaint was based upon his advice." Then I call your attention to an answer that was filed here a few days ago, March 10, 1930, and I find this: "The defendant, Emma L. Von Moschzisker, further says that prior to the signing of said written complaint men-

tioned in the complaint, competent attorneys at law were consulted, and a full disclosure of the facts made to them, and the signing of said written complaint was based upon their advice."

As a lawyer, is that at all significant to you?

Mr. Breslin: Now, I object to that.

The Court: I sustain the objection. The pleadings may be inconsistent. You cannot take an admission in the pleading in the instant case. You have to take the entire pleadings.

Mr. Zabriskie: I mean that one particular part.

The Court: No, you cannot do that.

Mr. Zabriskie: Your Honor will allow an exception.

Q. Did you ever talk to Prosecutor Hart about this case, Senator? A. No.

Q. Did you ever write a letter to Prosecutor Hart about it? A. I don't think I did. I am quite sure I didn't.

Q. Did you examine any of Mrs. Von Moschzisker's writing at all? A. No. Except perhaps the check that she sent me, but aside from that I didn't, because I never dreamed that—naturally, there was not any thought in anybody's mind that Mrs. Von Moschzisker was writing the letters to herself.

Q. Did she show you Exhibit P-51? A. I couldn't tell you now. I couldn't tell you now, Judge. You see, after these interviews with her, I never saw her again or heard anything more until this criminal case came up, and then I was not present at that trial.

Q. You did not recommend that she make the

complaint in writing that was made in this case, did you? A. I presume I did, because she left our office just—a few days afterwards, and a complaint was made.

Q. You never saw the complaint that she made in this particular case? A. This particular complaint I did not see. I advised her that she had a right to make the complaint. In fact I said she could go to a justice of the peace. But, I said, "In view of the fact a case of this kind needs work, and the prosecutor should be interested in it, I would suggest that you see him first, rather than go to a justice of the peace."

Q. Yet it did not enter into your head that she might have done the writing herself? A. No.

Q. You saw this report by Mr. Osborn, which is dated July 13, 1927, and marked D-33, and that starts off, "I made a careful examination of four anonymous letters sent to Mr. or Mrs. Von Moschzisker, dated February 18th, March 15th, May 20th and June 30th, 1927. These letters are all in printing, including the address on the envelopes." Now, that was one of the reports that was made, was it not, that you saw? A. I presume so, but I wouldn't know now by looking at them.

Q. Then you saw another one that came along, and I call your attention to D-41. You saw that? A. Yes, I suppose so. I don't recognize it now, except that it looks like it.

Q. As a matter of fact, all of those reports—at least three of those reports—start off in the usual way, "I have made a careful examination" of a certain number of letters? A. I presume so. You read it there.

Q. Then I call your attention to the fact that the report, D-41, starts off, "I have made a careful

examination of an anonymous letter sent to Mrs. F. Von Moschzisker, postmarked Ridgewood, November 20, 1926. This letter, like the five anonymous letters first examined, is not in script, but is entirely printed." So you read that letter, I suppose? A. I presume so. I read all the reports that were submitted to me.

Q. And that is the usual way these handwriting experts start out, is it not?

Mr. Breslin: I object to what the usual way is.

The Court: Sustained.

Q. Now, then, this report was made after the one you have already testified about? A. I couldn't tell you that.

Q. Well, the dates speak for themselves. A. Yes, they speak for themselves. And what I had was everything up to date, which would be the latter part of July.

Q. This was October 19, 1926, was the one report? A. Yes.

Q. Now, then, did it not attract your attention that this was on the end of this one I have just been reading, where it says, "I have made a careful examination of an anonymous letter sent to Mrs. F. Von Moschzisker, post-marked November 20, 1926, and this letter, like the five anonymous letters, is not in script, but was entirely printed."? When this was added on to the next anonymous letter also submitted, an anonymous letter postmarked January 18, 1926, "This envelope and letter are not printed, but are written," now, did it not arouse any suspicion in your mind when you saw that on so late in the game, the fact of a script

letter being written away back in January, 1926, being disclosed? A. I couldn't tell you after three years just what my mental operations were. I am very clear about my conclusions, that is all.

Q. You are not so sure on what the conclusions were based? A. Based on letters, standard—the reports, what I could see from my own observation; the character of the woman who was talking to me, and evidence of her sincerity, her distress of mind.

Q. Based on what she told you? A. I am giving you all these factors—made me unhesitatingly reach the conclusion that I did.

Q. With all this you did not ask her to do any writing? A. No.

Q. And you had not seen any of those motor vehicle applications? A. No.

Q. Or any other standards of Mrs. Von Moschzisker? A. No.

Q. So you relied entirely upon her honesty and upon the standard that she submitted, and the letters? A. I could see for myself, couldn't I?

Q. I thought you relied on her honesty; you were taking her word that those were the standards. A. Certainly. If I thought—

Q. You never suspected her for a minute of anything— A. No. I don't yet.

Q. What was there about the P-29 which you said would justify her in making a complaint, a demand for money here? A. A demand for money. There is a threat. I have forgotten the language of it for the moment.

Q. So you were basing it upon the subject matter and not upon the writing? A. No. Some of those letters are nasty, but they are not criminal. And I think you will agree with me that I could

write a letter that would make you feel very uncomfortable and you couldn't do anything to me, could you?

Q. No. A. Or vice versa, of course.

Q. And you do not know whether she was telling the truth or not? A. I assumed she was telling the truth.

Q. You did not communicate with the prosecutor at all? A. I did not, no.

Q. And you did not see the complaint that was made? A. No.

Redirect-examination by Mr. Breslin:

Q. But you were perfectly willing to come over with her to make the complaint? A. That was my offer to her. And she came up I think on the 27th of July, 1927, came up to the Court of Chancery, for the purpose of having me go over to Hackensack with her.

Recross-examination by Mr. Zabriskie:

Q. But you did not go? A. I was trying a case; couldn't.

Q. Even up to that time she had not told you she was talking to Judge Watson? A. She told me very little that day.

Q. At any time she never told you that Judge Watson was in the case? A. Not that I recall.

Q. She never told you Mr. Van Blarcom was in the case? A. No.

Q. Or that she had consulted Judge Randall? A. No.

Q. Or that she had gone to Horton & Tilt?

Mr. Breslin: I object to that. She went to Horton & Tilt on business for her mother.

The Court: Just a minute.

Mr. Zabriskie: Well, I doubt that.

The Court: Strike that out.

Mr. Zabriskie: And I also ask that it be stricken out that she went there on business for her mother, because she did not get there.

Mr. Breslin: That was the testimony.

The Court: She said she started to go and did not get there; that was the purpose. There is no evidence that she consulted Horton & Tilt about these letters.

Q. Then she did not mention to you that she had discussed it with any other lawyer? A. Randall Lewis, yes. I am—I have no recollection one way or the other about Judge Watson, except I am quite sure she did not tell me she was going to Judge Watson, of course, from me, anything like that.

Q. Did not say she was going there on an average of once a week, or anything like that? A. No, not that I recall.

ALBERT D. OSBORN, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mr. Osborn, what is your business? A. Examiner of disputed handwriting, typewriting, ink, and so forth.

Q. Where is your office? A. 225 Broadway, New York City.

Q. How long have you been engaged in that profession? A. Actively for the last ten years.

Q. Are you associated with anybody in business? A. Associated with Mr. A. S. Osborn.

Q. Who is he? A. He is my father.

Q. How long has he been in the handwriting business?

Mr. Zabriskie: I object as to how long his father has been in.

The Court: That is a fact.

Q. Do you know? A. Some forty years.

Q. And you have been associated with him? A. Yes, sir.

Q. During the last year I presume you have testified in a number of court cases? A. Yes.

Q. About how often? A. I think I testified about sixty times last year.

Q. Now, do you know the defendant, Emma L. Von Moschzisker? A. Yes, I know her.

Q. Do you know Mr. Von Moschzisker? A. Yes.

Q. Do you recall approximately on what date they first consulted you with relation to these anonymous letters? A. Yes. I remember, having looked it up.

Q. Did they submit anything to you at the time they visited you? A. Yes.

Q. What did they show you? A. Some anonymous letters and some standard printing they had.

Q. Is this the standard? A. Yes.

Q. And is this the standard? A. I think this was procured later.

Q. As a result of this first conference and the examination of the letters by you, I show you a report and ask you if that is the report that you submitted to them? A. Yes, that is the report.

Q. And that report correctly embodies your main reasons for coming to the conclusion that the writer of the anonymous letters was the same as the writer of the wrapper? A. Yes.

Q. Now, I show you another report dated December 8, 1926, and ask you if that is a report that you submitted to both of these defendants? A. Yes. That is another report.

Q. And I show you a final report, dated July 13th, 1927, and ask you if that is the report that you submitted to them with reference to the letter in dispute in this case, P-29? A. Is P-29 June 30th—

Q. Yes. That is the old S-10? A. Yes, that is right.

Q. Are you still of the same opinion? A. I am.

Q. Now, Mr. Osborn, have you made any photostatic copies of the standards in this case? A. Yes. I made photographs.

Q. Have you one set? A. I have got—those are all the same.

Mr. Breslin: I will offer a copy of these standards.

Mr. Zabriskie: Where were they taken from?

Mr. Breslin: Of course, if you want to, we will have to go through them word by word, if you want that.

Q. The word "Paterson", can you tell us what exhibit that is from? A. Can't I say it in this way: that the writing at the left is from the standard writing; the writing in the middle is from this letter of June 30th; the writing at the right is from—

Mr. Zabriskie: About "Paterson". That was the first one.

Mr. Breslin: I want to hurry it along all I can.

If you have not any objection, Judge, I would like to pick these out, those submitted by Mr. Osborn.

Q. I think "Paterson" is from the Motor Vehicle Application. A. Yes.

Q. The word "printed"? A. From the wrapper.

Q. The word "Mowell"? A. From the wrapper.

Q. And the word "matter"? A. From the wrapper.

Q. And the word "Von Moschzisker"? A. From the wrapper.

Q. And the word "Wood"? A. From the wrapper.

Q. "October"? A. It is in that marriage paper.

Q. Oh, from the marriage book. The word "October" is from the marriage book. The word "Von"? A. From the wrapper.

Q. And "jr."? A. From the marriage.

The Court: Is that the certificate?

Mr. Breslin: Yes, your Honor. It has been offered. The clerk has it.

Q. "Jr.", do you know where that is from? A. The marriage certificate.

Q. And the "J" is picked out from the standard wrapper? A. That is in the marriage certificate.

Q. And "Jersey", where is that picked out? A. That is in that wrapper.

Q. And "Spring"? A. That is in the wrapper.

Q. "Ridgewood"? A. That is in the wrapper.

Q. And "Ridgewood"? A. That is in the wrapper.

Q. Now, the words designated in the middle column are from P-29, the letter in dispute? A. Yes.

Q. And this work on the right is Mrs. Von Moschzisker's work in court? A. Yes.

Mr. Breslin: Now, I offer them, if your Honor please.

By Mr. Zabriskie:

Q. These are greatly enlarged? For instance, that word "Mowell"? That is, that word "Mowell", that little, very small printing is in the upper left hand corner of the wrapper, is it not? A. Yes .

Q. That is magnified how many times, approximately? A. You can tell by comparing with the original. About three times, I think.

Q. It is not relatively the same as it seems on there; there is no attempt to have that relatively the same, is there, the reproduction? A. Yes, they are all relatively the same.

Q. I mean, take the word "Mowell"; that is greatly enlarged? A. With the exception of that one word, yes. The size, I would say, has nothing to do—

Q. That does not make any difference? A. No practical difference here, no.

Q. So that the one is enlarged much more in proportion than the others? A. Yes.

Q. Yes. This scale here, what does that indicate? Does that indicate the enlargement of the word "Mowell" that I have pointed to? A. No.

That indicates the enlargement of the whole photograph.

Q. Of the what? A. It indicates the enlargement of the whole thing.

Q. Well, the word "printed", and the word "Paterson", all those words, they are magnified very much less, are enlarged very much less than the word "Mowell"; is not that so? A. Yes, I believe I have the card right here that I made up. Here is the card that was made up. It is just a comparison. In the middle is the anonymous printing, and on one side is the defendant's in the last case; on the other is Mrs. Von Moschzisker's; just to make the comparison easy, that is all. It puts the whole case in a nutshell, I would say.

Q. The word "Mowell" was very greatly enlarged already before you took the picture of it; is not that so? A. Yes, that one word. That is from the wrapper, up in the corner. You can see that.

Q. This photograph, then, does not give a true picture, even, of true pictures, does it? A. Yes, it does.

Q. It gives it by enlarged pictures, does it not? A. Naturally—

Q. Some enlarged in a different proportion than others? A. This one word, that is all—two words.

Q. How about the word "Wood"? A. I said two words.

Mr. Zabriskie: All right. That is all.

The Witness: The size has no significance there, I would say, at all.

(Papers marked Exhibits D-42, D-42A, D-42B, D-42C, D-42D, D-42E, D-42F, D-42G, D-42H, D-42I).

By Mr. Breslin:

Q. Now, Mr. Osborn, can you very briefly sum up the resemblances between Miss Mowell's writing and the anonymous writing? A. Well, I have not been over this photograph recently, but I made these exhibits—because it seems to me that with this photograph in front of you any reasonable person can see, without more than five minutes' examination, at least that the writing in the middle of this photograph that is the anonymous is like the writing at the left, and not that at the right.

This printing in the anonymous letter is very well done. It is fine work, and the printing at the right of this photograph done by Mrs. Von Moschzisker is really terrible printing. Anybody can see that.

It is done by a person that can't print hardly at all, while the anonymous printing is exceptionally well done, and that printing at the left of the photograph is highly skillful work.

For example, take that word "Moschzisker", the third comparison in the third column on this photograph. I would say it is ridiculous to say that the word in the middle is like that at the right. It is like the one at the left, Anyone can see.

When you get this printing together I don't think —I don't think it needs any explanation, if a person will just sit down, take these photographs, and just study them for a short time. The printing in the middle of the photograph is the anonymous printing. That at the left is the defendant's in the last case; that at the right is Mrs. Von Moschzisker's.

Take practically any word there—

Q. Pardon me for interrupting. I direct your attention to P-29 in the present case, that is, the

anonymous letter in dispute, and ask you, in your opinion, what grade of penmanship that letter shows? A. It has been very skillful printing.

Q. Now, it has been testified in this case that the work done by Mrs. Von in court was the work of a master. What kind of work would you say it was, the work done by Mrs. Von Moschzisker in court? A. Why, I think it is terrible printing. I don't think you have to explain that to anybody. If you look at that printing in this exhibit—what is it?

Q. That is P-14. A. P-14 is the printing done at the right of this photograph. Why, it is not in a class with this anonymous printing or with the defendant's printing in the last case.

Mr. Breslin: You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Now, Mr. Osborn, you made certain reports? A. Yes, sir.

Q. And the first report that you made— A. They are right here, Mr. Zabriskie.

Q. The first report that you made only dealt with printed letters, did it not? A. Yes.

Q. You remember the report? A. I don't remember at all. I remember—

Mr. Zabriskie: Are these all in evidence?

Mr. Breslin: Positively.

Mr. Zabriskie: Let us see.

Mr. Breslin: Right here—

Mr. Zabriskie: P-26 does not seem to be in evidence. It only seems to be marked for identification.

Mr. Breslin: I understood they were, before.

The Court: If it is not, mark it now. I understood it was in evidence.

(D-26 for identification was marked D-26).

(D-27 for identification marked D-27).

(D-28 for identification marked D-28).

(D-29 for identification marked D-29).

(D-30 for identification marked D-30).

Q. Just look at your report and see what that says, the first report. A. That is October, 1926.

Q. What is the beginning of that report? What do you say there? A. "Report of examination of anonymous letters. I have made a careful examination of five anonymous—"

Q. Those are the five just put in evidence, are they not? A. I guess so.

Q. Now, just look over these letters, will you, and verify that, and call off the dates of them? Those are the letters you were reporting on, is not that so, those five exhibits which are now in evidence, D-26, D-27, D-28, D-29 and D-30? What is the date of the first of those? A. I guess July 3rd. One of them does not seem to be dated.

Q. Which one is not dated, which Exhibit? A. P-30.

Q. D-30. A. Is that D? Excuse me. D-30.

Mr. Breslin: That is dated on the outside 1926. We agreed on the date before. It is 6/24/26.

The Witness: 6/24/26. It is dated in pencil, June, but it is dated 6/24/26.

Q. Now, do you have any there in January, that were dated in January? A. No.

Q. Every one of these is in printing; right? A. Yes, these are in printing.

Q. Why did you not make a report on this one in script, P-51? A. I did make a report on one letter in script.

Q. At that time why did you not? A. At that time?

Q. Yes. A. I don't know why I did not at that time. Gracious, that is a long time.

Q. All they brought you at that time—you reported on all that were reported to you, did you not? A. I think so.

Q. Is it not a fact that you did not report on this script one at that time because you did not have it? A. Well, I suppose so. I am not sure.

Q. Yes. I call your attention to the "P" in "perhaps" and the "P" in "Pettit", referring now to the letter P-51, the letter of January 18, 1926. Can you or can you not say whether there is a similarity between that "P" in "Pettit" and the "P" in "perhaps", 51? Will you just examine? A. Well, it is the same letter. I think that is about as far as you can go.

Q. Not much similarity in production or formation or anything of that sort? A. No.

Q. I call your attention to the "P" in "perhaps", and I ask if there is any similarity between that "P" and the "P" in "Pettit"? A. You said this was the script letter, didn't you?

Q. Well, is it a script? A. Why, yes. This is printing.

Q. That is printing. A. Yes.

Q. Cannot make any comparison there? A. You are picking a letter out in the middle of a word

to compare with a printed letter at the beginning of a word. I would say that is—

Q. I am not asking about that. I say is there any similarity? A. I can't see it.

Q. You cannot see it? A. No. This printing is so different, there is no question about it. Anybody can see it, if they will look at it.

Q. Now, Mr. Osborn, in your opinion, you said on your direct-examination, that the person who did the printing—that Mrs. Von Moschzisker could not print at all, it is shown there. A. Oh, she can print. You can read it. But I would say it is awful printing. It is the stuff you had her do.

Q. Now, I call your attention to Exhibit P-25 with this big "B" on it, and I call your attention to the word "Spring". In your opinion was that "SP" written by the same person who wrote that anonymous, in this right hand column here? A. I wouldn't say about two letters. You are holding your thumb over—

Q. All right. Take "Spring". A. What is the question?

Mr. Zabriskie: Read it, Mr. Stenographer? (Question read).

A. Well, the anonymous is not in the right hand column, and I am afraid he has your question mixed up.

Q. Mrs. Von Moschzisker is in the right hand column. A. Yes.

Q. We all know that. A. Yes. Well, I did not want your question—that is all.

Q. Thank you. Now, in your opinion, is the handwriting in this column, labeled "Mrs. Von Moschzisker—"

Mr. Zabriskie: Read the question as it was put before, with the modification.

(Question again read).

Q. That wrote the Mrs. Von Moschzisker column. A. Well, I don't know. I don't put myself up as able to decide things right off the bat. That is the way the bank tellers do it, and I spend two-thirds of my time examining their mistakes, so I don't make the same mistake.

Q. Your opinion of this Mrs. Von Moschzisker column is that it was written by somebody who could not print at all; is not that so? A. Oh, no. She can print after a fashion. Any body can. But she has not studied the stuff like that—like that printing in the left of this photograph. That is good printing.

Q. You would be sure that if those two words "Spring", for instance, and this was written by the same person, that the "Spring" came with practice, and this was earlier in the game, was it not?

Mr. Breslin: I object to it. It is argumentative, "if".

The Court: I sustain the objection.

Q. Now, Mr. Osborn, do you say that the word "Spring" there is written terribly, the person who wrote that could not print at all? A. I have not said she couldn't print at all.

Q. I think that is your direct examination. A. Oh, you can read this stuff.

Q. Oh, no. I am asking you about this. Do you say "Emma Von Moschzisker" was written on P-50, by a person who could not write at all, print at all? A. If I said she couldn't print at all, I mis-

spoke myself, because you can read it. But it is poor stuff.

Q. How about the word "SPR" in "Spring"? Is that poor stuff? A. Oh, you can read it, all right. It is pretty good.

Q. It is pretty good? A. Sure.

Q. Is not that very good? A. I don't know. I am just glancing at it like this.

Q. Well, take your time. A. Well, I can't tell—

Q. You are an expert. A. Well, I don't pretend to do things offhand, no more than you would give an importnat decision offhand on a law question.

Q. Can you tell us now whether or not "Spring" is well-written, well-printed? A. No, it is not well. It is not in a class—I wouldn't say it is nearly as good as this anonymous printing.

Q. How about the word "Bergen" on there? A. Why, it is pretty good, I would say.

Q. Pretty good. It does not go at all with this column marked "Mrs. Von Moschzisker" here, does it? A. Oh, it does some, yes.

Q. Where? A. Not the "Bergen." It does not appear there.

Q. I mean any letter? A. If you take "Ridgewood" on this and compare that with—

Q. No. I am comparing it with Mrs. Von Moschzisker. A. She wrote "Ridgewood" too. It is the last word in the right hand column.

Q. You think this "Ridgewood" on D-42, the lower right hand corner, compares favorably with "Ridgewood" on P-25, do you? A. No, I didn't say that. I said if you take this "Ridgewood" on P-50.

Q. P-25, one number, and P-50, another number. A. Oh, I would say it looks more like that on the right, but it is not just the same. A person who

prints the way Mrs. Von Moschzisker does—it is queer looking stuff, all right.

Q. Now, I call your attention to the word "Von Moschzisker" there. Is that written poorly? A. Well, it certainly is not very elegant.

Q. That is much better, though, than on the right hand column, on the right, is it not? A. You may think so. I don't think it is much better, no.

Q. Is there anything unusual in the word "Moschzisker" that strikes your attention, as you look at it, Mr. Osborn? A. Why, nothing exceptional, no. Why?

Q. Does not that "Z" point the wrong way? A. Why, yes. It is printing by somebody who does not know how to print; has not even got the letters the right size, and they are all supposed to be capital letters.

Q. And this one the same way on the back of that 1925 application, referring now to P-49—the same mistake there, isn't it? A. Why, yes, if you call it a mistake. The whole printing of Mrs. Von Moschzisker is a mistake, I would say.

Q. Did you ever have a chance to examine that before, Mr. Osborn, that you recall? A. Which one?

Q. That Exhibit P-25 and P-26? A. I can't remember it. I don't remember all these exhibits.

Q. No. Now, I call your attention to D-26, and I ask you to compare the "Moschzisker" there on the letter and the "Moschzisker" on the envelope with the "Moschzisker" as it is signed on the back of P-49, and as it appears on the front of P-25, and ask you whether, in your opinion, there is any similarity? A. Well, any similarity—it is in the same language.

Q. Same language. Is that the only similarity

you can see? A. Well, you can get similarity in practically some letters that have no significance.

Q. Is not there anything there about the "Z" that impresses you? A. Well, the "Z" is made the wrong way.

Q. In all of those. Now, is that the only similarity you can see in those two sets of signatures? A. Why, no. There is some similarities—there will be, between any two writings, and there is some very distinctive differences, which you are not interested in.

Q. All right. If you were to give your opinion, and had to give it with a five minute examination, would you or would you not say that there was a probability of all of those "Moschziskers" being written by the same hand?

Mr. Breslin: I object to that.

The Court: You are limiting it. In other words, perhaps he would not give an opinion in five minutes.

Mr. Breslin: In five minutes. He has already so stated.

Q. I will say now, will you say that in your opinion you do not find elements which make it reasonable to you to think that those were all written by the same hand? A. I would say it would be ridiculous to say such a thing. There are some entirely different letters in the two printings. If you are going to dismiss all the differences and pick out half of a circle or something that looks the same, there is no sense in that.

Q. All right. We will take it up letter by letter.

Mr. Breslin: I object to this. This is a

comparison between some letter that has not anything to do with this case.

Mr. Zabriskie: They are both in evidence, sir.

Mr. Breslin: Just a minute. If your Honor please, I would like to be heard on this. The issue in this case is whether Mrs. Von Moschzisker wrote P-29 or not. We do not have to prove that the Mowell girl wrote P-29. And I respectfully submit these comparisons must be confined to P-29.

The Court: No, this goes to the credit of this witness.

Mr. Breslin: All right.

The Court: Not for any other purpose.

Q. Just examine those ,Mr. Osborn. Take the word "Von Moschzisker" in P-25, and "Von Moschzisker" in D-26, and you can refer to them both, the one that is on the envelope, and also the one that is at the head of the letter. Now, do you or do you not say that there is a sufficient similarity between those "V's" to make it possible that they might have been written by the same hand? A. When you say possible—of course, it is possible.

Q. Now, I ask you probable? A. No.

Q. No probability. Now, go to the "O's". Take all the "O's" there on P-25, in those words, "Von Moschzisker, two of them, and those that are on the envelope, and the letter of D-26, and I ask you the same question: Is there anything in those, any characteristic that runs through them which would make it probable, in your mind, that they were written by the same hand? A. No. They may look somewhat alike, but it is like two people having black hair. That is no identification. There are

a million other people who write the same way.

Q. Take the "S's", the same way. A. The "S's" in what?

Q. The "S". Make a comparison of that in the same way. Is it not possible that all these "S's"

Mr. Breslin: I object to possibilities.

Q. I say probable. Are there not characteristics there that make it probable in your mind that all three of those were written by the same hand? A. No. I do not see where you can get any probabilities into this comparison.

Q. Now, go to the "Z".

The Court: Now, Judge, do I understand you are going to take letter for letter?

Mr. Zabriskie: Just here.

Q. I will say now, in "ZISKER", as written on D-26 and on P-25, as you look at that, as an expert, do you or do you not see elements which make it seem probable to you that they were all written by the same hand? A. No, sir. Have not even got the same kind of a letter, in the last letter.

Q. Now, I ask you to look at Exhibit P-8. How would you characterize the name "Emma L. Von Moschzisker" there? Is that written by someone who could not print at all? A. I have not said at any time she couldn't print at all, because she can print.

Q. Who prints at all, then, we will say? A. Well, that is better. No, that is poor stuff.

Q. Turn over on the back. A. All right.

Q. Now, there is printing there, is there not, of the name, "Emma L. Von Moschzisker"? A. Yes.

Q. And that is poor stuff too, is it not? A. I think so.

Q. Now, look at P-9. A. I have it.

Q. First take the front of P-9. Is that "Emma Von Moschzisker" written poorly or pretty well? A. Poor.

Q. But there is a decided improvement over the writing that appears in the right hand column in "Mrs. Von Moschzisker" in D-42, is there not? A. No, sir. If you will take the word "Moschzisker" at the top of P-9 and compare it with the "Moschzisker" at the right of this Exhibit P-42, you will find the same.

The Court: Is not this D-42?

The Witness: D-42. You will find the same poor stuff. It appears to be a capital printing, and ending up with a small "r" at the ending of the letter. Each one of these do the same kind of stuff right along.

Q. Then, in your opinion, the printing of "Emma Von Moschzisker" on P-9, front and back, is about the same as that which was printed in court on the other occasion, and from which you have taken some specimens? A. Yes. I think it is practically the same stuff.

Q. About the same? A. Yes.

Q. Now, turn to P-10. Get the exhibit P-10 there. A. I have it.

Q. As you look at the word "Emma Von Moschzisker" on P-10, and compare it with that on P-9, does it look as if it is done by the same person at all? A. Why, yes, I think so.

Q. You think it was done by the same person? A. Oh, I think so.

Q. Are they at all similar? Does not the P-10

look very much like the "Von Moschzisker" column on D-42? A. Why, yes. So does that one, P-9. You just asked me that.

Q. They both look—they are both similar then? A. Yes. I took the word "Moschzisker", this, and I said, "compare that word with the top "Moschzisker" on the photograph; you will find the same poor stuff.

Q. Now, taking these different exhibits in which the handwriting of Mrs. Von Moschzisker has appeared, and I am referring to license cards, can you see any difference between the—from year to year, can you see any difference? A. None of them are exactly the same, but she is a poor printer.

Q. Do you see any noticeable difference? A. I can't see she has improved.

Q. And all that is of about the same grade, in your opinion, as P-14, which she wrote in court; is that right? A. It is not exactly the same. That has not lines on it, and there is a lot of room. She has made it larger. But if you take the same words, and compare them, you will find it is very similar.

Q. And it indicates about the same degree of proficiency? A. Yes, I think so. That is larger. It looks worse, of course.

Q. Even when you take in comparison the word "Spring" and "Bergen" on P-50, your answer would remain the same? A. Why, yes. You have picked out the best ones, very best she did, probably. There are lots here that is worse than this stuff on the photograph.

Q. Does it strike you at all unusual, as an expert, that we would have a word written as well as "Spring" in 1925, and things written as poorly as P-14 in 1928? A. Well, that is your statement,

that it is written as well in 1925. You are saying that is so good. I can't see it.

Q. You cannot say that the word "Spring" is written good at all, as a matter of fact? A. I wouldn't say that. You have probably picked out the best specimen that she has made. Some of this stuff is awful—of these things, rather.

Q. Do people generally get better, with practice, as time goes on, or worse?

Mr. Breslin: There is no evidence of practice in this case. I object to that.

The Court: I sustain the objection.

Q. Well, year after year, as a person continues to print, for instance, license applications, do they generally get worse year after year, or better? A. Well, printing one license application a year, I would say is not much practice in printing. The ordinary person does not print hardly ever. That is why it is so poor, unless they have actually gone to school and studied it, like this stuff in the anonymous printing, and that on the left, then you have something.

Q. Do you think there is a great deal of similarity between this stuff, as you call it here, and Miss Mowell's and the anonymous? You think there is a great similarity there, do you not? A. I think anybody can see it, if they will look at it. It takes maybe a little study to look at it. Of course, it is similar. It is distinctive, too; that is the point.

Q. I call your attention to the word "Spring" written in 1925, on the back of the application of 1925, in this Exhibit P-25. Is not that "P" as good as any "P" that is in that anonymous column? A. I should say it is not. When you compare Mrs.

Von Moschzisker's printing with this anonymous printing, the comparison is ridiculous. She is not in the same class with it.

Q. So you say that "P" there in "Spring" is not anything like as good as the "P" in "Pettit" or "prison" or pay" or "paper", in the questioned column of this Exhibit D-42, nothing like as good? A. It is not nearly as good, no. It is not vertical, to begin with. That printing in that anonymous printing is very well done. Anyone can see that. That there particular part, right there, is fine. (indicating).

Q. And the "S", do you say that "S" on this license card of 1925 is a worse "S" than the "S" in "MISS" in the anonymous column here? A. There is no question about it.

Q. No comparison? A. No. If anybody will compare the two; unless they want to have them look alike.

Q. Now, could the work that is in the middle column have been done by copying the work in the left hand column? A. Not unless it was a person as skillful as the one that did the work in the left hand column.

Q. But by practice? A. Well, you are asking me for possibilities. That has no weight.

(Question read). A. If a person could develop that skill.

Q. Yes, if. A. Yes, if.

Q. Now, I call your attention to this Exhibit P-14. The capital "I's are dotted, are they not? A. Why, yes, if you call these capitals.

Q. Well, they are used in the place of capitals, are they not? A. Yes; that is her idea of a capital "I".

Q. Well, now, in this, "I hav'nt gone to Kings-

ton," there is not any question about that being a capital "I", is there? A. Why, I suppose it is meant for one.

Q. Yes. And that is dotted too, is it not? A. Yes, it is.

Q. You saw that written in court, did you not, by Mrs. Von Moschzisker? A. Well, I might have. I can't remember every little piece of paper.

Q. I show you another one, "I havev'nt gone back to Kingston", in another slip. That is a capital "I" and dotted, is it not? A. Yes, those are dotted.

Q. And that was written in your presence, in the courtroom here, from dictation, by Mrs. Von Moschzisker, was it not? A. I think so; from you.

Q. Yes, from me. I stood dictating it, and she wrote it. A. Yes. You had her write all this stuff too.

Q. Yes. A. And that is shown on the right of the photograph.

Q. And I call your attention to D-27, and that you say is written in the same hand as the anonymous letter that is in issue in this case? That was your opinion, was it not? A. Which one is that?

Q. You are familiar with that, are you not? That is one of the five letters you examined, is it not? A. Yes, I believe so.

Q. And you gave it as your opinion that the writter of that was the writer of the disputed letter in this case, did you not? A. I believe so.

Q. And there was not any doubt about that in your mind, was there? A. Well, that letter did not have much part in the case.

Q. No, no. Answer the question

Mr. Zabriskie: Read it, Mr. Stenographer. (Question read).

Q. No doubt about it, was there? A. Why, no. That and the other letters.

Q. I call your attention to the "I" there. Is not that dotted in exactly the same way as these other exhibits to which I had you refer? A. Yes, it is. And there are about a hundred things that are different.

Mr. Zabriskie: I think that last part may be stricken out, if your Honor please. I object to that. He says a hundred things that are different.

The Court: It is not responsive. Strike it out.

Q. Mr. Osborn, you have been in this line of business for some ten years, have you not? A. Actively, yes.

Q. Actively. Well, how long were you passively in it? A. Well, I was studying it before that time. I don't say I was in it, because I hadn't testified. I didn't testify right off.

Q. You are a man now of what, thirty some odd years, are you not? A. Yes, that is right.

Q. Thirty two or thirty-three? A. Four.

Q. So that since you were twenty-four you have been examining cases like this, similar, have you not, making a study of cases similar to this? A. Yes, sir.

Q. Now then, in determing whether or not handwriting is the same, do your sometimes have recourse to spelling of words too, as well as the formation of letters? A. Yes; sometimes it has point.

Q. And if you find an educated person writing

ten or fifteen or twenty letters, and all of it is written, spelling the words correctly, but if you find there is one particular word that is spelled wrong, and it is also in the anonymous, do you sometimes connect the two as pointing toward it being done by the same hand and the product of the same mind? A. It depends on the word. If it is "believe" or "receive", about half of the people spell them wrong, and it is no connection.

Q. How about "disease"? A. Well, I would say that is the same class of a word. I think if you had the people in the courtroom spell it, about a third of them would spell it wrong.

Q. That is your opinion? A. Yes. So the connection has no point.

Q. That has no point at all? A. I would say not, that word, no, or "believe" or "receive", either.

Q. Now, take a contraction. If a person wrote "hav'nt" instead of "haven't", and that mistake were made both in the anonymous and in the admitted standard, would that indicate anything to your mind? A. No, I don't think that is a very bad mistake at all. It depends on the kind of a mistake. If it is something that—

Q. I am saying if a person, otherwise educated, wrote pages and pages correctly—

Mr. Breslin: I object to that. That is not in this case. That is summation.

The Court: Just a minute. You have to predicate your hypothesis upon something before us. I know of no such evidence.

Q. Now, referring to Exhibit P-21 and the letter that is in dispute in this case, I call your attention to the fact that on the last page you find

"had'nt", and then I call your attention to the fact that in court, what is now Exhibit P-21, was written "had'nt", now, to your mind is that something that would help to indicate whether or not there was a probability of the two being written by the same hand? A. I can't think that is much of a connection.

Q. You cannot think so? A. No. I would have to be blind to overlook the rest of it, too.

Q. That would not be one of the straws which would show which way the wind blew, in your mind? A. Not if everything else was—

Q. You say that is your answer, is it? A. I can't overlook the rest of what you have in your hand. It is as different as black and white, I think.

Q. Now, I call your attention, Mr. Osborn, to the disputed paper, the "havn't", or the apostrophe over the "N", and I show you this same thing here in P-22, "hav'nt". Does that indicate to you, that it might possibly be the same handwriting at all? Is that a characteristic? A. I can't see that it indicates that same handwriting. It is like saying because a man has eyeglasses on—it is the same as a description. There are so many things that are different, I think it is silly, almost.

Q. When you see "had" with an apostrophe up in the air, on the exhibit P-21, the same style well known penmanship, and you find the same in the disputed letter, that does not help you to the conclusion that they might have been written by the same hand? A. I don't think that is a bad mistake at all.

Q. No, no. A. Certainly if, connecting the two, you are eliminating everything that is different, of course.

Q. I can only talk about one thing at a time, Mr. Osborn. A. Oh, I see.

Q. Now, is the matter of punctuation something that might help you to form an opinion, a straw, we will say, that shows the way the wind blows, or helps to show? A. Yes, that is one thing.

Q. Yes. All right. That is all. Will you just step to the board just a minute, Mr. Osborn? A. (Witness leaves the stand).

Mr. Breslin: Please do not answer this question, Mr. Osborn.

Q. Now, I call your attention to the "R" in Von Moschzisker on Exhibit P-8, and I will ask you if you will produce it on the board in the way that Mrs. Von Moschzisker did?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Mr. Breslin: He is not a handwriting artist.

The Court: I sustain the objection. The witness is not called upon to do that.

Mr. Zabriskie: Well, I think it is discretionary with your Honor.

The Court: Well, I am exercising my discretion.

Mr. Zabriskie: Well, that is all.

EDWARD H. SCHWARTZ, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mr. Schwartz, have you had any experience in examining disputed documents? A. Yes.

Q. What experience have you had? A. About twenty-five years.

Q. What office are you connected with at the present time? A. Prosecutor County.

Q. Now, before you were connected with the prosecutor's office of Bergen County, were you connected with any other counties in an official capacity? A. No, but with the City of Newark, Police Department.

Q. In what capacity? A. Superintendent of the Bureau of Identification.

Q. And in your duties as chief of that Bureau, did you have to examine disputed documents at times? A. Yes, frequently.

Q. You testified before Judge Caffrey in a number of cases in Essex County, when he sat there, as a handwriting expert? A. Not as a handwriting expert. I think I had several, though, before his Honor, if I recollect it correctly.

Q. In the performance of your official duties in connection with the prosecutor's office of Bergen County, did you, at my request, before the complaint was made in this case, make an examination or a comparison of the standard envelope, together with the George Murphy standard, and P-29? A. Yes.

Q. And before Mrs. Von Moschzisker signed that complaint on that particular morning, did you express an opinion in her presence as to the authenticity of the authorship? A. I did.

Q. What did you tell her? A. I said, in my opinion, Miss Mowell had written it.

Mr. Breslin: That is all.

Cross-examination by Mr. Zabriskie:

Q. Yes, but, Mr. Schwartz, you had had a very much bigger connection with this case than just passing on that letter; is not that so? A. Well, I don't get your meaning there, Judge.

Mr. Zabriskie: Read it, Mr. Stenographer. (Question read).

A. Well, that question is indefinite. I can't answer it. If you will be explicit and tell me what you mean, I will try to explain it or answer it for you.

Q. Well, quite a while before you gave the opinion you examined some twenty-seven or twenty-eight other letters and writings that were supposed or represented to you as having been done by somebody in connection with this case; is not that so? A. No, that is not.

Q. That is not the only letter that you saw, Mr. Schwartz, is it? A. No, it is not.

Q. Which others did you see? I will place the exhibits up there. You can place a letter aside, the ones you saw, please. A. I will try to identify them. But, you know, that is three years ago. I have not seen these letters since that time. And whether I will be able to or not, that is the question.

Q. Well, I will not take up time. You had all of those and more too, did you not, Mr. Schwartz? A. No, I didn't have—I may have had all these, but I made no examination of them.

Q. How many did you examine? A. Why, at the time that—possibly four or five.

Q. Well, that was your position at that time, to examine for the prosecutor, was it not? A. Yes.

But after—they were not all given to me at that time, the time that I made the examination. All that I had, I think, were four or five letters, P-29 among them.

Q. And, of course, you saw these some time before the criminal trial in 1928, did you not? A. I may have seen them all. I have no recollection of that.

Q. I say the ones you did see was some time in 1928, before the trial in February, 1928? A. No. I think I saw these in 1927.

Q. 1927? A. Yes, the fall of 1927.

Q. The trial was February, 1928. Did you see them around that time? A. Well, if they were produced in court, yes.

Q. If they were produced? A. Yes.

Q. All these were produced in court; all these you saw? A. Yes.

Q. Because they had you to pass on them before that?

Mr. Breslin: Wait a minute. I object to that.

Mr. Zabriskie: To save time, I will withdraw that question.

Q. And you are pretty proficient in this line of work, whether you say you are a handwriting expert or not; you are quite proficient, Mr. Schwartz, are you not? A. Well, do you want me to give an opinion on that?

Q. Yes. A. Yes.

Q. That is right. And then by reason of your proficiency and your knowledge, you kind of know who are good experts and who are not, do you not? That is, you form your opinion of who is high class and low class?

Mr. Breslin: Just a minute. I object to this.

The Court: I sustain the objection. Let us ask proper questions and save time.

Q. Did you not collaborate with Mr. Haring in this case before the trial, in February, 1928?

Mr. Breslin: I object to that.

The Court: You need not answer the question.

Mr. Breslin: Haring was never hired by the State.

Mr. Mowell: No, because—

The Court: This is another situation, altogether. And, Mr. Mowell, refrain from commenting. If you cannot, you will have to sit in the rear of the court room.

Q. Did you not hand to Mr. Haring, for the purpose of examination, all of these exhibits that you have just identified here in court today, so that he could—

Mr. Breslin: I object to that; not cross-examination.

The Court: I sustain the objection.

Q. And did not Mr. Haring come back with them

Mr. Breslin: I object.

The Court: Just a minute. Will you respect my rulings?

Mr. Zabriskie: If your Honor please, I think I can show inconsistent statements.

The Court: No, you cannot.

Mr. Zabriskie: I cannot show inconsistent statements?

The Court: There is no inconsistency.

Mr. Zabriskie: That is what I am going to prove next.

The Court: Now, just a minute. The State of New Jersey was the complainant in the other suit for the prosecutor. This woman made the complaint. Now, this is a civil suit, and anything Mrs. Von Moschzisker did could not bind the State.

Mr. Zabriskie: I am not talking about Mrs. Von Moschzisker at all.

The Court: Therefore anything this man did with respect to that trial has nothing to do with his testimony now, unless you can show, by way of contradiction—

Mr. Zabriskie: That is what I want to do.

The Court: You cannot do it under the form of your questions.

Mr. Zabriskie: May I ask him if he did not give a certain opinion?

Mr. Breslin: No. I object to that.

The Court: You may ask him if he gave an opinion, yes, but ask him that. Let us get to the point.

Q. Did you give an opinion to Mr. Haring?

Mr. Breslin: I—

The Court: I will allow this.

Q. About some of the exhibits in this case?

Mr. Breslin: I object to that as being too general.

The Court: I sustain the objection.

Q. As to whether or not they were in the handwriting of Mrs. Von Moschzisker?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Q. Did you give an opinion?

Mr. Breslin: I object to it.

The Court: He can answer yes or no.

A. No.

Q. Is it not a fact that (do not answer it unless the Court rules) Mr. Haring said to you, "It looks to me as if these letters are written by Mrs. Von Moschzisker"—

Mr. Breslin: If your Honor please, I object. He is trying to get something before the jury.

Mr. Zabriskie: No. I will argue in chambers with the Judge, if you want to.

The Court: No. Go ahead. Answer it.

Q. —and did not Mr. Haring say, "I think these were written by Mrs. Von Moschzisker", and show you some characteristics, and did you not say, "By God, that is so"?

The Witness: Shall I answer that?

The Court: Yes.

A. No, that is not so. I can give you the conversation that I had with Mr. Haring at the time, and as far as making any comparison between Mrs. Von Moschzisker's handwriting at that time, if I remember rightly, he had no standards of Mrs. Von Moschzisker to go by, as far as I recollect. I may be wrong on that. I don't remember.

Q. Mr. Schwartz, I show you these, and I will ask that they be marked for identification, and I ask if these do not refresh your recollection?

Mr. Breslin: I object to it. Mr. Schwartz

has denied that he ever made that assertion to Mr. Haring. That ends it.

Mr. Zabriskie: You would like to end it.

The Court: Just a minute. The witness denies the conversation.

Mr. Zabriskie: I am going to just ask him whether these photographs refresh his recollection.

The Court: All right. You may look at them.

(Photographs marked Exhibits P-53 and P-54 for identification).

(Exhibits P-53 for identification and P-54 for identification handed to the witness).

The Witness: No. I have seen this letter, but I have no recollection of Mr. Haring having it. I won't say that he did not have it, and I won't say that he had, because I have no recollection. I have seen this letter.

Q. Has that letter been in the custody of you or the prosecutor's office (I mean the original) continuously from the time Mr. Haring brought it and gave it to you, up until the present time, Mr. Schwartz? A. I just said that I have no recollection.

Mr. Zabriskie: Read the question.

The Court: You can answer that yes or no. Do you know that, where the letter has been?

The Witness: Yes.

Q. Has it been out of the custody of you or the prosecutor's office? A. No.

Mr. Zabriskie: Do you consent to this going in evidence, Mr. Breslin?

Mr. Breslin: I object to it, as it has not any bearing on the case, and you know it, and you are just playing up to the jury.

The Court: Just a minute. What letter is that, the script letter? Has not the script been offered in evidence?

Mr. Zabriskie: Your Honor can just look at that.

Q. Now, do you still say that Mr. Haring did not have any standard of Mrs. Von Moschzisker?

The Court: I will not admit this at this time.

Q. Do you still say that Mr. Haring did not have any standard of Mrs. Von Moschzisker when he brought back these exhibits and returned them to you? A. To the best of my recollection, he did not.

Q. Do not these refresh your recollection?

Mr. Breslin: I object, if your Honor please.

A. No.

Mr. Breslin: Repetition, time after time.

The Court: He has testified.

Mr. Zabriskie: That is all.

ELBRIDGE W. STEIN, called as a witness on behalf of the defendants, being duly sworn, testifies as follows:

Direct-examination by Mr. Breslin:

Q. Mr. Stein, what is your occupation? A. I

am an examiner of questioned documents, including—

Q. How long have you been engaged in that work? A. Exclusively for seventeen years.

Q. Where is your office? A. 15 Park Row, New York City.

Q. Do you testify occasionally or frequently in court cases involving questioned documents? A. Well, I would say frequently.

Q. Do you know the defendant, Mr. Von Moschzisker? A. Yes.

Q. Do you recall him consulting you with reference to certain letters? A. Yes.

Q. I show you a report and ask you whether or not that is not the report you submitted to him as a result of your examination? A. Yes.

Q. Is this the report that was used as the standard? A. Yes.

Q. Now, I direct your attention to P-29, and ask you if you examined that before? A. Well, I would have to ask a question about this. If this was in the other case, that would be it.

Q. Yes, that is the one on which the complaint was made. A. I have no recollection of it.

Q. Did you tell him, in your opinion, whose handwriting that was in? A. Yes.

Q. Whose handwriting? A. The same writer or letterer who did this wrapper and certain other standards that were submitted to me.

Q. Are you still of the same opinion? A. Yes. I have not anything on which to change my opinion.

Q. And your reasons were expressed partly in your reports that you sent to Mr. Von Moschzisker? A. Well, this report was not on this letter, as I recall. That is the report here of November 13th. I don't think that included this letter.

Q. It did not? A. No. This is June 30, 1927, and this report is 1926.

Mr. Breslin: You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Mr. Stein, your report there uses numbers, and it does not throw much light on what you did have before you. Now, will you just get together what you did have before you, so that the jury can see what you did have?

The Court: Now, it would be pretty hard for the witness, when you have everything at the table.

The Witness: That is what I was going to say, your Honor.

Mr. Zabriskie: We are trying to get them in shape. It would probably be well to put them back in the envelope; otherwise they get mixed up.

The Court: That is the standard wrapper.

Q. That you had, did you not? A. Yes. That is No. 10. That is my No. 10.

The Court: Have you any number on that?

The Witness: I don't see my number on this "George Murphy", but I know that I had that. I don't see my number on it, though.

Q. That is one thing. Suppose we put here what you had. Do you say you had that? A. No. That is one I did have. I don't see my number on the envelope, but my number is on the inside of it.

Q. Where is your number? A. On the back of it.

Q. Where? A. It is put on with the numbering machine.

Q. Is that No. 1 that you referred to? A. It looks like No. 1. It is 1 or 11 or 12, or some number that had a 1 in it. These have been handled so much since I put the number on, I notice some of them are gone, or at least I don't see them. How many numbers are on my reports?

Q. They seem to run up to 12. If you will just answer the question, just tell us briefly what No. 1 was, your No. 1. A. Yes, I understand. My No. 1 was a script written letter, and if this envelope in which it is now placed was the one in which it was posted—is January 18, 1926.

Q. Now, we will just stop a minute and discuss that. You say you were consulted when, for the first time, Mr. Stein, in this case? A. Why, it was the latter part of 1926.

Q. Shortly before the making of this report? A. Yes. I think just a few days. I think my report shows the 8th or 9th of November.

Q. You were employed by whom? A. By Mr. Von Moschzisker.

Q. Not by Mrs. Von Moschzisker? A. No. At least I didn't know. Mr. Von Moschzisker is the man who came to my office.

Q. When did you first meet Mrs. Von Moschzisker? A. I don't think I ever met her until the time of the other trial.

Q. February, 1928? A. Well, I don't know the date of that trial, but if that is the date, I have no recollection of having met her before that time.

Q. You never had an opportunity to have her write for you, and you never saw her write until

she wrote in the trial then? A. I do not remember that I saw her write then. Maybe she did, but I don't remember that.

Q. Now then, when you got that first letter there, your No. 1, the letter of January 18, 1926, you kind of put that in a category by itself, did you not, that it did not seem to be in the same writing as the others; did it? A. I don't know what I said.

The Court: You may look at your report, if you have a reference to it in there.

The Witness: Well, that I don't know, your Honor. I have not seen this report (examining report.)

Q. Mr. Stein, let me ask you this, before testifying.

The Court: Now, do you withdraw the other question?

Mr. Zabriskie: No, I will let it stand.

A. Now I can tell you what I said about it. I have to read it, though, from my report. I couldn't recall.

"Anonymous communication No. 1 seems to have been prepared with quite an effective disguise and I could not say from the standard matter which has been presented to me that this letter belongs to the same group as the others." I think that is the only reference I make to it.

Q. So you never compared that with any script writing at all, did you, of Mrs. Von Moschzisker, for example? A. I can't say that.

Q. That you cannot say; that is too far back. You were not quite satisfied with the amount of material you had before you in the form of stand-

ards at that time, were you? You only had this "George Murphy" card, and this wrapper; that is about all you had, is it not? A. Well, I seem to have had another one.

Q. And a marriage certificate? A. I do not recall.

Q. But you desired to have considerably more, did you not? A. Well, let us see what I said. Well, I say several things about that. Wait until I finish. Then I can answer.

Q. You would have been able to give a very much better opinion if you had had more standards; is not that so? A. Well, apparently not, for one of these. I say—do you want me to say what I said about it?

The Court: Yes.

A. (Continuing) I say, "As the result of this investigation, I am of the opinion that the same writter who did the lettering on Standard No. 10"—

The Court: That is P-29. Is this S-10.

Mr. Zabriskie: Yes, that was S-10 in the other case.

The Witness: But it was my No. 10, your Honor, and I think that was the marriage book or certificate.

A. (Continuing) "—also did the lettering of the anonymous communications, Nos. 3, 5 and 7." That is, my numbers 3, 5 and 7. "There can be no doubt but that Nos. 2, 3, 5, 6, 7 were the work of one person—"

Q. Now, just lay out 2, 3, 5, and 7. A. Hadn't I better finish this?

Q. Well, all right. A. "but, with the limited

amount of standard lettering that there is here presented, I could not say that, standing alone, Nos. 2 and 6 were written by the same writer who prepared the standard, but when these communications are taken together as a whole, I am of the opinion that all of these numbers came from the same source and that they were prepared by the person who wrote standard No. 10."

Now, I do not know whether I said anything else about standards or not. I might finish that.

Yes, I do say something else here about standards. "If this matter is to be the basis of a litigation, it would be well to procure additional standard writing. This writing should be both longhand and lettering, and if the—" well, that does not refer to it. That is what I said about the standards.

Q. So you were kind of cramped for material on which to form an opinion— A. Well, apparently not on what was submitted. That is, on this No. 10.

Q. But if you have more standards you can form a better opinion than you can on just one standard; is not that so? A. That depends upon the character of the writing that is being examined, and the standard.

Q. Well, as a general rule now, we will say, is it not desirable to have a great many standards, so that the different peculiarities or characteristics can be shown? A. Yes.

Q. Because sometimes you make a character by accident? A. Yes. I would say that, as a general rule. But that, again, depends upon the character of the writing, and the—that is, the character of the writing in the standard as well as the chac-

acter of the writing in the matter that is being examined.

I do not seem to have all of them here that I examined. Here is my No. 8, my No. 6, my No. 2, my No. 5, and No. 1. Now, there are several of them that I don't seem to have here.

Q. How do you arrive at an opinion as to whether one piece of handwriting is in the same as any other, Mr. Stein? A. My two processes. One is by a discovery, and listing of the similarities. The other is the same discovery, and estimate of their significance of the differences. Now, it is a combination of those two things. I might illustrate that. Differences have to be considered along with similarities, and then similarities have to be considered as to whether they are general, that might be found in, say, oh, a large number of different writers, or whether they are specially, individual, distinctive; and that is true of the differences, whether the differences are caused by natural variation in writing done by the same person on different occasions, or whether those differences point toward a different set of writing. I think, briefly, that is the process.

Q. Well, then, sometimes it is necessary to have quite a lot of standards in order to arrive at a conclusion, then, and there are other times when there is something so striking that you do not need so many; is not that so? A. Well, I wouldn't say just some one thing. You couldn't base any kind of a conclusion on one thing. But there are cases where a limited number of standards—an opinion can certainly be based upon a limited number, while in other cases that cannot be done. And then there are cases where with unlimited amounts of standards, you can't give an opinion at all.

Q. Now, of that kind, limited, can you give us some case (I do not understand your language; it is a little too technical)? What kind of a case would it be where very limited standards would—just give us one case, so the jury can get the idea? A. I think it depends upon the character of the writing. I couldn't explain it to you. It is—it depends upon the character of the writing, in both the standard and the disputed writing examined.

Q. I suppose you have cases where you will only have one signature to compare with another, practically, and you have to give an opinion; is not that so? A. Well, such an opinion is not worth much.

Q. Well, sometimes you would have two and two, would you not? A. Well, I think you should have more than that.

Q. You did not have more than that in this case, did you? A. Oh, yes; a lot more writing than that.

Q. How much writing that was admitted to have been done by Miss Mowell did you have? A. Well, I had this, and the marriage certificate book. Is it in evidence here? Is it proper to refer to it?

The Court: Yes. You may look at it.

Q. How many writings are there, from your recollection? How many words do you think are written by Miss Mowell there? A. Oh, I do not know.

Q. You say there is a whole lot of writing in that? A. Altogether, yes, considerable.

Q. All right. Now, let us question how much is a whole lot? This is it, is it not? A. Yes, this is it.

Q. A whole lot. Now, count them up. A. Count what?

Q. The words. Read off there what is in Miss

Mowell's handwrting. A. Which do you want me to answer first now? You have asked me two questions. I can't only answer one.

Mr. Zabriskie: The stenographer will read it.

The Witness: I know what the question is. You asked me two questions. I did not answer the first question.

Q. Count the number of words, and call off the number of words. Call them off, and I will count them, in Miss Mowell's handwriting? A. "October, 1926," "Arthur Colesby Mills, Jr.", "Thelma Fritz, Ridgewood, New Jersey," The "State of New Jersey."

Q. Where are you reading now? A. I read what you told me.

Q. Where is the standard? A. Right there.

Mr. Breslin: Just a minute.

Q. Now, go slowly, so that we will count the number of words. A. Is this a kindergarten class? I can count them. You don't need to count them.

Q. How many words are there? A. 16.

Q. 16. That is what you call a whole lot of writing, is it, Mr. Stein? A. Yes, combined with this other matter.

Q. I am not asking you to combine. You said— A. Well, my answer was that there was considerable writing, and it included this.

Q. Now then, altogether, how many words did you have to compare? A. Thirty.

Q. Thirty words? A. Yes.

Q. Now then, have you seen Exhibit P-25 before? A. I don't know.

Q. You do not remember? A. No.

Q. And P-26? A. I don't know about this, either.

Q. Do you know Mrs. Von Moschzisker's writing? A. I don't think so.

Q. Now then, I am going to show you something else, of which you have seen the original, D-26. A. What is it? I don't know what these papers are.

Q. It is your No. 2 or 3. 2, I think. A. I have it.

Q. How many words are there on those? A. A lot of them.

Q. All right. Count them up.

The Court: Now, just a minute.

Mr. Breslin: I object. We want to finish this case some time today.

The Court: I sustain the objection.

Q. Now, I am going to ask you—Mr. Stein, that is not the one. I mean D-26. A. You told me my No. 2. This is it.

Q. I cannot be responsible for your numbers.

The Court: Just a minute.

Mr. Breslin: I ask that that remark be stricken from the record.

Mr. Zabriskie: I will consent to it.

The Court: We are going to save time if you will definitely pick out just what you want.

Q. Here it is (handing papers to witness). A. Was there a question?

Q. Yes. How many words are there in that?

The Court: No. Do not answer that question.

Mr. Breslin: I object to that, if your Honor please.

Mr. Zabriskie: I withdraw that.

Q. Now, with D-26 before you, and with P-25 and 26 before you, can you say whether or not there is enough writing on those two for you to form an opinion as to whether or not they were in the same handwriting? A. I don't know. That is, I don't know whether there is enough or not. I have no recollection of seeing these two, that is P-25 and 26, and certainly I couldn't tell now. That has been two or three years ago, since I saw them.

Q. Now, assuming that the words "Emma Von Moschzisker, 144 Spring Avenue, Ridgewood, Bergen, April 1, 1925, Dodge, A276742, A348526, touring, Blk, yes, yes", as they appear on P-25, and also the "E. L. Von Moschzisker", in script, on the back, and also "November" and "5" and "E. L. Von Moschzisker", in print on the back—assuming those are all in Mrs. Von Moschzisker's handwriting, now, by comparison of that exhibit with D-26, could you or could you not form an opinion as to whether or not the same person wrote both?

Mr. Breslin: I object to that on the ground that the time has not been fixed. I mean in what time could he fix an opinion?

The Court: He can answer yes—

A. I can't tell.

The Court: You can answer yes or no.

A. I can't tell until I examine it. May be and maybe not.

Q. How long would it take to make the examination that would be necessary for you to arrive at

a conclusion? A. I can't tell that. It might take me ten minutes, and it might take me an hour.

Q. Can you not give us an opinion at all at the present time as to whether or not those are all in the same handwriting? A. No.

Q. You could not do that? A. No. I would not give an opinion of that kind.

Q. No expert will give an opinion right off the bat, anyhow?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Mr. Breslin: There is testimony—

Mr. Zabriskie: I withdraw that.

Q. You would not attempt to give an opinion on disputed writings by just a cursory examination, the same as you could make on the stand, would you, Mr. Stein? A. Why, no.

Q. You would have to examine and photograph and do other things to do that; is not that so? A. Well, not necessarily photograph, but it has to be examined with care.

Q. And when you say "examined with care" with a glass, and so on? A. Well, if it requires it.

Q. In a case like this, would it require it, in your opinion, or can you not tell that? A. I can't tell that.

Q. Cannot tell that.

Mr. Zabriskie: That is all.

Mr. Breslin: That is all.

May it please the Court, the defense rests.

The Court: I thought you had medical testimony.

Mr. Breslin: We are waiving that. We do not need it.

PLAINTIFF'S REBUTTAL TESTIMONY.

Mr. Zabirskie: Is Prosecutor Hart in the courtroom?

I have subpoenaed Prosecutor Hart. I supposed, if your Honor please, there were going to be more witnesses. I did not expect that the resting would be quite so soon, and I have some witnesses who will be here about half past twelve or one o'clock.

Mr. Breslin: If your Honor please, I want to finish this case today.

Mr. Zabriskie: Well, I want to finish it too.

Mr. Breslin: There is no reason why we cannot finish the testimony before lunch, and sum up after lunch. If there is any testimony after lunch, we will not finish today. It is not fair to the jury or to you or anybody else.

The Court: I do not know what you are going to rebut. I do not know what you are going to call Prosecutor Hart for.

Mr. Zabriskie: Well, I will call some other witnesses, then.

In the first place, I offer in evidence the pleadings in this case.

The Court: Pleadings are not evidential. So we will rule on that now.

Mr. Zabriskie: Well, I offer in evidence the pleadings that I referred to when I was talking to Senator McGinnis.

Mr. Breslin: No. I object to that.

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor will allow me an exception.

The Court: Pleadings in another case, but not in the instant case.

Mr. Zabriskie: Yes.

ROBERT J. CAVAGNARO, called as a witness on behalf of the plaintiff, in rebuttal, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Cavagnaro, what is your line of business? A. Newspaper work.

Q. And do you know Mrs. Von Moschzisker? A. I do.

Q. Did you meet her about the time the scare came out about—

Mr. Breslin: I object.

The Court: I will allow it and see what it is. I don't know.

Q. Can you give us the date when the newspapers begun to give accounts of these anonymous letters?

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Mr. Zabriskie: That is all.

Mr. Breslin: No questions.

Mr. Zabriskie: Is Mr. Frederick W. Van Blarcom in court?

The Court: Is this the Mr. Van Blarcom whom Mrs. Von consulted as an attorney?

Mr. Zabriskie: Well, she does not say so.

The Court: If there is a relationship of an attorney and client, unless privilege is waived, we are not going to have an attorney testify as to confidential communications with his client, so, to save time, that is my ruling.

Mr. Zabriskie: All I wanted to ask Mr. Van Blarcom was whether or not he was consulted by Mrs. Von Moschzisker on April 7th,

April 6th or 7th, 1926, in connection with this.

The Court: He can answer that, if he was. That is as far as it can go, unless there is a waiver of the privilege. Swear the witness, then.

FREDERICK W. VAN BLARCOM, called as a witness on behalf of the plaintiff, in rebuttal, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Mr. Van Blarcom, you are a counsellor at law of the City of Paterson, located in the City of Paterson? A. Yes, sir.

Q. And you were on April 7, 1926? A. Yes, sir.

Q. Was Mrs. Von Moschzisker in to see you on that day, or about that time? A. I don't recollect the date, but about that time.

Q. I will show you this. Does this paper that I now hand you refresh your recollection (handing paper to witness)? A. Yes.

Q. Was she there on April 7, 1926? A. This letter says she was.

Q. Who signed that letter?

Mr. Breslin: I object to that.

Q. That is a letter signed by you, is it not?

Mr. Breslin: I object to the letter.

A. That is stamped. It was written by—at my dictation, and stamped by my secretary.

Q. And was in connection with the anonymous letters that she had said she had been receiving? A. Yes, sir.

Mr. Zabriskie: Cross-examine.

New Jersey State Library

Cross-examination by Mr. Breslin:

Q. She told you that—

The Court: Now, just a minute. There is nothing to be had, unless you want to make him your witness. There is no cross-examination on that.

Mr. Breslin: Well, as I understand it, then, under your Honor's ruling, his testimony is restricted and confined to the one fact that Mrs. Von Moschzisker consulted him about these anonymous letters?

The Court: Yes.

Mr. Breslin: No questions.

Mr. Zabriskie: I am going to ask this, to see whether he will waive her privilege.

The Court: Now, Judge, you have been trying cases for a long while.

Mr. Zabriskie: No, but I think she has a right to waive the privilege.

The Court: Of course anybody has a right to do anything, but counsel—on the advice of counsel, she may be guided by that.

Mr. Zabriskie: I just want to ask.

The Court: You know and I know that the upper courts have frowned on any attempt to bring before a court or jury confidential communications.

Mr. Zabriskie: Well, can I not just ask one question?

Redirect-examination by Mr. Zabriskie:

Q. Did she or did she not at that time tell you, or not, to write a letter to Miss Mowell?

Mr. Breslin: I object to that

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor will allow an exception.

EDMUND B. RANDALL, called as a witness on behalf of the plaintiff, in rebuttal, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Q. Judge Randall, of what court were you formerly judge? A. Paterson District Court.

Q. Do you know Mrs. Emma Von Moschzisker? A. Yes, sir.

Q. And you never represented her as her counsel? A. No, sir.

Q. Did she or did she not come to see you in the summer of 1926? A. She did.

Q. And where did she see you, Judge? A. In my office, 152 Market Street, Paterson.

Q. Do you recall what she said to you?

Mr. Breslin: Well, I object to that. I do not think that is proper rebuttal.

The Court: I sustain the objection.

Q. Well, you did see her, though, in your office in the summer of 1926? A. Yes, sir.

Q. Was the conversation in the corridor or in the halls? First, I will ask you this: where do you say your office is? A. Fourth floor, 152 Market Street, Paterson.

Q. That is in the National— A. Paterson National Bank Building.

Q. Is it also called the United Bank Building? A. United Bank Building.

Q. It goes by both names? A. Yes, sir.

Q. You say that conversation was in your own office? A. It was in my private office.

Q. That you are positive of? A. Yes, sir.

Q. Did you ever discuss any anonymous letters with her in the corridor of that building? A. No, sir.

Q. Did she show you an anonymous letter in your office? A. She did.

Q. Did she ask you to represent her at that time? A. She asked me to do what could be done to stop sending these letters.

Mr. Zabriskie: I think that is all

Cross-examination by Mr. Breslin:

Q. You know the Mowell family for many years? A. Yes, sir.

By the Court:

Q. Judge, at that time did you tell Mrs. Von that you could not represent her if it involved the Mowell family, because you were their counsel? A. I did.

By Mr. Breslin:

Q. But she did tell you at that time, Judge, that she wanted the letters stopped? A. Yes.

Q. Or words to that effect. Now, Judge, this conference you had with Mrs. Von was three or four years ago? A. It was in the late spring or early summer of 1926.

Q. Are the details, and so forth, fixed in your

mind? A. Absolutely. I picture right where she sat and where I sat.

Q. I think you are wrong, because is it not a matter of fact, and is it not the truth, that you talked with Mr. Von in your private office? A. Considerably later, for a whole Saturday morning.

Q. But you did talk to him about the same topic? A. Yes, sir.

Q. And he wanted the letters stopped? A. Yes, sir. They both did.

Redirect-examination by Mr. Zabriskie:

Q. Now, what was the conversation with Mr. Von?

Mr. Breslin: I object to that.

The Court: Sustained. There is no rebuttal on that.

Mr. Zabriskie: He has opened up the subject.

The Court: Oh, no, I think not.

Mr. Zabriskie: Well, I think that is all.

ARCHIBALD C. HART, called as a witness on behalf of the plaintiff, in rebuttal, being duly sworn, testifies as follows:

Direct-examination by Mr. Zabriskie:

Mr. Breslin: I will admit the prosecutor's qualifications.

The Witness: What?

Mr. Zabriskie: Just a minute, Mr. Prosecutor.

Q. Mr. Hart, you were prosecutor of the pleas in the year 1928, and, in fact, down until 1930? A. Yes.

Q. For a period of how long preceding that date? A. Which date?

Q. 1930? A. Ten years.

Q. Do you know Mrs. Von Moschzisker? A. Yes.

Q. Did she ever come to your office when you were prosecutor? A. Yes.

Q. About anonymous letters? A. Yes.

Q. And did you instruct her what to do when she received anonymous letters? A. Yes.

Q. What did you instruct her? A. I don't know whether I said all—whether I may repeat all that I said to her. So far as the prosecution was concerned, I directed her, if she received any more of them, to bring them immediately to me, unopened, and, so far as possible, untouched by people.

Q. Now, as a matter of fact, did she follow out your orders about keeping them unopened?

Mr. Breslin: I object to that.

The Court: I will allow that. The testimony is in the case that she opened them. There is no rebuttal on that.

A. No.

Mr. Breslin: Just a minute. I object.

The Court: There is no rebuttal in this, Judge. She testified that she did that.

Mr. Zabriskie: Well, then, of course it is in.

Q. Is it not a fact that after you told her not to open them, she continued to open letters.

Mr. Breslin: I object to that.

The Court: I sustain the objection.

Mr. Zabriskie: Your Honor will allow me an exception.

That is all.

Cross-examination by Mr. Breslin:

Q. Is it not a fact, Prosecutor, that after these letters were received, and the opinions of the handwriting experts received, that you authorized and directed me to proceed with the criminal prosecution of the matter? A. I directed you at some stage of the proceedings to try the case.

Q. The case was tried with your approval? A. Yes.

Redirect-examination by Mr. Zabriskie:

Q. Who had the active management of the case, of that particular case, Mr. Hart? A. Divided in two parts. The earliest I had charge of; the actual court work, Mr. Breslin.

Mr. Zabriskie: Plaintiff rests.

(Recess)

After Recess.

Mr. Breslin: May it please the Court, I call upon Judge Zabriskie for an opening.

(Mr. Zabriskie opened the case to the jury).
(Mr. Breslin summed up the case to the jury).
(Mr. Zabriskie summed up the case to the jury).

The Court: As I remarked this morning, we will not submit the case to the jury tonight. Justice Parker will be here in the morning, and he will charge the Grand Jury. I would much rather you would take this case earlier in the day, because there are possibly a hundred exhibits or more, and I am going to adjourn until tomorrow at one o'clock, so far as this case is concerned. I will ask you to have your lunch before you come. Then you may uninterruptedly consider the case.

And I further ask you to keep your minds open until the case is finally given to you and, of course, do not discuss this case with anyone, or permit anyone to discuss it in your presence. If anyone attempts to discuss the case in your presence, advise the court.

We want all of the exhibits impounded, not to be taken out of the courtroom tonight.

Mr. Breslin: Fine.

The Court: Court is adjourned.

Adjourned to tomorrow, April 1, 1930, 1 P. M.

CHARGE TO THE JURY.

The Court: Ladies and Gentlemen of the Jury: During the past week you have listened to considerable testimony in this case and, in addition to the oral evidence you have had many demonstra-

tions with respect to handwriting, and you have had testimony on behalf of the plaintiff with respect to the similarity of P-29, which is the letter on which the complaint under date of August 10, 1927, was founded.

Ordinarily after the termination of a trial, if it terminates in favor of the defendant, the defendant must find compensation in the fact that he has been given a verdict. However, in other cases (this is one of them) the law permits the successful defendant in a criminal suit to institute an action for malicious prosecution. The defendants in this cause are Emma L. Von Moschzisker and Frank, her husband. For the purpose of abbreviation I am referring to them as Mr. and Mrs. Von. They have been charged in the complaint which is the basis of the suit before you, with having maliciously prosecuted Miss Mowell in the criminal proceeding.

Now, under the law, there are certain elements which must be established to your satisfaction by a fair preponderance of the evidence. The first is that the prosecution was ended and the defendant, now the plaintiff, was duly discharged. Second, that the defendant or defendants instituted the proceedings against her without reasonable or probable cause, and the defendants were actuated by a malacious motive in making the charge.

With respect to the first two propositions; that is, the institution of the proceedings and the discharge of the defendant, of course there is no dispute as to that. Miss Mowell was arrested pursuant to a complaint signed by Mrs. Von, and she was tried before a court and jury and she was acquitted. Of course, the mere acquittal of a defendant in a criminal proceeding, standing alone, is

not sufficient to justify a recovery in a suit such as this, because we have to keep in mind the other elements prescribed by law in order to make up a cause of action on her behalf.

The important letter in this case is referred to as P-29, and that was the letter which the State of New Jersey elected to use as the basis of the criminal action. The plaintiff in the present case contends that Mrs. Von wrote the letter herself. The defendants in this case say that the letter was written—that is, the evidence offered by them, by way of witnesses, have said that the letter was written by Miss Mowell. Now, therefore, one of the important considerations to determine, if you can, from the evidence before you, is, who was the author of this P-29? If you conclude that Mrs. Von wrote it herself, of course, in that event, the safeguards which the law puts around a person in such a case as this can be wiped away, about which I will refer to presently.

On the other hand, as I said before, the witnesses for the defense have testified that it was their opinion that Miss Mowell wrote this letter. However, in the present status of the case, it is not necessary for you, in order to justify a recovery for the defendants, to conclude that Miss Mowell wrote this letter because when you come to consider the other elements of the case with respect to probable cause or malice, if someone wrote this letter, and the defendants had probable cause for the institution of this suit, then, of course, in that event, irrespective as to who was the author, the defendants would be entitled to recover.

There have been offered in evidence many other

writings in this case. You will have before you in the juryroom not only P-29, but you will have before you specimen writings which have been referred to as genuine. This wrapper, P-35, is admittedly in Miss Mowell's handwriting. In addition to that, you have admittedly genuine writings of Mrs. Von. You have enlarged copies. You have photographs too of words in different letters, taken from the various exhibits.

The only purpose of admitting evidence of that character is for that of comparison. In other words, we are not concerned with the substance or the thought that these letters convey. But that, of course, I do not mean you are not privileged to look for a similarity of expression, or the use of a letter. When you are given these letters as a basis of deliberation, they are given to you for the purpose of comparison and, of course, sitting as you are, the triers of fact, the Court cannot impose any limitation on you with respect to what you should do on the question of fact in this case.

During the course of the trial many questions were raised by way of objection by both sides, and I have made my rulings on those. However, my rulings with respect to the admissibility of evidence have no bearing on your deliberations. Whatever the Court has said to either counsel should not influence you in any way at all, sitting, as I am, to pass upon questions of law. You are not to consider my attitude at all. Personally I am indifferent to the result in this case. My only concern is that you render a verdict, an honest verdict, in keeping with your oaths, upon the facts, applying the law as the Court lays it down to you.

As I said before, there are two elements established; first, the signing of the complaint by

Mrs. Von, the arrest, and the successful termination of the criminal trial in favor of the present plaintiff.

Now we come to the other elements. Did the defendants have probable cause in making this complaint? Were they actuated by malicious motives? If you conclude from the evidence that the defendant had probable cause, then, whether they were malicious or not, it is immaterial. On the other hand, if you conclude that there was no probable cause, upon the establishment of that fact to your satisfaction it is a permissible inference on your part to say the defendants' conduct was malicious.

I have emphasized those elements because the law has fixed the elements that I have enumerated as the basic rule which should be your guide in this case.

Mrs. Von testified that she did not write this letter in question. She testified that she was not actuated by malicious motives, and she further testified, and so did her husband, that before the institution of the criminal proceedings, she sought the advice of counsel and sought the advice of handwriting experts. The mere consultation of handwriting experts, standing alone, does not come within the rule of justification. But if the handwriting experts were consulted with respect to consultation with attorneys, where there has been a full disclosure of the facts, and the complaint was made, based upon a full disclosure of the facts, then, of course, the defendants would be absolved from liability in this case.

Our upper courts have said, with respect to the plea based upon the advice of counsel:

"If the defendant informed his counsel of all facts, all the details, counsel's advice would only protect the defendant if none of the material statements were false to the defendant's knowledge."

Now, with respect to that consideration, it is important for you to determine whether or not Mrs. Von wrote this letter. If she wrote this letter herself, and then she predicated this criminal complaint upon something which she did herself, then the fact that she consulted attorneys or consulted handwriting experts in conjunction with her attorneys, that rule of law would not avail her any protection But, on the other hand, if you conclude that she did not write this letter, if you conclude that someone else wrote it, other than Miss Mowell, and she went to her attorney or attorneys, and met the requirements of full disclosure that I have mentioned, then, of course, the law would protect her in acting on the advice of counsel.

The plaintiff in this case claims damages as the result of her arrest, incarceration, and the trial. If you conclude that the plaintiff has made out her case, she ought to be compensated on the basis of the injuries sustained, the injury to reputation, loss of wages, loss of position, humiliation.

There has been also testimony in the case with respect to medical bills and sickness after the arrest. I have not enumerated those elements in pointing out to you what are proper elements of damage, and I am going to ask you to be guided by my statement as to that; that is, in the event you find the plaintiff is entitled to recover at all.

From the testimony it appears that Miss Mowell

was employed as a clerk in the bank at Ridgewood. I do not recall the salary she earned.

Has there been any evidence of that?

Mr. Zabriskie: She said a thousand dollars a year.

The Court: A thousand dollars a year. There is evidence in the case of her being detained in the County Jail over here for some period of time, and there is testimony in the case that it cost her fifteen hundred dollars for counsel in the previous case; and also there is evidence with respect to the expense incurred by the hiring of handwriting experts, the expense of procuring bail; as I said before, the humiliation attending such an ordeal; and, if you can trace the loss of her position, the loss of earnings, to this act of the defendant, those, too, are proper elements of damage.

With respect to malice our superior courts have defined malice:

> "Malice in law is the intentional doing of a wrongful act without just cause or excuse."

I am going to ask you to keep that in mind on the question of malice. I am going to ask you to keep in mind, too, the elements which must be established by the plaintiff in order to recover in this action.

If, as I said before, from the evidence, you conclude that Mrs. Von wrote this letter herself, then, of course, she was not justified in instituting the criminal proceeding, and she ought to respond in damages to the amount or to the extent that damages have been proved. If she wrote this letter herself you can very properly say she had no probable cause in instituting the criminal proceeding. You can properly say, if she wrote this letter her-

self, she evidences malice; and, as I said before, if she wrote the letter herself, then the defense based upon the theory that she acted on advice of counsel would fail, because that rule of law only affords privilege to the one who has made full disclosure.

On the other hand, if you conclude that Mrs. Von did not write this letter, and you conclude that Miss Mowell or someone else did, and this arrest in the original instance, under the complaint which I have referred to as of August 10, 1927, were based upon probable cause, if it were done without malice, then, of course, the defendants ought to be given a verdict as of no cause of action. If Miss Mowell or someone else wrote this P-29, and Mrs. Von and her husband made a full disclosure, and they acted on the advice of attorneys, then, whether she made a mistake or not, the law would justify you in giving a verdict in favor of the defendants.

Now, I am not going into the evidence, and if, perchance, I should comment on some of the testimony, I do not want you to understand that I am giving emphasis to the evidence that I refer to, nor do I wish it understood that by my non-reference to testimony in the case, I am attaching little importance to it. I want you to decide this case on all of the evidence, as, sitting as jurors, it is your privilege, and your privilege alone, to determine the value of testimony. You can draw all proper inferences from the evidence or the facts before you. Whatever counsel has said, whatever the Court has said, with respect to the facts, is not binding on you at all. You are the sole judges of the facts, and your determination of the facts is a finality.

The defense, as I said before, denied the writing

of this P-29. There is evidence in the case with respect to the defendants' taking up the question of what ought to be done, with Mr. Lewis. There is evidence that they went to Mr. Winne, who was United States District Attorney at that time; and there is evidence, too, in the case that they talked to Judge Fred Watson, and also Senator McGinnis. There is evidence in the case that they went to the Prosecutor's office, and I think Senator McGinnis testified that after some consideration he recommended that a complaint be made, and offered to go to the Prosecutor's office with the defendants to make the complaint.

In this case before us Mrs. Von is the one who signed the complaint. The plaintiff contends, however, that Mr. Von was a party to those proceedings, and while he did not actually sign the complaint, yet he participated to the degree that renders him liable. And I might add something else with respect to Mr. Von's liability. Under the law that existed at the time that this complaint was made out a husband was chargeable with the torts of his wife, whether he was present or not, provided the tort was not committed on the separate business of the wife. So you see, irrespective of Mr. Von's active participation, if you conclude that Mrs. Von should have a verdict against her, the law carries with it the obligation to also include Mr. Von in your verdict, that is, rendering a verdict against him, in favor of Miss Mowell.

As I said before, this case has taken considerable time to try. You have been patient, you have been interested, and no further resume on my part will help you with respect to the facts.

As I said before, we are not concerned with anything in this case at all except the hope that a ver-

dict will be rendered based upon your oaths, in keeping with the law and the facts; and I will again, before I submit this case to you, reiterate the elements of malicious prosecution. First, that the prosecution was ended and the defendant, now plaintiff, was duly discharged; that the defendants instituted proceedings against the present plaintiff without reasonable or probable cause; and that the defendants were actuated by malicious motives in making the charge.

The plaintiff in this suit has undertaken the burden of establishing these elements to your satisfaction by a fair preponderance of evidence. If the plaintiff has so satisfied you, then she is entitled to a verdict at your hands. If she has failed to sustain these elements in their entirety, then the plaintiff must fail and your verdict ought to be no cause of action.

The Court: Judge, I think I have covered your requests.

(The Court and Mr. Zabriskie confer.)

The Court: I might say, in the event of recovery on the part of the plaintiff, in view of the fact that malice is charged, in addition to compensatory damages, the plaintiff would be entitled to punitive damages. That would be exemplary damages, as a punishment for what they did. But, of course, that too, like the other elements of damage, depends entirely upon your finding with respect to the basic rules, basic facts, which go to make up the cause of action.

(The Jury retired at 1:50 P. M.)

The Court: Are there any exceptions?

Mr. McGinnis: There is no proof that Mr. Von had anything to do with the institution of the criminal proceedings, and also what your Honor said later on in your charge with respect to Mr. Von being responsible at common law.

Second, I take exception to that part of the Court's charge where you said that"The plaintiff says that the defendant, Mrs. Von, wrote this letter; the defendants says that the plaintiff wrote it; it becomes important for you to find which is true."

The Court: I said the witnesses for the respective parties.

Mr. McGinnis: Well, the witnesses. My point being that your Honor limits by that language the finding as a fact that one or the other of these parties must have written that letter. Later on you somewhat take that back or, rather, change it, but I do not think fully enough to justify our passing this up.

And also where your Honor said, "The Court cannot impose any limitation as to what you may do with questions of fact", our exception to that being that the jury must be confined to the evidence that is before them, and only draw such legitimate inferences as may be from the evidence.

Also where your Honor said, "Handwriting experts, standing alone, would not be sufficient to justify the making of the complaint by Mrs. Von. My thought is, if what she learned from these handwriting experts honestly justified her in making the complaint, that that, standing alone, would be enough to take away malice.

Then where your Honor said in another part of your charge, "If you conclude that she (meaning

Mrs. Von) did not write this letter," and so forth, that language would indicate in effect that the burden was on Mrs. Von to establish that she did not write the letter.

Also to your Honor allowing the jury to discuss the question of loss of job. There is no proof before the Court to justify the jury giving any consideration to that element of damage, or for that damage.

Also that your Honor did not definitely exclude sickness and doctors' bills in your charge.

Also where your Honor said, "If Miss Mowell or anyone else wrote it, (referring to the Exhibit P-29) and defendants made full disclosure to counsel," and so forth. We except to that because we think that if Miss Mowell alone wrote that letter, why, it was not necessary for the defendants to make any disclosure to counsel; that would be a complete justification, if they established that fact.

I have already mentioned about Mr. Von's participation. I think there is no proof that Mr. Von participated. But if his participation consisted in the fact that he may have advised his wife to make a complaint, or aided her in her efforts to find out who wrote it, that would not constitute such participation as to justify the maintenance of an action against the defendant.

Notice of Appeal to New Jersey Court of Errors and Appeals.

NEW JERSEY SUPREME COURT.

SARAH B. MOWELL, Plaintiff-Respondent, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER, Defendants-Appellants.	Action at Law. Notice of Appeal.

To:

JOHN B. ZABRISKIE, ESQ.,
Attorney for Plaintiff,
Hackensack, N. J.

Sir:

PLEASE TAKE NOTICE, that the defendants in the above entitled cause appeal to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause.

BRESLIN & BRESLIN,
Attorneys for Defendants.

Opinion.

Filed April 16, 1931.

NEW JERSEY SUPREME COURT.

Submitted October , 1930. Decided April, 1931.

SARAH B. MOWELL,
Plaintiff-Respondent,

vs.

EMMA L. VON MOSCHZISKER and
FRANK A. VON MOSCHZISKER,
Defendants-Appellants.

Before—Justices CASE, DALY and DONGES.

For respondent, JOHN B. ZABRISKIE.
For appellants, BRESLIN & BRESLIN, and WARD & MCGINNIS; PETER J. MCGINNIS, on the brief.

Per Curiam

Plaintiff's action was for malicious prosecution and grounded in the arrest, indictment and trial of plaintiff on a charge of "knowingly, unlawfully, maliciously and with criminal intent" sending and delivering to Emma L. Von Moschzisker an anonymous, blackmailing letter. There was a verdict of $25,000.00 for plaintiff against both defendants. The trial court granted a rule with exceptions reserved, and the judgment was reduced to $13,000.00. The present appeal brings up the points of law raised under the reserved exceptions.

The first point is that the court erred in charging the jury as to the liability of the husband to

respond in punitive damages for the tort of his wife. Appellant's contention is that Frank A. Von Moschzisker's liability was due solely to the fact that he was the husband of Emma L. Von Moschzisker, who made the formal complaint that caused the arrest, and that the court's charge permitted not only compensatory damages but also, and improperly, punitive damages against Mr. Von Moschzisker as the husband of a tort feasor; it involved him as co-operating with his wife in the tort. Moreover, the cause of action arose prior to the corrective legislation of 1929 (P. L. 1929, ch. 120); and punitive participated in the wife's tort. Sargeant vs. Fedor, 3 Misc. 832; 17 C. J. p. 989 s 288. The husband is liable because of the oneness of the twain in the eyes of the law. Lombard vs. Batchelder, 5 Atl. R. (Vt.) 511. The point is not well taken.

It is next alleged that the court improperly charged the jury that no limitation could be imposed upon them as to what they should do on questions of fact, the imputed inference being that the rules enunciated by the court could be disregarded. We think that the charge, constructed as a whole, does not sustain this criticism. Appellants except a single sentence from its context. But the whole intendment of the charge is that the jury shall be governed in their findings by the evidence in the case, subject to the principles of law pronounced by the court. We think the jury could have been under no misapprehension on this score.

The third point is a criticism of the charge wherein the court directed the jury that the advice which would protect the defendants in instituting the criminal proceedings was the advise of

lawyers and not of handwriting experts. Appellants present no citations of law to sustain their argument. What the court said was: "The mere consultation of handwriting experts, standing alone, does not come within the rule of justification". Advice of counsel, as a complete defense to an action for malicious prosecution, is amply discussed in Weinstein vs. Klitch, 146 Atl. R. 219. We find nothing in the reasoning of that case to indicate that the advice of a handwriting expert may be set up as an equivalent to that of counsel, learned in the law, as a "justification" for lodging a criminal complaint against another. The charge was sound.

The fourth point is that "the court erred in charging the jury in effect that the burden of proof was upon the defendant". We think the language of the charge does not bear that construction.

The fifth point is that the court erred in charging that the jury could take into consideration as an element of damage the plaintiff's expenses in respect to medical bills for her sickness. The language complained of is: "There has been also testimony in the case with respect to medical bills and sickness after the arrest". Appellants do not cite the words that immediately follow this language, namely; "I have not enumerated those elements in pointing out to you what are proper elements of damage, and I am going to ask you to be guided by my statement as to that". We read this as meaning that inasmuch as the court had not enumerated medical bills as a proper element of damage, the jury was not to do so.

We find no error. The judgment below should be affirmed, with costs.

Rule on Affirmance.

NEW JERSEY SUPREME COURT.

SARAH B. MOWELL, Plaintiff-Respondent, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER, Defendants-Appellants.	On Appeal from Bergen County Circuit Court. Rule on Affirmance.

This cause having been duly argued at the October, 1930, term of this court by Peter J. McGinnis, Esquire, of the firm of Ward & McGinnis, of counsel for defendants-appellants, and John B. Zabriskie, of counsel for the plaintiff-respondent, and the court having considered the same and finding no error in the record or proceedings in the Bergen County Circuit Court;

It is thereupon ordered and adjudged that the judgment of the Bergen County Circuit Court, removed by appeal in this cause, be affirmed with costs; and that the record be remitted to the Bergen County Circuit Court to be proceeded with in accordance with this judgment and the practice of said court.

Entered June 6, 1931.

On Motion of
JOHN B. ZABRISKIE,
Attorney for Plaintiff-Respondent.

Notice of Argument.

NEW JERSEY COURT OF ERRORS AND APPEALS.

SARAH B. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER, Defendants.	Action at Law. Notice of Argument.

To:

JOHN B. ZABRISKIE, ESQ.,
Attorney for Plaintiff,
Hackensack, N. J.

Sir:

PLEASE TAKE NOTICE, that the argument of the issue joined in this case before the Court of Errors and Appeals, shall be held at the State House, in the City of Trenton, State of New Jersey, on the Third Tuesday of October next, at ten o'clock in the forenoon, or as soon thereafter as the court can attend to the same.

BRESLIN & BRESLIN,
Attorneys for Defendants.

Reasons.

NEW JERSEY COURT OF ERRORS AND APPEALS.

SARAH B. MOWELL, Plaintiff, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER, Defendants.	Action at Law. Reasons.

To:

JOHN B. ZABRISKIE, ESQ.,
Attorney for Plaintiff,
Hackensack, N. J.

Sir:

PLEASE TAKE NOTICE, that the defendants make the following reasons, upon which the appeal will be made in the above entitled cause:

1. Because the Supreme Court erred in affirming the judgment entered in the Bergen County Circuit Court, in that,

(a) The Supreme Court should have reversed said judgment.

BRESLIN & BRESLIN,
Attorneys for Defendants.

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P-6—Photostat. Admitted at page 51.
P-7—Photostat. Admitted at page 75.
P-11—Photostat. Admitted at page 100.
P-12—Photostat. Admitted at page 101.
P-13—Photostat. Admitted at page 102.
P-14—Photostat. Admitted at page 102.
P-15—Photostat. Admitted at page 105.
P-16—Photostat. Admitted at page 105.
P-17—Photostat. Admitted at page 106.
P-18—Photostat. Admitted at page 106.
P-19—Photostat. Admitted at page 106.
P-21—Photostat. Admitted at page 156.
P-22—Photostat. Admitted at page 157.
P-23—Photostat. Admitted at page 156.
P-24—Photostat. Admitted at page 109.
P-25, also P-50—Photostat. Admitted at page 110.
P-27—Photostat. Admitted at page 113.
P-29—Photostat. Admitted at page 115.
P-35—Phoitostat. Admitted at page 121.
P-39—Photostat. Admitted at page 297.
P-39A—Photostat. Admitted at page 297.
P-39B—Photostat. Admitted at page 297.
P-41—Photostat. Admitted at page 305.
P-42—Photostat. Admitted at page 306.
P-43—Photostat. Admitted at page 307.
P-45—Photostat. Admitted at page 360.
P-46—Photostat. Admitted at page 371.
P-47—Photostat. Admitted at page 402.
P-48—Photostat. Admitted at page 414.
P-50, also P-25—Photostat. Admitted at page 428.

DEFENDANTS' EXHIBITS.

D-2—Photostat. Admitted at page 127.
D-3—Photostat. Admitted at page 127.
D-4—Photostat. Admitted at page 123.
D-26—Photostat. Admitted at page 605.
D-27—Photostat. Admitted at page 605.
D-28—Photostat. Admitted at page 605.
D-29—Photostat. Admitted at page 605.
D-30—Photostat. Admitted at page 605.
D-33—Photostat. Admitted at page 557.
D-34—Photostat. Admitted at page 552.
D-35—Photostat. Admitted at page 552.
D-36—Photostat. Admitted at page 552.
D-37—Photostat. Admitted at page 553.
D-38—Photostat. Admitted at page 553.
D-39—Photostat. Admitted at page 555.
D-40—Photostat. Admitted at page 555.

Feb 14 1930

P-6

BERGEN OYER AND TERMINER

SEPTEMBER TERM, A. D. 1927

BERGEN COUNTY, to wit: The Grand Inquest of the State of New Jersey in and for the County of Bergen, upon their respective oaths, PRESENT, That MISS SARAH B. MOWELL, late of the Village of Ridgewood in the said County of Bergen, on the twenty-ninth day of June in the year of our Lord one thousand nine hundred and twenty-seven at the Village aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did knowingly, unlawfully, maliciously and with criminal intent, send and deliver to one Emma L. von Moschizisker a letter without a name subscribed thereto, demanding money in the sum of Twenty Thousand Dollars from the said Emma L. von Moschizisker, and threatening to do civil injury to the said Emma L. von Moschizisker by sending blackmail letters to some of the prominent people of the Village of Ridgewood, in the County aforesaid, and falsely signing the name of the said Emma L. von Moschizisker to said letters, whereby the said Emma L. von Moschizisker would be subject to arrest, trial, conviction and imprisonment, contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same.

A. C. Hart

Prosecutor

P-8

Witnesses:

Emma L. von Moschizisker
Edward H. Schwartz
Garrett A. Dawson

(Endorsed on the back)

6776

BERGEN OYER AND TERMINER

SEPTEMBER TERM, A. D. 1927.

THE STATE

vs

MISS SARAH B. MOWELL

BLACKMAIL

A. C. Hart

Prosecutor.

A TRUE BILL

H. S. Bridgman
Foreman.

Filed Oct. 28 1927
Arraigned Nov. 10, 1927
Plea Not Guilty
Amt. of Recognizance $3000.00
Augustus Mowell

Trial (in pencil) Feb. 16, 1928

Sentence (in pencil) Not Guilty.

Quarter Sessions Minutes Book 19 page 450.

6776	The State	)
		) INDICTMENT
	vs.	) FOR
		) BLACKMAIL
	Sarah B. Mowell	)

The defendant being charged on this Indictment entered a plea of Not Guilty. Recognized in the sum of $3000.00 with Augustus Mowell.

Date November 10th, 1927.

Quarter Session Minutes Book 20 page 1 &c.

Bergen County Quarter Sessions

Hon. William M. Seufert

February 8, 1928.

Trial

--

No. 6776	The State	)
		) Indictment
	vs.	) for
		) Blackmail
	Sarah B. Mowell	)

John J. Breslin, Jr. — Ass't. Prosecutor for State

John B. Zabriskie — Attorney for Defense

The defense moves to withdraw the plea of Not Guilty for the purpose of making a motion to quash the

Indictment. Granted. The motion to quash the Indictment was denied and the plea of Not Guilty was re-entered in behalf of the defendant.

Jury.

1. Joseph Amico
2. Grant E. Mellinger
3. C. Henry Ahlert
4. John H. English
5. Steven Toth
6. James S. Law
7. William T. Andrews
8. Charles F. Noyes
9. Frederick H. St.John
10. William C. Kirkpatrick
11. Alexander Pringle
12. Fred Gillis

Witnesses

State

1. Arthur A. Stagg
2. Edward H. Schwartz
3. Garrett A. Dawson
4. Raffaele Lippencott
5. Thelma Fritz Mills
6. Emma von Moschizisker

Recess here from 1.00 P.M. until 2.00 P. M. Court resumed at 2.00 P.M.

State Witnesses continued

Emma von Moschizisker recalled here for further cross-examination.

Edward H. Schwartz recalled here for further cross-examination.

F-6 -- Page 4

Indictment. Granted. The motion to quash the indict-
ment was denied and the plea of Not Guilty was re-
entered in behalf of the defendant.

Jury.

1. Joseph Amico
2. Grant E. Mellinger
3. C. Henry Ahlert
4. John H. English
5. Steven Toth
6. James S. Law
7. William T. Andrews
8. Charles F. Noyes
9. Frederick H. St.John
10. William C. Kirkpatrick
11. Alexander Pringle
12. Fred Gillis

Witnesses

State

1. Arthur A. Stege
2. Edward H. Schwartz
3. Garrett A. Dawson
4. Raffaele Lippencott
5. Thelma Fritz Mills
6. Anna von Moschzisker

Recess here from 1.00 P.M. until 2.00 P.M. Court
resumed at 2.00 P.M.

State Witnesses continued

Anna von Moschzisker recalled here for further cross-
examination.

Edward H. Schwartz recalled here for further cross-
examination.

7. James Mann

8. Edith Mallaby

9. Frank von Moschizisker

10. Albert D. Osborn

Emma von Moschizisker recalled here for further cross-examination.

Recess here at 4.00 P. M. until Thursday, February 9, 1928 at 10.00 A. M.

State Witnesses continued

Albert D. Osborn recalled here for further direct and cross-examination.

11. Eldridge W. Stein

Recess here from 1.00 P. M. to 2.00 P. M.

State Rests.

Defense Moves for an acquittal.

Motion denied by the Court.

Defense Witnesses

1. John V. Knowlton

2. Walter J. Burnett

3. Dr. William B. Nevan

4. Dr. Percy C. Fisher

5. Cornelius Doremus

6. John J. Lanyer

Walter J. Burnett recalled here for direct and cross-examination.

Recess here at 4.00 P.M. until Friday, February 10, 1928 at 10.00 A. M.

Defense Witnesses continued

7. James Lamm

8. Keith Malaby

9. Frank von Moschisker

10. Albert D. Osborn

Emma von Moschisker recalled here for further cross-examination.

Recess here at 4.00 P. M. until Thursday, February 9, 1939 at 10.00 A. M.

State Witnesses continued

Albert D. Osborn recalled here for further direct and cross-examination.

11. Eldridge W. Stein

Recess here from 1.00 P. M. to 8.00 P. M.

State Rests.

Defense Moves for an Nonsuit.

Motion denied by the Court.

Defense Witnesses

1. John V. Knowlton

2. Walter J. Burnett

3. Dr. William E. Nevan

4. Dr. Percy O. Fleher

5. Cornelius Doremus

6. John J. Lamyer

Walter J. Burnett recalled here for direct and cross-examination.

Recess here at 4.00 P.M. until Friday, February 10, 1939 at 10.00 A. M.

Defense Witnesses continued

Walter J. Burnett recalled here for direct and cross-examination.

7. Sarah B. Mowell

8. Augustus Mowell

9. Sarah B. Mowell

Recess here from 1.00 P. M. until 2.00 P.M.

Defense Witnesses continued

10. Thelma Fritz Mills

11. Catherine M. Fox

12. Bushrod H. Spencer

13. John B. Hopper

Bushrod H. Spencer recalled here for further direct and cross-examination.

Recess here at 4:00 P. M. until Tuesday, February 14, 1928 at 10.00 A. M.

Defense Witnesses continued

Bushrod H. Spencer recalled here for further direct and cross-examination.

Recess here from 12.00 M to 1.00 P. M.

Defense Witnesses continued

Bushrod H. Spencer recalled here for further direct and cross-examination.

14. Dr. William L. Vroom

Bushrod H. Spencer recalled here for further direct and cross-examination.

15. John Vreeland Haring

16. August Hartkorn

Recess here at 3.30 P. M. until Wednesday, February 15, 1928.

Defense Witnesses continued

August Hartkorn recalled here for further direct and cross-examination.

17. Franklyn T. Allabough

18. Walter H. Ostman

August Hartkorn recalled here for further direct and cross-examination. Recess here from 1.00 P. M. to 2 P. M.

Defense Witnesses continued

August Hartkorn recalled here for further direct and cross-examination.

19. Bertha E. Fritz

20. Mildred B. Nevan

Defense Rests

Rebuttal

1. Emma von Moschizisker
2. Mae Maxwell
3. Frank von Moschizisker
4. Albert D. Osborn
5. Eldridge W. Stein
6. Joseph A. Hannon
7. John V. Knowlton

State Rests

Recess here from 3.15 P. M. until Thursday, February 16, 1928 at 10.00 A. M.

Recess here at 3.30 P. M. until Wednesday, February 15, 1928.

Defense Witnesses continued

August Hertkorn recalled here for further direct and cross-examination.

17. Franklyn T. Alsbough

18. Walter H. Oatman

August Hertkorn recalled here for further direct and cross-examination. Recess here from 1.00 P. M. to 3 P. M.

Defense Witnesses continued

August Hertkorn recalled here for further direct and cross-examination.

19. Bertha E. Fritz

20. Mildred S. Nevan

Defense Rests

Rebuttal

1. Emma von Moschzisker

2. Mae Maxwell

3. Frank von Moschzisker

4. Albert D. Osborn

5. Eldridge W. Stein

6. Joseph A. Hannon

7. John V. Knowlton

State Rests

Recess here from 3.15 P. M. until Thursday, February 16, 1928 at 10.00 A. M.

Defense moves for a direction of a verdict. Motion denied.

Case closed.

The evidence closed and the case summed up by the respective Attorneys and submitted upon charge of the court. The Jury retired to consider all their verdict having an Officer sworn to attend them. The court to remain open for the purpose of the Clerk taking the verdict. The Jury returned into Court and being called they all appeared and said they find the defendant Not Guilty. And so say they all.
Verdict, February 16, 1928.

UNITED STATES OF AMERICA.)
)
STATE OF NEW JERSEY,) SS
)
COUNTY OF BERGEN.)

I, JAMES W. MERCER, Clerk of the County of Bergen aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas holden therein, the same being Courts of Record with a seal.

Do Hereby Certify, that the foregoing is a true copy of the original Indictment and record of the Minutes in the above case as the same remain in my office at Hackensack.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Courts and County at Hackensack, this 13th day of February 1930.

(Seal of Bergen County New Jersey).

(Signed) JAMES W. MERCER
County Clerk,
Deputy County Clerk.

P-6 -- Page

UNITED STATES OF AMERICA.)
STATE OF NEW JERSEY,) SS
COUNTY OF BERGEN.)

I, JAMES W. MERCER, Clerk of the County of Bergen aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas holden therein, the same being Courts of Record with a seal.

Do Hereby Certify, that the foregoing is a true copy of the Original Indictment and record of the Minutes in the above case as the same remain in my office at Hackensack.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Courts and County at Hackensack, this 13th day of February 1930.

(Seal of Bergen County New Jersey).

(Signed) JAMES W. MERCER
County Clerk,
By
Deputy County Clerk.

Jdem D-7 GS

Jdem P-4 3/3/30
GS

5

141 SPRING AVENUE

Dear Sara -

Don't you love the enclosed? It's so modern and of course if your "Bunny" should organize you might let me in on it since I seem to be so "Hell bent" for excitement - Have you heard of my Sunday trips with the young people? I should be very popular - except with the mothers -

Let me know in advance
if you need me on a
Sunday - I'd call it being
a modern Chaperone
and then some -
Come again some day
and cheer my sorrows
Won't you?

Sincerely yours -
Emma L. von Moschzisker

3/26/26 -



Miss Sara Mowell
139 Walnut Street
Ridgewood
New Jersey

4

144 SPRING AVENUE

Dear Ray-

Enclosed are all the rules of the game, and all that we have to add is the hope that you won't be caught "napping" and so let the dear child slip away from you.
We found her most adorable and altogether charming in her naive simplicity- We are hoping that you will be able to persuade

her to come again

Sincerely yours-

Emma L. von Moschzisker

2/10/26-





Mr. Raymond Lippincott
16 Walnut Street
Town.

My dear Mr. Burnett—

In our last conversation about this unpleasant situation you declared yourself as wanting to have the matter "ironed out" and asked if we could all meet at a lawyers.
I called your bluff and Mr. Van Blarcom wrote Miss Worrell to come to his office last Friday— Your request was mere bravado since neither one of you appeared to tell your story—
It was an unwise move on your part as— it gives the

claim that you also are implicated in this ruthless and unwarranted attack on my character—

You are the one and only person who can tell the truth me and I am amazed at your silence as it reflects on your own as well as my reputation.

I would advise you to see Mr. Van Blarcom at once— for I am prepared to go the limit to clear my good name and I intend to do it if I have to do it without your

assistance.

Sincerely yours—

Emma L. von Moschzisker

4/10/26



Mr. W. J. Burnett

Suburban Electric Co.—

Godwin Avenue

Ridgewood New Jersey

Idem
Ex D-12
98

P-13 Tuesday -

144 SPRING AVENUE

8

Dear Thelma, -

This morning I wanted so much to show you our latest black hand letter, but I was afraid your mother was not up to anything so snappy -

Our friend is evidently becoming thoroughly

to write them at the last minute. Wanting to be right up to date would you suggest pink perfumed paper? I feel that grey is much too negative for such a festive occasion.

Mr Jan Blarcom said that I might write him one letter now just to give him courage frightened because she is telling people that if we take her into Court that the boy will produce letters that will make Ridgewood stand on its hind legs- We wonder if he is going to engage the Ponclere's to help him produce them or if I will be expected

Mr Lou said last night that is leaving the serious stage and getting to be really funny - for it shows the neurotic brain back of it all - You all owe the girl something for giving you a laugh

I feel as if I had suddenly acquired the soul of a chambermaid —

Sincerely yours

Emma von Mochzisker

RIDGEWOOD
JUN 30
3
1926
N.J.



Miss Thelma Fritz
142 Walnut Street
Town

P-14 ~~9/4~~ 3/4 Ed D-33 98

Mrs von Moschzisker

So you think my threat to sue

You was pure bluff just dont fool yourself we are piling up evidence that will make you look sick - Dr Pettit has told the directors of our bank that he has treated you for epilepsy and that you are just crazy enough to write letters to yourself and Dr Vroom told them the same thing so now whose brain is neurotic You thought brag about Judge Doremus backing us but i guess you are convinced that he is. He hates you because you published the letters in the paper and he says he will bank on our

5-2

KINNING OUT FOR HE HAS INFLUENCE AND YOU
HAVE'NT I LAUGH WHEN I THINK ABOUT THE LOOK
AND AUDREY GOING TO PAY YOU A FRIEDLY
VISIT AND COMING BACK TO ME A LOT OF
YOUR MONOGRAMMED WRITING PAPER AND
UNLESS YOU PAY MISS MOWELL TWENTY
THOUSAND EACH I WILL WRITE SOME BLACK
MAIL LELLER ON IT TO SOME OF THE PROMINET
PEOPLE OF RIDGEWOOD AND SIGN YOUR NAME AND
I CAN COPY YOUR HANDWRITING SO PERFECTLY
THAT ANY EXPERT WOULD SWEAR TO IT THAT IT
WAS YOURS AND ON YOUR PAPER I GUESS
YOU ARE THE ONE WHO WILL GO TO PRISON
YOU THOUGHT YOU HAD ME SCARED TO DEATH
BUT I HAD THIS UP MY SLEEVE ALL THE
TIME

D-33

YOU HAVE TRIED HARD TO GET ME IN BAD
WITH THE BANK BUT IT COULDN'T BE DONE
THE ONLY THING THAT WILL TEMPT NIET
LEAVE IS YOUR TWENTY THOUSAND-
YOU CAN PAY IT TO OUR LAWYER MR RANDALL
AND THE SOONER THE BETTER FOR YOU UNLESS
YOU WANT ME TO WRITE THE ~~LET~~ LETTERS
YOU COULD NEVER CONVINCE A JURY THAT
YOU HADNT WRITTEN THEM
WHEN IT IS YOUR OWN PAPER
YOU OUGHT TO GET ABOUT FIVE YEARS

HA! HA!

JUNE TWENTY NINTH

P 15 - 34

A. C. HART
PROSECUTOR
J. J. BRESLIN, JR.
ASS'T PROSECUTOR

J. A. PRESTON
S. DENSEN
LEGAL ASSISTANTS

OFFICE OF THE
PROSECUTOR OF THE PLEAS
COUNTY OF BERGEN
HACKENSACK, N. J.

Mr J. von Moschzisker You must surely admit that you are licked I have much to thank you for and I expect to have still more before we finish.

Our directors say that you will soon leave Ridgewood

THE THE

Mrs von Moschzisker

So you think my threat to sue you was pure bluff

Just dont fool yourself

A. C. HART
PROSECUTOR
J. J. BRESLIN, JR.
ASS'T PROSECUTOR

P-16-W

J. A. PRESTON
S. DENSEN
LEGAL ASSISTANTS

OFFICE OF THE
PROSECUTOR OF THE PLEAS
COUNTY OF BERGEN
HACKENSACK, N. J.

Mr. F. von Moschzisker
Pennsylvania Station
New York City
New York.

ADDRESS ALL OFFICIAL COMMUNICATIONS TO THE PROSECUTOR OF THE PLEAS, HACKENSACK, N. J.

A. C. HART
PROSECUTOR
J. J. BRESLIN, Jr.
ASST PROSECUTOR

P M X

J. A. PRESTON
S. DENSEN
LEGAL ASSISTANTS

OFFICE OF THE
PROSECUTOR OF THE PLEAS
COUNTY OF BERGEN
HACKENSACK, N. J.

Mr. W. J. FULLERTON
CITIZENS NATIONAL BANK TOWN
SPRING AVE
RIDGEWOOD
NEW JERSEY

ADDRESS ALL OFFICIAL COMMUNICATIONS TO THE PROSECUTOR OF THE PLEAS, HACKENSACK, N. J.

A. C. HART
PROSECUTOR
J. J. BRESLIN, JR.
ASS'T PROSECUTOR

J. A. PRESTON
S. DENSEN
LEGAL ASSISTANTS

OFFICE OF THE
PROSECUTOR OF THE PLEAS
COUNTY OF BERGEN
HACKENSACK, N. J.

DR. PETTIT

DR. ~~H~~ VROOM

SO NOW WHOSE BRAIN IS NEUROTIC

MISS MOWELL

MR. BURNETT

JUNE 29

P. 19 of

A. C. HART
PROSECUTOR
J. J. BRESLIN, JR.
ASS'T PROSECUTOR

J. A. PRESTON
S. DENSEN
LEGAL ASSISTANTS

OFFICE OF THE
PROSECUTOR OF THE PLEAS
COUNTY OF BERGEN
HACKENSACK, N. J.

Mrs von Moschzisker —

When the Paterson Evening News

came out last week and Prosector Hart told the world

Whipper Snapper
Chief Blackshaw
Judge Downs

he
the
up
we'll
Mr Burnett

ADDRESS ALL OFFICIAL COMMUNICATIONS TO THE PROSECUTOR OF THE PLEAS, HACKENSACK, N. J.

P-22 Ex ~~[illegible]~~ D-3 gs

BOOTHER IS NOT ALWAYS
A FATAL DESEASE

P-24 Iden D-4

Hell-bent for excitement
HELL BENT FOR EXCITE
MENT

Iden, D-1 gs Ex P-21

I HAVE VNT GONE BACK TO
KINGSTON THIS WINTER
I HAD NT AND ~~COULDNT~~
COULD NT
GO

Iden D-2 gs Ex P-23

I HAVNT GONE TO KINGSTON
THIS WINTER AND I HAD NT
AND COULDNT GO

P27 EMMA VON MOSCHZISKER

(Do not fold) Registration Number

(Print or Typewrite) ( ) To be filled in by agent

Name of Owner EMMA VON MOSCHZISKER

Street Address 144 SPRING AVENUE

City or Town RIDGEWOOD County BERGEN

STATE OF NEW JERSEY

DEPARTMENT OF MOTOR VEHICLES

Application for Registration of a Passenger Vehicle

DESCRIPTION OF VEHICLE

1926 Reg. No. 24083 If not previously registered in New Jersey, from whom did you purchase same

Date of Purchase APRIL 14th

Name of Car HUPMOBILE

Serial No. 17934 Year 1926

Engine No. 17440 Model E

Body Type TOURING No. Cylinders 8

Body Color GREY Bore of Cylinders 3 1/2

Horse Power (S. A. E. Rating) 28.9

Is car equipped according to law in regard to brakes, signalling device, reflecting mirror and rear red light showing white light on number plate

Are headlights properly equipped and focused YES

Name approved headlight device used Bosch - Londstar

Issued at RIDGEWOOD, N. J.—R. D.

Date DECEMBER 1st Fee $ 11.60

Form A 21—7-1-26-M1500

DEC 27 1926

(Do not fold) Registration Number

(Print or Typewrite) ( ) To be filled in by agent

Name of Owner EMMA VON MOSCHZISKER

Street Address 144 SPRING AVE

City or Town RIDGEWOOD County BERGEN

P25

P50

STATE OF NEW JERSEY

DEPARTMENT OF STATE

COMMISSIONER OF MOTOR VEHICLES

Application for Registration of a Passenger Vehicle

DESCRIPTION OF VEHICLE

1925 Reg. No. [illegible] If not previously registered in New Jersey, from whom did you purchase same

Date of Purchase APRIL 1ST 1925

Name of Car DODGE

Serial No. A 276742 Year 1925

Engine No. A 348526 Model 32

Body Type TOURING No. Cylinders 4

Body Color BLK Bore of Cylinders

Horse Power (S. A. E. Rating) 24

Is car equipped according to law in regard to brakes, signalling device, reflecting mirror and rear red light showing white light on number plate YES

Are headlights properly equipped and focused YES

Name approved headlight device used D

Issued at

Date Fee $

Form CA 21—7-1-25-M1000

NOV 30 1925

Idem
5-10

P-29-

RIDGEWOOD
JUN 30
7 30 PM
1927
N.J.

UNITED STATES POSTAGE
2 CENTS 2

MRS. F. VON MOSCHZISKER
144 SPRING AVENUE
TOWN

BACKING US— BUT I GUESS YOU ARE
CONVINCED BY NOW THAT HE IS—

RD. VON MOSCHZISKER—

BACKING US— BUT I GUESS YOU ARE CONVINCED BY NOW THAT HE IS— HE HATED YOU BECAUSE YOU PUBLISHED THE LETTERS IN THE PAPER— AND HE SAYS HE WILL BANK ON OUR WINNING OUT— FOR HE HAS INFLUENCE AND YOU HAVNT—

I LAUGH WHEN I THINK ABOUT THELMA AND AUDREY GOING TO PAY YOU A FRIENDLY VISIT AND COMING BACK TO ME WITH A LOT OF YOUR MONO-GRAM WRITING PAPER— AND UNLESS YOU PAY MISS MOWELL AND MR. BURNETT TWENTY THOUSAND EACH I WILL WRITE SOME BLACKMAIL LETTERS ON IT TO SOME OF THE PROMINENT PEOPLE OF RIDGEWOOD AND SIGN YOUR NAME AND I CAN COPY YOUR HANDWRITING SO PER-

MRS. VON MOSCHZISKER— D:

SO YOU THINK MY THREAT TO SUE YOU WAS PURE BLUFF? JUST DONT FOOL YOURSELF— WE ARE PILING UP EVIDENCE THAT WILL MAKE YOU LOOK SICK— DR. PETTIT HAS TOLD THE DIRECTORS OF OUR BANK THAT HE HAS TREATED YOU FOR EPILEPSY AND THAT YOU ARE JUST CRAZY ENOUGH TO WRITE LETTERS TO YOURSELF— AND DR. VROOM TOLD THEM THE SAME THING— SO NOW WHOS BRAIN IS NEUROTIC?

YOU THOUGHT IT WAS PURE BRAG ABOUT JUDGE DOREMUS

A JURY THAT YOU HADNT

FECTLY THAT ANY EXPERT WOULD
SWEAR TO IT THAT IT WAS YOURS

A JURY THAT YOU HADNT
WRITTEN THEM WHEN IT IS YOUR
OWN PAPER—
YOU OUGHT TO GE ABOUT FIVE
YEARS— HA! HA!

JUNE TWENTY NINTH

FECTLY THAT ANY EXPERT WOULD
SWEAR TO IT THAT IT WAS YOURS
AND ON YOUR OWN PAPER? I GUESS
YOU ARE THE ONE WHO WILL GO
TO PRISON— YOU THOUGHT YOU HAD
ME SCARED TO DEATH BUT I HAD
THIS UP MY SLEEVE ALL THE
TIME. YOU HAVE TRIED HARD TO
GET ME IN BAD WITH THE BANK
BUT IT COULD NT BE DONE— THE
ONLY THING THAT WILL TEMPT
ME TO LEAVE IS YOUR TWENTY
THOUSAND— YOU CAN PAY IT TO
OUR LAWYER T. R. RANDELL— AND
THE SOONER THE BETTER FOR
YOU— UNLESS YOU WANT ME TO
WRITE THE LETTERS—

YOU COULD NEVER CONVINCE

From S.D. Mowell
139 Walnut Street
Ridgewood N.J.

Printed Matter Only

Mrs F. von Moschzisker
144 Spring Avenue
Ridgewood, New Jersey



My dear Dr. Hopper—

There are a few little things that it might be well for you to understand. The first is that I did not rush up to Mrs. Hopper to talk of affairs at the. Mrs Mercer and I were waiting for the trolley when Mrs Hopper joined me and if you are in doubt about Mrs Hopper's insulting remark about Mrs Wabrey I would suggest your using Mrs Mercer as she heard the entire conversation.

Your saying that you knew me well enough to know that Mrs. Wabrey would lush of it is the greatest compliment that you could pay me for I would be a poor friend indeed if I failed to report such an uncalled for attack

P-39-A 3 Page 2

the newspapers and horse journals were full of the Glanders scare, so that I see no reason why Mrs Mabrey should not have spoken of it - and the one suspected case made quite a showing on Wednesday afternoon. Even with an exaggerated case of defective vision you might have noticed more than one. I am very glad that at last My Von Moschzisker and I know exactly where we stand. For I think that we have heard all the disagreeable things that you and Mrs Hopper have said about us. I believe our first offense was in eating too much at a dinner that you invited us to some nine or ten years ago - Mrs Hopper claims that she felt as if she were feeding pigs - and as she is still telling it as one of her best stories about

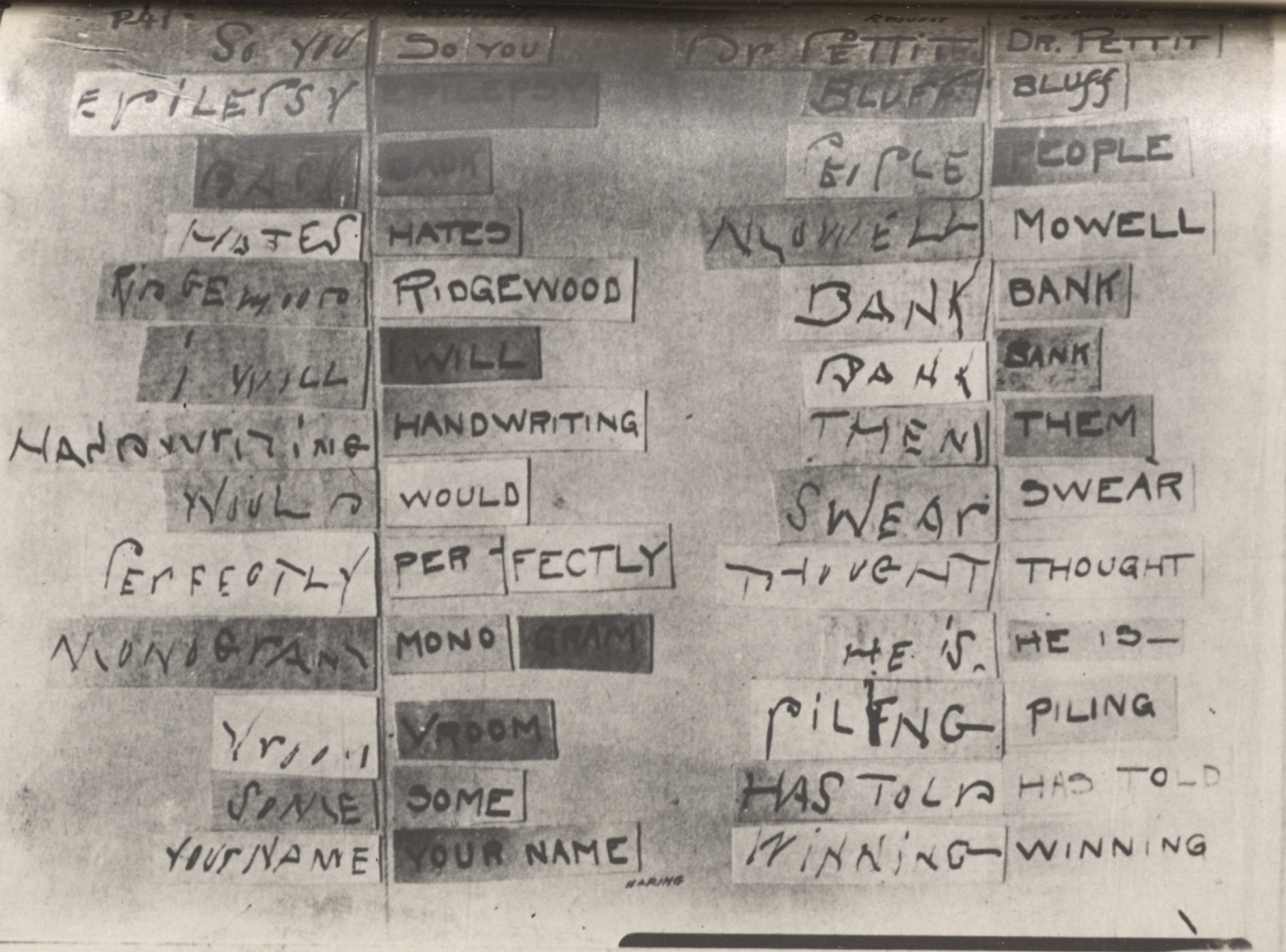
the abnormal appetite of the Vous. I think it would be well to set ~~on~~ a price on the dinner, and either Mr. Von M- or I will gladly send you a Check for the amount- of course it will spoil Mr. Hoppers- pet story if it becomes- known that we have finally paid for the enormous- amount of food that we ate, but it would be an immense relief to know that we were no longer indebted.

Mrs Hopper has even gone so far as to say that the ice cream that I made for your father when he was hurt was thrown out because your Mother and Sister were afraid that it might be poisoned. This from the woman who never gossips is indeed a tale and from your hectic stories about us you must be her able assistant-

Very truly yours-

(Mrs) E. von Moschzisker-

Dr. PETIT


So YOU
So YOU
EPILEPSY
HATES
HATES
RIDGEWOOD
RIDGEWOOD
I WILL
WILL
HANDWRITING
HANDWRITING
WOULD
WOULD
PERFECTLY
PERFECTLY
MONO
MONO
YROOM
SOME
SOME
YOUR NAME
YOUR NAME
DR. PETTIT
DR. PETTIT
BLUFF
BLUFF
PEOPLE
PEOPLE
MOWELL
MOWELL
BANK
BANK
BANK
BANK
THEM
THEM
SWEAR
SWEAR
THOUGHT
THOUGHT
HE IS
HE IS—
PILING
PILING
HAS TOLD
HAS TOLD
WINNING
WINNING

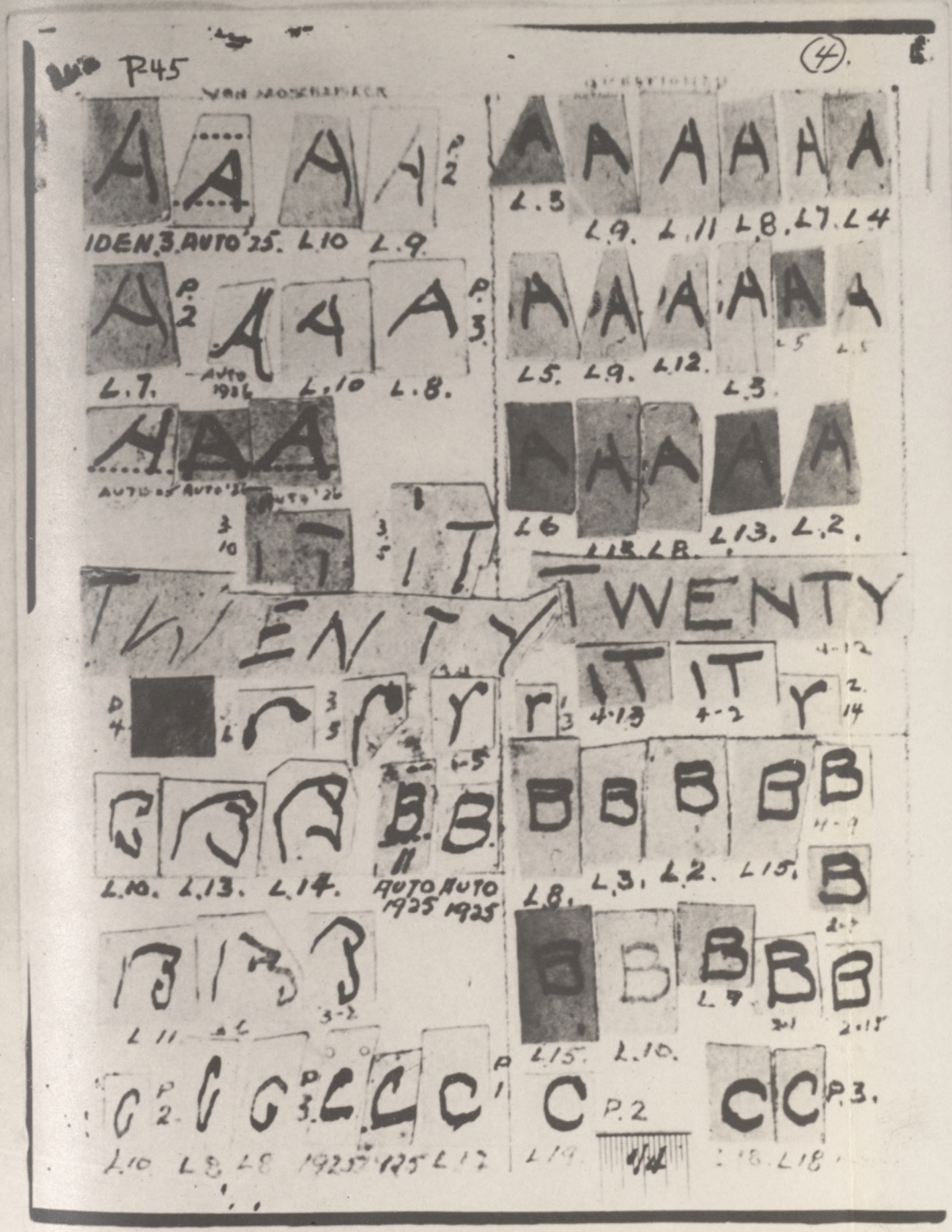
P-42

PURE	PURE BURNETT
CONVINCED	CONVINCED
LOOK SICK	LOOK SICK
DOREMUS	DOREMUS
THOUSAND	THOUSAND
COULD NT	COULD NT
COULD NT	
NOW	NOW
WAS	WAS
CRAZY	CRAZY
I LAUGH	I LAUGH
THOUSAND	THOUSAND

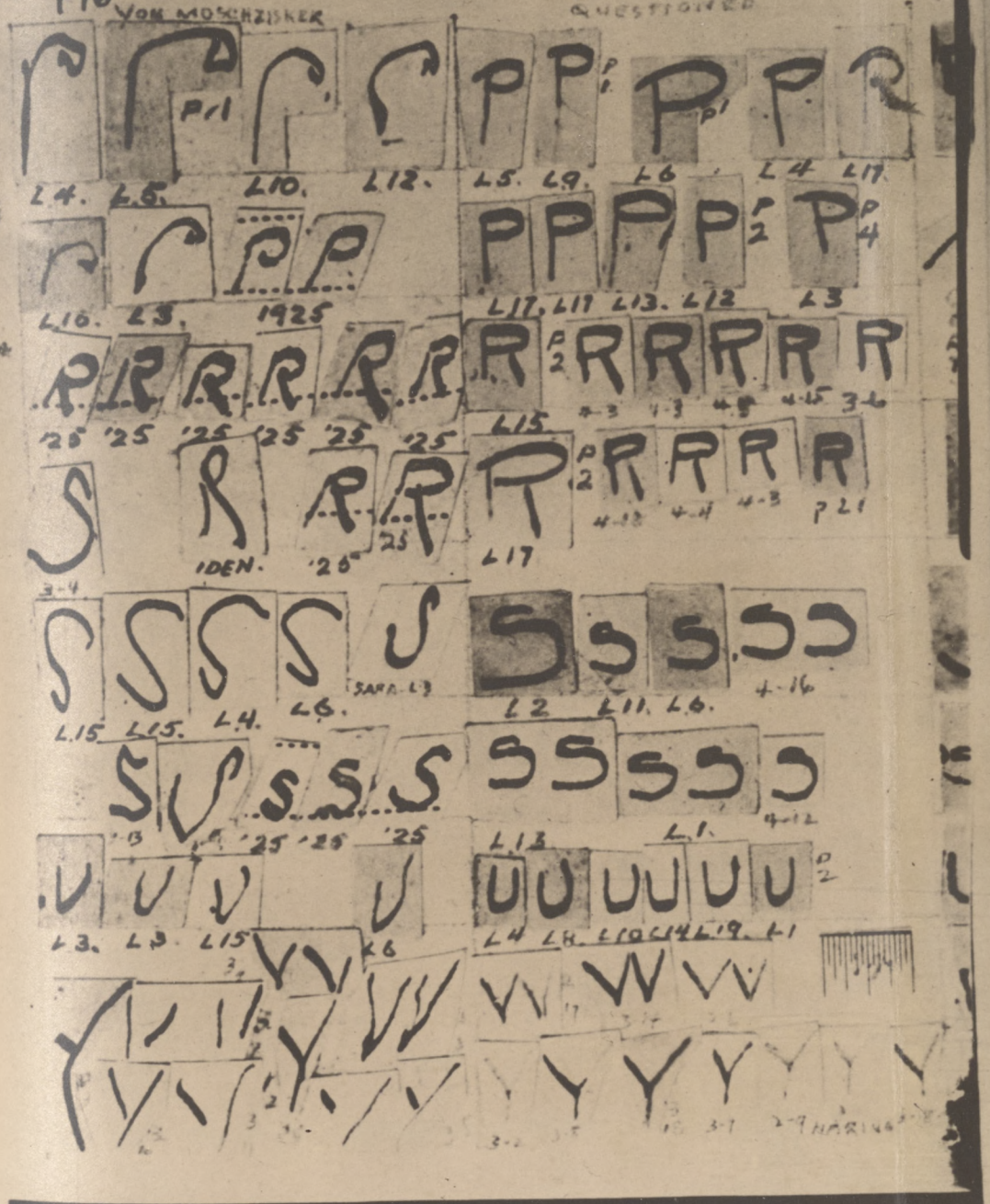
PAY	PAY
PAY	PAY
TWENTY	TWENTY
EACH	EACH
MISS	MISS
OF	OF
LOT	LOT
AUDREY	AUDREY
THELMA	THELMA
ABOUT	ABOUT
BECAUSE	BECAUSE
HADNT	HADNT
INFLUENCE	INFLUENCE

I


VON MOSCHZISKER
QUESTIONED
P-43
L.8
'25 '25 '25 '25
L.5.
L.6. L.16.
L.7.
2-14
3-1
L.4. L.9. L.9. L.14 L.2.
D3
3-1
3-1
3-2
L.18. L.8. L.6. L.1. L.14.
P.1
L.4. L.9. '25 '25 '25 '25
L.16. L.3. L.11 L.2. L.3
'25 '25 '25 '25 '25
L.7. L.10. L.12. L.18. L.3
3-1 T-1
1-14 1-3 3-3
P2
P1
L.11 L.2 .25 25 25 25
L.15. L.5. L.8. L.4
L.6 L.2. L.13.


P45
(4)
IDEN 3. AUTO '25. L.10 L.9.
L.3 L.9. L.11 L.8. L.7. L.4
L.7. AUTO 1926 L.10 L.8.
L.5. L.9. L.12. L.3.
L6 L.13. L.8. L.13. L.2.
TWENTY
TWENTY
L.10. L.13. L.14. AUTO 1925 AUTO 1925
L.8. L.3. L.2. L.15.
L.11
L.15. L.10.
L.10 L.8 L.8 1925 1925 L.12
L.19. P.2
L.18. L.18.
P.3.

P46 VON MOSCHZISKER QUESTIONED



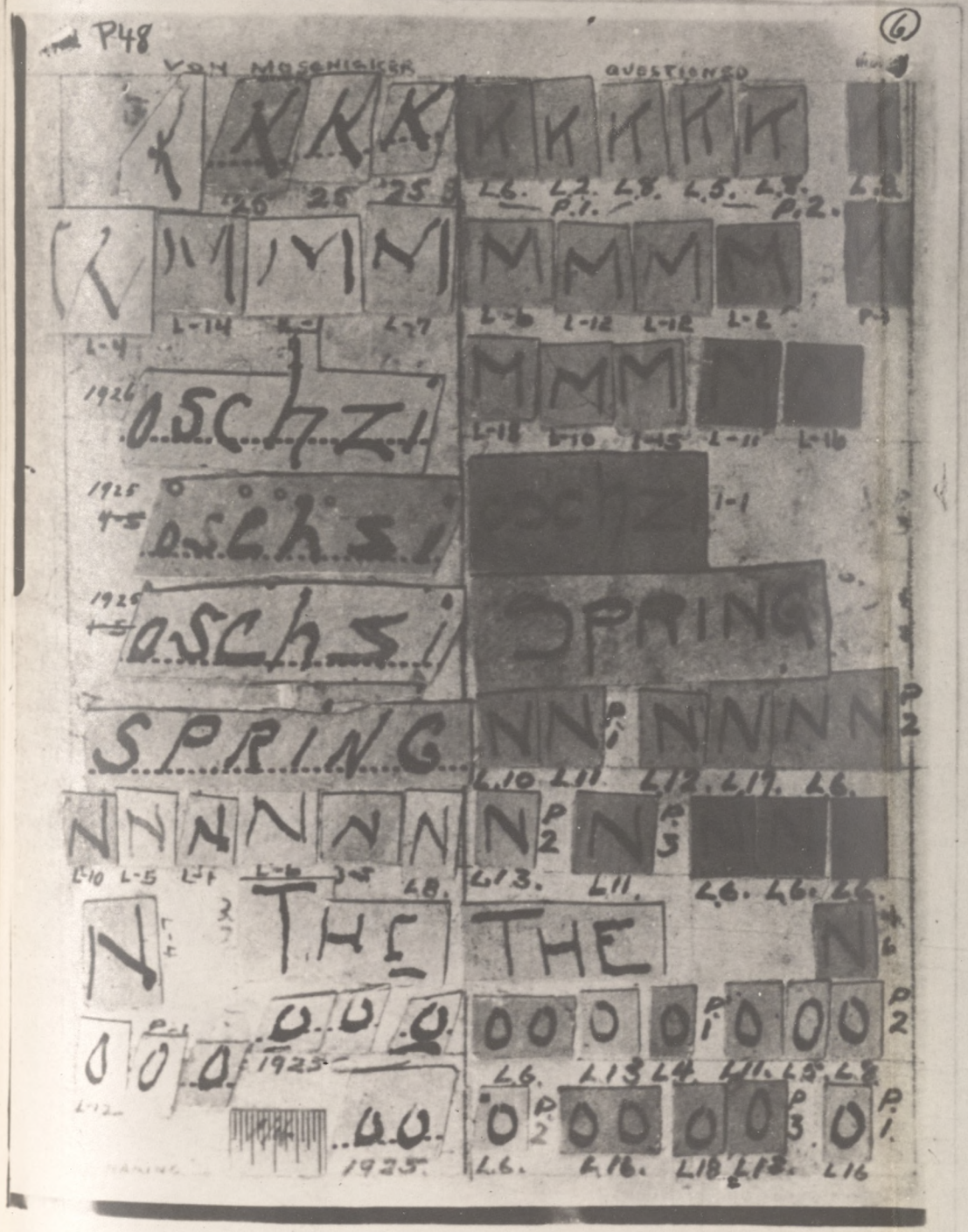
P-47

VON MOSCHZISKER

QUESTIONED

(7)





P48

(6)

VON MOSCHISKER QUESTIONED

K K K K K K K K K

'26 25 25 L6. L2. L8. L5. L8. L8.
P.1. P.2.

K M M M M M M M M

L-4 L-14 L-7 L-6 L-12 L-12 L-2

1926 oschzi M M M

L-18 L-10 L-15 L-11 L-16

1925 4-5 oschsi oschz 1-1

1925 1-5 oschsi SPRING

SPRING N N N N N N N

L.10 L11. L12. L17. L6.

N N N N N N N N N

L-10 L-5 L-1 L-6 L8. L13. L11. L6. L6. L6.

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O O O O O O O O O O O

1925 L6. L13 L4. L11. L5. L8.

O O O O O O O O O O O

1925. L6. L16. L18 L13. L16

p-51-~~24~~ p6B

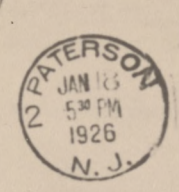
Perhaps you do not know that Walter Burnett is engaged to be married to me and i wish you would let him alone and keep away from his store for i am having you watched. You are a

Married Woman and
Why Cant you be
Satisfied With your
own husband

P-51-A 4

2 PATERSON
JAN 18
5 30 PM
1926
N. J.

P6a





UNITED STATES POSTAGE
2 CENTS 2

Mrs Von
144 Spring Ave.
Ridgewood
N. Jersey

D-2

RIDGEWOOD
DEC 21
1926
N.J.



Ex Idem
D-3b
GS

Ray Lippincott
16 Walnut Street
Ridgewood, N.J.

Idem
D 3a 3/3/30
GS



Wishing you a Merry Christmas and a Happy New Year

Sarah Budd Howell

D-3

RIDGEWOOD
DEC 22
7 PM
1925
N J



Idea
D-2
3-3/20

Mr. Ray Lippincott
16 Walnut St
Town

Non Residents of New Jersey Must Sign the Following Power of Attorney

Know all men by these Presents:

That I, ...

a resident of the State of ....., do hereby make, constitute and appoint Wm. L. Dill, Commissioner of Motor Vehicles of the State of New Jersey, and his successor or successors in office, my true and lawful attorney, for the purpose of accepting original process against me because of the operation of any registered motor vehicle within the State of New Jersey, and I do agree that any such original process against me shall be of the same force and effect as if the same had been served upon me within the State of New Jersey.

In witness whereof I have hereunto set my hand and seal this

..... day of .....

nineteen hundred and .....

PAID

..... (Official Title)

..... (Signature)

I, the undersigned, hereby apply for registration as a driver of motor vehicles in the State of New Jersey and for that purpose make the answers to the questions contained in this application. I know the contents hereof and the statements and answers contained therein are true, I am physically and mentally competent to operate a motor vehicle and am thoroughly familiar with such portions of such vehicles as is necessary to secure safe operation of the same, and qualified for license as stated herein, and have read the New Jersey Motor Vehicle and Traffic Acts and fully understand and hereby promise not to wilfully violate the provisions thereof.

AFFIDAVIT

State of New Jersey,

County of BERGEN

Sara B. Howell being duly sworn according to law says that .....he is the within named applicant, that .....he signed the application, knows the contents thereof, and hereby makes oath in due form of law that the statements and answers contained therein are true.

Subscribed and sworn to before me this MAY 26 1927

day of ....., 192.....

..... (Signature of Applicant)

Sara B. Howell A. A. Slagg (Notary Public)

Ex D-96

STATE OF NEW JERSEY D-4

DEPARTMENT OF MOTOR VEHICLES

(Print Name and Address)

(110,402)

This space to be filled in by agent

Application for Registration of an Auto Driver by Examination

Name SARA B. MOWELL (Residence)

Street Address or Road 139 Walnut St

City or Town Ridgewood County Bergen

Age 31 Weight 104 Color White Color Hair Light

Sex Female Eyes Brown Height 5' 2"

Occupation Banking

Business Address First National Bank Ridgewood (Street) (City or Town)

Are you a citizen yes Birthplace Paterson, N. J.

If naturalized give date and place .....

Do you speak, read and write English yes

Have you any mental or physical disability of which you are aware no

Have you ever had your license revoked or suspended or been refused a license in this State or any other State MAY 26 1927 no

Examination No. 149. Date .....

STATE OF NEW JERSEY

Department of Motor Vehicles

To any Agent of the Motor Vehicle Department

You are hereby instructed to issue Driver's License

To Sara B. Mowell

Address Ridgewood

who has been examined and certified by Inspectors, whose names appear below, to be a proper person to receive such license.

BY ORDER OF

Examination held at RIDGEWOOD, N.J.

Demonstration by Inspector Wm. L. Dill

Bewfield

Written Examination by Inspector Slagg

Date Permit Granted .....

Sara B. Howell Signature of Applicant.

Issued at Ridgewood N Date MAY 26 1927 Fee $3.00

Form A 39A

MICHAEL M. FITZPATRICK DEPUTY CHIEF

P-30.91

D-26-XII

Mrs Von Moschzisker

Odeu
8-5

Mrs Von Moschzisker

You just try taking Miss Mowell in to court and see what happens—

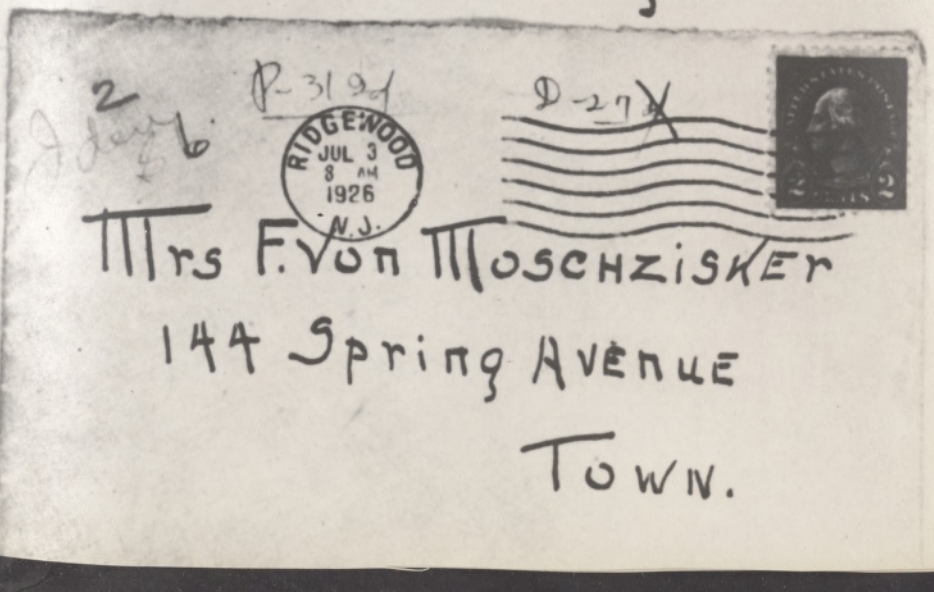
Walter Burnet will be only too glad to tell the court of your conduct with him

Mrs Von Moschzisker

Are you willing to

pay the sum of three thousand dollars for the return of your letters to Walter Buttett_ If you do not hand him this sum in cash before the fifteenth of July he will take them in to your husbands office and read them to him_ And right there is where he will drop his autocratic German manner and forget about his plan like taking miss Mowell to court for defaming your "Lily White" character_ I think he will come across mighty fast_the three thousand is a low figure for such letters_

July_second_



Mrs F. Von Moschzisker

144 Spring Avenue

Town.

3 B-9 P-32 Dd

RIDGEWOOD
AUG 6
3 AM
1926
N.J.

CENTS

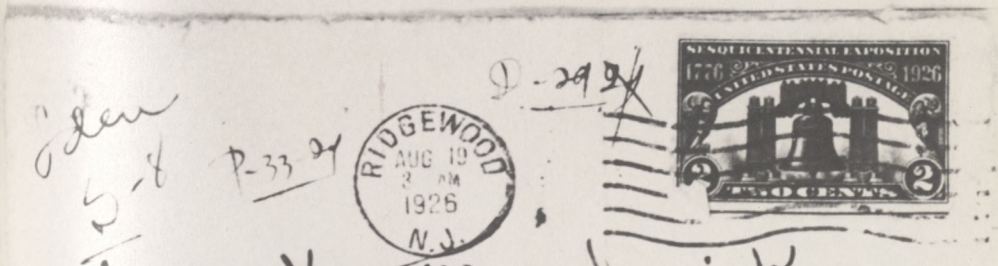
D-28

Mrs. F. von Moschzisker
144 Spring Avenue
Ridgewood,
New Jersey

MRS VON MOSCHISKER

YOU WILL SOON FOLLOW
THE TRAIL OF THE SKULL AND THE CROSS
BONES UNLESS YOU HAND WALTER BURNETT
THE SUM OF THYEE THOUSAND DOLLARS
BEFORE TEN A. M. SATUYDAY AUG 21

AUG 15



Mrs. Von Moschisker
Spring Ave
Town

YOUR DEVOTED HUSBAND WILL SOON REST IN VALLEAU
UNLLES YOU CALL OFF THE PROSECUTOR

THIS IS NO IDLE THREAT

Adev
6-9

P-34 21

RIDGEWOOD
SEP 20
8 AM
1926
N.J.

UNITED STATES POSTAGE
2 CENTS 2

9-30-21

MRS VON MOSCHISKER
144 SPRING AVE
TOWN.

D-33.

REPORT OF EXAMINATION OF ANONYMOUS LETTERS SENT TO F. VON MOSCHZISKER.

I have made a careful examination of four anonymous letters sent to Mr. or Mrs. A. F. Von Moschzisker, dated February 18th, March 15th, May 20th and June 30th, 1927. These letters are all in printing, including the address on the envelopes.

I have compared this printing with printing shown on a wrapper, marked Exhibit D, and it is my best judgment that the person who did the printing in these letters and the one who did the printing on this wrapper, is the same person.

The characteristic letters and forms are consistently the same and are peculiar to such an extent that I believe it can be said positively that the same person did the printing in all these letters and on this wrapper, Exhibit D.

There is another small piece of handwriting, Exhibit L, which is partly printed and partly in script. The capital "M's" on this paper are printed, however, and are distinctly like the capital "M" in "Mr." and "Moschzisker" at the beginning of the letter dated February 18th, 1927. This further confirms my opinion that the same writer was doing all of this printing.

Respectfully submitted,

(Signed) Albert D. Osborn.

New York,
July 13, 1927.

ADO/JF

D-35.

REPORT OF EXAMINATION OF ANONYMOUS LETTERS SENT TO

F. VON MOSCHZISKER.

I have made a careful examination of four anonymous letters sent to Mr. or Mrs. A. F. Von Moschzisker, dated February 18th, March 15th, May 20th and June 30th, 1927. These letters are all in printing, including the address on the envelopes.

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Respectfully submitted,

(signed) Albert D. Osborn.

New York,
July 13, 1927.

ADO/ip

Mr. von Moschzisker

We notice you are moving very slowly and are not at all sure of your ground — When I told Judge Doremus that you claim to have a handwriting expert who says that the printing was done by Miss Mowell he laughed and said he could get one who would swear that it was not — So you had better quit — Judgeing from your pay check you have no money to loose —

The Judge is too slick for you.

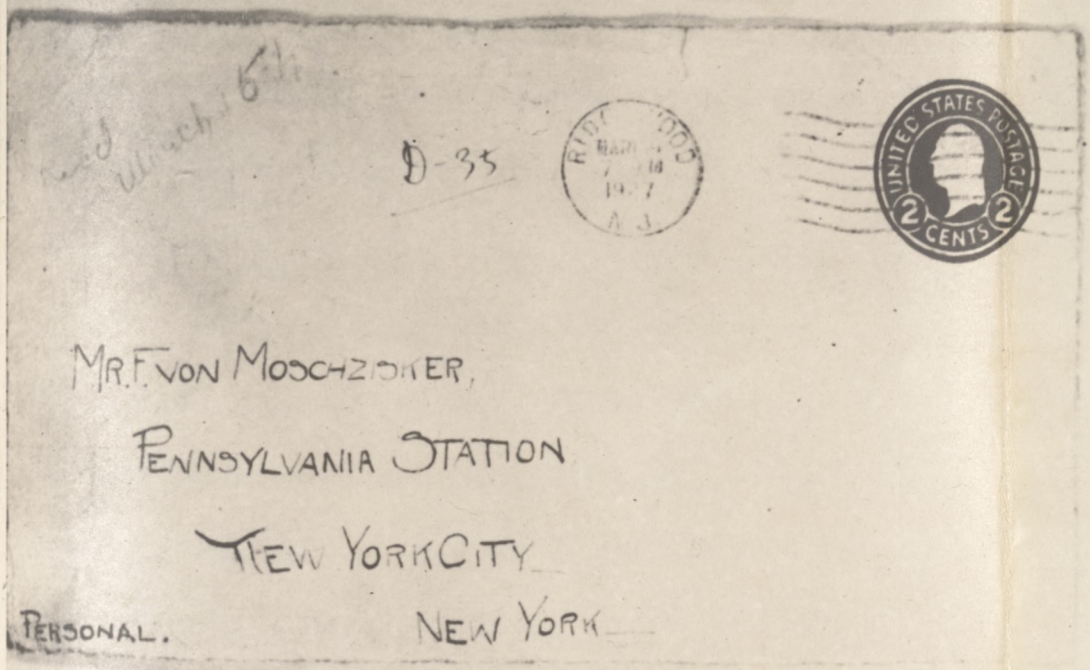
9-34

Ridgewood
1927
N.J.



Mr. F. von Moschzisker
Pennsylvania Station
New York City

Personal


D-35
UNITED STATES POSTAGE
2 CENTS 2
MR. F. VON MOSCHZISKER,
PENNSYLVANIA STATION
NEW YORK CITY
PERSONAL.
NEW YORK

March 14

Mr. von Moschzisker—

You are really quite amusing running around trying to tell people that your wife is sane. If you want to know who it is writing the letters to you I can tell you that your own wife dictates them and your nigger chauffeur writes them— You cant bully Judge Doremus for he knows too many of your crooked transactions— He did not say that Mrs von forged your name to a check— it was Mr Ryland who spoke of it and said she ought to go to prison.

Mr Walstrum and Mr Tetor both spoke to Mr Burnett about your wifes queer actions— Mr Tetor says that he has often seen Mrs von stand out on the

CORNER FOR A HALF AN HOUR AT A TIME TALKING TO HERSELF_ MR MOORE SAYS THAT THE PEOPLE FROM PATERSON WHO LIVE HERE ALL TELL HIM THAT MRS VON IS CRAZY.

MR. GREEN TOLD MR. BURNETT WHEN HE WORKED THERE THAT MR LANNUIER AND MR CALVIN SMITH AS WELL AS HE AND MRS GREEN HAD TROUBLE WITH MRS VON_ THEY ALL HATE HER_ MR. JOSEPH SMITH SAYS SHE ISN'T CRAZY SHE IS JUST PLAIN "HELLISH"

WHEN THE ROTARY CLUB MET AFTER THE NEWSPAPER PUBICITY LAST FALL THE MEMBERS TO THE LAST MAN ALL EXPRESSED SYMPATHY_ AND THE SHOPKEEPERS MR COBB, MR. MUSTER, MR. THORNTON, THE ACKERMANS ALL MENTIONED TROUBLE THAT THEY HAD WITH MRS VON_ MRS FRITZ SAYS THAT SHE WAS CRAZY TWENTY YEARS AGO.

AND Dr. HOPPER SAYS THAT YOU TRIED TO GET A DIVORCE FIFTEEN YEARS AGO AND WERE UNSUCCESSFUL— EVERYBODY HAS HER NUMBER— MAYOR GARBER SAYS HE IS GOING TO RUN HE OUT OF TOWN— MRS FRITZ TOLD MRS MOWELL THAT MRS MOSZKER TRIED TO BECOME A MEMBER OF THE WOMANS CLUB AND WAS BLACKBALLED—

YOU CAN SEE THAT SHE HADNT A LEG TO STAND ON WHEREAS I AM SPONSERED BY THE FIRST NATIONAL BANK OF RIDGEWOOD—

YOU WILL ALL EAT FROM MY HAND—

THE MASONS ARE GOING TO DROP YOU.

YOU HAD BETTER TRY A CHANGE OF AIR AND RIDGEWOOD WILL HELP WITH THE MOVING—

IF MRS VON HADNT BEEN CRAZY DO YOU THINK SHE WOULD HAVE TRIED TO START A FUND FOR MR. OSTMAN WHEN HE WENT

TO THE HOSPITAL? MR OSTMAN IS NOT AN OBJECT OF CHARITY_ AND OFFERING TO SEND HIM IN TO THE HOSPITAL IN YOUR CAP_ WOULD NT YOU KNOW THAT SHE WAS COCKOO? MRS. OSTMAN COULD SEE IT IN A MINUTE___

MR. BLACKSHAW SAYS IF HE CAN ONLY FRAME IT BEFORE HE LEAVES THE POLICE FORCE HE WILL SEE TO IT THAT SHE IS PUT AWAY FOR SAFE KEEPING.

WE ARE GOING TO TORMENT YOU THE REST OF YOUR DAYS_ AND TRY TO GET US.

YOU ARE IN "AMERICA" AND YOUR "KAISER" STUFF DOESNT GO HERE.

DONT YOU WISH YOU COULD PUBLISH THIS?

MAY 19_

MR VON MOSCHZISKER_ YOU MUST SURELY ADMIT THAT YOU ARE LICKED_ I HAVE MUCH TO THANK YOU FOR AND I EXPECT TO HAVE MORE BEFORE WE FINISH_ IT WAS FINE TO HAVE YOU TAKE IT UP WITH THE DIRECTORS FOR IT GAVE ME THE CHANCE THAT I HAVE BEEN WANTING TO TELL THE DIRECTORS THAT MRS VON MOSCHZISKER WROTE THE LETTERS HERSELF AND THEY ALL BELIEVD ME AND INSTEAD OF DISMISSING ME AS YOU HOPED THEY WOULD_ THEY APOLOGIZED FOR HAVING SUSPECTED ME AND SENT ME TO ATLANTIC CITY FOR A WEEK WITH ALL MY EXPENSES PAID BY THE BANK_ SO I SURELY HAD THE LAUGH ON YOU_ MR LANNUIER TOLD ME HOW SORRY HE WAS AND DR VROOM TOLD THE DIRECTORS THAT HE WAS

POSITIVE THAT MRS VOM HAD WRITTEN THE LETTERS HERSELF FOR HE HAD TREATED HER FOR EPILEPSY fifTEEN YEARS AGO AND AS THE DESEASE WAS PROGRESSIVE THAT BY NOW SHE WAS UNDOUBTEDLY CAPABLE OF SOME SUCH CRAZY TRICKS_

IF YOU HADN'T KNOWN THAT SHE forged A CHECK IN OUR BANK_WHY_ DID YOU TELL Mr. BOARD WHEN YOU MOVED YOUR ACCOUNT TO THE CITIZENS TO INSTUCT HIS TELLERS NOT TO CASH A CHECK OF YOURS MADE PAYABLE TO MRS VON- if THE AMOUNT EXCEEDED A HUNDRED DOLLARS_ MR. BOARD TOLD MR. GriggITHS THIS HIMSELF_

WE ARE GOING TO GIVE YOU ONE MORE CHANCE TO SETTLE OUT of COURT_ IF YOU ARE A MAN WITH ANY BRAINS AT ALL YOU WILL SEE THE WISDOM of doING AS I SUGGEST_ WE WILL GIVE YOU UNTIL JUNE 1ST TO PAY THE SUM of TWENTY THOUSAND dOLLARS EACH

TO MR. WALTER J. BURNETT AND MISS B. MOWELL AND ALSO TO AUTHORIZE THE RIDGEWOOD PAPERS TO PUBLISH AN ARTICLE ON THE FRONT PAGE TO STATE THAT WE DID NOT WRITE THE ANONYMOUS LETTERS TO YOU AND YOUR WIFE AND UNLESS YOU DO THIS WE WILL WAIT TWO DAYS AFTER THE APPOINTED TIME AND THEN START SUIT AT ONCE— JUDGE DOREMUS WENT TO SEE MY LAWYER MR. RANDALL AND HE TOLD HIM THAT HE HAD KNOWN ME ALL OF MY DAYS AND THAT MY CHARACTER WAS ABOVE REPROACH WHEREAS MRS. VONS CHARACTER WAS SHOT TO PIECES LONG BEFORE SHE LEFT PATERSON— THEN HE HAD A LONG TALK WARD AND McGINNIS AND TOLD THEM AND THEY TOLD JUDGE DOREMUS THAT WE HAD A VERY STRONG CASE AGAINST YOU— THEY SAID THAT YOUR HANDWRITING EXPERTS WERE FAKES— HE TOLD MR RANDALL THAT IT WAS YOUR SUGGESTION THAT MISS MOWELL RESIGN HER POSITION WITH THE

BANK AND THAT MY ANSWER TO THAT WAS- WHY SHOULD I? SINCE THE BANK IS AFRAID TO DISMISS ME- ALL THAT I HAVE TO DO IS STAY ON AND LAUGH AT ALL OF YOU. THERE ISNT A MAN IN THE BANK WOULD CARE TO HAVE ME TELL THEIR WIFE THAT THEY HAVE TRIED TO MAKE A DATE WITH ME- HA! HA! —

YOU COULD NOT DO ONETHING TO US FOR JUDGE DOREMUS HAS BEEN TO THE PROSECUTOR AND TOLD HIM THAT MYS VON WROTE THE LETTERS AND ADMITTED THAT SHE HAD TO HER FRIEND MRS MORTIMER INGLIS OF PATERSON AND MYS INGLIS CAME TO MR. BURNETT AND TOLD HIM SO AND SHE ALSO TOLD JUDGE DOREMUS - SO MAYBE YOU CAN SEE WHY WE EXPECT TO COLLECT FROM YOU- JUDGE WATSON TOLD JUDGE DOREMUS THAT HE HAD CHUCKED THE CASE WHEN HE FOUND THAT YOUR WIFE WAS NOT ONLY CROOKED BUT CRAZY HE SAYS ALL THE POLICE CALL HER RUTH SNYDER- HE SAYS HE THINKS SHE IS THE

LAST WORD IN DEPRAVED WOMAN_
WE HAVE DESTROYED YOUR FAITH IN HER
AND THAT IS A GREAT SATISFACTON TO US.
OUR DIRECTORS SAY THAT YOU WILL SOON
LEAVE RIDGEWOOD AFTER IT BECOMES
KNOWN THAT WE HAVE TRIMMED YOU
RIGHT_
YOU ONCE TOLD MR. BURNETT IN A VERY
HIGH-HAT TONE OF VOICE THAT NOTHING
THAT MISS MOWELL COULD SAY ABOUT
MRS VON COULD POSSIBLY INJURE HER
BUT I GUESS YOU SEE YOUR MISTAKE NOW
FOR HER STANDING HAS BEEN RUINED
BY THE PROLETARIAN IN SPITE OF THE
EFFORTS OF HER PLUTOCRAT HUSBAND
TO KEEP HER OUT OF T MIRE_

D-36

RIDGEWOOD
MAY 20
1 PM
1927
N.J.



Item
S-14
GS

Mr. F. VON MOSCHZISKER_

PENNSYLVANIA STATION

NEW YORK CITY

NEW YORK

PERSONAL

JULY TWENTY FIVE-

T. R. VON OSCHZISKER-

MR. RANDALL DECLARES NOW THAT HE NEVER offered TO RE - CEIVE THE MONEY FOR US- HE SAYS YOU ARE SMART ENOUGH TO HAND IT TO HIM AND THEN TURN AROUND AND HAVE HIM ARRESTED- SO YOU CAN PAY IT TO WALTER BURNETT- I HAVE WRITTEN SOME MORE LETTERS ON YOUR WIFES STATIONARY AND ONE OF THE MEN HAS SHOWN THE LETTER TO Mr. BLACKSHAW AND TO USE HIS OWN WORDS SAID- YOU GET THAT G.D. BITCH AND LOCK HER UP AND I WILL PAY YOU A THOUSAND FOR IT.

WOULDNT YOU LIKE TO KNOW WHAT WAS IN THE LETTER? WELL YOULL FIND OUT VERY SOON- AND WHEN YOU DO THE WIFE THAT YOU ARE TRY- ING SO HARD TO DEFEND WILL BE YOND THE REACH OF MONEY- IF YOU WILL PAY US WHAT WE ASK NOW WE CAN CALL HIM OFF BY STATING THAT IT WAS ALL A JOKE AND THAT We KNOW THAT MRS. VON DID NOT WRITE IT- SO ACT QUICK- IF YOU HAVE NT ALL THAT WE ASKED For YOU CAN PAY US PART NOW AND THE REST IN NOTES-

MR. LANNUIER HAS ASKED THE DIRECTORS ~~TO~~ NOT TO LISTEN TO ANY MORE COMPLAINTS ABOUT ME FOR HE KNOWS MRS VON ONLY TOO-WELL- MR. RANDALL SAYS SHE IS WELL KNOWN TO THE PATERSON POLICE- YOU WILL NEVER get THE PROSECUTOR TO DO ANYTHING FOR YOU AS CHIEF BLACKSHAW HAS INVESTIGATED THE CASE AND VINDICATED BOTH MISS MOWELL AND MR. BURNETT AND HE WIL SEE TO IT THAT THEY LAY OFF US AN WORK ON MRS VON AS SHE IS THE ONE WHO WRITES ALL THE LETTERS- SO WITH Judge DOREMUS MAYOR HOPPER, Chief BLACKSHAW, MR. RANDALL, MR. BATES, MR. MOORE ALL THE ELKS AND MASONS WE SHOULD WORRY ABOUT WHAT YOU CAN DO TO US- Chief BLACKSHA SAYS HE CAN GET US WITNESSES WHO WILL TESTIFY TO ANYTHING WE WANT FOR FIVE DOLLARS EACH SO THINK TWICE BEFORE YOU ATTEMPT TO TAKE US INTO COURT- HE ALSO CLAIMS HE KNOWS PEOPLE WHO WILL PUT A BOMB UNDER YOUR HOUSE FOR TWENTY FIVE BUCKS BUT THAT ISNT WHAT WANT JUST NOW

UNITED STATES POSTAGE 2 CENTS

Mr. F. Von Moschzisker
Pennsylvania Station
New York City
New York

PERSONAL

R. VON MOSCHZISKER_

WAS YOUR WIFE

AFRAID TO SHOW YOU THE LETTER
THAT I WROTE HER?
MR RANDALL SAYS HE HAS HEARD
NOTHING FROM YOU_ AND WE THINK
YOU HAVE HAD AMPLE TIME TO COME
ACROSS_ SO I HAVE WRITTEN ONE
BLACKMAIL LETTER ON HER ENGRAV-
ED PAPER WITH 44 SPRING AVENUE
ON IT AND I GUESS THE PERSON WHO
RECEIVD IT WILL BE GLAD TO TES-
TIFY THAT SHE IS THE WRITER OF
ALL THE LETTERS_ AND HE WILL
TELL THE TOWN AND DONT YOU
FORGET IT_

FIRST_ SO HE CAN PARK THAT IDEA
UNTIL WE GET THROUGH_

JULY 14_

UNLESS YOU PAY R. RANDALL THE
MONEY BEFORE THE END OF NEXT
WEEK I WILL WRITE SOME MORE
LETTERS ON HER STATIONARY_ SO
TRY TO USE YOUR HALF BAKED HEAD
AND SEE IF YOU THINK IT IS WISE TO
IGNORE OUR THREATS_
JUDGE DOREMUS SAYS WHEN WE HAVE
FINISHED WITH YOU THAT HE WILL
BEGIN ON YOU FOR YOU HAVE TRIED
YOUR BEST TO DISRUPT HIS BANK_
HE THINKS IT WOULD BE A GOOD
IDEA TO WRITE TO THE PRESIDENT
OF THE PENNSYLVANIA AND TELL
HIM A FEW THINGS ABOUT YOU AND
THEN YOU WOULD LOSE YOUR JOB_
BUT I WANT TO GET OUR MONEY



MR. F. VON MOSCHZISKER_
PENNSYLVANIA STATION_
NEW YORK CITY_
NEW YORK_

PERSONAL

REPORT OF EXAMINATION OF ANONYMOUS LETTERS.

I have made a careful examination of five anonymous letters sent to Mrs. F. A. Von Moschzisker, 144 Spring Avenue, Ridgewood, New Jersey. These letters and envelopes are all pen printed except the envelope dated August 19th, which is half printing and half script.

There has also been submitted to me a piece of brown wrapping paper, stamped and postmarked, containing the address all printed, "Mrs. F. Von Moschzisker, 144 Spring Avenue, Ridgewood, New Jersey", also the words "Printed Matter Only", and in the upper left-hand corner the words "From S. B. Morwell, 139 (or 159) Walnut Street, Ridgewood, N. J."

I have made a careful comparison of the printing shown on this brown paper wrapper as compared with the printing in the anonymous letters to determine, if possible, whether the person who did the printing on this brown paper printed the anonymous letters. The brown wrapper does not contain as much printing as would be desirable, but from what there is here it is my best judgment that the same person who did the printing on this wrapper also printed the anonymous letters.

Pen printing is much like handwriting in that each person modifies the forms of certain letters or introduces peculiar forms of his own which give his printing a distinct individuality. It is evident from the printing on the wrapper that this writer is ac-

E-39

customed to print, at least at times, and does the printing very well. The first two anonymous letters, one dated in pencil on the envelope, June 24, 1926,and the other postmarked July 3, 1926, are, in my opinion, not the natural printing of this writer. The letters are made heavy and black and some of the printing is slightly backhand, which is a natural disguise. The letter postmarked August 6, 1926, is a better example of this person's ordinary printing, I believe, as there is a quantity of it and the printing goes along smoothly and appears to have been more easily done than in the first two anonymous letters. The next anonymous letter, postmarked August 19, 1926, is very much like the preceding one of August 6th, and the last one, September 20th, is also in the natural printing of this writer,I believe.

There are in the printing on the wrapper certain peculiar forms of letters which appear, made in the same manner, in the anonymous letters,and these unusual forms appearing on the wrapper and also in the anonymous letters lead me to believe that the same person printed this wrapper and also printed the anonymous letters. The reasons for my conclusion that these two sets of printing were done by the same hand are as follows:

The capital "S" as it appears in the beginning of the word "Spring", in the word "Street", and in the initials "S.B. Mowell" on the wrapper, is a distinctive letter. The loop at the top is an exceptionally narrow loop. In the initials "S. B. Mowell" it will be seen

that the two lines almost come together, while the lower loop in this letter is large and well rounded. The beginning of this top of the "S" on the wrapper does not begin parallel with the right-hand side of the letter in the word "Spring" or "Street", but is begun nearly over the centre of the lower loop. This is a very unusual letter and it is found made in the same manner throughout the anonymous letters where the capital "S" is the beginning letter in a word. For example, this form is shown in the envelope address of the last letter, September 20th, in the word "Spring", again in the letter of August 19th in the word "Saturday" also in the letter of August 6th in the word "Spring" on the envelope, and in the body of this letter the capital "S" in this peculiar form is shown many times. For instance, running down the left-hand side of the letter, it appears in the word "Seriously", "Snubs", "Standing", and elsewhere. In the printing on the wrapper where the capital "S" is made in the middle of a word, it is made in just this same form only somewhat smaller. It is, however, just as characteristic as the larger capital "S". The small "s" as made throughout the anonymous letters has this same peculiar form.

Another peculiar letter as made on this wrapper is the capital "J" as made in the word "Jersey" and in the abbreviation "N. J." In this letter the cross mark at the top is made at a violent angle going upwards to the right, and the short cross mark, or serif, at the

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finish of the downward loop is also at an angle going upwards to the right practically parallel with the stroke at the top of the "J". The angle of these two strokes gives this letter a very characteristic appearance, and the same habit is shown many times in the anonymous letters, as on the envelope of August 6th and in the body of this letter on the second page in the fourth line in the word "Just" and again in the word "Just" in the tenth line. This peculiar capital "J" shown in this form appears in the first letter of June 24th in the second line and also in the second letter in the 7th line from the top, and again in the last line in the word "July".

These two letters made in this peculiar form are strong connection, in my opinion, between this printing on the wrapper and the printing as shown in the anonymous letters.

Other letters which are peculiar in the printing on the wrapper and in the anonymous letters are the small "g" in the word "Spring" and "Ridgewood" in the address on the wrapper, which are made by this writer so they appear twisted around to the left, the short serif slanting upwards to the right somewhat. This method of making a "g" is the same in the anonymous letters, as on the envelope of August 6th in the word "Spring" and "Ridgewood", and in the letter of August 19th in the last line in the abbreviation "Aug." it is clearly shown.

In the printing on the wrapper the capital "R" is begun with a stroke to the left of the down stroke in the

letter, and this form of an "R" is shown in the anonymous letters on the envelope of August 6th and in the body of the letter of August 19th in the second line in the word "Trail". In the anonymous letters the writer often uses the form of the small "r" instead of the capital "R", and this mixing of small and capital letters is shown on the wrapper in the abbreviation "Mrs." where the small "r" was used while in the following name the capital "R" form was made.

The capital "P" in the word "Printed" on the wrapper is begun with this stroke to the left of the down stroke in the letter, and this is also the form of the "P" occasionally made in the anonymous printing, as shown in the word "Spring" on the envelope of Aug. 6th and in the body printing of this letter.

The "144" as it appears on the wrapper is very similar to this number as made on the envelopes of the anonymous letters of July 3rd, Aug. 6th and Sept. 20th.

Comparing the address as it appears on the envelope of August 6th with the address appearing on the wrapper, there are too many points of connection in my judgment to be accounted for by accident or coincidence. The only reasonable explanation of them, I believe, is that the printing on the envelope and on the wrapper was done by the same hand.

Respectfully submitted,

(Signed) ALBERT D. OSBORN

New York,
Oct. 19, 1926.
ADO/JF

letter, and this form of an "R" is shown in the anony-
mous letters on the envelope of August 6th and in the
body of the letter of August 19th in the second line in
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often uses the form of the small "r" instead of the
capital "R", and this mixing of small and capital let-
ters is shown on the wrapper in the abbreviation "Mrs."
where the small "r" was used while in the following
name the capital "R" form was made.

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to be accounted for by accident or coincidence. The
only reasonable explanation of them, I believe, is that
the printing on the envelope and on the wrapper was done
by the same hand.

Respectfully submitted,

(Signed) ALBERT S. OSBORN

New York,
Oct. 13, 1925.
ASO\1f

D-40.

REPORT OF AN EXAMINATION OF ANONYMOUS LETTERS "von Moschzisker"

****

I have made a careful examination of seven anonymous communications received by Mrs. F. von Moschzisker, and have compared the writing and lettering in these communications with certain standard matter submitted to me as the known writing of suspected persons. This examination was made for the purpose of determining, if possible, whether or not the anonymous communications were written by the same persons who wrote the standard matter. Five of these anonymous letters were received through the mails, and two of them bear no stamp or post mark. The standards of comparison used in this examination was a lettered address purporting to have come from S. B. Mowell and two handwritten addressed envelopes purporting to have come from the Suburban Electric Company. The anonymous communications have been numbered for the purpose of identification from "1" to "7" both inclusive and this identifying number has been placed on both the envelope and its contents. The standards used for comparison have been numbered 10, 11, and 12.

As a result of this investigation, I am of the opinion that the same writer who did the lettering on

D-40.

REPORT OF AN EXAMINATION OF ANONYMOUS LETTERS "von Moschtaker"

****

I have made a careful examination of seven anonymous communications received by Mrs. F. von Moschtaker, and have compared the writing and lettering in these communications with certain standard matter submitted to me as the known writing of suspected persons. This examination was made for the purpose of determining, if possible, whether or not the anonymous communications were written by the same persons who wrote the standard matter. Five of these anonymous letters were received through the mails, and two of them bear no stamp or post mark. The standards of comparison used in this examination was a lettered address purporting to have come from S. S. Howell and two handwritten addressed envelopes purporting to have come from the Suburban Electric Company. The anonymous communications have been numbered for the purpose of identification from "1" to "9" both inclusive and this identifying number has been placed on both the envelope and its contents. The standards used for comparison have been numbered 10, 11, and 12.

As a result of this investigation, I am of the opinion that the same writer who did the lettering on

standard number 10, also did the lettering of the anonymous communications, numbers 3, 5, 7. There can be no doubt but that numbers 2, 3, 5, 6, 7 were the work of one person but, with the limited amount of standard lettering that there is here presented, I could not say that, standing alone, numbers 2, and 6, were written by the same writer who prepared the standard, but when these communications are taken together as a whole, I am of the opinion that all of these numbers came from the same source and that they were prepared by the person who wrote standard number 10. Anonymous communication number 1, seems to have been prepared with quite an effective disguise and I could not say from the standard matter which has been presented to me that this letter belongs to the same group as the others. The envelope of number 5, has some quite distinctive writing on it and I feel sure that if some of the longhand writing of the suspected person could be procured, it would be quite illuminating. The envelope of number 4, which contains a card of the Suburban Electric Company with a drawing on the back of it, is written in longhand and my best judgment is that it was written by the same writer who wrote standards numbered 11, and 12. In this comparison there is also a limited amount of standard writing but my judgment is, from a careful examination of all of this matter, that the same writer who wrote the two standards in longhand also wrote the envelope of number 4.

D-40 -- Page 3.

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mous communications, numbers 3, 5, 7. There can be no
doubt but that numbers 3, 5, 6, 7 were the work of
one person but, with the limited amount of standard
lettering that there is here presented, I could not
say that, standing alone, numbers 3, and 5, were writ-
ten by the same writer who prepared the standard, but
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I am of the opinion that all of these numbers came from
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standard matter which has been presented to me that
this letter belongs to the same group as the others.
The envelope of number 5, has some quite distinctive
writing on it and I feel sure that if some of the long-
hand writing of the suspected person could be procured,
it would be quite illuminating. The envelope of number
4, which contains a card of the Suburban Electric Com-
pany with a drawing on the back of it, is written in
longhand and my best judgment is that it was written by
the same writer who wrote standards numbered 11, and 12.
In this comparison there is also a limited amount of
standard writing but my judgment is, from a careful
examination of all of this matter, that the same writer
wrote the two examples in longhand also wrote the
envelope of number 4.

The lettering in standard number 10 is, in many ways, quite distinctive and individual. Many of these distinctive qualities and characteristics are to be found in the lettering on the envelopes and their contents. It is my judgment, that these identifying things occur in sufficient number and are of such a character as to warrant the conclusion that the writer of standard number 10, also wrote the letters stated in the first part of this report.

If this matter is to be the basis of a litigation, it would be well to procure additional standard writing. This writing should be both longhand and lettering and, if the suspected person works in a bank, it should be fairly easy to secure this additional writing without the direct knowledge of the suspected person.

From my deductions, it would seem that two persons were involved in the sending of these anonymous letters. In this I assume that the envelope and card enclosed in it are a part of the scheme as a whole. It seems to me that this construction must be placed upon the card on which there is a drawing because it has been referred to in some of the later communications which were undoubtedly prepared by another person.

Respectfully submitted,

(Signed) E. W. Stein.

Office of
Elbridge W. Stein,
New York City.
November 13, 1926.

(Note: Each page of this exhibit bears imprint in circle
Elbridge W. Stein
S
N.Y.C.

No. 59

New Jersey Court of Errors and Appeals

SARAH E. MOWELL, Plaintiff-Respondent, vs. EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER, Defendants-Appellants.	On Appeal from Supreme Court.

BRIEF OF DEFENDANTS-APPELLANTS.

The defendants-appellants by this appeal seek to reverse the judgment of the Supreme Court in which it affirmed a judgment in favor of the plaintiff obtained in the Bergen Circuit Court. The facts of the case are as follows:

The plaintiff, Sarah E. Mowell, brought an action in the Bergen Circuit Court for malicious prosecution against the defendants, Emma L. Von Moschzisker and Frank A. Von Moschzisker who are husband and wife. The jury returned a verdict in favor of the plaintiff against both defendants, for the sum of $25,000. The Trial Court granted a rule with exceptions reserved, and the judgment was reduced to $13,000. This appeal now brings up the points of law raised under the reserved exceptions. The errors complained of appear in the charge of the Court and are set forth in the grounds of appeal at P. 32 to P. 38.

The evidence in substance on behalf of the plaintiff was, that Sarah E. Mowell, had incurred the enmity of Mrs. Von Moschzisker; that Mrs. Von

Moschzisker had caused to be written to herself a series of anonymous letters; that one of these letters (P. 29) was an attempt to extort money from Mrs. Von Moschzisker; that thereupon Mr. Von Moschzisker made a complaint against Miss Mowell; that this complaint resulted in an indictment; that the indictment was duly tried at the Bergen Quarter Sessions and Miss Mowell acquitted.

The evidence on behalf of Miss Mowell was mainly that of handwriting experts, who claimed that Mrs. Von Moschzisker had written the criminal letter.

Mrs. Von Moschzisker denies plaintiff's contention and in turn offered handwriting to prove that Miss Mowell had written the letter in question. She also offered evidence that before making the complaint, she had gotten the opinion of handwriting experts to the effect that Miss Mowell had written the letter; that she had consulted three different lawyers who advised that she should make a complaint. These three lawyers all testified in favor of the defendant. In addition to seeking the advice of members of the bar, she placed the matter before the Prosecutor of the Pleas of Bergen County, who in turn sought the advice of a handwriting expert, and directed the defendant, Mrs. Von Moschzisker to make a complaint, and in accordance with these advices and directions she did so. In the action at law both Mrs. Von Moschzisker and her husband were sued, and the action against her husband, Frank Von Moschzisker, was grounded solely on the theory that he was the husband of Emma L. Von Moschzisker, and therefore was responsible for her torts.

Nowhere in the evidence, does it appear that Mr. Von Moschzisker took any active part in producing the complaint and criminal proceedings, or that he bore the slightest degree of ill-will towards

Miss Mowell, the plaintiff, or that he in fact even knew her until after matters had come to a head, following the reception of these anonymous letters by Mrs. Von Moschzisker.

Notwithstanding this, the plaintiff demanded from Mr. Von Moschzisker, as well as from his wife, punitive damages, and the court charged the jury that Mr. Von Moschzisker was responsible in punitive damages to the same extent as his wife. The verdict of the jury was a general verdict against both defendants, and the amount would clearly indicate that the jury in fixing the damages did so by way of punishment rather than compensation.

POINT I.

The Court committed error in charging the jury as to the responsibility of the defendant, Frank A. Von Moschzisker, to respond in punitive damages for the torts of his wife.

Under this point is considered the first, eighth and ninth grounds of appeal.

In the first ground of appeal the Court used the language:

> "That the defendant or defendants instituted the proceedings against her without reasonable or probable cause, and the defendants were actuated by a malicious motive in making the charge."

Again:

> "Now, we come to the other elements. Did the defendants have probable cause in making this complaint? Were they actuated by malicious motives?"

The quotation is found in the grounds of appeal at P. 33, ll. 10-20 of the State of Case and in the Courts charge at P. 653, ll. 25-30; P. 656, ll. 5-10.

In the eighth ground of appeal the Court said:

> "Under the law that existed at the time that this complaint was made out a husband was chargeable with the torts of his wife, whether he was present or not, provided the tort was not committed on the separate business of the wife. So you see, irrespective of Mr. Von's active participation, if you conclude that Mrs. Von should have a verdict against her, the law carries with it the obligation to also include Mr. Von in your verdict, that is rendering a verdict against him, in favor of Miss Mowell."

This quotation is found in the grounds of appeal at pages 36 and 37 and in the charge at P. 660, ll. 25-35).

In the ninth ground of appeal the Court said:

> "In the event of recovery on the part of the plaintiff, in view of the fact that malice is charged, in addition to compensatory damages, the plaintiff would be entitled to punitive damages, as a punishment for what they did."

This language is found quoted in the ninth ground of appeal at page 37, ll. 18-28 and in the charge at page 661.

It will be noticed in the first ground of appeal that although the evidence was clearly and solely to the effect that the complaint was made by Mrs. Von Moschzisker, acting on her own initiative, yet the Court assumed that both defendants had made this complaint. Note the language, "Did the *defendants* have probable cause in mak-

ing this complaint? Were *they* actuated by malicious motives?"

Then in the quotation also at this point, and referred to in the first ground of appeal, the Court said:

> "If Miss Mowell or someone else wrote this P-29, and Mrs. Von and her husband made a full disclosure, and they acted on the advice of attorneys, then, whether she made a mistake or not, the law would justify you in giving a verdict in favor of the defendants."

P. 33, State of Case, and the Court's charge at P. 659, ll. 25-30.

Note the reference to defendants in the plural.

In considering this point, it, in a sense falls under two heads, (1) the error of the Court in assuming that both defendants had made the complaint and submitting the case to the jury on the theory that there was a dual responsibility and (2) the statement as to the law of damages in respect to same.

We repeat that there was no question as to who made the complaint. This appears at State of Case P. 40, on the testimony of Charles Schmidt, former Clerk of the Criminal Court, and the admission by counsel for the plaintiff that Mrs. Von Moschzisker had signed the complaint. The Court so pointed out to the jury that the actual complaint was signed by Mrs. Von Moschzisker (P. 63, ll. 1-5); that it was the plaintiff's contention that Mrs. Von Moschzisker wrote the threatening letter herself (P. 654, l. 13). In fact, a reading of the whole charge, as well as a perusal of the evidence will clearly show that plaintiff's contention was, Mrs. Von Moschzisker wrote this letter or instigated the writing, and Mr. Von Moschzisker was only brought in the case because of his relationship to

Emma L. Von Moschzisker and the Court undoubtedly meant this when using the word "defendants" or in reference to the case against both defendants. This emphasizes therefore the erroneous character of the statement of law set forth in the eighth and ninth ground of appeal.

As we have shown from the language quoted above under these grounds of appeal, Mr. Von Moschzisker's liability was solely due to the fact that he was Mrs. Von Moschzisker's husband. The Court told the jury plainly that this was the law, after telling them that he was responsible irrespective of Mr. Von Moschzisker's active participation, and that any verdict against Mrs. Von Moschzisker carried with it the obligation of rendering a verdict against Mr. Von Moschzisker.

No attempt was made to point out that even if Mr. Von Moschzisker were responsible for the torts of his wife, nevertheless his responsibility ended with paying compensatory damages. As pointed out by the ninth ground of appeal, the Court distinctly said that Mr. Von Moschzisker would have to pay punitive damages as well as his wife, if she were guilty. This we charge was a grievous error.

Our contention is, that even though Mr. Von Moschzisker was responsible in damages for the torts of his wife, yet such damage should be limited purely to compensatory damages, while punitive damages could be rendered against the wife only. In support of this contention we cite and take the liberty of quoting in full the case of Price v. Clapp, 119 Tenn. 425; 105 S. W. 864, 123 Am. S. R. 730.

The price case was an action brought against the wife and husband for slander by the wife, and the Court charged the jury as in the case at bar, that the husband was responsible for the torts of his wife; that the plaintiff was entitled to punitive damages, making no distinction between

the damages which the defendant wife might be responsible for, and those to which the defendant husband would have to respond. The judgment was reversed. The syllabus in that case is as follows:

> 5. Husband and Wife—Torts of Wife—Liability of Husband—Punitive Damages.
>
> Where a wife uttered a libel without her husband's knowledge or participation, he was liable for punitive damages, though he was necessarily joined as a party defendant in the action because of the existence of the marital relation, and thereby became liable for the judgment recovered in so far as it awarded compensatory damages.

In the course of the opinion dealing with this phase of the case the Court said:

> "This suit is brought against the wife for slanderous words, alleged to have been spoken by her. It is neither averred in pleading or pretended in evidence that the husband counseled or connived at their utterance. The declaration alleges that the wife did the wrong. This is the case which the plaintiff himself made. If the declaration had alleged that it was done by the wife in the husband's presence, or upon his demand, it would have been demurrable by the wife. It is because the wrong complained of is the wife's independent and personal act that she can be sued at all. It is well settled that the husband is not joined as defendant in such cases on the ground that the wife's misconduct is imputable to him, but for conformity's sake. His being a defendant results not from his participation in the wrong, but from the fact that the existence of the marriage relation makes it impossible for the injured party to sue the wife alone. To reach her, the husband must be joined in the action. If the wife is found guilty, notwithstanding his innocence, the law visits the consequences on his head, as well as hers.

> But, where this is the case, does not the violated law exact all to which it is entitled when it exacts from this innocent party full compensation for the wrong inflicted by the wife? Upon what reasonable ground can it be maintained that he should be compelled to answer in exemplary damages? These are allowed for a wanton and flagrant wrong. Why, then, should they be required of one absolutely blameless, and only held liable on technical grounds? So it is, we think, the weight of authority and of sound reason that the damage recoverable against him is compensatory, and that vindictive damages will not be allowed. Newell, p. 365, and cases cited."

This would, of course, not preclude a judgment against the wife herself for punitive damages, and there could be no objection to having the verdict show how much was assessed on this head.

Newell on Slander & Libel, p. 365, chapter 18, paragraph two, deals with this subject as follows:

> "Extent of the husband's liability. A husband is only liable in civil actions for the acts of his wife. He is not responsible for her acts when they are criminal. And when they are joint defendant in actions for defamation the judgment, if rendered for the plaintiff, must be as well against the husband as the wife. The damages must be limited to compensation for the injury sustained. The husband is liable for his wife's act to the same extent as if she alone were answerable. Vindicative or exemplary damages cannot be given."

The Statute enacted by our Legislature in 1912 is as follows:

> "A married woman may sue, or be sued, without joining her husband, in any case

> whatsoever, in which he would be an unnecessary party if he were not her husband, (L. 1912, c. 232 p. 416).
>
> 1 Compiled Statute, P. 1838.

We are familiar with the case of Sargeant v. Fedor, 130 At. Rep. p. 207; 3 Misc. p. 832, where at first reading it would appear that this point had been squarely before the Supreme Court and had been decided contrary to our views. Upon examination, however, it appears that the decisions as far as this point is concerned was *obter dicta* inasmuch as the question before the Court was the refusal of the Court to direct a verdict in behalf of the defendant husband. Our contention is not that a verdict should be directed in a case of this kind, but that a different rule of damages should apply as to the husband.

To compel a husband to pay punitive damages for the sole tort of his wife would be equivalent to charging him with a guilty participation in the wrong. In the case of Kowing v. Washington Manley *et al.*, 49 N. Y. at page 201, Justice Rapallo said:

> "The unsoundness of this position consists in the assumption that the liability of the husband to be joined with his wife, in an action for her wrong, is equivalent to a guilty participation by him in that wrong, or is founded upon the idea that her act is considered as his. Such is not the nature of his liability. He is not joined as a defendant on the ground that her guilt is imputed to him, but because, so long as the marital relation continues, the wife is incapable of being sued alone (Capel v. Powell, 17 C. B. [N.S.], 744); and his liability continues only so long as the relation of marriage subsists.
>
> In trover against husband and wife for goods converted by the wife, the reason as-

signed for holding a plea that the defendants were not guilty to be bad, was that "no tort is supposed in the husband, and the issue should be only that she is not guilty." (Coxe v. Cropwell, Cro. Jac., 5; Slater v. Franks, Hobart, 126.).

If after the commission of a tort by a married woman she should be divorced, or the husband should die, the action could be brought against her alone, and if the death of the husband occurred pending an action against both it would survive against the wife. But if she should die before, or pending the action, it would not survive against the husband.

This could not be if her wrong were imputed to him, or he were in law unqualifiedly responsible for it."

In the case of Radke v. Schlundt, (Ind) 65 N. E. Rep. at page 772, Justice Black in his opinion said:

"At common law a husband is liable for the frauds and other torts of his wife, whether they were committed before marriage or during coverture. One of the reasons for this doctrine was that the unity of husband and wife rendered the wife incapable of being sued alone. Her husband had to be joined in all actions against her. Another reason was that the husband became the absolute owner of his wife's personal property, and had the right to receive her earnings and the rents and profits of her real estate, so that it was only just to hold him liable for her torts. Another consideration was that he should not permit her to commit torts. The liability, however, was not based on any idea that he was himself guilty of her torts, even in contemplation of law. The liability exists even when the husband is separate from his wife, so long as the marriage has not been dissolved." Tiff. Pers. & Dom. Rel. 60, 61.

We submit that these views are well reasoned and consonant with the modern view expressed repeatedly through acts of the Legislature that a husband and wife should be able to contract and act independently of each other; to be entitled to enjoy the fruits of their own property and labor; to be responsible solely for their own wrongs.

"When the reason ceases, the thing itself ought to cease." (Blackstone)

Now the reason the Common Law made a husband responsible was that by marriage he became in absolute control of his wife's property. Her identity was merged with his; she and her husband were no longer two persons, but one, hence rights were enjoyed and liabilities imposed as a result of this fact and with it, the additional reason that the husband was in complete control of all her property which she brought to the marriage, so that she could not respond in damages.

As a result of modern Statutes, the wife now may hold her separate property as if she were feme sole; the husband no longer owns or has any control over her property. Why then should he be responsible for her separate tort? It is true that in this State it has been held that he is responsible, but why should the rule now be extended to punish him for his wife's separate tort? Therein lies our criticism of the Court's statement of the law. We contend that having in mind the status of a modern married woman, the limit that the Court should have gone in stating the law to the jury, should have been that Mr. Von Moschzisker was responsible for his wife's tort only to the extent of compensatory damages.

Exception was properly raised to the Court's charge on these points. See the State of Case at P. 662-663.

The Supreme Court in its opinion (P. 666, ll. 10-

20), took the view that the Common Law was unchanged in this State, and rested their view under the case of Sargeant vs. Fedor, 3 Misc. 832; 17 C. J. p. 989. This discussion was purely obiter but perhaps the Supreme Court felt that even though it was not the deciding factor in the case under consideration, it was an expression of opinion of its own Court, which should be treated with respect. The situation, however, before this Court is quite different. Whether the Supreme Court in the Sargeant case regarded the expressed view as obiter or as decisive, as to the case above, it is immaterial. In neither situation is it binding upon this Court, and we submit that this Court should take the more enlightened view expressed in the cases cited in our brief, and the view of the people exprssed through the Legislature in 1929.

The Supreme Court concedes that the Legislation of 1929, Chapter 120, was corrective legislation. In other words, that the Common Law rule, in the light of present day rights and responsibilities of women, was an evil that called for correction, hence the Act of 1929. So far therefore as the Court of Errors is concerned the Court is in a position irrespective of the Statute to have considered this case as one of novel ~~expression~~ impression and taken the more enlightened and modern view. More so because of the Legislative expression, should this Court affirm the Supreme Court judgment, we would have then a situation in which the Court would go out of its way to adopt for the first time an ancient rule of law, pronounced so by the Legislature two years before, and adopt this rule on a judgment recovered after the enactment of the legislation in question. To adopt the old Common Law rule, this Court would adopt a rule that has as its basis no sound reason, and due to the

old time view of the marriage relation, work an act of deliberate injustice.

The absurdity and injustice of this ancient rule can only be fully realized when we compare the situation in law of the married woman of other days, when she was practically without rights of any kind, to the woman now completely emancipated, and who now in all respects stands equal to her husband before the law. When the reason of the law ceases, the law should cease. This Court, in a position to adopt a sound view consonant with modern conditions, should take a view opposite to that pronounced by the Supreme Court in this case.

POINT II.

The Court improperly charged the jury that no limitation could be imposed upon them as to what they should do on questions of fact in the case.

This covers point two in the grounds of appeal. The language complained of is as follows:

> "Sitting as you are, the triers of fact, the Court cannot impose any limitation on you with respect to what you should do on the question of fact in this case."

This language is quoted in the ground of appeal at page 34 of the State of Case, and in the Court's charge at page 655, ll. 20-25.

There are limits imposed upon a jury, in the considering of facts. Thus, for example, upon an even balancing of facts, the finding should be in favor of the defendant. This, would be a limitation. Surely, the jury would have no right to find

malice as a matter of fact, excepting from evidence legally before it and in accordance with the rules of law laid down by the Court. This, would be a limitation. Again, the Court pointed out to the jury that in considering the various letters offered in evidence as standards of writing, that these were admitted only for the purpose of aiding the jury to ascertain whether or not the letter complained of, was written by the defendant Mrs. Von Moschzisker, or, by the plaintiff Miss Mowell. This would be a limitation, yet, the language complained of under this point, however, would have permitted the jury to use these various letters on the direct issue in the case, as to who, had written the letters, the question of malice, and the like.

The answer of the Supreme Court to this criticism of the charge was: "That the charge construed as a whole, does not sustain this criticism." We feel that in this construction of the language, the Supreme Court was at fault. The whole paragraph in which this language occurred is found at page 655, ll. 12-25 and reads as follows:

> "The only purpose of admitting evidence of that character is for that of comparison. In other words we are not concerned with the substance or the thought that these letters convey. But that, of course, I do not mean you are not privileged to look for a similarity of expression, or the use of a letter. When you are given these letters as a basis of deliberation, they are given to you for the purpose of comparison and, of course, sitting as you are, the triers of fact, the Court cannot impose any limitation on you with respect to what you should do on the question of fact in this case."

From an examination of this language, we find that the Court was dealing with various exhibits

of handwriting offered in the case. The Court first said that this evidence was only for the purpose of comparison; next he said that the jury were not to be concerned with the substance or the thought that these letters convey. Then he proceeds to qualify this by saying, "But that, of course, I do not mean you are not privileged to look for a similarity of expression, or the use of a letter."

What was meant by this last quotation? Just what was meant by this privilege that the jury would have? For the Court after again stating that the letters were admitted for the purpose of comparison used the criticised language, thereby stating that it, (the Court) could not impose any limitation on them as to what they should do on the question of fact in the case.

It would seem to us that this language could be construed to mean that while the evidence was admitted into the case, as a means of comparison only, that once they were admitted in evidence, the jury could use them as they saw fit; that there could be no limitation placed upon them. Surely, the Court did not in any other place qualify or limit this language, but on the contrary, we find him to say at page 659, ll. 30-40:

> "I want you to decide this case on all of the evidence, as, sitting as jurors, it is your privilege, and your privilege alone, to determine the value of testimony. You can draw all proper inferences from the evidence or the facts before you. Whatever counsel has said, whatever the Court has said, with respect to the facts is not binding on you at all. You are the sole judges of the facts, and your determination of the facts is a finality."

We submit that this language emphasized the error complained of under this point. The Court

told them, as it will be noted, that they, the jury, alone had the right to determine the value of the testimony; that they had the right to draw all inferences, and their determination of the facts was a finality. While this abstract proposition of law is correct in all respects standing alone, yet taken in consideration with the language we have criticized and excepted to, it would mean that these various exhibits of handwriting samples, once they passed the Court's ruling, so that they were laid before the jury, would be in evidence, and that the jury might draw any inference that they wished from those facts and put what value they pleased upon them, their determination in this respect being a finality, although their admission had been strictly limited.

POINT III.

The language complained of under third ground of appeal was erroneous in law.

This language is set out at page 34 of the State of Case, and again in the charge, at page 656, ll. 30-40, as follows:

> "The mere consultation of handwriting experts, standing alone, does not come within the rule of justification. But if the handwriting experts were consulted with respect to consultation with attorneys, where there has been a full disclosure of the facts, and the complaint was made based upon a full disclosure of the facts, then, of course, the defendants would be absolved from liability in this case."

The Court had gone on to state to the jury what might constitute justification to the jury for Mrs.

Von Moschzisker making the complaint, even though Miss Mowell, the plaintiff, had not in fact written the letter. The Court under the language complained of, practically made it a necessity, that in order to find good faith on the part of Mrs. Von Moschzisker, that she did in fact consult handwriting experts and attorneys, and made a full disclosure of the facts to them, and that if she didn't do that, she would not be absolved from liability. Note the language, "The mere consultation of handwriting experts, standing alone, does not come within the rule of justification."

The language which follows, shows, that the Court tied this up with the necessity of consulting attorneys as well as making a full disclosure. This, prevented the jury from finding that if the handwriting experts had given an opinion to Mrs. Von Moschzisker that Miss Mowell had written the letter complained of, she would have been justified in making the complaint without the consultation with lawyers, if she believed what the handwriting experts had reported to her.

The Supreme Court missed counsel's point in this case. Their criticism will be found at page 667 of the State of Case, ll. 1-20 of opinion. What we desired to point out to the Court is that if the defendant in good faith consulted handwriting experts, and their opinion was that the plaintiff had sent this threatening letter, which was the basis of the criminal matter, that the jury had the right to consider the fact that, the defendant, Mrs. Von Moschzisker had consulted handwriting experts, and had obtained an opinion which would in good faith justify her in making the complaint.

What the Court said in charging the jury was, that no matter how much, nor to what extent, the handwriting experts may have created in the mind

of the defendant an honest belief that the plaintiff did send the threatening letter, that still this would not save her; that only the advice of lawyers would be her salvation. Let us take a suppositious case of a person in doubt as to who had written a threatening letter; that this person went to twenty handwriting experts, all of whom had assured her that a certain individual had written a letter, and thereupon, believing the opinion of all those experts made a complaint against the person whom the experts had pointed out as the guilty party, still according to the Supreme Court, and the language of the Trial Judge which they approve, such a person would be defenseless in an action for malicious prosecution.

We contend it is the state of mind, that is to say, an honest belief backed by probable cause are the factors which protect a person making a complaint. That this state of mind may be created by facts and factors, other than the opinion of a lawyer.

POINT IV.

The Court erred in charging the jury in effect that the burden of proof was upon the defendant.

This point covers the fourth and fifth grounds of appeal, and the language complained of is set out at page 35 of the State of Case, and in the charge at P. 657, ll. 20-25.

The language complained of is as follows:

> "But on the other hand, if you conclude that she did not write this letter, if you conclude that someone else wrote it, other than Miss Mowell, and she went to her attorney or attorneys, and met the requirements of full disclosure that I have mentioned, then, of course, the law would protect her in acting on the advice of counsel."

The error in this, is, that it put upon the defendant the burden of proof. Miss Mowell was the plaintiff. She was charging Mrs. Von Moschzisker with having written the letter complained of. Instead then of telling the jury that Miss Mowell should establish these facts, the Court said with reference to Mrs. Von Moschzisker:

> "If you conclude she did not write the letter [meaning defendants], if you conclude that someone else wrote it, other than Miss Mowell, and she [defendant, Mrs. Von Moschzisker] went to her attorney, and met the requirement of full disclosure that I have mentioned, then, of course, the law would protect her," etc.

Surely it was error to tell the jury that they

must affirmatively conclude that Mrs. Von Moschzisker did not do the things complained of, keeping in mind that the evidence in this case, on the part of the defendant, was that Miss Mowell had written the letter.

The only comment the Supreme Court makes on this point is:

> "We think the language of the charge does not bear that construction." (P. 667, l. 20).

It is difficult for us to see how the Court came to that conclusion. The jury are told that they must conclude that she did not write the letter, in order that she, the defendant, may be exonerated. Again they are told that if they conclude that she went to her attorney etc. In other words, the jury are told in effect to start with a presumption that the defendant did write the letter, and did go to her attorney and make a full disclosure, but that she may be exonerated if the evidence leads them to conclude otherwise.

Surely this was placing the burden of proof upon the defendant. It was error which was a vital one. The whole case turned on the theory as to whether Mrs. Von Moschzisker or Miss Mowell had written the letter. Of course, if Mrs. Von Moschzisker wrote it to herself that ended all questions of good faith, probable cause and the like. On this crucial point therefore the Court placed the burden of proof on the defendant.

POINT V.

The Court erred in charging that the jury could take into consideration as an element of damage, the plaintiff's expenses in respect to medical bills for her sickness.

The language complained of is set out in the seventh ground of appeal at P. 36 and in the charge at P. 657, ll. 30-35.

The language complained of is as follows:

> "There has been also testimony in the case with respect to medical bills and sickness after the arrest."

The error lies in the fact that there was absolutely no evidence in the case that there had been any medical bills with respect to any sickness growing out of the case.

No testimony was offered by the physicians called, viz., Dr. Morrow (P. 241), Dr. Fisher (P. 252), Dr. Hagen (P. 262). In fact, counsel for the plaintiff, at the close of his case, before resting, asked leave to put in evidence as to the value of the doctors services, etc, giving by way of excuse for his failure to do this in the course of the case, that it had slipped his mind. See the discussion on this point at P. 431 of the State of Case. He also gave as an additional ground that he did not have the bills before him. The Court then said, "I will rule on it when the occasion arises." (P. 431, l. 22).

A careful examination of the case will show that no evidence was offered. Following this reservation by counsel, the defendants began to put in their case, and closed at P. 462. Plaintiff's rebuttal testimony commences at page 643 and ends

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at page 651. A careful examination of the testimony offered in rebuttal will show that the medical bills, or medical expenses rendered were never discussed or referred to in any way.

This error we contend is a serious one. The plaintiff was allowed to testify at great length to the alleged effect of the criminal proceedings upon her health. See her testimony at page 67 at bottom and page 68 entire. There was ample evidence that she was in ill health suffering from tuberculosis. Dr. Morrow from page 243 to 247 inclusive, in fact all of his testimony, was directed to her health and the probability of it having been broken down by her arrest. To the same effect was the testimony of Dr. Fisher whose testimony begins at Page 252, but who testified particularly as to the plaintiff's condition at pages 254, 255, 256, 257. Dr. Hagen also testified to the same effect at page 264.

An examination of the testimony of these doctors at the places quoted, plus the testimony of the plaintiff, would all indicate an attempt on the part of the plaintiff to show a long period of illness, constant medical treatment, confinement in sanitariums and the like, leaving to the jury the right to put a value on the medical services rendered, covering a period of approximately two years, as appears from the evidence. With these various physicians treating her, sanitarium expenses and the like, would perhaps have justified the jury in concluding that such medical expenses were worth or involved an expenditure of many thousands of dollars.

How can we speculate as to what proportion of the damages the jury assessed as to the cost or value of the medical services rendered. The plaintiff was not actually in court because of her ill-

ness, and the jury might have concluded that there had been an extraordinary expenditure of money in an effort to bring her back to health and allowed damages accordingly. This, without a scintilla of evidence from any physician as to the value of service, or without the presentation of a single bill from any hospital, sanitarium or the like, was an error of such a substantial character as to justify a reversal of the judgment.

The Supreme Court's answer to this is:

> "That inasmuch as the Court had not enumerated medical bills as a proper element of damage, the jury was not to do so."

We do not think the language quoted in the opinion justifies this conclusion. It is true the Court did not enumerate the bills, but it was not required under the law to enumerate the same, even if there had been a proper charge. A simple statement to the jury that the plaintiff could have recovered for her medical bills would have been sufficient. What the Court did not do in this case was to state definitely to the jury that the plaintiff was not required to recover for her medical bills. If the evidence is capable of two constructions, in justice to the defendant there should be a reversal.

On an important element such as is raised under this point, when the Court's attention was called to the doubtful language, the Court should promptly have made clear to the jury just what he meant.

CONCLUSION.

For these reasons, it is respectfully submitted that the judgment of the Supreme Court should be reversed to the end that the judgment of the Bergen Circuit should be set aside and a new trial granted to the defendant.

Respectfully submitted,

BRESLIN AND BRESLIN,
AND
WARD & McGINNIS,
Attorneys and of Counsel for
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OCTOBER TERM. 1931.

E. W. Stillman, Pompton Plains, N. J., Tel. Pompton Lakes 500

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New Jersey Court of Errors and Appeals

SARAH E. MOWELL, *Plaintiff-Respondent,* *v.* EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER, *Defendants-Appellants.*	On Appeal from Supreme Court.

BRIEF OF PLAINTIFF-RESPONDENT.

On behalf of the plaintiff-respondent, it is contended that the judgment of the New Jersey Supreme Court affirming the judgment of the Bergen Circuit Court in favor of the plaintiff-respondent, should be affirmed.

The defendants-appellants Frank A. Von Moschzisker and Emma L. Von Moschzisker are husband and wife. They lived together at Ridgewood. They had no children. Frank A. Von Moschzisker was sixty-five years old in January, 1926. Emma L. Von Moschzisker was forty-nine years old in January, 1926. Sarah E. Mowell, the plaintiff-respondent, who lived in Ridgewood with her father and mother, was twenty years old in January, 1926.

In January, 1926, Sarah E. Mowell associated with Walter Burnett. Prior to that time, he had done work for Mrs. Von Moschzisker. Mrs. Von Moschzisker showed interest in him and his business affairs. On one occasion, Burnett took Miss Mowell for a social call to the Von Moschzisker

home. Before, and at, and after that time Mrs. Von Moschzisker showed animosity toward Sarah Mowell.

On August 10th, 1927, the defendant Emma L. Von Moschzisker in company with her husband, the defendant Frank A. Von Moschzisker, went to the Prosecutor's office of the County of Bergen, and then Emma L. Von Moschzisker, with her husband's advice and consent, signed and swore to a criminal complaint before the Clerk of the Court of the Second Criminal Judicial District of the County of Bergen, charging Sarah Mowell with "knowingly, unlawfully, maliciously and with criminal intent, sending and delivering" a certain letter, etc., which resulted in the arrest, indictment and trial of Sarah E. Mowell.

After a trial lasting eight days, Miss Mowell was acquitted in the Bergen Quarter Sessions Court.

The plaintiff-respondent Sarah E. Mowell, after being duly acquitted in the Bergen Quarter Sessions Court, instituted suit for malicious prosecution against said Emma L. Von Moschzisker and said Frank A. Von Moschzisker. She recovered a verdict for $25,000. This was later reduced by the Circuit Court to $13,000.

The plaintiff-respondent's evidence in the Circuit Court was to the effect that Mrs. Von Moschzisker herself had written and "sent and delivered" the letter that she charged the plaintiff-respondent with having written. In the case in the Circuit Court, the making of the complaint and the acquittal were not denied.

The evidence showed that Mrs. Von Moschzisker herself had written the letter that she charged the plaintiff-respondent with having written, and that she did not disclose to counsel or handwriting experts or any one else whom she and her husband consulted before making the complaint that she

herself did the "writing and sending and delivering."

No motion was made for a nonsuit by the defendants-appellants, or as to either of them.

No motion was made for a direction of a verdict on behalf of the defendants-appellants, or either of them.

No requests to charge on behalf of the defendants or either of them were denied.

No adverse rulings by the trial court were complained of by the defendants-appellants.

The defendants-appellants' exceptions all related to the judge's charge.

Frank Von Moschzisker was made a defendant in the action, not merely because he was the husband of Emma L. Von Moschzisker, but because, from the very beginning, he cooperated with her in every way, including the advising of the making of the criminal complaint, Exhibit P-1 (omitted by defendants-appellants from state of case), notwithstanding the fact that he himself had apparently suspected that his wife wrote anonymous letters, and that he had had some or her handwriting examined and compared by a handwriting expert with anonymous writings (p. 561, lines 2-26).

The evidence showed that Frank Von Moschzisker took a very active part in the making of the complaint and prosecution of the criminal proceedings. His attitude on the stand when referring to Miss Mowell showed his entire lack of consideration for the rights of this young girl, notwithstanding the fact that both he and Miss Mowell's father lived in the same village, a short distance from each other.

There was an abundance of evidence in the case to prove that Mrs. Von Moschzisker was the author of the letter that she claimed that Miss Mowell

wrote; that she falsely and maliciously charged Miss Mowell with having sent and delivered it; and that she did not make a disclosure of the true facts to lawyers or handwriting experts.

The evidence showed all the elements of malicious prosecution. The additional circumstance was proved that Mrs. Von Moschzisker, with malicious intent, wrote, sent and delivered the letter, P-29, to herself, and then falsely swore to the complaint charging Miss Mowell with having sent and delivered it.

The evidence showed that Frank Von Moschzisker, the husband, was equally culpable and equally liable to punitive damages; that he had reason to suspect his wife of writing anonymous letters; that he had her handwriting compared with anonymous letters by handwriting experts (p. 561, lines 2-28); that he knew his wife's idiosyncrasies; that he knew that for years she had taken to writing and printing. For some reason, known only to himself, he cooperated with her in every detail.

It is contended he was further responsible on the theory of the common law doctrine that a husband is liable for his wife's torts, as that common law doctrine existed at the time of the making of the complaint, down to the time of the conclusion of the criminal prosecution. The criminal case was finished on February 16th, 1928, and the statute changing the husband's liability for his wife's torts did not become effective until April 22nd, 1929 (P. L. 1929, p. 205, Chapter 120).

The defendants-appellants have attempted to find fault with the charge of the Circuit Court judge, using isolated parts of paragraphs or sentences as grounds for their exceptions. It is contended that these exceptions are without legal merit when the court's charge is considered in its

entirety. The truth of this statement is emphasized by the fact that the defendants-appellants failed to make any suggestions when the court halted before completing the charge to the jury, saying, "I think I have covered your requests," and then proceeded to charge as to exemplary damages, after conference with counsel.

The plaintiff-respondent takes the stand that such advice as may have been given to Mr. and Mrs. Von Moschzisker by attorneys failed to constitute a bar to this action, because she did not disclose to them the true facts.

Answer to Point I.

The court did not commit error in charging the jury as to the responsibility of the defendant Frank A. Von Moschzisker to respond in damages for the torts of his wife.

At the outset, the plaintiff-respondent contends that no proper exception was taken on which to base the defendants-appellants' ninth ground of appeal.

Point I goes to the question of the propriety of the judgment against Frank A. Von Moschzisker.

In argument under this point, the defendants-appellants overlook certain damaging testimony in the case connecting Frank Von Moschzisker with active participation at every stage. His activity was not overlooked by the Circuit Court when he said (p. 660, lines 19-23):

> "In this case before us Mrs. Von is the one who signed the complaint. The plaintiff contends, however, that Mr. Von was a party to those proceedings, and while he did not actually sign the complaint, yet he participated to the degree that renders him liable."

As examples of evidence of his participation, we have the following testimony:

Direct examination of Emma L. Von Moschzisker:

(Page 454, lines 32-35):

> "Q. Now, did you go to any other handwriting experts, other than Mr. Hartkorn and Mr. Osborn? A. I didn't. Mr. Von did."

(Page 455, lines 28-39):

> "Q. Now, I direct your attention to the letter upon which the indictment was based, P-29, and ask you what you did after you received that letter with it? A. Well, Mr. Von took it to Mr. Osborn.
>
> "Q. You cannot tell what Mr. Von did; but you gave it to Mr. Von? A. Yes, I gave it to Mr. Von.
>
> "Q. As a result of what Mr. Von told you—you cannot tell us what he said, but you can tell us what you did as a result of what he told you. Did you consult any other lawyer than Judge Watson? A. I went to Ward & McGinnis."

Cross examination of Emma L. Von Moschzisker:

(Page 531, lines 15-24):

> "Q. Well, you said about October 14th, yesterday, did you not? A. I did, I think. But I have it fixed in my mind, because October 11th was Columbus Day, and that was the day we went over to Montclair to see Mr. Osborn.
>
> "Q. You say 'We.' You mean you and your— A. Me and my husband. My husband and I."

(Page 537, lines 35-40, and page 538, lines 1-2):

> "Q. With you? A. No, he came with my husband.

"Q. But I mean you were in the party? A. Not that day.

"Q. Then how do you know that he went down? Just what somebody told you, I suppose? A. No. I saw him. That is how I know.

"Q. Where did you see him? A. I saw him in the car with Mr. Von Moschzisker."

(Page 539, lines 1-15):

"Q. When you came down and made the complaint where did you start out from? A. From home.

"Q. With whom? A. My husband.

"Q. And who else? A. No one.

"Q. No one else? A. No, sir.

"Q. And you drove from Ridgewood down here to the prison?

"Mr. Breslin: Prison?

"A. That is your word, not mine.

"Q. To the Prosecutor's office? A. Yes."

Direct examination of Frank A. Von Moschzisker:

(Page 553, lines 28-40):

"Q. Now, when was the first time that you consulted any handwriting experts concerning the authenticity of the letters in question? A. October 12, 1926.

"Q. And whom did you consult? A. Mr. A. S. Osborn and A. D. Osborn, I think they—

"Q. Where did you talk with them? A. Talked with them in their home at Montclair.

"Q. And at the time did you have the letters with you that you had received up to that date? A. I did."

(Page 555, lines 12-14):

"Q. Did you consult any other handwriting expert, other than Mr. Osborn? A. Yes. I consulted Mr. Stein."

(Page 556, lines 28-39):

"Q. Now, at the time you went to Mr. Stein's office, was Mrs. Von along with you? A. What is that?

"Q. Was Mrs. Von Moschzisker with you at the time you went to Mr. Stein's office? A. No, sir.

"Q. In other words, the report that you received from Mr. Stein was due to your own work? She had nothing to do with it? A. She had nothing to do with it. My reason for going to Mr. Stein was that I thought it advisable to get the opinion of two men on the question of these disputed letters."

(Page 559, lines 16-31):

"Q. Did you advise your wife to sign this written complaint? A. We, after having left the matter with the Prosecutor, who held it some time, making an investigation of his own, I understand, and having the handwriting passed upon by one of his own experts in that kind of matter, wrote to Judge Watson and stated that if a complaint was signed, they would go ahead with the case.

"I advised my wife that the only way the prosecution could move would be on a complaint.

"Q. And did she sign a written complaint? A. She did sign a written complaint.

"Q. Were you with her that day? A. I was.

"Q. And you have been with her in most of the proceedings all the way through? A. I have."

Cross examination of Frank A. Von Moschzisker:

(Page 563, lines 24-28):

"Q. What plans did you discuss with your wife, ending this trouble, if any? A. I did not discuss with my wife about ending the trouble. I endeavored to end it.

"Q. What do you say? A. I endeavored to end it by getting the best advice I could."

From the above and other testimony, it is obvious that Mr. Von Moschzisker and his wife worked hand in hand from the beginning of the prosecution that was the basis of the criminal indictment and trial, notwithstanding that he had suspicions as to his wife's conduct in writing anonymous letters, as indicated by his own admissions on cross examination as follows:

(Page 561, lines 3-27):

"Q. And, as you just said to Mr. Breslin a few minutes ago, you have been married thirty-two years, and you have never once had any reason to believe that your wife had anything to do with the preparing of these letters? A. Certainly not.

"Q. *Is it not a fact, Mr. Von Moschzisker, that you asked Osborn to make a report on certain writing of hers to you? Yes or no?* A. *No.*

"Q. Do you mean that, Mr. Von Moschzisker? A. Why, yes. I can explain what you have got in your mind. There was a letter came along in script, not in printing, in which there was some doubt who it—who had written it. *It didn't look like Sarah Mowell's work, who had been using printing, and I asked for a report in relation to that letter.*

"Q. *And did you not ask to have your wife's handwriting used as a standard to see whether or not it was her work?* A. *I did, because some question had been raised on that point. Not that I had any doubt.*"

Taking up the question as to the liability of the husband for the torts of the wife, attention is called to the New Jersey law hereinafter quoted. It was after the making of the complaint in this case and after Sarah Mowell's trial and acquittal, that the following law was passed:

"1. For all torts committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor, except in cases where he would be jointly responsible with her if the marriage did not exist.

"2. All acts or parts of acts inconsistent herewith are hereby repealed." *P. L. 1929, page 205, Chapter 120, approved April 22nd, 1929.*

The criminal complaint, Exhibit P-1 (which, at the time of the writing of this brief, has not been included in the printed state of case, or in any of the papers served on the plaintiff-respondent), was made on August 10th, 1927, and the criminal trial was finished and Miss Mowell acquitted February 16th, 1928. Hence the defendant-appellant, Frank Von Moschzisker, cannot avail himself of the protection of that act.

The following are some citations as to the liability of a husband for his wife's torts before the passage of Chapter 120, Laws of 1929.

The elementary proposition is contained in *17 Corpus Juris, page 989, section 288,* where the following language is used:

"So one who in behalf of the firm of which he is a member unlawfully seizes and detains another's goods is properly answerable in punitive damages, and so is the firm, and exemplary damages are recoverable in an action against a husband and wife for the malicious trespass or other tort of the wife, even though the husband is free from blame.

"Note: The husband is liable, not as master, but as husband, and because of the oneness of the twain in the eye of the law. Lombard *v.* Batchelder, 58 Vt. 558, 560, 5 A. 511." *17 Corpus Juris, page 989, section 288.*

In the case of *Hildreth* v. *Camp,* 41 N. J. Law 306, the court said:

"At common law the husband is liable for the wife's torts committed during coverture, and the action is brought against both husband and wife. Head *v.* Briscoe, *et ux.*, 5 C. & P. 484.

"If the tort is done by the wife in the company of the husband, the law presumes coercion on his part, or his direction to the wife, which excuses her from liability but such presumption is not conclusive, and may be rebutted by proof.

"The presence and command of the husband must concur to justify the exemption of the wife from responsibility. An offense by his direction but not in his presence, or in his presence but not by his direction, is not within the rule which gives immunity to her. 2 Kent 150; Keyworth *v.* Hill, 3 B. & Ald. 685, Wagener *v.* Bill, 19 Barb. 321; Commonwealth *v.* Lewis, 1 Metc. 151; Cassin *v.* Delaney, 38 N. Y. 178." *Hildreth* v. *Camp,* 41 N. J. Law 306.

With reference to the liability of a husband for the torts of the wife, in a carefully considered case in Passaic County Circuit Court, reported in *2 N. J. Misc., page 61,* the late Judge NEWMAN concluded that the common law rule that the husband was liable for the torts of the wife was not abolished by the Married Woman's Act, nor by any subsequent legislation up to the opinion of the Supreme Court in the case of *State* v. *Martini,* 80 N. J. L. 685, the opinion in which last-mentioned case was filed November 5th, 1910.

Judge NEWMAN concluded that up to the time of his decision (February 9th, 1924), "in the absence of any opinion of any appellate court, or court of superior jurisdiction in this state, I am unwilling to declare that such abrogation has taken place." *Majowicz* v. *Magda,* 2 N. J. Misc. 61.

Counsel in the present case have not produced a single statute or a single decision of the New

Jersey courts that would sustain the contentions of the defendants-appellants.

The Supreme Court, in the case of *Sargeant* v. *Fedor*, 130 Atl. Rep., page 207, 3 N. J. Misc., page 832, decided August 26th, 1925, gave a short summary of the law and therefore that decision is set out in full for this court's convenience:

Per Curiam:

> "This action was tried by the court, without a jury, resulting in a judgment for the plaintiff against both defendants for $100. Then action was brought against the defendants, husband and wife, for alleged slander by the defendant wife as follows: 'He (the plaintiff) stole a piano; he is a thief.' The contention is that error was committed in the refusal to direct a verdict in favor of the defendant husband, inasmuch as the court found that the slander was the wife's voluntary tort, not uttered in the husband's presence nor at his command. At common law the husband was jointly liable for the voluntary torts of his wife, and this rule has not been abrogated in this state by express statute.
>
> "By the weight of authority the general property acts relating to married women do not change by implication the husband's common law liability for his wife's torts. 13 R. C. L. 1233, Sec. 268; 30 Corp. Jur. 787, Sec. 417; 27 A. L. R. 1218, note; Ann. Cas. 1915, D 1206, note. Nor the common law rule that one spouse may not sue the other in tort. 29 A. L. R. 1482. But since the passage of the married woman's acts, a husband is not liable for the torts of his wife, growing out of the conduct by her of her own business or arising from the management by her of her separate property. Harrington *v.* Jagmetty, 83 N. J. L. 548.
>
> "This tort in question, however, is not included in the statutory exceptions in this state, and the husband's liability, therefore, persists,

> viz., that punitive damages may be assessed against the husband, though he in no way participated in the wife's tort. 13 R. C. L. 1237, Sec. 273. Some states take a contrary view. Price *v.* Clapp, 105 S. W. Rep. 864, Ann. Cas. 1913, D 998. But since the common law rule of liability is adhered to in this state, as against the husband, the consequent rule of common law damage is equally applicable." *Sargeant* v. *Fedor,* 3 N. J. Misc. page 832.

The New Jersey decisions all seem to be in harmony on the subject in question.

Attention of the court is again called to the fact that there is an abundance of testimony in the case, including that above pointed out, to show that Frank A. Von Moschzisker was a joint tortfeasor with his wife.

Answer to Point II.

The court did not improperly charge the jury that no limitation could be imposed upon them as to what they should do on question of fact in the case.

The court charged the jury (p. 653, lines 22-32):

> "Now, under the law, there are certain elements which must be established to your satisfaction by a fair preponderance of the evidence. The first is that the prosecution was ended and the defendant, now the plaintiff, was duly discharged. Second, that the defendant or defendants instituted the proceedings against her without reasonable or probable cause, and the defendants were actuated by a malicious motive in making the charge."

It will be remembered that it was Sarah Mowell's contention in the Circuit Court that Mrs. Von Moschzisker wrote the letters herself and then

made a complaint falsely charging that Miss Mowell had "sent and delivered" to Mrs. Von Moschzisker a letter without a name subscribed thereto, demanding money in the sum of $20,000, etc.

The court charged (p. 654, lines 11-24):

> "The plaintiff in the present case contends that Mrs. Von wrote the letter herself. The defendants in this case say that the letter was written—that is, the evidence offered by them, by way of witnesses, have said that the letter was written by Miss Mowell. Now, therefore, one of the important considerations to determine, if you can, from the evidence before you, is, who was the author of this P-29? If you conclude that Mrs. Von wrote it herself, of course, in that event, the safeguards which the law puts around a person in such a case as this can be wiped away, about which I will refer to presently."

Now, coming to the part of the court's charge that was excepted to under Point II, what the court said was this (p. 655, lines 12-25):

> "The only purpose of admitting evidence of that character is for that of comparison. In other words, we are not concerned with the substance or the thought that these letters convey. By that, of course, I do not mean you are not privileged to look for a similarity of expression, or the use of a letter. When you are given these letters as a basis of deliberation, they are given to you for the purpose of comparison and, of course, sitting as you are, the triers of fact, the Court cannot impose any limitation on you with respect to what you should do on the question of fact in this case."

Prior to that statement, the court had said (p. 655, lines 1-19):

> "You will have before you in the juryroom not only P-29, but you will have before you

> specimen writings which have been referred to as genuine. This wrapper, P-35, is admittedly in Miss Mowell's handwriting. In addition to that, you have admittedly genuine writings of Mrs. Von. You have enlarged copies. You have photographs too of words in different letters, taken from the various exhibits.
>
> "The only purpose of admitting evidence of that character is for that of comparison. In other words, we are not concerned with the substance or the thought that these letters convey. By that, of course, I do not mean you are not privileged to look for a similarity of expression, or the use of a letter."

In other words, it was for the jury to make the comparison of admitted writings and questioned writings, and their decision on the question of fact as to whether or not Mrs. Von was the author of the disputed writings was entirely within the province of the jury. It was for them to arrive at a decision on the questions of fact from the comparisons that they should make under the rules laid down by the Circuit Court. The court's statement was correct.

The Circuit Court judge repeatedly called attention to the fact that they must make their findings from the evidence.

(Page 656, lines 10-18):

> "If you conclude from the evidence that the defendant had probable cause, then, whether they were malicious or not, it is immaterial. On the other hand, if you conclude that there was no probable cause, upon the establishment of that fact to your satisfaction it is a permissible inference on your part to say the defendants' conduct was malicious."

(Page 658, lines 32-37):

> "If, as I said before, from the evidence, you conclude that Mrs. Von wrote this letter her-

> self, then, of course, she was not justified in instituting the criminal proceeding, and she ought to respond in damages to the amount or to the extent that damages have been proved."

(Page 659, lines 29-39) :

> "I want you to decide this case on all of the evidence, as, sitting as jurors, it is your privilege, and your privilege alone, to determine the value of testimony. You can draw all proper inferences from the evidence or the facts before you. Whatever counsel has said, whatever the Court has said, with respect to the facts, is not binding on you at all. You are the sole judges of the facts, and your determination of the facts is a finality."

Then, by way of résumé, the Circuit Court judge said (p. 661, lines 2-21) :

> "and I will again, before I submit this case to you, reiterate the elements of malicious prosecution. First, that the prosecution was ended and the defendant, now plaintiff, was duly discharged; that the defendants instituted proceedings against the present plaintiff without reasonable or probable cause; and that the defendants were actuated by malicious motives in making the charge.
>
> "The plaintiff in this suit has undertaken the burden of establishing these elements to your satisfaction by a fair preponderance of evidence. If the plaintiff has so satisfied you, then she is entitled to a verdict at your hands. If she has failed to sustain these elements in their entirety, then the plaintiff must fail and your verdict ought to be no cause of action."

Taking either the language of which the appellants complain with its immediate context, or taking the charge as a whole, it is evident that the Court's charge was correct in what was said with respect to their sitting as triers of fact, and that the court could not impose any limitations

on the jury with respect to what they should do on the question of fact in the case. It was the jury that was to determine whether or not Mrs. Von Moschzisker herself wrote the letter upon which she based the criminal charge against Sarah Mowell.

Answer to Point III.

The language complained of under third ground of appeal was not erroneous in law.

The questioned part of the charge, *together with the context,* was as follows (p. 656, lines 22-40, and p. 657, lines 1-25):

> "Mrs. Von testified that she did not write this letter in question. She testified that she was not actuated by malicious motives, and she further testified, and so did her husband, that before the institution of the criminal proceedings, she sought the advice of counsel and sought the advice of handwriting experts. The mere consultation of handwriting experts, standing alone, does not come within the rule of justification. But if the handwriting experts were consulted with respect to consultation with attorneys, where there has been a full disclosure of the facts, and the complaint was made, based upon a full disclosure of the facts, then, of course, the defendants would be absolved from liability in this case.
>
> "Our upper courts have said, with respect to the plea based upon the advice of counsel:
>
> > "'If the defendant informed his counsel of all facts, all the details, counsel's advice would only protect the defendant if none of the material statements were false to the defendant's knowledge.'
>
> "Now, with respect to that consideration, it is important for you to determine whether or not Mrs. Von wrote this letter. If she wrote

this letter herself, and then she predicated this criminal complaint upon something which she did herself, then the fact that she consulted attorneys or consulted handwriting experts in conjunction with her attorneys, that rule of law would not avail her any protection. But, on the other hand, if you conclude that she did not write this letter, if you conclude that someone else wrote it, other than Miss Mowell, and she went to her attorney or attorneys, and met the requirements of full disclosure that I have mentioned, then, of course, the law would protect her in acting on the advice of counsel."

It is contended that the charge correctly stated the law and made the situation clear to the jury.

Counsel have failed to point out any case where consultations with individuals, other than lawyers, have been held to constitute a justification for making a criminal complaint.

It is to be borne in mind that the criminal complaint in this case (inadvertently omitted from state of case by defendants-appellants) was in the following language:

"COURT OF THE SECOND CRIMINAL JUDICIAL DISTRICT OF THE COUNTY OF BERGEN.

THE STATE *v.* SARAH MOWELL.	Complaint for Vio. Section 39—Criminal Procedure Act.

State of New Jersey, }
Bergen County, } ss.:

Before me, J. WALLACE LEYDEN, Esquire, Judge of the Court of the Second Criminal Judicial District, in the County and State aforesaid.

Personally appeared Emma L. Von Moschzisker, of N. 144 Spring Avenue in the Village of Ridgewood, who, being duly sworn according to law, deposeth and saith, that on or about the 30th day of June A. D. one thousand nine hundred and twenty-seven at the Village of Ridgewood, in the County aforesaid did violate Section 39 of the Criminal Procedure Act in that the said Sarah Moewell did knowingly, unlawfully, maliciously and with criminal intent, send and deliver to the complainant a letter without a name subscribed thereto, demanding money in the sum of $20,000.00 from the complainant and threatening to do civil injury to the complainant by threatening to send blackmail letters in Borough of Ridgewood, whereby the complainant would be subject to arrest, trial, conviction, and imprisonment contrary to the form of the statute, &c.

Therefore, this Complainant prays that the said Sarah Moewell may be apprehended and held to answer said complaint, and dealt with as law and justice may require.

E. L. Von Moschzisker,
Complainant.

Sworn and subscribed to before me this 10th day of August, A. D. 1927.

(Seal) Charles Schmidt
Clerk of the Court of the Second Criminal Judicial District of the County of Bergen."

Whether or not such a complaint should have been made was a question for a lawyer—not for a handwriting expert.

After a disclosure of all the facts, it would be the province of a lawyer, under the decisions, and no other class of persons, to give advice that a complaint be made which would result in a justification in case an acquittal followed in the criminal trial, and the other necessary elements of malicious prosecution were established.

Even consultation with those supposedly versed to some extent in law would not constitute justification for making a criminal complaint.

> "The advice given by policemen, detectives, and like officers is properly admitted in evidence on the trial of actions for malicious prosecutions and false imprisonment to show the circumstances under which the prosecution was instituted and to mitigate the damages; *but such advice can never be shown as a defense, as would be the advice of a respectable attorney, fairly and honestly obtained, regarding a prosecution claimed to be malicious. The law has never regarded the advice of such officers as being a justification for instituting mistaken criminal proceedings.*"
>
> *Newell on Malicious Prosecution,* page 323.

Answer to Point IV.

The court did not charge the jury in effect that the burden of proof was on the defendants.

As above indicated, the Circuit Court Judge charged the jury that they must find the necessary elements of malicious prosecution and that they could only give a verdict to the plaintiff if the plaintiff sustained its contentions by a fair preponderance of the evidence. And by way of summary, near the conclusion of the charge, so there could be no mistake as to what the plaintiff was obliged to prove in order to recover, the Circuit Court Judge said (p. 660, lines 39 and 40, and p. 661, lines 1-21):

> "As I said before, we are not concerned with anything in this case at all except the hope

> that a verdict will be rendered based upon your oaths, in keeping with the law and the facts; and I will again, before I submit this case to you, reiterate the elements of malicious prosecution. First, that the prosecution was ended and the defendant, now plaintiff, was duly discharged; that the defendants instituted proceedings against the present plaintiff without reasonable or probable cause; and that the defendants were actuated by malicious motives in making the charge.
>
> "The plaintiff in this suit has undertaken the burden of establishing these elements to your satisfaction by a fair preponderance of evidence. If the plaintiff has so satisfied you, then she is entitled to a verdict at your hands. If she has failed to sustain these elements in their entirety, then the plaintiff must fail and your verdict ought to be no cause of action."

The part of the charge complained of by the defendants-appellants, with context, was as follows (p. 657, lines 10-25):

> "Now, with respect to that consideration, it is important for you to determine whether or not Mrs. Von wrote this letter. If she wrote this letter herself, and then she predicated this criminal complaint upon something which she did herself, then the fact that she consulted attorneys or consulted handwriting experts in conjunction with her attorneys, that rule of law would not avail her any protection. But, on the other hand, if you conclude that she did not write this letter, if you conclude that someone else wrote it, other than Miss Mowell, and she went to her attorney or attorneys, and met the requirements of full disclosure that I have mentioned, then, of course, the law would protect her in acting on the advice of counsel."

In that part of the Circuit Court's charge, the court was dealing with one phase of the case. A reading of the entire charge makes it clear that

the Circuit Court judge did not in any way put the burden of proof upon the defendant. The court repeatedly placed the burden of proving the case by a fair preponderance of the evidence upon the shoulders of the plaintiff.

Answer to Point V.

The court did not charge that the jury could take into consideration as an element of damage the plaintiff's expenses in respect to medical bills for her sickness.

The defendants-appellants fail to state the facts when they allege that the Circuit Court judge charged the jury that they could take into consideration as an element of damages plaintiff's expense in respect to medical bills for her sickness.

It is quite clear in reading the judge's charge that instead of indicating to the jury that they *could* take into consideration as an element of damage the plaintiff's expenses in respect to medical bills for her sickness, the Circuit Court *expressly took away from the jury* the consideration of these elements.

The defendants-appellants again omit to join to the alleged objectionable part the context that follows. What the court said was this (p. 657, lines 26-39):

> "The plaintiff in this case claims damages as the result of her arrest, incarceration, and the trial. If you conclude that the plaintiff has made out her case, she ought to be compensated on the basis of the injuries sustained, the injury to reputation, loss of wages, loss of position, humiliation.
>
> "There has been also testimony in the case with respect to medical bills and sickness after the arrest. *I have not enumerated those ele-*

> *ments in pointing out to you what are proper elements of damage, and I am going to ask you to be guided by my statement as to that;* that is, in the event you find the plaintiff is entitled to recover at all."

When we read the context, we see that the Circuit Court judge did exactly what the defendants-appellants contend the court should have done.

The argument under Point V is along the line that might be used in an attempt to procure a reduction of verdict, but the request for a reduction of the verdict in this case has been argued before the Circuit Court, and the verdict of $25,000 was reduced to $13,000.

The record on page 548, lines 28-40, and page 549, lines 1-11, is as follows:

> "Mr. Zabriskie: Yes. That is all. Has the Court any objection to my calling Dr. Fisher where he is now, to prove his bill? Have you any objection to his bill being proven?
>
> "Mr. Breslin: I have not any objection to his bill being proved, but we still insist, as a matter of law, it is not evidential, unless it can be connected up.
>
> "The Court: Well, then, you will stipulate that he will testify to a fact.
>
> "Mr. Breslin: Yes.
>
> "Mr. Zabriskie: What was the amount of the bill, Doctor?
>
> "Dr. Fisher: $380.
>
> "Mr. Zabriskie: We will stipulate that is the amount.
>
> "Mr. Breslin: That is the amount, but we dispute the legality of the evidence, because it has not been properly connected."

Accordingly, the Circuit Judge, in his charge, made the situation very clear when he said (p. 657, lines 32-38):

> "There has been also testimony in the case with respect to medical bills and sickness after the arrest. I have not enumerated those elements in pointing out to you what are proper elements of damage, and I am going to ask you to be guided by my statement as to that;"

In other words, he took away from the jury compensation for the doctor's bill, and the jury should have and undoubtedly did eliminate that item of $380 from the verdict which they found. Attention is called to the fact that the judgment was reduced by the Circuit Court Judge from $25,000 to $13,000.

The defendants-appellants stood by, without objection, and heard the testimony of Dr. Morrow and Dr. Fisher and Dr. Hagen. They did not interpose objections to their testimony. In fact, no request that the defendants-appellants made to the court, with respect to charges to the jury, were denied. They allowed what they now contend illegal evidence to be admitted, and they procured a reduction of the verdict from $25,000 to $13,000. They now attempt, at a very late stage in the proceedings, to raise points on appeal that were argued on the motion to reduce the verdict.

It is elementary law that a charge by the court must be considered according to its entirety and not according to isolated parts. It is also elementary law that if a party desires an instruction, he should make timely request therefor.

It is also elementary law that partial non-direction or omission to charge as to a particular issue or more generalization, indefiniteness and the like, constitute no reversible error in the absence of a specific request for more specific, comprehensive instructions.

Although it is sometimes contended that, in a criminal case, it is the duty of the court to give

the whole law of the case, still, in civil cases, the law is to the effect that the court is not required, unless called on so to do, to give instructions embracing all theories of the cause of action that is, or may be, supported by testimony.

CONCLUSION.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

It is respectfully submitted that the judgment in the Bergen Circuit Court should be affirmed.

Respectfully submitted,

JOHN B. ZABRISKIE,
Attorney and of Counsel for Plaintiff-Respondent.

October Term, 1931.

In view of the fact that the opinion of the Supreme Court contained in the state of the case contains errors, a copy of the Supreme Court opinion is set out in full as follows:

"NEW JERSEY SUPREME COURT

No. 65, October Term, 1930.

SARAH E. MOWELL,
Plaintiff-Respondent,

v.

EMMA L. VON MOSCHZISKER and FRANK A. VON MOSCHZISKER,
Defendants-Appellants.

Submitted October , 1930. Decided April , 1931.

Before Justices CASE, DALY and DONGES.

For Respondent, JOHN B. ZABRISKIE.

For Appellants, BRESLIN AND BRESLIN, and WARD AND MCGINNIS; PETER J. MCGINNIS on the brief.

Per Curiam:

Plaintiff's action was for malicious prosecution and grounded in the arrest, indictment and trial of plaintiff on a charge of 'knowingly, unlawfully, maliciously and with criminal intent' sending and delivering to Emma L. Von Moschzisker an anonymous, blackmailing letter. There was a verdict of $25,000.00 for plaintiff against both defendants. The trial court granted a rule with exceptions reserved, and the judgment was reduced to $13,000.00. The present appeal brings up the points of law raised under the reserved exceptions.

The first point is that the court erred in charging the jury as to the liability of the husband to

respond in punitive damages for the tort of his wife. Appellant's contention is that Frank A. Von Moschzisker's liability was due solely to the fact that he was the husband of Emma L. Von Moschzisker, who made the formal complaint that caused the arrest, and that the court's charge permitted not only compensatory damages but also, and improperly, punitive damages against Mr. Von Moschzisker. But plaintiff's case went further than charging Von Moschzisker as the husband of a tort-feasor; it involved him as cooperating with his wife in the tort. Moreover, the cause of action arose prior to the corrective legislation of 1929 (P. L. 1929, ch. 120); and punitive damages may be assessed against the husband though he in no way participated in the wife's tort. Sargeant *v.* Fedor, 3 Misc. 832; 17 C. J. p. 989 s. 288. The husband is liable because of the oneness of the twain in the eyes of the law. Lombard *v.* Batchelder, 5 Atl. R. (Vt.) 511. The point is not well taken.

It is next alleged that the court improperly charged the jury that no limitation could be imposed upon them as to what they should do on questions of fact, the imputed inference being that the rules enunciated by the court could be disregarded. We think that the charge, construed as a whole, does not sustain this criticism. Appellants excerpt a single sentence from its context. But the whole intendment of the charge is that the jury shall be governed in their findings by the evidence in the case, subject to the principles of law pronounced by the court. We think the jury could have been under no misapprehension on this score.

The third point is a criticism of the charge wherein the court directed the jury that the advice which would protect the defendants in instituting the criminal proceedings was the advice

of lawyers and not of handwriting experts. Appellants present no citations of law to sustain their argument. What the court said was 'The mere consultation of handwriting experts, standing alone, does not come within the rule of justification.' Advice of counsel, as a complete defense to an action for malicious prosecution, is amply discussed in Weinstein *v.* Klitch, 146 Atl. R. 219. We find nothing in the reasoning of that case to indicate that the advice of a handwriting expert may be set up as an equivalent to that of counsel, learned in the law, as a justification for lodging a criminal complaint against another. The charge was sound.

The fourth point is that 'the court erred in charging the jury in effect that the burden of proof was upon the defendant.' We think the language of the charge does not bear that construction.

The fifth point is that the court erred in charging that the jury could take into consideration as an element of damage the plaintiff's expenses in respect to medical bills for her sickness. The language complained of is: 'There has been also testimony in the case with respect to medical bills and sickness after the arrest.' Appellants do not cite the words that immediately follow this language, namely: 'I have not enumerated those elements in pointing out to you what are proper elements of damage, and I am going to ask you to be guided by my statement as to that.' We read this as meaning that inasmuch as the court had not enumerated medical bills as a proper element of damage, the jury was not to do so.

We find no error. The judgment below should be affirmed, with costs."

NOTE.—The brief of the defendants-appellants was served on the attorney for the plaintiff-respondent on October 14th, 1931. Lack of time has prevented the correction of some errors in arrangement and construction in the foregoing brief.