

INDEX.

	Page
Writ of Error.....	i
Return to Writ.....	ii
Caption to Indictment	iii
Indictment	iii
Plea	v
Verdict	vi
Clerk's Certificate	viii
Testimony	1
Motions for Direction of Acquittal.....	141, 193
Charge of the Court	195
Certificate of Judge	204
Stenographer's Certificate	204
Assignments of Error	205
Specifications of Causes for Reversal	207
Joinder in Error	209
Opinion of Supreme Court	210
Rule of Affirmance	213
Writ of Error	214
Return to Writ of Error.....	215
Assignment of Error.....	216
Notice of Argument	217

WITNESSES FOR THE STATE.

Albert Parks :	
Direct	2
Cross	8
Redirect	30
Recross	35
Paul W. Baker :	
Direct	38
Cross	39
Redirect	40
Benjamin Rosenberg :	
Direct	40

	Page
Daniel Allen:	
Direct	41
Cross	42
George W. Comeau:	
Direct	65
Cross	66
Frank Robert Kromka:	
Direct	68
Cross	68
Recalled—Direct	98
Recalled—Cross	99
John H. Dickerson:	
Direct	72
Cross	72
Redirect	82
Recross	83
Redirect	85
George Smith:	
Direct	86
Cross	87
Redirect	98
Harry F. Dennis:	
Direct	102
Cross	103
Redirect	112
John R. Gallione:	
Direct	113
Cross	113
Redirect	122
William Bulmer:	
Direct	122
Cross	123
Frank E. Adams:	
Direct	125
Cross	126

Anthony Locicero :

Direct 187

WITNESSES FOR DEFENDANT.

Anthony Locicero :

Direct 50

Cross 60

Redirect 63

Recross 64

Recalled—Direct 142

Recalled—Cross 153

Recalled—Redirect 164

Recalled—Recross 165

Aaron Heller :

Direct 132

Cross 135

Redirect 137

Recross 138

Theodore H. Boss :

Direct 139

Cross 140

Stephen Balatanacz :

Direct 171

Cross 171

Alois Leseecz :

Direct 172

Cross 173

Joseph Sobo :

Direct 173

Cross 174

Israel Watner :

Direct 175

Cross 175

Andy Toth :

Direct 176

Cross 176

	Page
Catherine Locicero:	
Direct	177
Cross	179
Redirect	180
Thomas Locicero:	
Direct	181
Cross	182
Redirect	184
Annie Locicero:	
Direct	184
Albert Parks:	
Direct	186

WITNESSES IN REBUTTAL.

William Bulmer:	
Direct	189
Cross	190
Frank Robert Kromka:	
Direct	192
Cross	192

Writ of Error.

New Jersey, to wit:

(L.S.) The State of New Jersey to Albert H. Holland, Esquire, Judge of the Morris County Court of Quarter Sessions holden at Morristown, in and for the County of Morris, of the Term of September, in the year of our Lord one thousand nine hundred and thirty-three: Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Anthony Locicero, of the City of Passaic, County of Passaic and State of New Jersey, for highway robbery and assault, pro ut the said indictment and the several counts therein, whereof before you he has been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Anthony Locicero, as it is said, manifest error hath intervened to the great damage of the said Anthony Locicero, as from his complaint we have received information, we being willing in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Anthony Locicero, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the entire record of the proceedings had upon the indictment and trial including the judgment thereon to our Justice of our Supreme Court of the State of New Jersey, on the 13th day of December next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

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Return to Writ.

Witness, THOMAS BROGAN, ESQ., Chief Justice
of our Supreme Court at Trenton this 23rd day
of November, in the year of our Lord one thou-
sand nine hundred and thirty-three.

FRED L. BLOODGOOD,
Clerk.

10 HARRY H. WEINBERGER
and
HELLER & BOSS,
Attorneys.

Return to Writ.

*To the Honorable Justices of the Supreme Court
of Judicature at Trenton, New Jersey:*

20 I return herewith as herein I am commanded
the entire record of proceedings in the case of
The State vs. Anthony Locicero for Robbery, Oc-
tober Term, 1933, with all things touching the
same.

In Testimony Whereof, I have hereunto
set my hand and affixed the seal
of said County at Morristown, this
(Seal) Fifth day of December, A. D.,
30 Nineteen Hundred and Thirty-
three.

ALBERT H. HOLLAND,
Judge, &c.

Caption to Indictment.

State of New Jersey)
 County of Morris, to wit:) ss.:

Be It Remembered, That at a Court of Oyer and Terminer and General Jail Delivery holden at Morristown, and in said County of Morris, on the Second Tuesday in October in the year of our Lord Nineteen Hundred and Thirty-three, by the Honorable Albert H. Holland, Esquire, Judge of the Inferior Court of Common Pleas, in and for the said County of Morris, by the oath of Emil Rilk, Mrs. Bertha Budd, Clifford W. Emmons, William M. Sequine, DeWayne Weaver, Edward Camusat, Manuel Sodano, Jr., Domenick Costanzo, Patrick J. Coffey, Frank E. Swain, William A. Closter, Edward Gilligan, Mrs. Louise Longstreet, John H. Crane, Palmer C. Dawson, John Gallagher, Jacob Allerman, Aicken Greer, James Andrews, Henry O. Baker, Russell Dixon, Mrs. Laura Marquard, Nathaniel Dickerson, good and lawful men and women of the said County of Morris, duly summoned, and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following, to wit:

Indictment.

MORRIS OYER AND TERMINER,

October Term, 1933.

Morris County, to-wit:

The Grand Jurors of the State of New Jersey, in and for the County of Morris, upon their oaths present that William Walker, Edward Schlenger, Anthony Locicero and Charles Schiffman, on the twenty-ninth day of August in the year of our

Indictment.

10 Lord one thousand nine hundred and thirty-three, at the Township of Denville in the County of Morris aforesaid, did make an assault upon Albert C. Parks, and then and there did beat, wound and ill-treat the said Albert C. Parks, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

20 And the Grand Jurors aforesaid, upon their oaths do further present that the said William Walker, Edward Schlenger, Anthony Locicero and Charles Schiffman, on the twenty-ninth day of August, in the year of our Lord one thousand nine hundred and thirty-three, at the Township of Denville, in the County of Morris aforesaid, feloniously did make an assault upon Albert C. Parks and then and there did put said Albert C. Parks in bodily fear, and twenty bales of silk, one hundred eleven dozen silk stockings, twenty seven bags green (unfinished) stockings, three cases silk spinning spools and one White truck in all of the value of Thirty Five Thousand Six Hundred Fifteen Dollars and Six Cents, of the goods and chattels of Gotham Silk Hosiery, Inc., from the custody and control and against the will of said Albert C. Parks then and there feloniously,
30 violently and forcibly did steal, take and carry away, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

ORVILLE V. MESLAR,
Prosecutor of the Pleas.

Plea.

On the Twentieth day of October, A. D., Nineteen Hundred and Thirty-three, on which day the said Indictment was presented by the Grand Jury aforesaid, to the said Court of Quarter Sessions, and delivered to the Clerk of the said Court of Quarter Sessions in and for the County of Morris, and then and there the said Indictment was duly delivered and duly filed by the Clerk of said Court and an entry made in the minutes of said Court at the same time pursuant to the statute in such case made and provided. 10

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Morristown, in and for the County of Morris aforesaid, on the Fourteenth day of November, in the year of our Lord One Thousand Nine Hundred and Thirty-three, before Honorable Albert H. Holland, Judge of said Court of Quarter Sessions, the said Anthony Locicero, being publicly called, cometh in his own proper person and forthwith being demanded of and concerning the premises in said Indictment above specified and charged upon him, and being asked in what manner he will acquit himself thereof, he says that he is not guilty thereof, and of this he puts himself upon the Country, and Orville V. Meslar, Prosecutor for the said County of Morris, who prosecutes for the State in this behalf doth the like. 20 30

Therefore let a Jury thereupon here come on the Fourteenth day of November, A. D., Nineteen Hundred and Thirty-three, before the said Court of Quarter Sessions above mentioned, of free and lawful men and women of the County of Morris aforesaid, by whom the truth of the matter may be better known, and who are not of kin to the said Anthony Locicero, to recognize upon their oath whether the said Anthony Locicero be guilty 40

Plea.

in manner and form as he stands charged in the Indictment above specified, or not guilty, because as well the said Orville V. Meslar, Prosecutor as aforesaid, and who prosecutes for the State of New Jersey in this behalf as the said Anthony Locicero has put himself upon the said Jury, at which said Court of Quarter Sessions, to wit:

10

Verdict.

At a Court of Quarter Sessions held at Morristown, in and for the County of Morris, on the Fourteenth day of November in the year of our Lord One Thousand Nine Hundred and Thirty-three, before the Hon. Albert H. Holland, Judge of the said Court of Quarter Sessions, according to the form of the statute in such case made and provided, come as well the said Anthony Locicero, as Orville V. Meslar, who prosecutes as aforesaid, and the Jurors of the said Jury by the Sheriff of the County of Morris aforesaid for this purpose duly empanelled and returned, to wit: after the following challenges, by the State 1, by the Defendant 2, Edward Hanton, Eugene Tredway, Albert Papp, David Jenkins, Edna Barber, Raymond Outwater, Amos Alpaugh, Daniel O'Brien, Frederick D. Henderson, James W. Speed, 20 Jeanette Seals and Gussie Zimmer, who were elected, tried and sworn to speak the truth of and concerning the premises,

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And the trial of the said Indictment against said Anthony Locicero, having proceeded, the said Jurors upon their oath say that they find the said Anthony Locicero Guilty, in the manner and form as he stands charged in the Indictment, and so say they all.

40

And afterwards at the same term of said Court

Verdict.

of Quarter Sessions, to wit, on the Seventeenth day of November, in the year of our Lord, one thousand nine hundred and thirty-three, (to which time the said Court had been regularly adjourned) came as well the said Anthony Locicero, as the said Orville V. Meslar, who prosecutes as aforesaid, whereupon it is demanded of the said Anthony Locicero, if he hath or knoweth anything to say whereof the said Court here ought not upon the premises and verdict aforesaid to proceed to judgment and execution against him, who nothing further saith unless as he before hath said. Whereupon all and singular, the premises being fully understood by the Court, it is considered and adjudged by the Court here that the said Anthony Locicero be confined in the State Prison at Hard Labor for the space of a minimum term of ten (10) years and a maximum term of fifteen (15) years, and that he stands further committed until the costs of prosecution are paid.

Judgment signed the Seventeenth day of November, A. D., Nineteen Hundred and Thirty-three.

ALBERT H. HOLLAND,
Judge, &c.

Clerk's Certificate.

State of New Jersey }
 County of Morris } ss.:

I, E. Bertram Mott, Clerk of the County of Morris, and also Clerk of the Court of Quarter Sessions, holden in and for said County, Do Hereby Certify, that the foregoing is a true, full and correct copy of the Judgment Roll in the case of
 10 The State vs. Anthony Locicero, as fully and entirely as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court and County at Morristown, this Fifth day of December, A. D., Nineteen Hundred and Thirty-three.

(Seal)

E. BERTRAM MOTT,
 Clerk.

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Testimony.

**MORRIS COUNTY QUARTER
SESSIONS COURT.**

THE STATE

VS.

ANTHONY LOCICERO,
Defendant.

10

Morristown, New Jersey,
November 14 and 15, 1933.

Before—Honorable ALBERT H. HOLLAND, Judge,
and a Jury. 20

APPEARANCES:

For the State,
Honorable ORVILLE V. MESLER, Prosecu-
tor of the Pleas.

For the Defendant,
Messrs. HELLER & BOSS, by AARON HEL-
LER, Esq.; HARRY WEINBERGER, Esq., of
Counsel.

30

The Prosecutor: I move the case for the State
against Anthony Locicero—and I move a sever-
ance from the other four indictments, and will
try him alone.

The Court: A severance may be granted, and if
counsel is ready the Sheriff may empanel a jury.

(The following proceedings were had before the
jury was accepted and sworn):

Mr. Weinberger: Would the fact that the
Grand Jury had returned an indictment prevent 40

Albert Parks—Direct.

any of you ladies and gentlemen of the jury from—

The Court: That is not a proper question.

Mr. Weinberger: Exception.

(A Jury was duly empanelled, accepted and sworn.)

10

ALBERT PARKS, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Mr. Parks, where do you live? A. Dover.

Q. And in August of this year by whom were you employed? A. Gotham Silk Hosiery.

20 Q. On the morning of August 29th did you load this truck? A. Yes.

Q. Where? A. At the Dover plant.

Q. What time? A. About—well—ten after five when I got on the elevator.

The Court: Morning or night?

The Witness: Morning.

Q. What kind of truck were you driving? A. White.

30 Q. What was the character of the truck? A. Character of the truck?

Q. What was its tonnage, if you know? A. 5-ton truck.

Q. Do you know what was put on this truck at Dover? A. Hosiery.

Q. Did you receive any bill of lading? A. I signed the book for the stuff what I loaded.

By the Court:

40 Q. And what did you load? A. I loaded hosiery.

Albert Parks—Direct.

Q. How many pair, if you know? A. I couldn't say.

Q. Approximately, if you know, more than two pair? A. Yes.

Q. How many more than two pair? A. They were in bags, I couldn't tell just what they was.

Q. How many bags? A. I had on about 50 bags. 10

Q. And about how many hose in the bags? A. Just loose in bags they are.

Q. How many in a bag? A. Around 80 to 100 dozen.

By the Prosecutor:

Q. And then you started driving the truck? A. Yes.

Q. And where did you go? A. On my route to New York. 20

Q. Will you tell the route you took? A. I took Route 6.

The Court: Just a little louder.

The Witness: I took Route 6.

Q. That took you through Denville? A. That took me through Denville and I stopped at the light at Denville, and I started off on that lane and coming down a grade, down to what they call Rainbow Lakes, and I was stopped. 30

Q. Just tell what happened? A. A man come out and stopped me with the whistle, with a police cap on, got on my truck and demanded me to drive on.

Q. What else did he have? A. He had a brown raincoat on, a gun and his whistle.

Q. What kind of a gun? A. I couldn't say.

Q. Revolver or shotgun? A. Revolver, long barrel. 40

Albert Parks—Direct.

Q. What happened? A. He got on the seat with me, told me to drive on.

Q. Was he masked? A. No, sir.

Q. Go ahead. A. I drove on until I got to Pine Brook.

10 Q. What did he say to you, anything? A. Nothing, just to drive on.

Q. What did he do to you? A. Nothing, just kept the gun there, he had the gun on me.

Q. What do you mean onto you? A. Pressed against my right arm. I drove on Pine Brook Road until I got just before you cross the bridge going into Caldwell, and he told me to stop, and I stopped, and I was blindfolded and taken off the truck.

20 Q. Who blindfolded you? A. This same officer, and the minute I was taken off the truck I was taken I believe to this other car, threw in this other car and drove off with.

Q. And where did you find yourself later on? A. In New York, that was 18th Street and 11th Avenue.

Q. Where was that?

The Court: 18th Street and 11th Avenue.

30 Q. What was the character of the neighborhood you were left on? A. That was along the river, Erie Railroad, Erie runs in there.

Q. During this drive during which you were stopped by these men in the Township of Denville, could you look at him? A. No, I couldn't.

Q. Did you see his features when he got in the truck? A. When he got in the truck I seen his features.

40 Q. Did you see them when you got out of the truck? A. I did not.

Albert Parks—Direct.

Q. Did you later identify the man who held you up?

Mr. Weinberger: Objected to.

The Court: Objection sustained.

Q. Did you see the same man that held you up any time later? A. No, sir.

Q. Did you see him later at Police Headquarters? 10

Mr. Weinberger: Object to that. Counsel suggests a leading question.

The Court: I will allow it.

Mr. Weinberger: I pray an exception.

The Court: You may have an exception, the answer is not conclusive. The question is directed to another place.

Exception allowed and sealed.

ALBERT H. HOLLAND, 20
Judge.

Mr. Weinberger: I desire to call your Honor's attention to the fact this case is one of identification and the Prosecutor knows that fact, and that is the reason why I am so insistent that the question is leading and has no proper place in the face of the answer just given by the witness.

The Court: It is not leading at all. The question is did he or did he not see him again at Police Headquarters. 30

Mr. Weinberger: May I have the previous question read?

The Court: I know what the question was, and I know what the answer was, and I have ruled; he may ask it.

Q. Did you see him later at Police Headquarters? A. Yes. 40

Albert Parks—Direct.

Q. Whereabouts, what Police Headquarters?
A. Hackensack.

Q. Did you there identify him as the man who held you up?

Mr. Weinberger: That is objected to.

The Court: Yes, objection is sustained.

10 Q. Did you identify a man in Police Headquarters as the man who held you up?

Mr. Weinberger: I object to the question.

The Court: The objection is sustained.

That is a conclusion. The question is did he see him and identify him; did he see him and did he know him.

Q. Did you see him at Hackensack? A. Yes.

20 Q. Did you recognize him? A. Yes.

Q. Do you see that same man in Court today?
A. Yes.

Q. Where? A. Right there.

The Court: Indicating the defendant.

Q. That gentleman (indicating the defendant)?

A. That is the gentleman.

The Court: The defendant stood up. He may sit down again.

30 Q. Saw him in Hackensack Police Headquarters? A. Yes.

Q. Did you there identify him as the man who held you up?

Mr. Weinberger: That is objected to.

The Court: Objection is sustained; identification comprehending a conclusion.

Q. Did you at the time you saw him in Hackensack Jail say he was the man that held you up?
11

Albert Parks—Direct.

Mr. Weinberger: I object to it on the ground that clearly is hearsay, and whatever he may have said—

The Prosecutor: Withdraw the question.

Q. What did you do there at the Hackensack Jail? A. I was taken down there to look the man over, to see if he was the man.

10

Q. How many men were there, more than one? A. No, sir.

Mr. Weinberger: One minute.

The Court: The answer is, "No, sir, only one."

Q. Just one man? A. Yes.

Q. Where was this one man? A. This man here.

Q. The man you saw in Hackensack? A. They picked him up in the Court Room. 20

Q. Just what took place, who was there with you? A. Some of my people were there of the firm, Mr. Baker was there.

Q. Who else? A. Mr. Rudell was there, the officer from Hackensack was there, I don't know what his name is, he is in the room now.

Q. Will you point him out? A. Yes, right back there, sits by Harry Dennis.

Q. Stand up, Officer. Is that the gentleman? A. Yes. 30

The Court: And that is Officer who?

The Prosecutor: Officer Gallione.

Q. Who else was there? A. Mr. Rudell, I gave you.

Q. Yes; Mr. Baker, Officer Gallione was there? A. Mr. Cummings at the time, and I forget these other parties now.

Q. Mr. Walters? A. No.

40

Albert Parks—Cross.

Q. What took place there at that time, what was said and what did you do? A. They had me there to identify this man, they took him in the room and they took me in and I identified him.

Q. Do you think you could identify that man who held you up today? A. I could identify him today?

10

Q. Yes. A. I think so.

Q. Would you say the man sitting at the counsel table was the man that held you up there in Denville? A. Yes, sir.

Cross-examination by Mr. Weinberger:

Q. When was it that you were held up? A. The day?

20

Q. Yes. A. 28th of October—or August.

Q. August? A. Yes.

Q. Of this year? A. Yes.

Q. How many men held you up? A. One man.

Q. When did you next see this—withdraw that. When did you first see this defendant? A. After the hold-up?

Q. Yes. A. I couldn't say just what day.

Q. Give us an idea when it was? A. It was about—

30

The Court: How many days or how many weeks?

Mr. Weinberger: Or how many months?

The Witness: About a week and a half, I believe.

Q. A week and a half? A. I believe about that.

Q. Are you sure of that now? A. I can replace the first place they took me to see him, I don't know the name of the place.

40

Q. This defendant was in the Court Room when

Albert Parks—Cross.

you were brought in, wasn't he? A. He was in a Court Room at one time, yes.

Q. In fact, the first time you saw him he was in a Court Room? A. No, sir.

Q. Where was he the first time? A. The first time I saw him he was in this other jail in the cell.

Q. What jail? A. I don't know the name of the place, the gentleman back there that just spoke he might be able to tell. 10

Q. You were there? A. I was to this jail.

Q. And they took you there? A. They took me to this place.

Q. And they took you to this place for the purpose of trying to fasten something on this man?

The Prosecutor: That is objected to.

The Court: Objection sustained.

Mr. Weinberger: Withdraw it. 20

Q. They took you there for what reason? A. Does he want to—

The Court: Answer the question.

A. (Continuing) For to identify this man.

Q. Did they tell you they had a man for you to identify? A. Want to find out the man who held me up.

Q. Did they tell you they suspected a certain man they had in the jail? A. No. 30

Q. Who came to see you about identifying this man? A. I was taken there by Mr. Rudell.

Q. Was he the first one to speak to you about it? A. He was the first man, yes.

Q. And Mr. Rudell is who? A. I don't know who Mr. Rudell is, that is, he is insurance company detective, detective I believe.

Q. You don't know yet who he is? A. Not personally, no. 40

Albert Parks—Cross.

Q. Didn't you ask him, "Who are you and what do you want?" when he came to see you? A. No, sir.

Q. Weren't you interested to know who the man was who was taking you on an excursion to some jail? A. Well, yes.

10 Q. Well, didn't he tell you who he was? A. He told me his name was Rudell, yes.

Q. Did he tell you what his business was? A. Detective.

Q. Then you did know he was a detective? A. I knew he was a detective.

Q. Did you ask him where he was a detective? A. No.

Q. Did you ask him whether he worked for an insurance company? A. No.

20 Q. Did you ask him whether or not he was connected with the insurance company that had insurance on this particular subject matter? A. No, sir, I did not ask him.

Q. Where did he meet you? A. He met me at Dover, and met me in New York.

Q. Where was the first time he met you in New York, at whose place of business? A. Gotham Silk Hosiery, the office.

30 Q. Were you introduced to him by anyone? A. Mr. Cummings.

Q. Was the appointment arranged for you? A. I was to meet him, yes, sir.

Q. Did you know what you were to meet him for? A. Yes.

Q. What? A. To go out with him to look over the man.

Q. Who conveyed that message to you? A. Who sent the message to me?

40 Q. Yes. A. That was told to me by the firm, Mr. Cummings.

Albert Parks—Cross.

Q. And he is one of the officers of what concern? A. Gotham Silk Hosiery Company.

Q. Do you work for them or a trucking company? A. Gotham Silk Hosiery.

Q. Whose truck was this? A. Gotham Silk.

Q. Mr. Cummings said he had arranged a little session with you and with some detective in New York? A. Yes. 10

Q. How long was that after this date? A. I couldn't tell you.

Q. How long was that after this so-called arrangement? A. The very same day.

Q. What do you mean, the same day? A. The 28th.

Q. They didn't arrange any identification that day? A. Not that morning, it was later on.

Q. When was the first time there was an arrangement made for you to see any prisoner for the purposes of identification? A. That very same afternoon. 20

Q. The 28th? A. Yes, sir.

Q. Don't you know this man was not in jail on the 28th? A. I was up there at this time, it wasn't this man I was to see at that time.

Q. You were to see another man? A. I was to go to another place.

Q. Did you go? A. Yes. 30

Q. Where was that? A. In New York.

Q. Did you see the man? A. I look at some pictures only.

Q. Pictures? A. Yes.

Q. Did you recognize anybody on pictures? A. I recognized a man on pictures, yes.

Q. Isn't it a fact you didn't recognize anyone but from the pictures? A. No, sir.

Q. What is that? 40

Albert Parks—Cross.

The Court: The answer is, "No, sir."

Mr. Weinberger: I heard that. I am asking another question, "What is that?" in surprise.

The Court: The record will undoubtedly not register your emotions.

10 Q. Do you now say you did recognize anybody on pictures? A. Did I recognize anybody on pictures at the time?

Q. Yes. A. Yes.

Q. You did. Have you the pictures here? A. I have.

Q. Now, as a matter of fact, who showed you the pictures? A. There was a man this Mr. Rudell and another man was with him.

Q. Who is that man? A. Mr. Rudell.

20 Q. No, the other man? A. I couldn't tell you.

Q. The gentleman who showed you the pictures? A. That was in Police Headquarters.

Q. What was his name? A. I don't know his name.

Q. Did you ever talk to him? A. That day, that's all I talked to him.

Q. That's all? A. Yes.

Q. Did he suggest the pictures he wanted you to look at? A. He showed me the books with the pictures.

30

The Court: When you say pictures, were you in what is commonly known as a Rogue's Gallery?

The Witness: Yes.

The Court: You were shown pictures of convicted criminals?

The Witness: Yes.

Q. You said to his Honor now that you looked at pictures of convicted criminals? A. Yes.

40

Albert Parks—Cross.

Q. This defendant's picture was not amongst those, was it, because he was never convicted?

The Prosecutor: I object to that.

Mr. Weinberger: One minute. I want to put the whole question.

Q. You didn't see this defendant's picture there because you know he was not convicted? 10

The Prosecutor: I object to that.

The Court: It will be sustained.

Mr. Weinberger: I pray an exception.

The Court: Exception allowed.

Q. You didn't see this defendant's picture there that morning, did you? A. Yes.

Q. You did? And you told the Court a moment ago you were looking at pictures of convicted defendants? A. Well, there were all kinds-- 20

Q. Is that right?

The Court: He says, "Yes," that is what he said.

Q. Is that the truth? A. I was looking at pictures.

Q. That is not my question. Is that what you said to the Court a minute ago the truth?

The Court: That would depend on the form of the question. 30

Mr. Weinberger: True. I will reframe it.

Q. Was it the truth you were looking at pictures of convicted criminals?

The Court: In other words, what kind of pictures were you looking at?

The Witness: Well, pictures of hold-up men, and the like of that. 40

Albert Parks—Cross.

The Court: Whether they were convicted or otherwise?

The Witness: I don't know whether they were or not.

Q. Then, you were wrong when you said a minute ago, when you said they were convicted criminals?

The Court: Maybe the Court didn't do the right thing.

Mr. Weinberger: Maybe your Honor didn't, but I still think it was the right thing.

The Court: How does any layman who looks at pictures in a Rogue's Gallery know whether that is a picture of one who has been convicted, how does anybody know that?

Mr. Weinberger: I think in due deference to your Honor's suggestion, the question your Honor put to the witness was convicted criminals—

The Court: And without thinking he said yes, he was looking at pictures in the Rogue's Gallery.

Mr. Weinberger: That is what I want to bring out, they very readily say yes to questions.

Q. Then you were wrong when you said yes?
A. Yes.

The Prosecutor: I object to that.

Mr. Weinberger: He says now he was.

The Witness: Yes.

The Court: Why make a mountain out of a mole hill?

Mr. Weinberger: I am trying to be fair—

Q. Then, sir, you don't know now the name of

Albert Parks—Cross.

the police officer who showed you pictures? A. No, sir, I do not.

Q. Who else was there? A. Mr. Cummings was there.

Q. Your boss? A. Yes.

Q. Who else? A. That was all.

Q. How many men were you going to identify? 10
A. Trying to identify one man.

Q. Only one. Weren't there more men than that on that robbery? A. There might have been more, but I seen no more.

Q. Are you sure of that? A. I didn't see any more at the time, no, sir.

Q. At any time that morning? A. Not that morning.

Q. At any time during the course of this robbery you are being taken to New York you saw 20
no one else? A. Not to see him.

Q. And you couldn't identify anybody else, is that right? A. Couldn't identify nobody else.

Q. Now, you are sure of that, are you? A. Could identify only the one man, that's all.

Q. Did the man wear a tie that you saw that morning?

The Court: What time?

Q. At the robbery. A. I couldn't say whether 30
it was a tie or what it was.

Q. Man wear a raincoat? A. A raincoat, yes.

Q. What color? A. Brown.

Q. Wear a mask? A. No, sir.

Q. At any time that morning? A. No, sir.

Q. Never had one on his face? A. Not while I seen him.

Q. Now, when you were down at this Rogue's Gallery, how long after that session was it you 40

Albert Parks—Cross.

saw this defendant over in jail? A. About a week, week and a half I should say.

Q. You don't know now yet where the jail is? A. No, I don't.

Q. Do you know what County? A. In Bergen County, I believe.

10 Q. Bergen County? A. Yes.

Q. Who took you there? A. Mr. Rudell was with me that morning, and there was an officer from Hackensack.

Q. Do you know his name? A. Brennan, I believe, I think that is the name.

Q. Brennan? A. I believe that is the man.

Q. Did he take you right to the cell where this defendant was? A. Yes.

20 Q. Did he point him out to you? A. He got him to come outside of the cell.

Q. And how long was he out there with you? A. Out of the cell?

Q. Yes. A. Oh, probably five minutes.

Q. Have any conversation with him? A. No, sir.

Q. Was there any conversation with him in your presence? A. No, sir.

Q. What were you doing during those five minutes? A. Looking at the gentleman.

30 Q. Looking at him? A. Yes.

Q. That was the first time you had seen him? A. Since the hold-up, yes, sir.

Q. Did you say to the man, you are the man? A. I did not.

Q. Why not? A. I didn't say it that morning.

Q. Why not? A. Well, I didn't say it, that's all.

Q. Why not?

40 The Prosecutor: That is his answer.

Albert Parks—Cross.

The Court: He may give an answer if he has it.

Q. I beg your pardon? A. I didn't say anything.

Q. I beg your pardon, sir, I am sorry. Trying to get you to say something. Why not?

The Court: Was there any reason for your not saying anything to him that morning? 10

The Witness: Well, if you want to know, I was afraid of the gentleman.

The Court: That is what he has been asking you.

Q. Fear, was that it? A. Yes, sir.

Q. Wasn't doubt, was it? A. I told you.

Q. It was not doubt, was it? A. No, sir.

Q. The police officer right with you, Mr. Cummings right with you, is that right? A. Yes. 20

Q. Both of them standing there? A. Yes.

Q. Is that right? A. Yes.

Q. You went there for the purpose of identifying him, is that right? A. Yes.

Q. And you were afraid to tell him whether you did or did not identify him, is that right; is that right?

The Prosecutor: It is just repetition, he said that is why. 30

The Court: I will allow the question.

Mr. Weinberger: I think that is a different sort of question.

The Court: It is cross-examination, the question was, "Is that right?"

The Witness: Yes, sir.

Q. Well, you left that day without identifying him, is that right? 40

Albert Parks—Cross.

10 The Court: Overruling the objection, of course, the Prosecutor is not prevented on re-direct in bringing out fear was not personal danger at that moment, but fear which had some other aspect. The Prosecutor is entitled to bring out anything with reference to cross-examination, and the cross-examination may be a broad one, so you may proceed.

Mr. Weinberger: Thank you. I won't try to stop my friend at all.

Q. You left that morning without identifying him, didn't you? A. Yes.

Q. When was the next session that was arranged? A. Why, it was about a week, about a week afterwards.

20 Q. Then you came out again—pardon me, withdraw it. Another session was arranged to see if you could identify him a week or a week and a half later? A. About a week later.

Q. Who arranged this second session to try and see if you could identify him? A. These same people.

Q. Mr. Cummings? A. Mr. Rudell.

30 Q. Mr. Rudell? What detective that time? Mr. Brennan? A. The gentleman back there, I don't know his name, the officer back there.

The Court: Mr. Gallione?

The Witness: Mr. Gallione.

Q. Mr. Gallione? A. Yes.

Q. Of the East Paterson Police Department?
A. Yes.

Q. When you left—

40 The Court: Maybe it is not the East Paterson Police Department.

Albert Parks—Cross.

Mr. Weinberger: Perhaps not. Is it?

Mr. Gallione: No.

Q. He is in Bergen County, I know he takes in quite a bit of territory. Mr. Gallione was there, was he not? A. Yes.

Q. By the way, let me just go back for a second. When you left Mr. Locicero the first time who arranged that second session, Mr. Cummings again? A. Mr. Cummings is the one. 10

The Court: My recollection is he said the same people, because that is just merely repetition now.

Q. Was it Mr. Cummings? A. The same people, yes.

Q. Coming right down to that, where did you meet the second time? A. I met them in Hackensack. 20

Q. In Hackensack? A. Yes.

Q. At the Court House? A. At the Court House.

Q. Now, at that time you saw this man, the defendant, in the Court Room, did you not? A. Yes, sir.

Q. And who took you into the Court Room? A. The gentleman back there.

Q. Mr. Gallione? A. Yes. 30

Q. And this man was really in that Court Room? A. Well, he was standing when he first went in.

Q. Standing. And who pointed him out to you, Mr. Cummings, Mr. Gallione or who? A. Mr. Gallione.

Q. And when he pointed him out to you whereabouts was the defendant standing or sitting in the Court Room? A. He was standing at the time. 40

Albert Parks—Cross.

Q. And when Mr. Gallione pointed him out to you did he whisper to you? A. He fetched him in.

Q. He brought him in? A. Yes.

Q. Tell the Court and jury in your own way how this was staged? A. He fetched this gentleman in for to be identified.

10

Q. Now, let us see you were in the Court Room? A. Yes, sir.

Q. He was not in the Court Room? A. Not at the time.

Q. Were you sitting or standing? A. It was not in the Court Room, in a separate room there.

Q. A little ante-room, witness room or counsel room? A. Officers' room, I believe, there.

Q. You were seated there and the defendant was ushered in? A. He was fetched in and I was outside.

20

Q. He was fetched in by who? A. A gentleman back there.

Q. Mr. Gallione? A. Yes.

Q. And as he was fetched in what did you do?

The Court: He said he was outside.

The Witness: I was outside.

Q. What did you do? A. I stayed outside there for a few minutes.

30

Q. Then what happened? A. They then took me in.

Q. Then what happened? A. To identify the man, to see if he was the man.

Q. To see if he was the man? A. Yes.

Q. What did you say? A. I said yes, sir.

Q. Your fear had gone, had it, of a couple of weeks before? A. Just a minute—they put an officer's hat onto the gentleman.

40

Q. Oh. You didn't tell us about that. I was

Albert Parks—Cross.

asking you how this was staged. Tell us it all?

A. They put this officer's cap on the gentleman.

Q. Who put it on? A. The officer back there.

Q. Mr. Gallione put a policeman's hat on him?

A. Yes.

Q. What kind of hat? A. Policeman's.

Q. There are a lot of them. A. Well, a badge
on the front. 10

Q. Big hat or just a cap? A. A cap.

Q. Put that on him? A. Yes.

Q. Who arranged that, to get that policeman's
cap, Mr. Gallione? A. I suppose.

Q. Did you know he was going to have it? A.
No, I did not know.

Q. Was that discussed? A. Put that on him,
I could tell him better.

Q. Wasn't that discussed before? A. They
said that, yes. 20

Q. Did they say if we put a police cap on him—
A. I told them if they put a police cap on him I
could identify him better.

Q. Yes. You told him you couldn't without the
hat? A. No, I didn't say I couldn't.

Q. Isn't it a fact you didn't identify him two
weeks before or a week and a half before because
you couldn't say that he was the man, isn't it so,
Mr. Parks? A. Well, I identified him as far as
I went besides the hat. 30

Q. It didn't go very far, did it?

The Court: Just a moment, the answer
was, "As far as I went."

Mr. Weinberger: I beg your pardon.

Q. Mr. Parks, you appreciate the fact, do you
not, that when you left Headquarters after the
first session and the second session was arranged
because it was you who said, "I can't identify 40

Albert Parks—Cross.

the man," you know that, don't you? A. No.

Q. You don't know that? A. No.

Q. Who suggested that they wanted to have a policeman's hat on him to be sure that's the man?

A. I did.

10 Q. Well, if you are sure he was the man the first time you were there, why did you want to have a policeman's hat on him? A. Well, it showed up much better.

Q. Showed up much better? A. Yes.

Q. That is the only reason, is that right? A. Yes.

Q. It was not fear, was it? A. It was fear when I first went to see him, I told you that before.

20 Q. Were you afraid the second time? A. I did not feel faint, no.

Q. You were still afraid? A. Yes, sir.

Q. Who put the policeman's cap on him? A. Mr. Gallione.

Q. Did you see him do it? A. Yes, sir.

Q. Who else was present in this room? A. Different men in there, I don't know who they was.

Q. He was the only man in the room, the defendant? A. No, sir.

30 Q. I mean, there were no other men lined up? A. Nobody, only him, there was other men in there.

The Court: The question is simply put, there was no line-up?

The Witness: No line-up, no, sir.

Q. How long were you there altogether in that room? A. From the time I first went in there?

40 Q. Yes, after the defendant got in there. A. Five minutes.

Albert Parks—Cross.

Q. How far did they put the cap—withdraw that. Just tell the Court and jury— A. They put the cap down, tried to—down around his head, the same as I seen him with it.

Q. Covered his eyes? A. Not all, a little bit down, about to his eyebrows.

Q. Did it have a peak on? A. Yes, sir.

Q. Was that a man of the department's hat used there that morning? A. As far as I know. 10

Q. What did they do with the defendant then? A. I couldn't tell you.

Q. Don't know? A. Don't know.

Q. Had you ever seen this man before that particular morning of the alleged robbery as you claim? A. No, sir.

Q. On the morning that you were brought to Hackensack Court House did he wear a raincoat? A. No, sir. 20

Q. What kind of a coat did he wear? A. The morning he was fetched there?

Q. Yes. A. He just had a short coat on.

Q. Did he wear a collar on the night of the alleged robbery? A. A collar, not that I know of, couldn't say.

Q. Did you hear the defendant speak at the Court House while you were there? A. Yes, sir.

Q. You heard his voice? A. Yes, sir. 30

Q. Who suggested that he talk? A. I did.

Q. The first time you saw him did he talk in your presence? A. That is the first time he was in jail?

Q. Yes. A. That was the first time he did speak, yes.

Q. Did you testify before the Grand Jury?

The Prosecutor: I object, don't see its relevancy. 40

Albert Parks—Cross.

The Court: I will allow it. Did you testify before the Grand Jury here in Morris County? That is yes, or no.

The Witness: What do you mean?

The Court: Did you testify before the Grand Jury? That is yes or no.

10 The Witness: Yes, I testified.

The Court: Were you a witness before the Grand Jury?

The Witness: You mean, here?

The Court: Yes.

The Witness: Yes.

Q. When did you testify before the Grand Jury?

The Prosecutor: Objected to as irrelevant.

20 The Court: I will allow whether he did or did not, and when; what he said is not relevant.

The Witness: This is the only time I have testified in front of any Grand Jury.

Q. Then you did not testify before the Grand Jury?

The Prosecutor: I don't think the gentleman knows the difference between Grand and Petit Jury.

30 The Court: Maybe he don't know, counsel is entitled to bring it out.

Q. You did not appear before the Grand Jury of Morris County, in other words, you have not been before any group of jurors before today?
A. No, sir.

Q. Is that correct? You were mistaken then when you answered yes to the Court? A. Yes.

40 Q. Now, did you say that the defendant drove you to New York? A. He was in the car.

Albert Parks—Cross.

Q. Do you say that he drove you to New York?

A. No, sir.

Q. You say he was in the car? A. Pretty sure he was in the car, yes, sir.

Q. Where was he sitting? A. In the back seat.

Q. Anybody else in that car? A. There was somebody in the car.

Q. Who? A. I couldn't tell you.

Q. Who drove the car? A. I couldn't tell you that.

Q. Did you see the person who drove the car?

A. No, sir.

Q. Could you identify the person who drove the car? A. No, sir.

Q. You say you were blindfolded while in the car? A. I was blindfolded.

Q. Then you did not see the defendant in the back of the car, did you? A. No, sir, I did not see him.

Q. A moment ago I thought you said he was in the car? A. He was the man behind me and pushed me into the car and climbed in on top of me, pretty sure of that.

Q. You did not see him get in the car? A. No.

Q. Don't know whether he was in the car? A. No.

Q. When you said a moment ago he was in the car that was not a fact? A. I did not see him get in the car, I was blindfolded.

Q. Why is it you said he was in the car? A. Because he was the man who took me out of the car, had hold of me, and led me to the other car blindfolded.

Q. You just said you don't know—withdraw it. You did say so far as you know you did not see him in the car? A. Not in the car I was in.

Albert Parks—Cross.

Q. That is what I am asking you about. A. I did not see him in that car.

Q. And you won't say now he was in that car?

A. No, I couldn't say for sure no more. I have told you he was the only man had hold of me.

Q. Can you describe any man who was in that car?

10

The Court: It is obvious, he said he was blindfolded and didn't see anybody.

Q. I am pressing the question for only one reason and the reason is—

The Court: You may press the question, and I reiterate the fact that he did not see him, he said that.

Q. We are clear on that. And you did not see anybody in that car? A. No, sir.

20

Q. When was the first time that you came in contact with any other person on the morning of that robbery? A. After the robbery?

Q. Yes. A. I came in contact with any other person?

Q. With the other men in the car you speak of, how long after this so-called hold-up? A. At no time, no more than I told you before, I was put in this car and drove to New York.

30

Q. You were sitting on the truck? A. Yes.

Q. Right after that, how long after that did anyone else come up with another car? A. I drove about eight miles to Pine Brook.

Q. Was anybody with you on the truck when you were driving? A. No, only this officer, dressed in officer's clothes there.

Q. And you weren't talking to him at all? A. No.

40

Q. He didn't say anything to you, you didn't

Albert Parks—Cross.

say anything to him? A. No, nothing more than, "Drive on."

Q. That is the only conversation that took place between you and the man that held you up? A. Yes.

Q. He said, "Drive on?" A. Yes.

Q. No other language, no other words? Did you tell Mr. Cummings you were afraid to identify the man the first time you were over there? 10

A. I did not.

Q. Did you tell that to any officer? A. No, sir.

Q. Why not? A. Well, didn't have any reason to tell them.

Q. This man was in jail, wasn't he at the time?

A. I believe so.

Q. Now, did you ever see him after the Court session, that Court arrangement? A. Down Hack- 20
ensack?

Q. Yes. A. No.

Q. That is the last you saw him? A. That is the last I saw him.

Q. Until today? A. The last I saw him until today.

Q. What makes you so sure this is the man?

A. Well, he has got the looks in every way when he had the hat on looks more like him.

Q. What makes you so sure? A. Well, simple 30
reason he looks just like the man, he is the man.

Q. Looks like the man? A. Yes, is the man.

The Prosecutor: What is the last, is the man?

The Witness: That is the man.

Q. Let me ask you a question: How high, how tall was the man you saw? A. Well, I couldn't say exactly now.

Albert Parks—Cross.

Q. Couldn't say. Did the man ever have his hat off in your presence? A. No, sir.

Q. You heard no conversation of his? A. No, sir.

Q. I take it you were somewhat frightened when the gun was near your nose, or under your nose?

10 The Court: He said it was near his arm.
Mr. Weinberger: I beg your pardon.

Q. I assume you were somewhat alarmed no matter where that gun was, you were not comfortable? A. No, sir, was not comfortable.

Q. You weren't much concerned with identification, with the gun under your arm, were you? A. No.

20 Q. You were not so much interested in who the fellow was, or what he looked like at that time; what you were anxious about was that nothing happen to you?

The Court: That is a foolish question, who wouldn't be under those circumstances?

30 Mr. Weinberger: Your Honor please, I respectfully submit, that I have asked a lot of foolish questions in my day. May I be pardoned if I ask one more?

The Court: If you say it is a foolish question I will allow you to ask it.

Mr. Weinberger: Thank you very kindly. I mean I have been known to do these things once in a while.

The Court: Repeat the question.

(Question repeated.)

The Witness: That's right.

40 Q. And that was the very reason why you were

Albert Parks—Cross.

in doubt whether this was the man when you paid your first visit to the jail in Hackensack, the doubt as to whether it was he? A. I told you before.

Q. Yes or no? A. I told you before it was the scare.

Q. And when you got out did you suggest another session yourself? A. When I got out where? 10

Q. From the Hackensack jail? A. No, sir.

Q. You did not. You can identify no wearing apparel of the defendant, can you that you saw that night, you can't tell us what he wore at all? A. Nothing more than—

Q. The policeman's cap? A. The policeman's cap, the whistle, and the brown coat.

The Court: And the gun? 20

The Witness: And the gun.

Q. The gun, the whistle, the cap and the raincoat? A. The gun, the cap, the whistle and the raincoat.

Q. Aside from those things there is nothing you recognized on the defendant at all, is that right? A. No.

Q. No facial characteristic at all, height, you couldn't identify, that's right? A. Yes, sir. 30

Q. And it is also true that you could not identify him by the tone of voice, because you did not hear him speak, that is true, too, isn't it? A. Yes.

Q. Did you ever meet any of the detectives and discuss the question of identification, and the importance of identifying the defendant? A. Well, as I told you before I was at different places and identified him, that is, after looking over pictures, things like that, that's all. 40

*Albert Parks—Redirect.**Redirect-examination by the Prosecutor:*

Q. What sort of a night was this you were held up, or morning, rather? A. It was a little rainy.

Q. And this was on the morning of August 29th, was it not? A. 28th.

Q. Night of the 28th, morning of the 29th? A. Yes.

Q. It was raining? A. Raining very little.

Q. How was the raincoat, buttoned up around the neck? A. Yes.

Q. So you couldn't see the man's clothing under the raincoat? A. No.

Q. Was there a badge on this man? A. Badge on his cap.

Q. And you first saw him when he blew the whistle outside of your cab? A. He was outside of the cab.

Q. And did you watch him get in your cab? A. Yes.

Q. And you had a full opportunity then of observing this man's face? A. Yes.

Mr. Weinberger: Just a minute, I object to that question. It is decidedly leading.

The Court: It is a leading question.

The Prosecutor: On cross-examination that was brought out.

Q. Did you have an opportunity of observing this man's face when he got in the cab? A. When he sat alongside of me, yes.

Q. And with the gun under your arm? A. No, my right arm.

Q. And was that gun under your right arm until you were taken out of the truck? A. Just about all the time.

Albert Parks—Redirect.

Q. What happened when you were taken out of the truck, when the truck stopped? A. He told me to stop at once.

Q. What happened? A. I got ahead of my story, he stopped the brake himself, he shoved it out.

The Court: What do you mean "shoved it out?" 10

The Witness: The gear.

The Court: All right.

The Witness: And we was stopped. I was covered up then and my cap was pulled right down over my face tight.

Q. What sort of cap did you have on? A. Ordinary cap, white cap.

Q. And who pulled it down over your face? A. He pulled it down over my face, and I was pulled off the truck. 20

Q. The same man did that? A. Yes.

Q. Did he take hold of you? A. He took hold of me, behind me.

Q. When did this hold leave you? A. After I was pushed in the car.

Q. Is that what you think was the same man?

Mr. Weinberger: Objected to.

The Court: I will allow it. You brought out he did not see him and it is only a question of whether his belief that the man who sat in the truck with him was the same man who got in the car, whether that is substantiated by the facts. 30

Mr. Weinberger: May I formally object to the question as framed, it is highly improper and an illegal question.

Albert Parks—Redirect.

The Court: I will allow the Prosecutor to reframe it. Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

10 Q. You say this man pulled your cap down and took hold of you? A. Yes.

Q. When did he let go of you? A. I am sure that the man come right over top of me; as soon as I was pushed in this car he climbed over me and got in the seat.

Q. When was this hold let go of you? A. When I was in the car.

Q. You were in the car? A. I was in the car, yes.

20 Q. Did you still have the cap down over your face? A. Yes.

Q. Was there any blindfold? A. It was covered up.

Q. What with? A. Like rubber to me.

Q. Couldn't see anything in the car? A. Couldn't see nothing. I was down behind the seat.

Q. And such an occurrence, being held up, the man would impress itself on your mind?

30 Mr. Weinberger: One minute, I object.
The Court: Objection sustained.

Q. Didn't this occurrence impress itself on your mind?

Mr. Weinberger: Objected to as self-serving.

The Court: It is a matter of argument.

40 Q. When you were in the presence of this de-

Albert Parks—Redirect.

fendant over at the Hackensack Jail and they placed a police officer's cap upon him did you sit on either side of the defendant?

The Court: I understood the cap was placed on him in the Court Room, not in the jail.

Q. Wherever it was, Court Room or jail, where was the cap placed on the defendant? A. In that man's room there. 10

Q. Mr. Gallione? A. Mr. Gallione.

Q. At that time did you sit on which side of the defendant? A. Yes.

Q. Which side? A. The left side.

Q. Did you look at him at that time? A. Yes.

The Court: What about it?

The Witness: I said, "That was the man." 20

Q. Did you place your hand on this man's shoulder? A. I put my hand on this man's shoulder.

Q. And said what? A. It is the man.

Q. Now, after you were held up on the morning of August 29th did you receive any threatening telephone calls or messages?

Mr. Weinberger: I object to it. 30

The Court: Yes, it will be sustained.

The Prosecutor: I want to bring out why he was afraid to identify this man on this first occasion.

The Court: No, the testimony would tend to indicate that that may come from this defendant and consequently may not be introduced against this defendant, un-

Albert Parks—Redirect.

less he knows the source from which it came.

10 Mr. Weinberger: May I move for a mistrial on the ground the question was asked by the Prosecutor supplemented by what he stated with regard to his justification for it is highly prejudicial, and improper in this case in the presence of the jury?

The Court: No, the motion will be denied.

Mr. Weinberger: The Prosecutor knew a legal duty devolved upon him to establish the fact that the defendant, and only the defendant could transmit a message of that character.

20 The Court: I don't agree with you, may have been the defendant or any one of the defendants in this indictment, but I excluded it because there has been a severance on this indictment alone. You may have an exception.

Mr. Weinberger: Thank you. May I have it on both grounds.

30 The Court: Of course, it is on all grounds. Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

Q. You say you picked out a picture of a man and identified him as the man who held you up, over in New York, was it? A. In New York.

Mr. Weinberger: I object to that, the witness has not so stated.

40

Albert Parks—Recross.

Q. And at that time did you pick out one of these pictures and say that is one of the men?

Mr. Weinberger: I object to that.

The Court: No; I will allow that question. You may have an exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,

10

Judge.

Q. Did you? A. Yes.

Q. And whose picture was that? A. That gentleman there.

Q. Did you? A. Yes, sir.

Recross-examination by Mr. Weinberger:

Q. This picture upon which you say you identified the defendant, was he alone on that, or with somebody else? A. Alone.

20

Q. Sure of that? A. Well, there were two pictures made, him and himself, you may call it.

Q. He and himself? A. Two pictures.

The Court: You mean two different views?

Q. One boy in two places, is that it? A. That is it.

30

Q. Are you sure of that? A. Yes.

Q. Who showed you that picture? A. That was showed to me in New York I am pretty sure.

Q. And that was shown to you before you went to the jail in Hackensack? A. Yes, sir.

Q. And you identified him in New York? A. I was sure that he was the man, looked just like him.

Q. What is that?

40

Albert Parks—Recross.

The Court: Looked just like him.

The Witness: Just exactly like him.

Q. And when you got to Hackensack you did not identify him? A. The first time I seen him?

Q. I say, you did not identify him the first time? A. No, sir.

10 Q. Was this a dark night? A. It was in the morning, dark.

Q. It was dark, wasn't it? A. Yes.

Q. Pitch dark? A. At the time it was getting lighter all the time.

The Court: What time of the morning or day was it?

The Witness: That was around 6 o'clock, about 6:20 when I was held up.

20 Q. It was a rainy night? A. It was a rainy night, but when I was taking out my truck it was practically light.

Q. Did you see the color of the shoes the man wore? A. Black.

Q. Wear gloves? A. No, sir.

Q. Did not. Of course you have talked this case over with the detectives, haven't you? A. They have had me look at different pictures, that's all.

30 Q. Haven't you talked the case over at all? A. Talked to me certainly.

Q. When was the last time you talked in regard to this case? A. It has been three weeks ago.

Q. Was the importance of identifying the man discussed with you? A. No, sir.

Q. It was not? A. No, sir.

Q. What happened to the truck finally and the silk? A. What happened to it?

Albert Parks—Recross.

Q. Yes. A. Well, it was found the next morning, that's all I know about it.

The Court: What was found next morning?

The Witness: The truck was.

The Court: Was the silk found?

The Witness: No, sir, not that I know of. 10

Q. What is that? A. Silk was not found that I know of.

Q. Wasn't it ever found? A. Not that I know of.

Q. You don't know whether it was or not? A. No, sir.

By the Prosecutor:

Q. I show you Mr. Parks, certain invoices and ask you if those are the invoices of the goods put on your truck that morning? A. I didn't see those, I have another sheet that I sign, they go in in an envelope, the shipper does that. 20

Q. I show you these papers and ask you if these are the receipts you got for the goods placed on your truck? A. Yes.

Q. Look at these, did you have the items shown on these receipts on your truck at the time? A. Yes, sir. 30

The Prosecutor: I offer these papers.

Mr. Weinberger: I have no objection.

The Court: They may be admitted and marked Exhibit S-1 on the part of the State, may be marked as a group.

(Received in evidence and marked Exhibit S-1.)

(Witness excused.) 40

Paul W. Baker—Direct.

PAUL W. BAKER, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

10 Q. Mr. Baker, where do you live? A. Morristown.

Q. By whom are you employed? A. The Gotham Silk Hosiery Company.

Q. And employed by them August 29, 1933? A. That is right.

Q. Still in their employ? A. That is right.

Q. Are you familiar with the value of the goods that your company handles? A. An examination was made by a firm of accountants, Ernst & Ernst, and they wrote up a report calculating the
20 value of the goods and find it to be \$29,115.00.

Mr. Weinberger: One minute. I thought this gentleman knew the value himself, I don't think that is proper.

The Court: If you object I will rule on it.

Mr. Weinberger: I formerly object.

The Court: Objection will be sustained; only what you know.

30 Q. Do you know the value of the truck? A. The value—

Mr. Weinberger: One minute. May I inquire as to the qualifications of the witness?

The Court: Yes.

By Mr. Weinberger:

Q. What is your business? A. General superintendent of plant in Doyer.

40

Paul W. Baker—Cross.

Q. Are you familiar with the values of trucks?

A. Yes.

Mr. Weinberger: No objection.

By the Prosecutor:

Q. What was the value of the truck? A. The sound value as of that date was \$4,500.00.

10

The Court: Do you know how many bales of silk stockings were loaded on that truck that day?

The Witness: From the record there were 47 bags on it.

Mr. Weinberger: I have no objection.

The Court: 47 bales?

The Witness: Bags, and 20 bales of silk.

The Court: And can you state generally without reference to an accountant's figures what those 47 bags and 20 bales of silk would be worth ordinarily, an approximate amount? Neither counsel cares whether you are ten or twenty cents or ten or twenty dollars out of the way.

20

Mr. Weinberger: I will give him more leeway than that.

The Witness: Between twenty-five and thirty thousand dollars.

30

The Court: There is no objection to that?

Mr. Weinberger: None whatever.

The Court: Between \$25,000 and \$30,000?

The Witness: Yes.

Cross-examination by Mr. Weinberger:

Q. What happened to the truck, have you still got it? A. We still have the truck.

40

Paul W. Baker—Redirect.

Q. Do you know what happened to the merchandise? A. I believe it was stolen.

Q. You don't know? A. I don't know what happened to it after that, no.

Redirect-examination by the Prosecutor:

10 Q. Mr. Baker, do you know whether or not any of these goods have been recovered? A. I do not.

The Prosecutor: That is all.

Mr. Weinberger: I think that is what he said.

The Court: Yes, there is no dispute about that.

(Witness excused.)

20

BENJAMIN ROSENBERG, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Detective Rosenberg, you are connected with the New York City Police Department? A. I am.

30 Q. And did you find a White truck belonging to the Gotham Hosiery Company in New York City? A. I did.

Q. When? A. About 10:45 A. M. August 30, 1933.

Q. Where did you find it? A. In front of premises 503 West 26th Street, City, County and State of New York.

Q. Who was in the truck? A. The truck was abandoned on the street.

40

Daniel Allen—Direct.

Q. Was this truck identified by Parks or anyone belonging to the Gotham Hosiery Company?

A. Identified by Mr. Cummings.

Mr. Weinberger: No questions.

(Witness excused.)

10

DANIEL ALLEN, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Lieut. Allen, you are connected with the Morris County Prosecutor's Office? A. I am.

Q. Did you question Anthony Locicero? A. I did.

20

Q. Where and when? A. October 4th at Boonton Police Headquarters, Boonton, New Jersey.

Q. Who was present? A. Detective Gallione, Chief Bulmer, Chief Dennis, Coroner Richter, Detective Dickerson, Sergt. Kromka, the defendant and Mr. Smith, Court Stenographer.

Q. Did you say you questioned Anthony Locicero? A. I did.

Q. Did he answer questions asked by you? A. He did.

30

Q. Who took down this statement, questions and answers? A. Mr. Smith.

Q. I show you a certain paper and ask you if these are the questions and answers asked by you and answers made by Locicero? A. This was asked by Detective Gallione, that is the wrong statement.

Q. I show you this paper and ask you if that

40

Daniel Allen—Direct.

is the paper signed by Anthony Locicero? A. It is.

Q. In your presence? A. Yes.

Q. In whose presence? A. All the detectives and police officers I already have named.

The Prosecutor: I offer it.

10 Mr. Weinberger: I object to it. May I ask your Honor for the—we desire to raise the question whether this is a voluntary or involuntary statement.

The Court: You may cross-examine if that is what your motion is. The offer will be held and you may have an opportunity to cross-examine.

By Mr. Weinberger:

20 Q. Where was this statement typed? A. At Boonton Police Headquarters.

Q. By whom? A. Mr. Smith.

The Court: When you speak of “Mr. Smith” you are referring to Mr. Smith the present Court Stenographer?

The Witness: Yes.

The Court: The stenographer in this Court Room?

30 The Witness: Yes.

Q. When had you before this statement was transcribed—when had you taken charge of Locicero? A. I believe it was the same day.

Q. Wasn’t it the day before? A. It may have been.

Q. Don’t you know? A. No.

40 Q. Have you any record or chart by which you could tell us? A. If I looked at my book in the office I could tell.

Daniel Allen—Direct.

Q. The book is not here, is it? A. That is right.

Q. And your book would show where he was the day before? A. Surely.

Q. Was he kept for twenty-four hours without eat and drink before this statement was gotten from him? A. No, sir.

Q. He was not? A. No, sir.

Q. Where was he the day before? A. He may have been in the Boonton jail, or he may have been in the Mountain Lakes jail.

Q. Don't you remember the facts with regard to his arrest and where you took him? A. Yes, sure, Mountain Lakes.

Q. Is it Mountain Lakes he was at? A. He may have been at Mountain Lakes Jail the day before.

Q. Was he? A. Yes.

Q. Now, we have it at Mountain Lakes? A. That is right.

Q. Where was he kept in that jail? A. In one of the cells.

Q. Did you provide him eat and drink that day? A. The man in charge.

Q. Did you hear my question? A. I left money there for him to buy coffee and sandwiches for him.

Q. Did you provide him with food yourself? A. No.

Q. Did you interrogate him that day? A. Well, we asked him some questions.

Q. Who is "We"? A. Probably Detective Gallione.

Q. Probably. I would like to know. A. Detective Gallione, Chief Bulmer, Trooper Dickerson and myself.

Q. Anybody else? A. That is all.

Daniel Allen—Direct.

Q. When did you start interrogating him that day and when did you finish? A. He had told us where the drop was—

Q. And when did you start interrogating him and when did you finish? A. We brought him to Mountain Lakes jail—

10 Q. When, time, how many hours between sunrise and sunset? A. It was about 4 o'clock in the afternoon.

Q. And when did you finish?

The Court: Finish what?

Q. Interrogating him. A. Probably we spoke to him 15 minutes.

Q. Is that all? A. That is all that day.

20 Q. On October 3rd, 1933, you only spoke to this defendant for 15 minutes? A. It may have been 20 minutes.

Q. It was not hours, was it? A. No.

Q. Why did you take him to Mountain Lakes jail? A. To get a Judge.

Q. To get a Judge? Did you get a Judge? A. No, not that day.

Q. Why didn't you bring him here to the County Jail? A. We didn't have any commitment.

30 Q. You brought him in from Hackensack, didn't you? A. That is right.

Q. You had a warrant? A. That is right.

Q. And that warrant was issued by what Judge? A. I think it was the Judge at Mountain Lakes.

Q. Are you sure of that now? A. Yes.

Q. Have you got the warrant there? A. I may have—Percy Ralston, of Boonton.

40 Q. So it was not Mountain Lakes, was it? A. That is right.

Daniel Allen—Direct.

Q. Why didn't you take him to Boonton? A. Why, there is a restaurant in Boonton and we placed in the Boonton jail and provided sandwiches and coffee, and while we went out to eat.

Q. Did you move him from Boonton? A. The following day.

Q. I thought he was up in the Mountain Lakes jail? A. You are talking about Boonton. 10

Q. Did you say that on October 3rd, 1933 this defendant was in the Mountain Lakes jail? A. That is right.

Q. And did you say you took him there because you were looking for the Judge? A. That is right.

Q. Was that the fact? A. Yes, sure.

Q. Then he was not at the Boonton jail on October 3rd? A. That night I believe he was. 20

Q. When did you shift him? A. That night.

Q. What time? A. About 6 o'clock.

Q. Why? A. Why I am just after telling you we went to a restaurant to eat.

Q. What right did you have to take the defendant from one jail to another jail? A. Because there is no man at the Mountain Lakes jail.

Q. Who gave you the legal right to take him? A. In the warrant.

Q. Why didn't you take him where your warrant said, in the first place? A. I did. 30

Q. Didn't it say, Boonton? A. Yes.

Q. Why did you take him to Mountain Lakes? A. Because the Justice of the Peace comes over to the Mountain Lakes and holds Court and also holds Court in Boonton.

Q. Did the warrant state Boonton? A. That is right.

Q. What right had you to take him to Moun- 40

Daniel Allen—Direct.

tain Lakes if it was not your intention to give him the third degree? A. Do you want me to answer that?

Q. I would love to have the answer.

The Court: Yes.

A. Earlier in the summer there was another
10 truck that was held up.

Q. In the summer, we are talking about the winter now.

The Court: Just answer this question, the question is not objected to.

The Prosecutor: He is asking why.

Mr. Weinberger: I will withdraw my objection; let him go, go ahead.

The Witness: He was also wanted in another job in our County that happened at
20 Mountain Lakes.

Q. Yes. A. And the Judge who issued the warrant in that first case, I believe, he made them out at Mountain Lakes, and we had telephoned him to come to Mountain Lakes.

Q. I again ask you why didn't you take him where your warrant said to take him? A. We did take him.

30 Q. To Boonton? A. Yes.

Q. I just thought you said you took him to Mountain Lakes? A. We did.

The Court: Now, just a minute. Both counsel and witness are both intelligent men and they both know they are just kidding each other; you know he said he took him to Mountain Lakes first and to Boonton afterwards, and he knows he said that.

Daniel Allen—Direct.

Q. Was he arraigned at Mountain Lakes? A. No.

Q. Did a Judge give you authority to remove him from Mountain Lakes? A. No, sir.

Q. You removed him? A. Sure.

Q. Now, where was he confined in Mountain Lakes? A. He was not confined in Mountain Lakes. 10

Q. What did you do with him in Mountain Lakes? A. We asked him a few questions and he told us where the drop was in Newark. We left him and went down to Newark and there was nothing there, and came back and took him to Boonton.

The Court: What do you mean by "drop", I don't understand that.

The Witness: Where the load of silk 20 was supposed to be dropped.

Q. At Mountain Lakes you interrogated him, questioned him? A. Yes, sure.

Q. When did you reach Mountain Lakes? A. I would say around 2:30.

Q. And you questioned him how long? A. Probably 15 or 20 minutes.

Q. Did he deny that he had anything to do with the robbery in Denville? 30

The Prosecutor: This is not going into whether or not this statement was obtained voluntarily.

The Court: I will allow it.

Q. I want to get the facts? A. Did he deny it?

Q. Yes. A. No, he didn't deny it.

Q. He told you there was a drop in Newark and you went there? A. Yes. 40

Daniel Allen Direct.

Q. And that was not so? A. I can't prove it wasn't so, we went where he told us.

Q. You didn't find what he sent you to find?

A. That is right.

Q. And you came back? A. That is right.

Q. And who went to Newark? A. There was quite a few, I believe all the officers went to Newark.

Q. You weren't sore at all that he had lied to you? A. No.

Q. You didn't care about his telling you an untruth at all? A. No, we are used to that.

Q. And when you came back to him you didn't do anything to him at all for lying? A. No, sir, didn't, I didn't even go down to see him.

Q. What happened to him at Mountain Lakes?

A. Two of the officers went down and brought him out.

Q. To where? A. To our car parked in front of Police Headquarters and we took him to Boonton.

Q. Did you speak to him again in Boonton? A. We did.

Q. How long did you talk to him there? A. For hours.

Q. Let us have how many hours? A. Probably from eight in the evening until two the next morning.

Q. From eight to two; furnish him any entertainment? A. No, sir.

Q. None at all? A. No, sir, that is the entertainment, I believe, you mean.

Q. You know what I mean? A. I don't know what you mean.

Q. What do you think I mean?

The Court: The Court is just calling at-

Daniel Allen—Direct.

tention to the fact that counsel and the witness are talking a language between themselves they each know.

Mr. Weinberger: And we understand the language.

The Court: Yes, in a Court of Justice it should be placed in such language the jury will have no doubt at all what is intended to be conveyed by questions and answers. 10

Q. At eight in the evening and finished two in the morning? A. Yes.

Q. At Mountain Lakes he admitted he committed it? A. He didn't admit he committed it.

Q. He didn't admit it? A. Not all, no.

Q. Then he denied it? A. No, he didn't deny it.

Q. Deny any part of it? A. No. 20

Q. Then he admitted— A. Just parts we had asked him, we were looking to get the silk back.

Q. Now, from eight to two did he deny then that he had been in the Denville robbery? A. There is the statement.

Q. Did he deny then? A. No.

Q. He did not? A. No.

Q. From eight to two who was doing the questioning? A. Detective Gallione, he started somewhere in the neighborhood of 9:30, and he may have finished up around midnight, and I took a statement from him. 30

Q. Did you ask the questions in question and answer form? A. I just asked him to tell me where he was on August 29th, and he related it.

Q. The statement was taken down as dictated by him? A. Yes.

Q. All his own language? A. Yes. 40

Daniel Allen—Direct.

Q. And it was taken down by Mr. Smith? A. That is right.

Q. Did you beat him? A. No, sir.

Q. Anyone there beat him? A. No, sir.

Q. No one put a hand on him? A. No, sir.

Q. No injury inflicted on him at all? A. No, sir.

10 Q. How many of you were there all the time?

A. Oh, probably half a dozen or more.

Q. Put your hand on him in Mountain Lakes?

A. No, sir.

Q. Anybody beat him there? A. No, sir.

Q. Assault him at all? A. No, sir.

Q. No one touched him? A. No, sir.

20 Mr. Weinberger: Now, if your Honor please, I formally object to this statement at this time and I desire to put my proof in with regard to the fact that this is not a voluntary statement under the law.

The Court: You may put in your proof. You may leave the stand, Mr. Allen.

(Witness excused.)

30 ANTHONY LOCICERO, called as a witness on his own behalf as to the voluntariness of the statement, being first duly sworn, testifies as follows:

Direct-examination by Mr. Weinberger:

Q. Mr. Locicero, on October 4, 1933 you signed a statement, did you not? A. I signed a statement.

40 Q. On that day when you signed that statement will you just tell the Court and jury what hap-

Anthony Locicero—Direct.

pened to you, that led up to the signing of this statement, where you were taken and what happened to you, in your own words? A. First I was taken out of Hackensack Court Room and I was brought upstairs in the Prosecutor's Office.

Q. I am past that point. You were in the Prosecutor's Office in Hackensack? A. That is right. 10

Q. Who took you over there? A. Then they—Mr. Parks sat alongside of me.

The Court: No, you are not proving anything in reference to the taking of the statement.

Q. I am trying to get only the statement. You were taken from Hackensack where? A. I was taken from Hackensack to Mountain Lakes.

Q. Just tell us what happened, who took you there? A. No—from Hackensack I was taken to the State Troopers' Headquarters. 20

Q. Where? A. I don't know where it is, Troopers' Headquarters.

Q. What County? A. Morris County.

Q. Whom did you meet there? A. Well, there was Officer Gallione, Chief of Police Bulmer, and that detective there, I don't know.

Q. Mr. Allen? A. Mr. Allen and State Troopers. 30

Q. How many of them? A. Well, there was one in the room, there was a lot of them around there.

Q. All right. A. They fingerprinted me and took my picture that night, then they brought me to Morristown here, put me in the jail and that day I didn't have anything to eat.

Q. It was Morristown you were in? A. Morristown jail, brought me there, didn't have nothing, just iron seat there, and I couldn't sleep 40

Anthony Locicero—Direct.

that night because it was too cold. Next day about 11 o'clock they come for me.

Q. Who? A. Mr. Allen—the whole four of them.

Q. Who are the whole four? A. Chief of Police Bulmer, Mr. Gallione, Allen and I don't know what the State Trooper's name is.

10 Q. And a State Trooper? A. Yes, Sergeant of State Troopers.

Q. What happened? A. They took me to Mountain Lakes.

Q. You were in Morristown in jail, were you? A. Yes, all night.

Q. What jail was it? A. City jail.

Q. And you were kept there the whole day and night? A. I was brought there at night.

20 Q. What time about? A. About, I guess about eight or nine o'clock.

Q. Eight or nine o'clock that night. And you slept there that night? A. I couldn't sleep.

Q. I mean, they gave you a place to sleep? A. That is right, I stayed there until next day about 11 o'clock.

Q. Had you been given anything to eat at all? A. No, not all day.

30 Q. The whole day at Hackensack neither? A. No.

Q. At 11 o'clock what happened? A. About 11 o'clock they come for me and they brought me to Mountain Lakes.

Q. How were you taken from that jail to Mountain Lakes? A. By Mr. Allen's car, and together with him was a State Trooper.

Q. What kind of car was it? A. A Buick sedan.

40 Q. All right. Who was in the car? A. Officer

Anthony Locicero—Direct.

Gallione, the Chief of Police of East Paterson, State Trooper and Mr. Allen. They took me down to Mountain Lakes. So at Mountain Lakes they asked me if I knew anything about it, I says no.

Q. About what? A. About that silk robbery.

Q. At what place? A. At Denville, Morris County.

Q. What did you tell them? A. I told them I didn't know anything about it. 10

Q. What did you tell them? A. I told them I did not know anything about it.

Q. Did you tell them where you were on the night they asked you that? A. I told them I was home.

Q. What happened? A. Then they got me out of the cell.

Q. How long had they questioned you? A. Just questioned me for about ten minutes. 20

Q. All right. Then they took you out of the cell? A. They took me out of the cell and they started beating me up.

Q. Who started? A. First Allen started.

Q. What did he beat you with? A. First he was beating me with his fists, and they were all beating me with their fists for about an hour, then Allen got a night-stick, and the State Trooper got a hose, and he start beating me for another two and a half or three hours; they beat me for about four hours, I was laying on— 30

Q. Where was this? A. In Mountain Lakes.

Q. Whereabouts in Mountain Lakes, can you tell us? A. In the basement.

Q. Had you ever been in the basement before in your life? A. No, there were two cells there.

Q. Were you ever in any of the cells? A. In one of the cells first. 40

Anthony Locicero—Direct.

Q. I mean, when you were being beaten? A. No, I was outside the cell.

Q. What kind of a floor was there there? A. Concrete floor.

Q. Who had the hose? A. The State Trooper.

10 Q. Do you know his name? A. I don't know his name, I know him if I see him.

Q. If you saw him here you would know him? A. Yes.

Q. Will you look around and see if he is here? A. Yes, that's him there. (Indicating)

Q. Where, which one do you mean? A. The second one there.

The Court: The second one from the door?

20 The Witness: I don't know, unless he is sitting down—yes with that fellow right there.

The Court: How is he dressed, the one you are pointing to?

The Witness: He is one of them—

The Court: You mean the gentleman standing next to Mr. Gallione?

The Witness: That is right.

30 The Court: That is the one you pick out?

The Witness: That is right.

The Court: You are sure it is not the next one?

The Witness: No.

Q. May I ask the gentleman's name?

The Prosecutor: Dickerson.

Q. Are you a State Trooper?

40 Mr. Dickerson: Yes, sir.

Anthony Locicero—Direct.

Mr. Weinberger: Thank you. I am glad I don't know you.

The Prosecutor: I don't see what that has to do with it.

The Court: It is an unnecessary remark. All right, gentlemen, both sides are to be reprimanded. Why say whether you do or do not feel happy at knowing him? 10

Mr. Weinberger: True, I want to apologize.

Q. Go ahead and tell your story. A. So they were beating me, and every time I went down—

Q. Went down where? A. Every time they knocked me down on the floor they picked me up by my hair, and they beat me up and kicked me when I was down one time. I was unconscious three or four times, but they picked me up and after three and a half hours I couldn't stand up no more. Every time they hit me I would go down. Then Gallione took about five steps back and he jumped with both feet— 20

Q. He what? A. Took about five steps back while I was laying on the floor and he jumped with both feet right on my chest, and I was out yet for a few minutes.

Q. You were out? A. Yes. 30

Q. You mean down and out? A. Then they asked me where the place is. I couldn't stand any more, I told them any place they want, I told them I—I said I tell you I do anything, tell you I murdered anybody if you say so.

Q. Did you give them any place in Newark? A. I just guessed that, I don't know it existed.

Q. Did you know where that place was? A. No. 40

Anthony Locicero—Direct.

Q. Did they go to that address? A. They said they did.

Q. What did they do then? A. They said they found a river there, or something, I don't know.

Q. When they were through with you, where did they put you? A. They took me and they brought me—

10 Q. After you told them a place in Newark which you didn't know anything about, did they stop beating you? A. Well, yes, then they stopped beating me.

Q. What did they do with you? A. They took me and put me in a cell.

Q. How long did you stay there? A. About two, two and a half hours.

20 Q. And where did they go? A. They had went to that address in Newark.

Q. Did they come back? A. Yes.

Q. Who came back? A. The whole four, Mr. Gallione, Mr. Bulmer, and Mr. Dickerson and Mr. Allen. They come back and they says, "You give us a goose chase, now we are going to murder you for sure." So I says, "All right, I will sign anything so long as you don't touch me" I couldn't stand it no more, I was already as good as dead.

30 Q. What happened then? A. So then they said be all right if you sign we won't touch you, so I said I will sign anything you say.

Q. At that time what time was that? A. About half past six, seven o'clock.

Q. What jail was that at? A. In Mountain Lakes.

Q. Now, was it at Mountain Lakes you signed this statement? A. No.

40 Q. Where did they take you from there? A. They took me to Boonton.

Anthony Locicero—Direct.

Q. To Boonton. Now, when they came back from Newark you were still at Mountain Lakes and then you told them you would be willing to sign anything? A. Anything for them if they don't touch me.

Q. Did they prepare anything for you to sign at Mountain Lakes? A. They took me to Boonton.

Q. How did you go to Boonton? A. By Allen's car.

Q. Who was in the car? A. There was the State Trooper, Mr. Dickerson, and the Chief of Police of East Paterson, and Allen, four, I guess.

Q. And they took you to Boonton? A. That's right.

Q. What happened at Boonton? A. They put me in a cell.

Q. Had you had anything to eat up to the time you said you would be willing to sign anything? A. No, I had not; then in Boonton, there I was in a cell and they left orders I could have anything I wanted in Boonton, but I couldn't eat anything.

Q. Why not? A. I was all sore, I was like crushed there (indicating).

Q. Did you have any marks on you? A. Had plenty of marks.

Q. Where? A. All over my body.

Q. Just tell the Court and jury? A. All over my body.

Q. What kind of marks? A. Black and blue marks, all kinds of marks.

Q. Any marks on your face? A. Yes, they kicked me in the chin, it was all swollen.

Q. How long did you have that swollen condition? A. Five or six days.

Q. Didn't have any lawyer? A. At that time,

Anthony Locicero—Direct.

no, then about five or six days later a lawyer come in and I know the lawyer for years.

Q. You didn't have a lawyer at that time you were beaten up? A. No—yes, my brother got a lawyer.

10 Q. Now, as a matter of fact Mr. Locicero, when you came back to Boonton you say there was some money left there by whom? A. I don't know if there was any money left, just order left.

Q. Who left the order? A. I think Allen left it.

Q. To who? A. To one of the police that take care of the Police Station there.

Q. And what was the order? A. Says if he wants something they should give it to him.

20 Q. Had you already signed the statement? A. No, I did not.

Q. You had not? A. No.

Q. And had you eaten anything up to the time you signed the statement? A. No, they brought me a sandwich and coffee in Boonton, but I couldn't eat the sandwich.

Q. What time was it they brought you that? A. About 8, half past 8.

Q. At night? A. Yes, that's right.

30 Q. When did you next see Allen? A. Well, about 10 o'clock or so.

Q. At night? A. They brought me upstairs.

Q. Brought you upstairs from where? A. Upstairs in Boonton in the Court House, in the Police Station.

Q. Where were you kept before you got up in the station? A. In the cell in the jail. I was in a cell.

40 Q. When you got upstairs what happened? A. When I got upstairs at first I didn't want to sign,

Anthony Locicero—Direct.

I said I am not going to sign, didn't have anything to do with it. So Chief Bulmer brought a skeleton head. He says, "Here"—

Q. A what? A. A skeleton head, he said, "If you don't sign here is what is going to happen to you." The head was cracked.

Q. Cracked head of a skeleton? A. Yes, he said, "Here is what is going to happen, we will crack your skull, too." 10

Q. Sure it was a skeleton head? A. Sure, I know a skeleton head when I see it.

Q. What happened then after he showed you this? A. I was—from that beating I was like crazy, I said I would sign anything, they would dictate most of it, some I told them and they dictate, and so I just signed it, that's all.

Q. Now Mr. Locicero, in this statement it says that on August 29th— 20

The Court: You are exceeding the bounds of your cross-examination.

Mr. Weinberger: I beg your pardon, I thought the Prosecutor would correct me if I was wrong.

Q. If you had not been beaten, struck the way you were, would you have ever signed that statement? A. No, sir. 30

The Prosecutor: Object to that.

The Court: I will allow it.

Q. Would you? A. No, sir.

Q. Had you anything to do with this robbery at all at Denville?

The Prosecutor: I object.

The Court: Objection sustained, you are not on your defense. You will have an

Anthony Locicero—Cross.

opportunity of course to put your witness on and make full and complete denial; anything further?

Mr. Weinberger: That is all.

Cross-examination by the Prosecutor:

10 Q. After you were beaten up did you walk to the car to take you to Boonton? A. Did I walk to the car?

Q. Yes. A. Yes.

Q. Nobody had to assist you? A. They were holding me, yes.

Q. At the time you got to Boonton remember going up a long flight of stairs? A. That's right.

Q. You walked up those all right? A. They helped me.

20 Q. How did you know your brother had a lawyer? A. When I was getting beaten there was a lawyer called up Mountain Lakes and told them if they had a prisoner by my name.

Q. How do you know he called up? A. I heard him.

Q. You were capable of hearing after being beaten and unconscious? A. I wasn't unconscious yet, they were upstairs, and called, and Allen says that the lawyers are going crazy.

30 Q. Where is the telephone, upstairs? A. That's right.

Q. And you were downstairs? A. That's right.

Q. And you heard the telephone conversation all the way through the corridors downstairs? A. I heard his name mentioned.

Q. Whose name? A. Boss.

Q. How did you know he was inquiring for you? A. I know, because Allen said so.

40

Anthony Locicero—Cross.

Q. Downstairs? A. He told the other detectives.

Q. What did he say? A. He said the lawyers were going crazy.

Q. As a matter of fact these lawyers were chasing all over Morris County with writs of habeas corpus to get you out of jail? A. So they wouldn't kill me. 10

Q. Remember Dr. George W. Comeau examining you in jail? A. Two weeks, yes.

Q. When did you get in touch with your lawyer? A. About six or seven days after I was in.

Q. Didn't you tell him then to have a doctor come in? A. Couldn't get no doctor in.

Q. Was any application made? A. Wouldn't let him in, anything about a doctor said couldn't get any doctor in. 20

Q. Do you know whether any application was made to the Court to have a doctor examine you or not? A. No, sir.

Q. How many statements did you sign that night? A. I don't know, about—about, I signed a lot of papers.

Q. You signed a lot of papers? A. That's right.

Q. Remember Detective Gallione asking you a lot of questions? A. That's right. 30

Q. Did you give him answers? A. Some of them.

Q. Didn't you give him all of them? A. Some of them I didn't have to answer.

Mr. Weinberger: This relates to a statement other than the one in question, no proffer made, and I object to it.

The Court: Of course, the Prosecutor cannot prove any reference to any other 40

Anthony Locicero—Cross.

10 statement, but he can go into the entire transaction that evening in which you claim he was subjected to the so-called third degree, and if he signed other statements voluntarily without disclosing the contents of those statements, of course, it would tend to have some bearing with the Court when the Court passes on the question whether there was any duress at the time.

Mr. Weinberger: I respectfully submit this line of questioning is improper.

The Court: No question pending.

Q. You say you were beat with fists for about an hour? A. Yes.

Q. How many beat you? A. Four.

20 Q. Then they took a night-stick and a hose and beat you for three hours more? A. One took a night-stick and one took a hose.

Q. And somebody jumped on you? A. About three hours later Gallione, I was laying down and he jumped right on me.

Q. Did you show any evidence of these bruises when you were in Boonton Police Headquarters, was your jaw swelled up, your face cut? A. I was swelled under here (indicating), that's all.

Q. Any other cuts? A. Just on my body.

30 Q. Did you say anything to anybody at Police Headquarters? A. No.

Q. Didn't you see the police officers of Boonton? A. They come down when they brought me in, that's all, I saw them.

Q. You didn't say they had beaten you up and you wanted protection from these other officers, you didn't say take me away they would kill me? A. No.

40 Q. Remember this gentleman taking the notes down, the stenographer?

Anthony Locicero—Redirect.

The Court: Indicating Mr. Smith.

The Witness: I guess it was him, I am not sure.

Q. Did you say anything to him? A. No.

Q. Didn't ask him to get somebody to protect you? A. Why should I ask him, wouldn't get nobody to do anything for me.

10

Q. You already had your lawyer?

Mr. Weinberger: He said that they were scouting around with writs of habeas corpus trying to get him out of jail.

Q. How do you know they were trying to get you out? A. Allen said so.

Q. How did you know your lawyer had already gotten an attorney—

20

Mr. Weinberger: I object to that.

Q. Or your brother had already gotten an attorney, how did you know? A. I heard it on the telephone.

Q. When you were downstairs you weren't unconscious then, were you? A. Not yet.

Mr. Weinberger: That is a three-barreled question, withdraw the objection.

The Prosecutor: He seems to understand the question, he answered it.

30

Redirect-examination by Mr. Weinberger:

Q. Mr. Locicero, you did try to get a doctor to examine you, didn't you? A. I told Heller to get me a doctor.

Q. Told who? A. Heller, from Heller & Boss' office, he said if you try to get a doctor they only

40

Anthony Locicero—Recross.

raise the bail, it was \$50,000.00, they raise it more.

Q. As a matter of fact, Locicero, how many days from the time you were taken to Hackensack was it before you were brought up to the County Jail?

10

The Prosecutor: This is not re-direct.

Mr. Weinberger: Just the one question.

The Court: I will allow it; both counsel understand that all this testimony is directed to the jurisdiction of the Court and to the ruling of the Court, and is not a matter upon which the jury base any particular finding.

Mr. Weinberger: I think that is my understanding.

20

The Court: Yes; and of course in presenting the evidence it must be with the view of not impressing the jury, but to bring the evidence before the Court for the purpose of a ruling.

Mr. Weinberger: May I ask him the one question?

30

Q. From the date you were taken from Hackensack up to the time you were taken to the County Jail how many days elapsed? A. Well, in the morning they took me, and the next night they brought me, later that night, they brought me to the County Jail, late at night, or either the next two days after, in the morning.

Recross-examination by the Prosecutor:

Q. You say you told Mr. Heller and who is Mr. Heller? A. He is from Heller & Boss' office.

40

Q. He is a lawyer? A. That's right.

George W. Comeau—Direct.

Q. And you told him you wanted to be examined by a doctor? A. That is right.

Q. You told him you had been beaten up? A. Yes, sir.

Q. You never were examined by a doctor except the County Physician, Dr. Comeau, that is the only doctor you were examined by? A. Yes.

10

(Witness excused.)

GEORGE W. COMEAU, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Dr. Comeau, you are a practicing physician of the State of New Jersey? A. I am. 20

Q. And you practice here in Morris County? A. I do.

Q. How long have you been practicing medicine? A. A little over eight years.

Q. What schools are you a graduate of? A. Montreal University.

The Court: No question of qualifications. He is the County Physician.

Mr. Weinberger: Your Honor please, I didn't hear the questions being asked and I broke in. 30

The Court: I am cutting short what are apparently useless matters, the Doctor's qualifications are admitted.

Q. You are at present County Physician? A. I am Jail Physician.

Q. Did you examine Anthony Locicero in the County Jail? A. I did. 40

George W. Comeau—Direct.

Q. When? A. On October 7, 1933.

Q. What condition did you find him in? A. I found him in perfect physical condition with the exception of a few scratches on the inside of his left shoulder blade.

10 Q. Were there any marks or bruises or black and blue marks around his body? A. None—these marks of the three scratches.

Q. And was he suffering from an organic disease? A. Yes, he was suffering from a venereal disease, gonorrhea.

Mr. Weinberger: I object to that and ask it be stricken out.

The Court: Yes.

20 Mr. Weinberger: May I also move for a mistrial? I don't think these things are a proper part of the case, they are prejudicial, and I think unwarranted upon any theory, and I respectfully move for the withdrawal of a juror in this trial.

The Court: The motion is denied.

Mr. Weinberger: Exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

30 The Court: He could be afflicted with two or three venereal diseases, and he wouldn't be guilty of this crime.

Q. Did he show any evidence of any beating?
A. No.

Cross-examination by Mr. Weinberger:

40 Q. Told you he was beaten up, didn't he? A. He said what?

George W. Comeau—Cross.

Q. He told you he was beaten up? A. No, he told me he was run over by a truck.

Q. Did he mention the name of the man who he called, the truck? A. No, he did not.

Q. What did you examine him for? A. He was complaining of pain in his side.

Q. At whose request did you examine him? A. I have to examine all jail prisoners. 10

Q. Did anyone suggest you examine him? A. The Warden notified me I had to go down and examine him.

Q. There was a claim, was there not, that he had been brutally assaulted by the authorities? A. Not to my knowledge.

Q. You didn't know that? A. No.

Q. You didn't know that lawyers had been trying to locate his whereabouts to get him out with habeas corpus because he had been brutally assaulted? A. No, I had not. 20

Q. You had not? A. No.

Q. Where were these marks you found, just point them out? A. He had three scratches right in this location here (indicating).

Q. How long were they? A. They would be about oh, I suppose, three or four inches long, very slight scratches.

Q. That was on the 7th of October? A. That was on the 7th of October, yes. 30

(Witness excused.)

Frank Robert Kromka—Direct.

FRANK ROBERT KROMKA, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Sergeant, you are Sergeant of Police down at Boonton? A. I am.

10 Q. And on the day of October 4th did you see Anthony Locicero? A. I did.

Q. Where? A. Police Headquarters.

Q. And did he show any evidence of being beaten or bruised? A. None whatsoever.

Q. Did he make any complaint to you? A. He did not.

Q. Did you lock him up? A. I did.

20 *Cross-examination by Mr. Weinberger:*

Q. Who brought him there? A. Detective Allen.

Q. Did you get a commitment? A. Yes, he showed me the warrant.

Q. Did you get a commitment? A. No, I did not.

The Prosecutor: I don't think that is relevant on the question of beaten up.

30 The Court: Not on the question of duress.

Mr. Weinberger: I submit, part of the res gestae, and I have a legal right to show—

The Court: I don't think the rule res gestae goes into that at all.

Mr. Weinberger: I urge it goes into the defendant's statement, motive being there.

40 The Court: He couldn't know the motive of other people, he had no motive; as a prisoner he was under apprehension. He

Frank Robert Kromka—Cross.

went where he was taken, he didn't know what the motive of the people was. His own motive would be inconsequential and immaterial.

Mr. Weinberger: May I also say I think it is illegal imprisonment. They had no right to have him there, they could be sued for damages.

10

The Court: You cannot expect the Court to agree with you.

Q. You received him there at what time? A. What time?

Q. Yes. A. About 6:45.

Q. Have you a basement there? A. Ground floor.

Q. Was he ever downstairs in the basement? A. There is no downstairs to it, this is on a ground floor.

20

Q. You were on the street level? A. Yes.

Q. Where are the cells at? A. In the back.

Q. Was he taken out of the cell at any time after he got there? A. No, sir.

Q. Was he interviewed by anybody while he got there? A. No.

Q. Or after he got there? A. No, sir.

Q. How long was he there altogether? A. Well, from 6:45—you mean in the cell?

30

Q. I mean in your presence. A. From 6:45 to 2 in the morning.

Q. Did you place him in a cell? A. I did.

Q. Was he charged with crime by your authorities there? A. The warrant was shown to me by Lieut. Allen, and he says to me, "Will you keep him here until we go out and get something to eat and come back," which I did.

Q. Were you given orders to give him food? A. I was.

40

Frank Robert Kromka—Cross.

Q. Did you bring him in a sandwich and a cup of coffee? A. I had a ham and egg sandwich and a container of coffee brought in.

Q. Did you observe his physical condition? A. I did.

Q. Did you examine him? A. No, I did not.

10 Q. Didn't see his clothes off of him? A. No, I did not.

Q. Don't know what his condition was physically? A. Couldn't say, he appeared to me all right, he walked to the back of the cell.

Q. He appeared all right? A. I asked him what he wanted, he said ham and egg sandwich and some coffee, brought that to him, and he walked upstairs.

The Court: Did he eat it?

20 The Witness: He did, didn't see anything he left in the cell.

Q. Did you see him eat it? A. No, I did not.

Q. I say, you did not see him eat it?

The Court: He says, "No, I did not, but there was nothing left."

Q. Where it went you don't know? A. I don't know.

Q. Was he taken upstairs to give a statement?

30 A. He was.

Q. Were you a witness to that statement? A. I was there at all times, yes, except now and then going downstairs answering a call, that wouldn't be over two minutes.

The Court: It should be marked for identification S-2.

(Received and marked for Identification, Exhibit S-2.)

Frank Robert Kromka—Cross.

Q. Did your name appear on this statement?

A. No, sir.

Q. Was Mr. Dickerson there? A. He was.

Q. The State Trooper? A. He was.

Q. Did he tell you how long he was kept in Mountain Lakes? A. No, sir.

Q. Did you discuss Mountain Lakes with him at all? A. No, sir. 10

The Court: When you speak of "he", you mean the defendant?

Mr. Wienberger: Yes.

Q. When I asked you the questions, the two previous questions, whether he had discussed Mountain Lakes with you, I meant the defendant, did he discuss Mountain Lakes at all with you? A. He did not. 20

Q. You had no conversation about that at all? A. None whatsoever.

Q. You did not ask him what he had been doing there or what they had been doing to him? A. No, I did not.

Q. Now, what time did he leave Boonton, your headquarters? A. Around 2 o'clock in the morning, 2 A. M.

Q. In other words, he stayed there, he was kept there long enough to sign the statement and he was taken where? A. I couldn't say. 30

Q. Did you give him a discharge from your place? A. Well I turned him over to Lieut. Allen.

Q. You handed him over? A. Yes.

Q. Had lawyers inquired from you whether he had been there, lawyers, or Heller & Boss? A. No, sir.

Q. Get any telephone calls from lawyers trying to locate this defendant? A. No, sir. 40

John H. Dickerson—Direct.

John H. Dickerson—Cross.

Q. Did you learn anybody in your department had received telephone calls? A. There was nobody there but I.

Q. No one but you? A. Yes.

(Witness excused.)

10

JOHN H. DICKERSON, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Trooper Dickerson, you are connected with the New Jersey State Police? A. Yes.

20 Q. Do you know Anthony Locicero? A. Yes, sir.

Q. Did you lay your hands on Locicero to beat him or ill treat him? A. No, sir.

Cross-examination by Mr. Weinberger:

Q. You were there all the time? A. Yes, sir.

Q. You didn't sign as a witness, did you? A. I don't know, I signed some of them.

30

The Prosecutor: Yes, he did, too.

By the Prosecutor:

Q. I show you this paper and ask you if you witnessed Anthony Locicero's signature? A. Yes.

The Court: Now you may continue, Mr. Weinberger.

By Mr. Weinberger:

40 Q. If you had struck him you would tell us?

John H. Dickerson—Cross.

A. I am under oath to tell the truth, I certainly would.

Q. You of course never heard of police beating anybody?

The Prosecutor: Objected to.

The Court: Objection sustained.

Mr. Weinberger: I pray an exception.

The Court: Exception allowed.

10

Exception allowed and sealed.

ALBERT H. HOLLAND,

Judge.

Q. Do you know what the third degree is?

The Prosecutor: That is objected to.

The Court: Objection sustained.

Mr. Weinbergere: I pray an exception.

The Court: Exception allowed.

20

Q. Were you at Mountain Lakes? A. Yes, sir.

Q. How long on this day that Locicero was there? A. Possibly a half an hour.

Q. What happened during that half an hour?

A. We were questioning the defendant.

Q. And he was answering? A. Yes.

Q. Did you take down what he said? A. No.

Q. Why not? A. Not all of what he said.

Q. Not all of what he said? A. Yes.

30

Q. Who took it down? A. I did.

Q. In writing? A. Yes, some of it.

Q. Have you got it here? A. No, I took down the address he gave us in Newark.

Q. Anything besides the address? A. Not that I can recall.

Q. Did you take down the questions and answers that were put to him at Mountain Lakes?

A. No.

40

John H. Dickerson—Cross.

Q. Why not? A. I am not a stenographer.

Q. You were trying to get a statement from him, weren't you? A. We were just questioning him.

Q. You were trying to get a statement from him at that time, weren't you? A. No.

Q. What was he taken to Mountain Lakes for?

10 A. For questioning.

Q. Who was going to do the questioning? A. The police officers that were there.

Q. How many of you? A. Four or five.

Q. How many were there, was it four or five?
A. There was Dan Allen, Detective Gallione, Chief Bulmer and myself, I believe that was all at that time.

Q. Who started questioning him? A. I don't know who started it.

20 Q. Did he deny he was in any silk robbery?
A. Not that I can recall.

Q. You can't tell this Court now whether or not he denied being in a silk robbery in Denville?
A. No, I can't recollect, no.

Q. Well, you were anxious to record the fact whether or not he was there, why didn't you write it down? A. Particularly anxious at that time to get the silk.

30 Q. You weren't interested at that time whether or not he was involved? A. He had already been identified as being involved.

Q. I just asked you whether or not you were interested in what he had to say? A. Why certainly.

Q. Were you one of the gentlemen down at the Hackensack Court? A. I was down there.

Q. Who got the police hat to put on the man?

40 The Prosecutor: Objected to, that is not the question of duress.

John H. Dickerson—Cross.

The Court: Not proper cross.

Mr. Weinberger: Possibly, I withdraw the question.

Q. Then, as a matter of fact, you came with him from Hackensack, didn't you? A. Yes.

Q. And the first stop was the Mountain Lakes jail? A. No.

Q. Where? A. The State Police barracks in Morristown. 10

Q. You stopped at the barracks? A. Yes.

Q. State Troopers were there, how many? A. I don't recall.

Q. What did you do with him there? A. Took his fingerprints and photographed.

Q. Who took them? A. A man in the identification bureau.

Q. And from there where did you take him? A. He was taken to Morristown City Jail. 20

Q. The Morristown City Jail? A. That is right.

Q. And now, sir, at the barracks did you question him? A. Very little.

Q. Did you question him? A. Possibly a few questions, but very little.

Q. When you got to Morristown jail who placed him in jail? A. I don't recall the officer's name, on the desk that night. 30

Q. Did you have a commitment? A. No.

Q. What time did you reach the Morristown jail? A. I don't recall exactly.

Q. About what time? A. Possibly nine or ten o'clock.

Q. How long did you keep him there? A. Until the next morning.

Q. Did you give him any food there that night? A. I asked him if he wanted anything to eat, he said no. 40

John H. Dickerson—Cross.

Q. Will you answer my question?

The Court: He answered the question.

A. He was offered food.

Mr. Weinberger: May I have an answer, yes or no?

10

The Court: He asked him if he wanted something to eat and he said no; so he didn't give him anything.

Q. Was there nothing given to him to eat? A. No.

Q. In the morning what time was he taken out?

A. If I recall about 11 o'clock.

Q. Who took him out? A. Detective Allen, Gallione and Chief Bulmer and myself.

20

Q. Where was he taken? A. Mountain Lakes.

Q. In whose car? A. I don't recall whose car he rode in, two cars were there.

Q. Was it Allen's Buick? A. Might have been.

Q. Were you in that car, too? A. No—maybe I was—I guess I was that morning, yes.

Q. Now, you reached Mountain Lakes jail at what time? A. Oh, I don't recall exactly.

Q. Did he have anything to eat there? A. Not that I know of.

30

Q. Then, from the evening before down to 11 o'clock nothing was given to him to eat that you are sure of? A. I was not with him all the time.

Q. Said he did not want anything? A. I don't know what he had to eat.

Q. After 11 o'clock until what time was it you were with him? A. Got him at Morristown, took him to Mountain Lakes.

Q. Yes. A. Took him over to Mountain Lakes, he was there for approximately half an hour.

40

Q. You left him there? A. Yes.

John H. Dickerson—Cross.

Q. You went to Newark? A. That is right.

Q. Who questioned him at Mountain Lakes? A. Mr. Gallione, Mr. Bulmer, Mr. Allen and myself.

Q. Did you leave him there? A. Yes.

Q. All went to Newark? A. Yes.

Q. Found there was no such address in Newark? A. There was an address.

Q. There was? A. Yes.

Q. What was the place? A. An old show boat.

Q. A boat on the river? A. That is it.

Q. It had no number on it?

10

The Court: It may be an old boat, nobody contends it was good.

Q. I mean, there was no number on that boat, no address? A. No.

Q. You came back and told him that is a river? A. Yes, might have told him that.

20

Q. After you got back and went on the wild goose chase, as it were, were you at all aggrieved at the fact, I mean sore? A. Can't say I was.

Q. Why not, take it friendly? A. We often go on those wild goose chases.

Q. And the result was, what happened? A. He was taken to Boonton.

Q. How long did you keep him at Mountain Lakes after you got back? A. Only a very few minutes.

30

Q. What did you take him to Boonton for? A. To take his statement, took him to Boonton to arraign him.

Q. Take his statement? A. Yes.

Q. At Mountain Lakes, is there a basement? A. There is.

Q. Did you have him down the basement? A. That is where the cells are.

Q. Is there a hose there? A. Not that I seen.

40

John H. Dickerson—Cross.

Q. Was there a hose there? A. No, sir.

Q. You didn't touch him at all? A. Absolutely not.

The Court: You are speaking of Mountain Lakes?

Mr. Weinberger: Yes.

10 The Court: I did not even understand the defendant, he contended he was struck in Mountain Lakes.

Mr. Weinberger: I think your Honor will find it was Mountain Lakes.

Q. Where was it, let us straighten this out?

A. Where was what?

Q. That is what I am trying to find out. At Mountain Lakes do you know whether there is a hose there? A. Didn't see any hose there.

20 Q. You did not? A. No.

Q. You say you took him to Boonton to write his statement up? A. Yes.

Q. What statement? A. That is one of them right there I witnessed.

Q. Why didn't you write a statement out there in longhand in Mountain Lakes? A. Well, accommodations in Boonton are better I suppose, that is one reason.

30 Q. More accommodation? A. Yes.

Q. Wasn't it because you wanted to play safe and wanted to get a Court Stenographer in?

The Prosecutor: Play safe and get a Court Stenographer in?

The Court: If you object—

The Prosecutor: I object to characterization "play safe".

40 The Court: I sustain that objection. The meaning of the question ought to be made clear.

John H. Dickerson—Cross.

Mr. Weinberger: The witness answered it.

The Court: I will sustain the objection.

Mr. Weinberger: I think he understood it.

The Court: That is what I pointed out to both of you, you understand, and it is entirely inexplicable in some measure to both the jury and to the Court. 10

Q. When did you leave for Newark from Mountain Lakes? A. I don't know, we were in Mountain Lakes about half an hour or approximately half an hour when we left.

Q. What time did you get to Mountain Lakes? A. I don't know.

Q. Haven't you got a record anywhere to show us what you did that day and the time? A. No, sir. 20

Q. How long were you at Newark? A. We were in Newark I suppose from the time we left Mountain Lakes until we got back.

Q. Yes. A. Probably two and a half, three hours.

Q. Any conversation when you got back? A. A little, just told him there was no such place, no such drop as he had said. 30

Q. At that time when you got back you realized he told you an untruth and he was not telling you the facts? A. I understand that that wasn't the fact, yes, that statement.

Q. What had he said up to that time that was a fact? A. I don't know just exactly what he did say.

Q. Tell us anything he said up to that time that you say was a fact? A. I do not recall what he said there that day. 40

John H. Dickerson—Cross.

Q. Then how did you know it was time to take him down to make a statement in Boonton if the fact is you found out he was untruthful to you?

A. He was untruthful about that one statement.

Q. You don't know anything that was truthful?

A. No, not now, no.

10 Q. Had you given him anything to eat at Mountain Lakes? A. I did not personally.

Q. Did you see anyone give him anything to eat at Mountain Lakes? A. No, gave him a glass of water.

Q. Now, you took him to Boonton at what time?

A. A little after 6 o'clock when we got to Boonton.

Q. Kept him there until what time? A. Until around two in the morning.

20 Q. From six to two? A. I said a little after six.

Q. Had he been given anything to eat? A. He was given an opportunity to eat.

Q. But you did not see him eat? A. No.

Q. How long had he been interrogated there? A. About 8 o'clock to 2.

Q. How many of you were doing the questioning? A. Who was doing the questioning?

30 Q. How many of you were doing the questioning? A. About four.

Q. And who were they? A. Gallione, Chief Bulmer, Detective Allen and myself.

Q. You say that at no time did anyone put a hand on this defendant? A. Not that I seen.

Q. You say at no time did anybody strike the defendant? A. That is what I said.

Q. You say that at no time was a hose used there or a night-stick? A. That is what I said, yes, sir.

John H. Dickerson—Cross.

Q. Did you see a skeleton there that night? A. Boonton Police Headquarters?

Q. Yes. A. I seen a skull.

Q. Did anyone show him the skull? A. I believe they did.

Q. Who? A. I don't know.

Q. Let us have it, who? A. I don't recall, I remember the skull being there.

10

Q. Anybody pick it up and show it to him? A. I don't know.

Q. Did it have a crack in it? A. I believe it did, I wouldn't say that as a fact, though.

Q. How was it shown, do you know? A. No, I didn't say it was shown to him.

Q. You won't say that it was not? A. No, I won't say that it was not there.

Q. At two in the morning you took him where? A. I didn't take him anywheres.

20

Q. Who took him? A. Detective Allen.

Q. Did you go along? A. No, sir.

Q. Why was he removed at two in the morning, do you know? A. No, I came back to Morristown.

Q. You were there up to the time he was taken away, weren't you at two in the morning? A. Yes.

Q. And you don't know the reason why he was taken from Boonton? A. Because we had finished with him.

30

Q. You had finished him? A. I say we had finished with him.

Q. You are sure you didn't finish him, and that was the reason he was ushered off to Morristown?

A. Didn't look like he was finished to me.

Q. He still had a little to go? A. Nobody bothered that man at all.

40

John H. Dickerson—Redirect.

Q. Where was this skull kept? A. Upstairs in the Boonton Police Headquarters.

Q. Whereabouts? A. It was on the table when I seen it.

Q. What table? A. On the left as you go in the door.

10 Q. Were the notes taken down in shorthand or were they typed? A. They were typed out right there in Headquarters.

Q. No stenographic notes taken at all? A. No, sir.

Q. Did the defendant deny having anything to do with this robbery in Denville? A. No.

Q. Never did? A. I can't recall that he did.

20 Q. From the time you first saw him and he was taken from Hackensack at no time did he deny being in that robbery? A. No, I don't recall that he did.

Q. You won't say that he did not? A. He might have.

Redirect-examination by the Prosecutor:

Q. Did you read this statement to Locicero, the defendant here? A. It was read to him.

30 Q. Do you remember him reading it? A. He read it, yes.

Q. And this address you went to in Newark is a former night club on an old barge? A. Yes.

Q. And did the watchman tell you what number that one is?

Mr. Weinberger: Objected to.

The Court: That is hearsay, he may ask him if he found out.

40 Q. Did you find out? A. If I remember right the number he gave was 64.

John H. Dickerson—Redirect.

Q. And is that what this night club went by, 64, on this same street this man gave you? A. There was no number on the street, that is where 64 would be.

Q. And this barge was used as a night club? A. Yes.

Q. What was the character of the neighborhood this barge is moored in? 10

Mr. Weinberger: Objected to.

The Court: Objection sustained.

Q. What is the paving of the road where this barge is moored?

Mr. Weinberger: Objected to.

The Court: I will allow it.

Exception allowed and sealed.

ALBERT H. HOLLAND,

Judge. 20

The Witness: Paved with cobblestones, rough.

Q. And what is the character of the buildings around the neighborhood? A. The majority of them are mills, storehouses, so on.

Q. Very little apartment houses where people live? A. No. 30

Recross-examination by Mr. Weinberger:

Q. You don't mean to convey the impression that this was the number of a building, 64, do you?

The Prosecutor: I object to the characterization conveying the impression.

The Court: I will allow it. It is cross-examination. 40

John H. Dickerson—Recross.

The Witness: What was the question?

Mr. Weinberger: Repeat the question.

(Question repeated as follows: "Q. You don't mean to have the impression that this was the number of a building, 64, do you?")

The Witness: I said there was no number of this boat, but—

10

Q. The place—

The Court: Wait a minute, he hasn't finished; but what?

The Witness: Taking into consideration the other addresses on that street, 64 would be where that boat is, if 64 was the right number. I think that is the right number.

The Court: Now, let us see. We will take an adjournment until 2 o'clock.

20

RECESS.

AFTER RECESS.

JOHN H. DICKERSON, resumes the stand and testifies further as follows:

Recross-examination by Mr. Weinberger (Continued):

30

Q. This boat you speak of, is on the river, the Passaic River? A. Yes, sir.

Q. It is not on the land at all? A. No, it was tied fast to the river bank.

Q. It is tied fast? A. Yes.

Q. It has no number on it? A. No.

Q. When you say 64, you mean that the vacant land, if there was a building erected on it, or some part would have a number 64, is that it? A. Yes, it was a parking space, a vacant lot.

40

John H. Dickerson—Recross.

Q. It takes up almost a block of vacant land?

A. What?

Q. The place where the boat is had a land front that is all vacant for almost a block? A. No, I would say a half a block, maybe three-quarters.

Q. It is right at this junction where the bridge is, at the bridge leading into Harrison between the river and the first street? A. Going towards Newark. 10

Q. There is no number 64 on that street, is there? A. No.

Q. And what is the name of the street? A. Bridge Street.

Q. You say that is a mill zone? A. I said mills and storehouses, warehouses, etc.

Q. What is the number of the gas station that is there—there is a gas station there first, is there not? A. No, I didn't—where? 20

Q. The place where you parked the car you spoke of a parking space. A. There may be a gas pump there, I don't know.

Q. Don't know the number? A. No.

Q. Isn't that a three hundred number, not 64, or anywhere near 64? A. I don't know what the number is.

30

Redirect-examination by the Prosecutor:

Q. This craft, or whatever it is, formerly used as a night club, is permanently moored there?

A. Yes.

Q. It doesn't navigate up and down the stream?

A. No.

(Witness excused.)

40

George Smith—Direct.

GEORGE SMITH, sworn on behalf of the State, testifies as follows:

Direct-examination by Mr. Meslar:

Q. Mr. Smith, you are one of the official court stenographers? A. I am.

10 Q. Where do you live? A. Borough of Lincoln Park.

Q. And on the night of October 4th, were you called to Boonton? A. I was.

Q. What time did you get there, about? A. Between eight and nine.

Q. Do you remember taking down certain answers and questions? A. I do.

Q. At Boonton? A. I do.

20 Q. And do you know who was being questioned? A. I do.

Q. Who? A. Mr. Locicero.

Q. This defendant here? A. That's the man.

Q. And did he answer the questions that were asked him? A. He did.

Q. And did you take them down in shorthand or longhand? A. Direct on the typewriter.

Q. I show you certain sheets of paper and ask you if these questions and answers were taken down by you? A. They were.

30 Mr. Meslar: I offer these for identification.

(Marked S-3 for identification.)

Q. And do you know the condition of Locicero at this time? A. I do.

Q. Did he have anything wrong with him? A. Not then.

Q. Did you see any evidence of having been beaten? A. No.

40 Q. Did he answer the questions coherently? A.

George Smith—Cross.

Yes, he did; and I asked him to repeat once or twice.

Q. His answers were responsive to the questions asked him? A. Oh, yes.

Q. And he didn't complain to you about having been beaten, did he? A. No.

Mr. Meslar: Cross-examine.

10

Cross-examination by Mr. Weinberger:

Q. Who phoned you? A. Mr. Gallione; it was a hurry up call.

Mr. Meslar: I object to that characterization—

The Court: I will allow it.

A. (Continued) Just asked me to come up there and take a statement. 20

Q. You left your house about what time at night? A. Well, he called me about seven and I left between eight and nine.

Q. And referring to Exhibit S-2, was that taken down in question and answer form? A. On the typewriter, yes.

Q. You remember that distinctly? A. Yes.

Q. And you typed the questions and the answers he gave? A. Exactly. 30

Q. I ask you to look at the statement and tell the Court and jury whether it's taken down in question and answer form? A. This one wasn't taken down in question and answer form, and I may have to retract that statement.

Q. This one wasn't? A. No.

Q. It wasn't? A. No.

Mr. Meslar: This isn't the statement I questioned him about.

40

George Smith—Cross.

Mr. Weinberger: I questioned him about that; and he said question and answer form. Let's be fair about it.

10 The Court: No question about being fair involved. The prosecutor mentioned that your question to S-2 is not cross-examination because he only asked him about S-3. I am permitting you to ask him again.

Mr. Weinberger: This is the one we are concerned with. S-3 was also presented and S-2 had been previously marked. Apparently Mr. Smith wrote them both and the witness stated he retracted his former answer about that being taken question and answer, that S-2 was taken in narrative form.

20 Q. Which was taken first? A. Mr. Gallione questioned him first.

Q. Which statement was taken first, S-2 or S-3?

A. The longest one; that one was taken first. (Indicating).

The Court: Indicating S-3?

The Witness: Yes.

Q. And this was taken— A. Second.

30 Q. Do you know why two statements were taken? A. Why, I heard they had something to do with different—

Q. Do you know? A. Only what I heard—no, I don't know.

Q. When you got there, where was the defendant? A. I don't know where he was; they brought him up after awhile.

40 Q. To what room was he brought? A. I don't know. I am not sure. I think it's the council chamber and police headquarters.

George Smith—Cross.

Q. Well, where was it, police headquarters? A. Council chamber; I think it was; there's some desks there.

Q. And you didn't take any stenographic notes, did you? A. They didn't want them. They wanted them direct on the machine. They wanted it all done that night.

Q. Did you have your stenographic pad with you? A. I did. 10

Q. You were prepared to take stenographic notes? A. I was.

Q. Who says they didn't want them? A. I think Mr. Allen, I am not sure.

Q. Did he tell you he wanted this out in a hurry? A. He wanted it that night.

Q. How long did you take to do the work on S-3? A. I am not sure exactly how long; how many pages is it, Mr. Weinberger, please? 20

(Mr. Weinberger hands the witness a paper.)

A. (Continued) Approximately two and a half to three hours.

Q. Just this one? A. Just that one.

Q. You started it about what time? A. I guess it was closer to nine o'clock.

Q. Well, then, after you got through taking this one, who suggested the next statement, S-2? 30

A. Mr. Allen said he wanted to take a statement.

Q. He wanted what? A. He wanted to have a statement taken.

Q. Didn't you tell him you got one? A. I didn't tell him anything.

Q. Nothing at all? A. No.

Q. Did he tell you that was important, to get it that night too? A. He didn't tell me about that particular one; he told me when I began. 40

George Smith—Cross.

Q. Why didn't you take the other statement down in question and answer form, S-2? A. Well, Mr. Allen, he took the statement a little differently than Mr. Gallione did, that's the only answer. He would recite the facts contained in the statement and Mr. Locicero would say yes, and that's why it was put in that form.

10

Q. In other words, Mr. Allen took the statement, S-3 and then he transcribed it into his own language, is that it? A. That's right.

Q. And asked him a question and he would say yes or no? A. Well, he would make a statement and if it wasn't corrected, why, I would put that down.

Q. Whatever Mr. Allen said you would put down if he didn't correct it? A. Yes.

20

Q. But what appears in statement S-2 is what Mr. Allen dictated to you, to which you say the defendant didn't make any correction of; is that correct? A. That's correct.

Q. Why didn't you in statement S-2 make the suggestion that Mr. Allen was making the statement?

Mr. Meslar: I don't think this goes to the direct-examination, this cross-examination, this is all we are inquiring into now.

30

The Court: I will allow it. Mr. Smith may say he did anything that he did.

A. I had nothing to do with it; if Mr. Allen wanted it that way.

Q. And you were taking orders from Mr. Allen too? A. Well, I did it the way he wanted it.

Q. Now, in referring to Exhibit S-2 for identification, it reads: "I, Anthony Locicero, age 31, residing at 48 Dayton Avenue, Passaic, N. J. do

40

George Smith—Cross.

make the following statement"—that was stated by Mr. Allen, wasn't it? A. Yes.

Q. "Of my own free will and accord without fear—"

Mr. Meslar: I object to this; this has nothing to do with duress; this is only a question of duress, whether this statement was obtained—

10

The Court: No, this witness is being handed a confession—

Mr. Meslar: No, but it is a question whether the statement is admissible.

The Court: You are offering a statement; his confession, and you are producing other witnesses, both those who signed it and who took it. I will allow the question.

20

Mr. Meslar: I think that the inquiry is whether this statement is admissible and taken under duress—

The Court: Objection overruled.

Q. I have read from this S-2: "of my own free will and accord without fear, threat or compulsion on the part of anyone." That was also dictated by Mr. Allen? A. Yes.

Q. "I am single, and live with my mother at the above address." A. Yes.

30

Q. And that also was dictated by Mr. Allen? A. That's right.

Mr. Meslar: Same objection.

Q. And the same applies to the entire statement; the subject matter was dictated to you by Mr. Allen and it reads in the first person as if Locicero gave it, the fact being, however, that Allen did; is that right? A. That's right.

40

George Smith—Cross.

The Court: When you refer to S-2, you refer to the statement which Locicero signed?

The Witness: Exactly.

Q. Were you present when he was asked to sign it? A. Yes, I was there.

10 Q. You did not witness it? A. I did not witness it.

Q. You wrote this down on the typewriter, as you say, what Mr. Allen was dictating? A. Yes.

Q. It was not read by the defendant, was it? A. I am not sure; I can't say now.

Q. Isn't it a fact he said he didn't want to read it; he would sign nothing? A. No; I would not say that's a fact, that he would sign nothing.

20 Q. But whether he did read it or not, you don't know? A. I am not sure. I was getting my stuff together and getting ready to go out then.

Q. This statement was written at Boonton? A. Yes.

Q. Both these statements, S-2 and 3? A. Yes.

Q. Was anything said as to where he came from, to get to Boonton? A. No.

Q. Was anything said in your presence as to how long he was at Mountain Lakes? A. No.

30 Q. Was anything said about the treatment he received at Mountain Lakes by anybody? A. No.

Q. Did you know he had been in the Morristown City Jail that night? A. No.

The Court: What difference does it make whether he knew it or not?

Mr. Weinberger: I want to know whether the whole matter had been gone over in his presence.

40 Q. I haven't looked through the statement in

George Smith—Cross.

its entirety: someone showed him a skeleton, didn't they, in your presence? A. A skull.

Q. You didn't put that in the minutes here? A. No.

Q. Who showed him that? A. Chief Bulmer went downstairs and came back with a skull and laid it on the table and that's all I knew; I was busy. 10

Q. Didn't it have a crack in it? A. I think there was; they were talking between them; all I could gather, looks like a fractured skull there.

Q. There was talk about a skull with a fracture? A. They were talking among themselves.

Q. Who did you say brought it up? A. Chief Bulmer.

Q. Where did he lay it? A. Just on a desk there. 20

Q. On what desk? A. Why, there were desks around and he came in and laid it on a desk in front of him.

Q. In front of who? A. Chief Bulmer.

Q. Where the defendant was sitting? A. No, he was sitting right at my side.

Q. Where he could see it and you could see it? A. Oh, I saw it.

Q. What was said when it was brought up? A. I don't recollect what was said. 30

Q. Well, it was brought up for some reason? A. I don't know what reason.

Q. That was sent there for some reason, wasn't it? A. I was busy, Mr. Weinberger.

Q. I know that, Mr. Smith. I am trying to find out. How long had you been there before the skull had been brought there? A. I don't know.

Q. Well, an hour or a half an hour or what 40

George Smith—Cross.

was it? A. I don't remember how long I was there; some time, though.

The Court: Had you finished with any of these, either the first or second statement at that time?

The Witness: I am not sure, Judge.

10 Q. You hadn't started yet? A. Oh, yes.

Q. Mr. Smith, isn't it a fact that just as you sat down at the typewriter a chap brought up this skull and placed it right within sight of the defendant and then you proceeded to type? A. No.

Q. You don't know now when it was brought up? A. I couldn't tell you the time, no.

Q. Did you ask him anything about the skull?

20 A. I ask who?

Q. Anybody? A. No.

Q. Didn't you have any opinion as to what it was brought there for?

Mr. Meslar: I object, not relevant.

The Court: Sustained.

Mr. Weinberger: Exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,

30

Judge.

Q. Wasn't there some remark passed by the Chief as to why he brought the skull? A. Not that I can recall now.

Q. Was there anything said to the defendant about the fact that if you don't sign the statement when it's wrote that's how you will look before we are through with you? A. No, sir.

40 Q. You don't remember what was said, though, do you?

George Smith—Cross.

The Court: No, his answer was, that was not said. The answer was, no.

Q. My next question is, you don't remember what was said? A. No, I don't remember what was said.

Q. And you can't tell us anything about what was said? Your mind is blank on that subject? 10
A. Well, it's very hazy.

Q. Yes, that's what I mean. So you can't recall the attitude of the defendant while he was being interrogated? A. No.

Q. You stayed there from about nine to two? A. Yes.

Q. And every gentleman in the department that was there did question him at times? A. While I was there they did question him. Gallione, he conducted the examination by himself, 20
and Mr. Allen conducted his examination.

Q. But all were present in the room while the defendant was being questioned? A. That's right.

Q. This S-2 was not made—I withdraw that. You didn't place your name on S-2? A. No.

Q. Why not? A. I don't know that there's any reason why.

Q. Did you do it on S-3? A. We do as a rule; 30
I probably overlooked it on one of them.

Q. Was there any reason for you overlooking it? A. Well, it's a different form; we have a form.

Q. On S-3 you mention the fact that George Smith is stenographer, do you not? A. Yes.

Q. On S-2 for identification you do not mention the fact? A. No.

Q. On S-3 for identification you mention the fact that the statement was made this day at Boon- 40

George Smith—Cross.

ton Police Headquarters. That's not placed on S-2 for identification, is it? A. No.

10 Q. In S-3 you say there was present Detective John Gallione of the Bergen County Prosecutor's Office, Chief Bulmer of East Paterson and George Smith, stenographer. That is not mentioned or anything like that is mentioned and nothing is mentioned who was present at S-2; that's correct? A. That's correct.

Q. There were more present than shown on S-3; that you said? A. That's right.

Q. Was there any reason why they were omitted? A. I don't know that, I didn't know them.

Q. Do you recall what their names were? A. No.

20 Q. On S-2 you don't mention anyone around. You don't say Mr. Allen was doing the dictating? A. No. It was a different form of statement.

Q. But there was still a man putting in the question, doing the questioning?

The Court: That is over-ruled.

Q. On S-2 Mr. Allen's name was not once mentioned that Mr. Allen is the man who dictated it?

30 The Court: That's repetition. He said Mr. Allen's name was not in that S-2.

Q. Now, reading statement S-2 for identification, is there any way that any one could tell as to who was doing the dictating?

Mr. Meslar: I think the statement speaks for itself.

The Court: No, I will allow the question; if the statement were in evidence, that would be so.

George Smith—Cross.

Mr. Meslar: This is only on duress, your Honor.

The Court: I will allow it.

Q. That does not say that he dictated it? A. No.

Q. In reading the statement, isn't it a fact that on reading it, it would indicate that the defendant was doing the speaking? A. Yes, it would. 10

Q. And nowhere in the language would it indicate that any one but the defendant was doing the speaking, is that correct? A. Yes.

Q. It's all the personal pronoun, I? A. Yes, first person.

Q. Is it not customary for you always to make mention of the fact as to what occurrences took place when you are making a statement?

Mr. Meslar: I object to what is customary. 20

The Court: I will allow Mr. Weinberger to finish the question.

Q. (Continued) So as to indicate whether another person in the room or whether a person came in the room with a skull or something of a particular nature? Would you make such a notation?

Mr. Meslar: I object. 30

The Court: I will allow it.

A. No, you can't see everything going on behind you.

Q. But you saw that particular thing? A. When it was laid on the desk.

Q. There was no reason why it was kept there that you know? A. No.

Mr. Weinberger: That's all. 40

George Smith—Redirect.

Frank Robert Kromka—Recalled—Direct.

Redirect-examination by Mr. Meslar:

Q. You had started one statement of Locicero before the skull was brought in? A. Yes.

Q. How much of that statement had you taken down before the skull was brought in? A. I am
10 not sure, quite considerable.

Q. Did Locicero say anything when the skull was brought in? A. Not that I remember.

Q. Or did he change—did you notice any change in him at all after the skull was brought in? A. No, none at all.

Mr. Meslar: That's all.

(Witness excused.)

20

FRANK ROBERT KROMKA, recalled.

Direct-examination by the Prosecutor:

Q. Sergeant, in these cells over there in the Police Station are there any toilets? A. Yes.

Q. So you could have flushed something away? A. Yes.

Q. And this skull you speak of has that always
30 been in the Boonton Police Department, since when? A. Yes, eight or nine years.

Q. That was not imported for this occasion? A. No, still there; I was the gentleman found that skull and brought it to Police Headquarters and cleaned it up, and left it as a souvenir.

Q. And this souvenir was handed to Locicero that night? A. It lay there and the Chief asked me where this come from. I explained where I found it, dug it up and brought it in.

40

Frank Robert Kromka—Recalled—Cross.

Cross-examination by Mr. Weinberger:

Q. Where was that skull kept before it was brought into the place where the defendant sat?

A. It was kept downstairs.

Q. All right, where? A. It lays downstairs on the locker where everybody can see it.

Q. Who took it from there that night? A. I was upstairs, me and the Chief was talking about it, and the Chief said— 10

Q. Never mind about the conversation. You brought it up? A. Yes.

Q. When you brought it up did you bring it up to the room the defendant was sitting in? A. Yes, but in back of him.

Q. And you brought it in the room, didn't you? A. Yes.

Q. And then you had a talk about it, you and the Chief? A. Yes. 20

Q. What Chief, what was the name of the Chief? A. Chief Bulmer, I think.

Q. Who put it down on the desk in the room where the defendant was being questioned? A. It was not put in front of where the defendant was questioned.

Q. I didn't ask you where. Who put it on the desk? A. Him, I expect.

The Court: Suppose you answer the question. The question is, who put it on the desk where it was put. 30

The Witness: The Chief handed it back to me and I put it on the desk, but it was not in front of the defendant.

The Court: He didn't ask you that, nobody has said it yet.

Q. You say it was not in front of the defendant? A. No. 40

Frank Robert Kromka—Recalled—Cross.

Q. Was it in a position where he had to see it?

A. No, he couldn't see it, his back was to it, his back was towards the skull, in fact, Mr. Smith, the gentleman sitting here, dictating to him, the desk was over here, the Chief was over here, back of that man's back.

10 Q. You and the Chief started discussing it downstairs? A. Yes, asked me downstairs about the skull, going up I said I will show it to you.

Q. Wait a minute. You first discussed it downstairs where it was? A. Yes.

Q. Why did you bring it upstairs? A. To show it to the Chief.

Q. Did not show it downstairs? A. He couldn't reach it where it was, I took it and explained where it was got.

20 Q. It was downstairs up on a closet? A. It was up as high as you could reach.

Q. The Chief was up there? A. Yes.

Q. You pulled it down? A. Yes.

Q. And the Chief and you discussed it downstairs? A. No, we didn't.

Q. You showed it to him downstairs? A. After we were going up I said I will show it to you Chief. I went down and got it and brought it up to him.

30 Q. Was it taken down from there while you and the Chief were downstairs? A. No.

Q. Was there a discussion about it? A. Yes.

Q. After you discussed it downstairs the Chief went up? A. Yes.

Q. You brought it up, is that your story?

The Prosecutor: I object to that, is that your story. That is his testimony.

Mr. Weinberger: Pardon me. Not the story, that is what you said.

Frank Robert Kromka—Recalled—Cross.

The Court: Just a minute, counsel will remain quiet until the witness has a chance to answer the question. Where was the Chief at the time you decided to go and get the skull?

The Witness: He was about half way up the stairs. I said, "I will bring it up and show it to you." 10

The Court: And you went down and got hold of it and brought it upstairs?

The Witness: Yes.

Q. Did you discuss the crack in the skull so the defendant could hear it? A. No, the Chief looked at it and said kind of funny a couple of nails drove into it.

Q. A couple of nails drove into it. Was there a crack in it? A. Not that I know of. 20

Q. Wasn't there talk of a crack in that skull? A. No.

Q. You did tell him there was a couple of nails in it? A. He could see it himself.

Q. Did you discuss it? A. Naturally, a couple of nails in there.

Q. Did you discuss it so the defendant could hear you? A. Well, I don't know whether he could hear or not, he was about four or five feet away from us. 30

Q. Did you ever bring it upstairs when another defendant was in that room being questioned? A. Yes, I had it on my desk for weeks.

Q. I didn't ask you that. Did you ever bring it up when a defendant was questioned? A. No, never had occasion to, no one asked me about it. I had it on my desk laying there for weeks.

Q. When did you take it downstairs? A. I don't know, a week or so. 40

Frank Robert Kromka—Recalled—Cross.

Q. After he was through that night? A. No, I didn't, I left it there.

The Court: The answer was, "a week or so."

Mr. Weinberger: I beg your pardon.

10 Q. Do you know Mr. Heller, who sits at the counsel table? A. No.

Q. You will say that you were not talked on the telephone by Mr. Heller as to the whereabouts of Mr. Locicero? A. No.

The Prosecutor: He did not say—

The Court: I will let him answer. He says "No."

Q. Your answer is no? A. No.

20 Q. Do you know Mr. Boss, the lawyer? A. I do not.

Q. Did you ever talk to anyone on the telephone with regard to Locicero by the name of Mr. Boss? A. No, sir, not that I recall.

Q. Beg pardon? A. No, sir, I don't recall.

Q. You might have? A. I don't think so. If I talked to anyone with regards to that I would have known that night.

(Witness excused.)

30

HARRY F. DENNIS, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Mr. Dennis, you are Chief of Police in Mountain Lakes Borough? A. Yes, sir.

40

Harry F. Dennis—Direct.

Q. And on the night of October 3rd was Anthony Locicero in your jail? A. Yes, sir.

Q. At Mountain Lakes? A. Yes.

Q. Did you see he had food that night? A. Yes.

Q. What food did you give him that night? A. Hamburger sandwiches.

Q. Do you know whether he ate it or not? A. No, I do not.

10

Q. Did he show any evidence of having been beaten up? A. No.

Q. Did you see him on the night of October 4th? A. The night of October 4th?

Q. Yes. That is the night the statements were taken. Do you remember the night the statements were taken? A. Yes.

Q. And did he show any evidence of having been beaten up at that time? A. No, sir.

20

Cross-examination by Mr. Weinberger:

Q. What is your position in the Police Department? A. Chief of Police.

Q. Do you recall the day Locicero was first brought to the jail, what the date was? A. No, I can't recall the date.

Q. Have you any idea what the date was? A. In October, I think it was on Friday.

Q. You have a record of it? A. Yes.

30

Q. Was he booked as a prisoner? A. No, sir.

Q. He was put into a cell? A. For a little while.

Q. Did you get a telephone call from Mr. Boss? A. I did.

Q. Did you tell him that Locicero was not there when the fact is he was there? A. He didn't ask me that.

40

Harry F. Dennis—Cross.

Q. What did he ask for? A. If Mr. Allen was there.

Q. And what was your answer? A. No.

Q. Did he ask you about Mr. Locicero? A. He did not.

Q. Did he tell you he was a lawyer? A. He did.

10 Q. Did he tell you he was looking for a man by the name of Locicero? A. No.

Q. Who was the man that spoke to you? A. Who spoke to me?

Q. What was his name, did he give a name? A. Well, the name you just mentioned.

Q. What name? A. Boss, I think.

Q. Wasn't it Mr. Heller? A. Well, if it was he did not give me that name.

20 Q. Wasn't it Mr. Heller of the firm of Heller & Boss? A. I think he did say Heller & Boss.

The Court: The answer is, "I think he did say, Heller & Boss."

Mr. Weinberger: Yes.

Q. Do you recall when that call came in?

The Prosecutor: Is this on the question of duress again?

The Court: I will allow it.

30 A. Approximately 6 o'clock.

Q. Was Locicero there at the time? A. Yes, sir.

Q. Did he tell you he was the lawyer for Locicero? A. No, sir.

Q. Did you ask him any questions? A. No.

Q. Have you given us the whole conversation you had with him? A. Yes, sir.

40 Q. And that was what? A. He asked me if Mr. Allen was there and I said no.

Harry F. Dennis—Cross.

Q. And that is all that happened? A. He asked me if I knew where he was and I said no, I thought he was out of town.

Q. Did he ask you whether he could see—the man who was talking to you on the wire ask you whether he could see Locicero? A. No, sir.

Q. At no time during the conversation was the name Locicero mentioned? A. Not to me, no, sir. 10

Q. Did he say to you he is looking for Allen who is parading around with Locicero and he cannot find him? A. He did not.

Q. Did you get another telephone call after the first? A. No, sir, I did not.

Q. Who else is in charge of Police Headquarters besides yourself? A. Officer Ginter.

Q. Do you know whether Officer Ginter got a call that night? 20

The Prosecutor: I object. If he knows.

The Court: I will allow it. The question is, do you know.

The Witness: What is the question?

(Question repeated.)

The Witness: No, I don't.

Q. When did he go on duty, Officer Ginter, that night? A. About 4 o'clock.

Q. In the afternoon? A. Yes. 30

Q. And he stayed on until when? A. 12 o'clock at night.

Q. When did the defendant leave your Headquarters? A. Between 6 and 7 o'clock.

Q. Did you receive a discharge? A. No, sir.

Q. You delivered him up to who? A. Lieut. Allen.

Q. And you received what sort of a receipt for doing it?

The Prosecutor: Objected to, irrelevant. 40

Harry F. Dennis—Cross.

The Court: Objection sustained.

Mr. Weinberger: I pray an exception.

The Court: Exception allowed.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

10

Q. Have you a basement in that Mountain Lakes building? A. Yes, sir.

Q. Was the Trooper down the cellar with Mr. Allen and the defendant that day? A. When I was with them, yes.

Q. How much time did they spend down the cellar that day with Locicero? A. About 15 or 20 minutes.

Q. Got a hose there? A. No, sir.

20

Q. What? A. No, sir.

Q. Night-stick there? A. Yes, sir.

Q. Where do you keep them? A. Upstairs.

Q. Any of them down the cellar that day? A. No, sir.

Q. What time was he taken down the cellar? A. What time was he taken in the cell?

Q. The cellar. A. Oh, about 3 o'clock.

Q. What was he taken down there for, I thought the cell was up on the next floor?

30

The Court: No, he said the cellar was down in the basement, and he was put in the jail. Apparently counsel is not listening to the reply.

Q. Where are the cells? A. Second floor.

Q. Where is the celler? A. Third floor down.

Q. There are no cells in the third floor down? A. No, sir.

40

Q. I don't understand that to be the fact, that

Harry F. Dennis—Cross.

is why I asked the question. Why did you have him go down the cellar if the cells were not down there? A. We did not go in the cellar.

Q. You did not go down in the cellar? A. You just asked me where the cellar was, I said, third floor down.

Q. Didn't you say you were down the cellar? A. Second floor down, I said. 10

Q. With Mr. Allen and the Trooper? A. Second floor down, I said.

Q. There wasn't any mention of the second floor down; the question was were you down the cellar and didn't you answer yes? A. No.

Q. You did not so testify here today? A. Not in the cellar.

Q. Will you please go back—

The Court: The Court will control that, you may proceed; the jury heard all the questions the same as you and I did. 20

Mr. Weinberger: May I have with due deference to your Honor's ruling, could I have the question and answer read?

The Court: The jury has been paying rapt attention to all proceedings, and there is no reason to go back for any particular emphasis.

Mr. Weinberger: May I have an exception? 30

The Court: Of course, it is entirely a matter in the discretion of the Court.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

Mr. Weinberger: I want to be fair with the witness, that is why I urge it. 40

Harry F. Dennis—Cross.

Q. So then, you were not down the cellar that afternoon at all with Mr. Allen or the State Trooper or anybody, is that right? A. That is right.

10 Q. From the time that Locicero came to Mountain Lakes and was placed in the cell first, was he ever taken out of that cell? A. Yes, sir.

Q. What for? A. Brought him upstairs and told him to sit in a chair.

Q. What for? A. Questioning.

Q. Questioning of what or for what? A. With reference to the robbery.

Q. When did that start, the questioning, what time? A. I don't know.

Q. When did that finish? A. Only about five minutes it took.

20 Q. Only five minutes? A. When he was upstairs, yes.

Q. That whole performance took but five minutes? A. That is all.

Q. He went up and went down? A. No, he stopped there.

Q. For five minutes? A. No, sir.

Q. How long? A. Probably two hours.

Q. What was he doing there during these two hours? A. Sitting there.

30 Q. And what were you first doing? A. Nothing.

Q. Questioning him? A. No, sir.

The Court: I think there is confusion in the minds of both the counsel and the witness as to which time is referred to, as to who was present; you may start at the beginning and get the matter straight.

Harry F. Dennis—Cross.

Q. He was brought up from the cell? A. Yes, sir.

Q. By whom? A. By myself, Lieut. Allen and Dickerson.

Q. To what room? A. Well, in Police Headquarters where we make our records, etc.

Q. And when he got into that room how long did he stay there before he was taken back to a cell? A. He was questioned about five minutes and then he stayed there for a couple of hours. 10

Q. So all the questioning that went on was for five minutes? A. In that room, yes.

Q. Did they change rooms? A. Sometime ago you asked me if he was questioned downstairs, and I answered yes.

Q. Chief, I want to be fair with you and I want to get the facts as you have them? 20

The Prosecutor: I object to the characterization of fair.

The Court: After all that is the duty of the Court to see that the trial is fairly conducted; put the proper questions which should elicit the proper answers.

Mr. Weinberger: I want to be fair.

Q. How many times was he taken out of that cell? A. Twice. 30

Q. When was the first time? A. Downstairs.

Q. I mean when? A. I don't know just what time it was.

Q. The morning or afternoon? A. Afternoon.

Q. When he was taken out of the cell the first time he was taken downstairs, meaning what room? A. The cells are on the second floor.

By the Court:

Q. Second floor, where, downstairs? A. Yes. 40

Harry F. Dennis—Cross.

Q. Is that what you call the second floor upstairs or second floor downstairs? A. Downstairs.

Q. Is there a ground floor? A. Yes.

Q. A floor below that? A. Yes.

Q. A cellar basement below that? A. Yes.

10 Q. The cells are in the floor downstairs? A. Yes.

Q. And he was taken out of the cell? A. Yes.

Q. Where was he taken to? A. He was not taken out of the room.

Q. He was taken out of the cell but not out of the room. Who was there with him at that time? A. Mr. Allen, Mr. Dickerson, myself and Mr. Gallione, I think.

20 Q. What took place on that occasion? A. They were questioning him.

Q. How long did that last? A. About 20 minutes.

Q. Then what happened to the defendant? A. He was put back in the cell.

Q. What did the other men do? A. They came upstairs, talked a few moments, and later on brought him up probably half an hour, three-quarters.

30 Q. And on that second occasion he sat in the chair? A. Yes.

Q. And the first five minutes he sat in the chair? A. Yes.

Q. Then the men left? A. Yes.

Q. And he continued to sit in the chair a couple of hours? A. Yes.

The Court: Have you the sequence, Mr. Weinberger?

Mr. Weinberger: Perfectly.

The Court: Proceed.

Harry F. Dennis—Cross.

By Mr. Weinberger:

Q. Then, as a matter of fact, when he sat there for a couple of hours who was in the room? A. Myself and Officer Ginter.

Q. Then was put back in the cell? A. Yes, sir.

Q. When? A. About 5 o'clock, I should say.

Q. And how long did he remain there? A. When? 10

The Court: Mr. Weinberger, by whom?

The Witness: Officer Ginter.

The Court: Had the other men returned by that time?

The Witness: No.

Q. And he remained there until when? A. About 6:30.

Q. And then the men came back? A. Yes, sir.

Q. And what happened to him then? A. They took him away. 20

Q. Have you a Court Room upstairs there? A. Yes.

Q. Have you a convenient place for the stenographer to take a statement there? A. Yes.

Q. The Court Room is on what floor? A. On the ground floor.

Q. They took him away to get the statement, is that it? A. I presume so.

Q. Did they say so to you? A. Not at that time, no. 30

Q. Was any notes made or were any records made of this man being at your jail?

The Prosecutor: I object, don't think it is relevant on the question of duress.

The Court: I will allow it. That may be one of the elements of duress, I don't know, I will allow it.

Harry F. Dennis—Redirect.

Mr. Weinberger: Repeat the question, please.

(Question repeated.)

The Witness: Yes, sir.

Q. What record if any? A. Just a note in the blotter he was brought there.

10 Q. Charged with a crime? A. No, sir.

Q. Detained there for any reason? A. For questioning.

Q. Did he have a raincoat on when he came to your place? A. No, sir.

Q. Did he have any policeman's cap when he came to your place? A. No, sir.

Redirect-examination by the Prosecutor:

20 Q. Chief, the building that your headquarters is located in is a three-story building? A. Yes.

Q. The first floor is on what is known as the ground floor? A. Yes.

Q. And that floor is your Police Court, your offices in the rear? A. Yes.

Q. And below that is another floor of cells? A. Yes.

Q. And below that is what you have, a sub-cellar? A. Yes.

30 Q. You can't get from the cell to the sub-cellar without going down and around? A. Yes.

Q. So your reference is to the cellar where the cells are? A. Yes, sir.

(Witness excused.)

John R. Gallione—Direct.

JOHN R. GALLIONE, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Where do you live, Mr. Gallione? A. Englewood, New Jersey.

Q. And you are connected with what Police Department? A. Prosecutor's Office, County of Bergen. 10

Q. Did you question Anthony Locicero at the Mountain Lakes Police Headquarters? A. I did.

Q. And any time there did you lay your hands upon him to beat him, wound him or ill treat him? A. Absolutely no.

Q. To compel him to sign the statement? A. No. 20

Q. Did you see anyone else in your presence beat him, threaten him in order to get him to sign a statement? A. No, sir.

The Court: I understand the Prosecutor is confining his questions to Mountain Lakes.

The Prosecutor: To the question of duress in Mountain Lakes as to the signing of this statement.

The Court: The statement signed in Boonton? 30

The Prosecutor: Yes, no testimony he was ill-treated at Boonton.

Cross-examination by Mr. Weinberger:

Q. How many statements did you witness? A. Two, I believe, that night, the statements were taken at Boonton. My statement was taken first, that was started about 9 o'clock. My statement 40

John R. Gallione—Cross.

ended at 12, midnight. I finished questioning him. I wasn't interested in the other statement, Mr. Weinberger.

Q. Of course, you personally came to Mountain Lakes at what time? A. With Chief Bulmer, we arrived at Mountain Lakes around 2, 2:15.

10 Q. You had left Hackensack with the party, had you not? A. With Chief Bulmer?

Q. Yes. A. Yes, I picked up Chief Bulmer at his Police Headquarters.

Q. And Locicero? A. He knew Locicero was here, or I had arrested Locicero the day before.

Q. At Hackensack? A. Yes.

Q. And you brought him to Morristown Jail? A. No, I did not.

20 Q. Who took him there? A. Lieut. Allen and the Trooper between then and 2 o'clock the next day, I don't know.

Q. When you got to Morristown or rather to Mountain Lakes how much time did you spend with the defendant altogether? A. Well, I will give you the exact time. I am pretty sure we arrived there around 2:15, and we talked a while upstairs, say, about 2:20, then we went downstairs—downstairs where the cells are, I don't know any more than what that is, and we have
30 spent about 20 minutes with Locicero. I believe it was 20, couldn't be any more, and he told us about something in Newark.

The Court: You may go on.

Q. Go ahead. A. And we went to Newark and Locicero was brought upstairs by one of the officers, and what happened after that, I don't know. So we went to Newark to the address he told us where the silk was, of course, we didn't
40 find no silk and we came back about half past 6,

John R. Gallione—Cross.

and the way I got the reason of going to Boonton is because there are no restaurants in Mountain Lakes, and I was hungry, so I decided to go and eat, so I said we will go to Boonton.

Q. It was your appetite which changed his position from Mountain Lakes cells to Boonton? A. No, I wouldn't say that, we went to Boonton to eat. 10

Q. You did say that it was your appetite that made the change from Mountain Lakes to Boonton? A. I wouldn't say that was the reason for it.

Q. You just gave it, isn't that the way you changed it? A. Not the exact reason, we went to Boonton to eat.

Q. And you changed him from Mountain Lakes to Boonton so you could eat? A. So we could eat there together. 20

Q. Did you take him to the restaurant with you? A. No, not I, he is a prisoner.

Q. Do you know Mr. Boss? A. Yes, I know Mr. Boss.

Q. You were in Hackensack, were you not, when you took Locicero out? A. I was in Hackensack, yes.

Q. In the Court Room or Court House? A. Yes. 30

Q. You didn't tell Mr. Boss? A. I didn't see Mr. Boss that morning.

Q. Didn't see him? A. No.

Q. Whoever took Locicero, who was supposed to be in that Court that morning out of the Court House, did so without even letting the Court or lawyer know about it?

The Court: I don't see how that has anything to do with this statement. 40

John R. Gallione—Cross.

Mr. Weinberger: For this reason: I think I have a right to show the motives employed to get this man in a position where they could get a statement.

10 The Court: He was absolutely under no duty to tell Mr. Boss anything, if he had a warrant to arrest him, and it has no business in this proceeding on duress, and if it is objected to—

The Prosecutor: I object to it.

Mr. Weinberger: I pray an exception.

The Court: You may have your exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,

Judge.

20

Q. Is it a fact that Locicero was answering a command of the Court in Hackensack when you took him from the Court Room and almost had him forfeit a bond there?

The Prosecutor: Objected to.

The Witness: That is not true.

30 The Court: The objection is sustained. I am going to allow the witness to answer it, he feels he has a defense, he says that is not true, no reason why that should be stifled.

Mr. Weinberger: May I examine?

The Court: I have allowed the answer, you may examine.

Q. You say he was not answering a bail there that morning? A. Yes, but his bail was not forfeited.

40 Q. Was he answering a bond there that morning? A. He was answering a call for trial.

John R. Gallione—Cross.

Q. And isn't it a fact before he answered the call you politely ushered him out of the Court Room so he could not answer the call of the Court?

A. I asked him to come up to the office.

Q. And he was not in Court when the call came?

A. He was in the Prosecutor's office.

Q. I said, in Court? A. Not in Court, no.

10

Q. And hadn't you served Mr. Boss with a notice to produce the man in Court that morning?

A. I personally, no.

Q. Did you have it done? A. Not I, the Chief of County Detectives did.

Q. You knew it was done? A. What?

Q. That he was served with a notice to be in Court that morning? A. I don't know whether he was served or not.

Q. You don't know that? A. No.

20

Q. Well, you had Mr. Parks there that morning? A. Parks was there when I got in the office.

Q. But he was there, wasn't he? A. I did not arrange it.

The Prosecutor: We are really getting into collateral issues.

The Court: It seems to me it is going far afield.

Mr. Weinberger: I am going to heed your Honor's caution.

30

Q. In other words, when you got him to Mountain Lakes—withdraw that. Why didn't you question him in Hackensack when you had him there?

A. Because Mr. Weinberger I arrested Locicero on September 16th for the crime in East Paterson and at that time—

Mr. Weinberger: If your Honor please—

40

John R. Gallione—Cross.

The Witness: I will answer the question and tell you just the exact truth. I don't want to hide anything.

Mr. Weinberger: I know that of course, your Honor Please, may I ask the witness to answer my question?

10 The Court: Repeat the question and answer.

(Question and answer repeated.)

Mr. Weinberger: I ask it be stricken out as not responsive.

The Court: It may be stricken out.

The Witness: That day do you mean?

Q. Yes. A. The second time he was upstairs?

Q. When you took him out in the Court Room?

20 A. Because I was a witness in the Zabriskie murder trial.

Q. Other engagements prevented you? A. That is right.

Q. You finally got to Mountain Lakes the next day and then you came up there to do a little questioning, didn't you? A. That is right.

Q. And you were the interrogator, the questioner, is that right? A. I wouldn't say.

30 Q. You took the reins in your hands and started questioning, didn't you? A. I questioned him in reference to the crime in East Paterson.

Q. You started questioning, yes or no? A. Sure I did.

Q. And for how many hours? A. 20 minutes, the first time.

Q. 20 minutes? A. Yes, sir.

Q. That was all? A. That was all.

Q. Did you come back again for more? A. I come back and took the statement.

40

John R. Gallione—Cross.

Q. When—how much time did you take? A. In all about three hours and 20 minutes.

Q. Any rubber hose used during that little time? A. Absolutely not.

Q. None, of course.

The Prosecutor: I object to the characterization.

10

The Court: I don't think Mr. Weinberger any acting should be indulged in.

Mr. Weinberger: I want to apologize, just the natural reaction when you hear those things.

The Prosecutor: We all have those natural reactions.

The Court: After all, counsel knows that definite and natural reactions or otherwise ought not to be stimulated by acting, of course.

20

Q. Of course, there were no clubs used, nightsticks, I mean? A. No, sir.

Q. Were there any there? A. I didn't see any.

Q. Didn't you step on his chest with both feet? A. That is an absolute untruth.

Q. That is untrue? A. Absolutely.

Q. Did he have any scratches on his back after you got through with him? A. That I couldn't say, he had his clothes on him, I couldn't say.

30

Q. Why didn't you have the stenographer come to Mountain Lakes, Mr. Smith, to take a statement there? A. Because we were going to Boonton. I called Mr. Smith from Mountain Lakes and then we decided to go and eat. We went to Boonton and we decided we better take Locicero with us, that would save time. When Mr. Smith came to Boonton we immediately

40

John R. Gallione—Cross.

started taking the statement, and if you will notice my statement is questions and answers.

Q. The County Jail is still in Morristown? A. I have nothing to do in Morris County.

Q. Haven't? A. No.

10 Q. Did you take him—withdraw that. Did you first take him to the Trooper's Barracks? A. I was not with them.

Q. You were not? A. No, I was not.

Q. Did Locicero mention the fact that he would like to have his lawyer there? A. No.

Q. There was a 'phone call out at Mountain Lakes from Heller & Boss? A. I couldn't say that.

Q. Were you informed to that effect? A. No, I was not.

20 Q. Were you present when the statement S-2 for Identification was prepared? A. May I see it, please?

Q. I beg your pardon? A. Not at all times, no, sir; this concerns the Morris County job, isn't it? Yes, I wasn't there all the time this was taken. I come in and out of the place, that was after I had taken my statement.

30 Q. You weren't there when it was signed? A. Yes, that is—my signature must appear on that, I believe.

Q. Who dictated that statement? A. I couldn't tell you. After I took my statement I went downstairs.

Q. Did you hear any part of it dictated? A. Yes, I heard some part. Mr. Allen would say tell us about the uniform, or how would you go about it. I would come in and out, wouldn't pay any attention.

40 Q. In other words, Mr. Allen would ask the

John R. Gallione—Cross.

question and Locicero would give the answer? A. I couldn't swear, I wasn't in there. I am not interested in Morris County affairs.

Q. You just made a remark a moment ago that Mr. Allen would say now tell us about the uniform? A. Yes, I heard that.

Q. And he would answer? A. Yes.

Q. Did you mean that? A. Yes, that Locicero would answer. 10

Q. Did you mean that? A. Yes, positively.

Q. That was in question and answer form? A. No, different question and answer form maybe not, you can't hold me down to that.

Q. I don't want to hold you down to anything. A. I am speaking just what I heard and what I did in the matter.

Q. Isn't it true that Mr. Allen was the man that was talking and saying everything that is in S-2 for Identification? A. I couldn't tell you, true, of the whole statement, I wasn't there. 20

Q. Isn't it true every word in this statement S-2 for Identification was dictated by Mr. Allen to Mr. Smith? A. I couldn't say that either.

Q. And do you deny the fact that Mr. Allen dictated word for word what is found in the statement S-2 for Identification, or as much there as you heard? A. As much as I heard? 30

Q. That is true, then? A. But the other stuff I don't know about.

Q. And you didn't hear Locicero dictate any part of this, did you? A. He was telling him just as I told you, when I heard something about uniform, Locicero said yes, it was a uniform. Then, naturally, I went downstairs, good reason why I had to go in and out, tell you the truth, so I didn't pay no attention to it, that is the Gospel truth. 40

William Bulmer—Direct.

Q. Isn't it true that Locicero denied to you from the time that he was first arrested down to the time that he was, as he claims, brutally beaten and assaulted? A. He denied it in Hackensack what he did here. When I got up here to Mountain Lakes he was ready to give me a statement.

10 Q. But he denied it in Hackensack? A. In Hackensack he said he didn't know anything about it, but up here he gave me the statement.

Q. You said that. I am only talking about Hackensack.

Redirect-examination by the Prosecutor:

Q. Did you see Anthony Locicero sign this statement, S-2 for Identification? A. I seen him
20 sign the statement.

Q. Do you know whether he read it over or it was read to him? A. Read to him and he read it.

(Witness excused.)

WILLIAM BULMER, called as a witness on behalf of the State, being first duly sworn, testifies as follows:
30

Direct-examination by the Prosecutor:

Q. Mr. Bulmer, where do you live? A. East Paterson.

Q. You are Chief of Police of East Paterson Police Department? A. Yes.

Q. And I show you Exhibit marked S-2 for Identification and ask you if you have seen that
40 paper before, all those papers? A. Yes, sir.

William Bulmer—Cross.

Q. And did you witness Anthony Locicero's signature? A. I did.

Q. Did you see him sign these papers? A. I did.

Q. And do you know whether they were read to him or he read them? A. He read them.

Q. Were they read to him also? A. They were.

Q. Were you present when he was questioned in Mountain Lakes Police Headquarters? A. Part of the time, yes, sir.

Q. Anyone beat him there that you saw? A. No.

Q. Beat him with a hose? A. No, sir.

Q. Jump on his chest? A. No, sir.

Q. See anyone else do these things? A. I did not.

10

20

Cross-examination by Mr. Weinberger:

Q. Chief, was there a conversation to the effect that if he would sign this statement they would go easy with him? A. Not in my presence.

Q. I mean, what was the conversation that led up to the signing of the statement? A. There wasn't any that I know of.

Q. Wasn't there something said about why he should sign these statements for some reason? A. No, the statements were taken, he was asked to sign them and he signed them.

30

Q. Wasn't anything said at all to him in advance about what they wanted statements for, what would happen to him if he signed the statement, something of that kind? A. Not in my presence. I don't recall that.

Q. You were present when they started in? A. I believe I was on one or two of them, anyway.

40

William Bulmer—Cross.

Q. In other words, there was nothing said by any of the officers to him at all before they got right down to business, now, Locicero we want a statement from you, and you proceeded to get it, is that right? A. That is right.

10 Q. Nothing said to him at all by you or any of the other officers with regard to the promises, if any, would be made to him if he did, nothing like that happened? A. I didn't hear it, I didn't do any of the questioning myself.

Q. Nothing like that said? A. Not in my presence, no.

Q. So that you and I can understand one another— A. I hope so.

20 Q. —when you got to Mountain Lakes that is where the first session was had about questioning him, is that right? A. I wasn't there at any of the questioning there in Mountain Lakes, I didn't hear them say anything to him there.

Q. You weren't in Mountain Lakes? A. Yes, but I wasn't there as they were questioning.

Q. But they were questioning him? A. They might, I don't know.

Q. But where they questioned him you don't know? A. I did, yes, in Boonton.

30 Q. I mean the Mountain Lakes questioning? A. I don't know.

Q. What room they had him in you don't know? A. No.

Q. What took place in the room, you don't know? A. I don't know.

Q. Whether or not he was beaten you don't know? A. Not in my presence.

Q. I say, you don't know? A. I don't know.

40 Q. Whether the rubber hose was used or not, you didn't know? A. I didn't see any.

Frank E. Adams—Direct.

Q. You did see night-sticks there, clubs, the real goods? A. I saw the officer with one, that is the only one I saw.

Q. I mean, you saw them? A. I saw a night-stick, yes.

Q. And whether that was used or not freely that day, you don't know? A. I don't know.

10

(Witness excused.)

FRANK E. ADAMS, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct-examination by the Prosecutor:

Q. Where do you live, Mr. Adams? A. 693 20
Prospect Avenue, Newark.

Q. You work for the City of Newark? A. Yes.

Q. What position? A. Detective Bureau.

Q. Remember Lieut. Allen coming to Newark Police Headquarters and asking you to go up to a certain address? A. I do.

Q. Did you go with him? A. Yes.

Q. Did you return to Mountain Lakes with Mr. Allen? A. I did.

Q. Were you in his presence all the time? A. 30
I was.

Q. Did you see him go down to the cells in Mountain Lakes? A. We went down and got the prisoner and brought him over to Boonton.

Q. There wasn't any questioning there at all at that time? A. No.

Q. Did Lieut. Allen question him in Mountain Lakes after he came back? A. No.

40

Frank E. Adams—Cross.

Q. When you were in Boonton did you see Locicero? A. I did.

Q. Did you see any evidence of his having been beaten? A. He was able to walk, seemed to be all right.

10 Q. Any bruises on his body, any swelling of his face? A. Not that I seen.

Cross-examination by Mr. Weinberger:

Q. He went in perfect and came out perfect? A. As far as I know.

Q. Did you examine his body? A. Didn't examine his body, he had his clothes on, wasn't interested in that.

20 Q. You weren't interested in that? A. Your remark.

Q. You mean his condition? A. What you just started to explain.

Q. You mean his condition? A. Yes, sir.

Q. You weren't interested? A. No.

Q. How long was he in Mountain Lakes? A. How long was I?

Q. He. A. I don't know.

Q. How much time in all do you know he spent there? A. I don't know.

30 Q. When was he taken there, the time? A. I don't know.

Q. When did he leave there? A. We left there about 7 o'clock.

Q. Did you take him? A. I was with Lieut. Allen, yes, sir.

Q. Do you know how many times he was taken from the cell that afternoon at Mountain Lakes? A. I do not.

40 Q. What time did you go there first? A. I got

Frank E. Adams—Cross.

there about ten to seven, that night, and the investigation was conducted in Bridge Street, Newark.

Q. Were you there when he was taken from Boonton? A. Taken from Mountain Lakes to Boonton.

Q. From Boonton to the County Jail? A. No, sir, I was not. 10

Q. When you were taken to Boonton what time did you reach Boonton? A. I imagine we got in Boonton from Mountain Lakes, I believe twenty minutes' drive, half past seven. We put Locicero in the cell with orders to have him fed, and we went to a restaurant and ate, and we came back and went upstairs to the second floor, a police room up there, about ten desks, and statements were taken from him of the jobs. After the statements were taken we asked him to read them out loud, and the witness he signed same. 20

Q. Remember that? A. I do.

Q. Did you see a skull there at any time that night? A. I wasn't paying any particular attention to that, I was paying attention to police business and the statements which were taken.

Q. You didn't see the skull there? A. No, sir.

Q. You didn't see the skull in the room where he testified? A. I didn't see it. It might have been there, but I wasn't interested. 30

Q. Were you paying attention to the questioning? A. I was.

Q. Were you there when Allen questioned him? A. I was.

Q. Did you hear the answers he gave to each question? A. I did, some of them, I could remember some of them offhand.

Q. And each question asked by Mr. Allen would 40

Frank E. Adams—Cross.

be taken up by Mr. Allen? A. That is right, with his answer.

Q. One minute. And then he would give his answer? And his answer would be typewritten by Mr. Smith, is that right?

10 The Prosecutor: Just a moment, let him answer. I object.

The Court: The witness of course may be entitled to answer in his own way, that is a question which cannot be answered yes or no. The witness isn't prepared to give you an answer which will refute the theory you are endeavoring to put to him.

Mr. Weinberger: I will reframe it.

20 Q. It is a fact, is it not, when a question was asked by Mr. Allen and put down by Mr. Smith Locicero would answer, that was put down by Mr. Smith? A. We would ask him to explain and he would do it, and Mr. Allen would ask him a question, go into details and explain how the job was pulled and where he went from that, and what happened, to the police officers, rather, he said he drove the car to New York.

30 Mr. Weinberger: I haven't asked him that. May I ask the gentleman's discourse be stricken out?

The Court: Yes. The question is, when Mr. Allen framed a question did Mr. Locicero answer it, and did the typewriter, Mr. Smith, put it down in the form of question and answer, or was it in narrative form, or running story?

The Witness: Just the running story.

40 Q. Now, was the running story given by the

Frank E. Adams—Cross.

defendant? A. Well, a question would be asked.

Q. Yes or no? A. No.

Q. Who gave the running story? A. Well, we would ask him a question, and then he would answer it in his own way, and that is the way it would be put on the paper.

Q. What do you mean by, we would ask him? 10
A. Mr. Allen would ask him.

Q. Did you also ask? A. No.

Q. You had nothing to do with it? A. No.

Q. Let us see if we can get this right. Now, I read to you and ask you whether you heard Mr. Locicero say this: "On August 29th I met Ed. Schlenger," did he say that? A. Yes, he said that.

Q. I read to you on page 2, first line, "I got on the truck," did he say that? A. Yes, sir. 20

Q. And did he say everything that follows that on page 2, he dictated it to Mr. Smith? A. That is what he said.

Q. And on page 1 I ask you to look at that, and I ask you whether you heard the defendant, Locicero, dictate that to Mr. Smith? A. Not this first part, that is, Anthony Locicero, that is we asked him this.

Q. What do you mean by "we"? A. That is 30
Lieut. Allen asked what his name was, his age.

Q. Then beginning here, on August 29th, do you now say that Locicero dictated everything on the page from that date, on August 29th down, and you heard him dictate it to Mr. Smith and Mr. Smith took it down?

The Court: What do you mean by dictate, what does counsel mean to incorporate the word, dictate?

Frank E. Adams—Cross.

Q. Did you hear Mr. Locicero say this to Mr. Smith to take down? A. Yes, sir.

Q. You heard that? A. Yes.

Q. And every word you say beginning with on August 29th, is that what Locicero told Mr. Smith? A. Yes, sir.

10 Q. Mr. Allen didn't give that to Mr. Smith, did he? A. No, sir.

Q. You are sure of that? A. No, sir.

The Prosecutor: I don't see how this all goes to duress.

The Court: I will allow it.

Q. Were you there during all of the time that statement, S-2, was being written up by Mr. Smith? A. I was.

20 Q. What time did they finish? A. About 2 o'clock in the morning.

Q. From the time they started up to the time you finished, 2 o'clock in the morning, it was a continuous question and answer? A. That is right.

(Witness excused.)

The Prosecutor: I now offer the statement.

30

The Court: For what purpose is Mr. Heller called?

Mr. Weinberger: To rebut testimony given by—

The Court: Suppose he rebuts everything there is?

Mr. Weinberger: Your Honor heard these detectives, it would be on the question of duress as well as the legal admissibility of the statement in question.

40

Frank E. Adams—Cross.

The Court: Suppose Mr. Heller does take the stand and says I did call so and so and told him I was his lawyer and suppose there is a direct question of fact between the veracity of Mr. Heller and some police officer with whom he talked, what has that to do with the duress that might have been exercised in taking of this statement? 10

Mr. Weinberger: I suppose the Court could only get the fact from a picture as it actually existed, if there is an attempt to hide or secret the whereabouts of the defendant, and the defendant comes into Court and explains what has happened to him, and counsel then proposes to show that they tried to locate this man, if legally he ought to be at a certain jail, but he isn't there, and they got to go out and get a Judge to give them a writ of habeas corpus, and then to go chasing from one jail to another in Morris County to find out where the man is, at no time there being any legal record in any Court, and you do find the defendant and you find him all black and blue, marks all over his body— 20

The Prosecutor: Had a right to show that on direct proof. 30

The Court: No, I cannot prevent you from calling a witness, but I am ruling on questions.

Mr. Weinberger: I was trying to answer your Honor, I didn't wish to excite the Prosecutor.

The Prosecutor: You are not exciting 40

Aaron Heller—Direct.

the Prosecutor; you are the only one getting excited.

Mr. Weinberger: Mr. Heller, be sworn.

10 AARON HELLER, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Weinberger:

Q. Mr. Heller, you are a practicing attorney of Passaic County? A. I am.

Q. Have been how long? A. Nine years.

Q. Do you know the defendant Mr. Locicero? A. I do.

20 Q. Did you in his behalf get in touch with the authorities in Mountain Lakes or at Morristown to find out his whereabouts in October, 1933?

The Prosecutor: That is objected to.

The Court: Objection sustained.

Mr. Weinberger: I pray an exception.

The Court: Exception allowed.

Exception allowed and sealed.

ALBERT H. HOLLAND,

30

Judge.

Q. Did you see Mr. Locicero in October or early part of October in any jail? A. I did.

Q. Where? A. At the Morris County Jail.

Q. And what was his condition?

The Prosecutor: I object.

The Court: I will allow it. I will sustain the objection unless you fix the time.

40

Q. When was it, Mr. Heller? A. That was the

Aaron Heller—Direct.

same day that bail was fixed on return of the writ of habeas corpus.

The Court: Nobody asked you that. You are an attorney, you can answer questions, can't you?

The Witness: I do not know the date. If you show me those papers—it is early 10
in October.

The Court: How can you expect a witness to answer questions if an attorney cannot?

The Witness: The exact date I don't know unless you show me certain papers.

Q. Can you approximate the date? A. Yes, the early part of October.

Q. Do you know how long he had been in the 20
County Jail? A. Of course, only by hearsay.

The Prosecutor: I object.

Mr. Weinberger: All right.

The Court: Yes.

Q. At that time what was his condition?

The Prosecutor: I object to that.

The Court: I will allow it. He says the early part of October. That brings it quite close to the examination of Dr. Co- 30
meau, and for the purpose of contradicting that testimony I believe I should allow it to be entered.

The Witness: He took his shirt off so I could see his back, and I noticed marks along the lower part of his back, some red marks, and also colored marks on his back. The Warden, or rather one of the men from the Sheriff's Office— 40

Aaron Heller—Direct.

The Prosecutor: I object to any conversation.

The Witness: No talk, he was there, I called his attention to it.

Mr. Weinberger: No conversations, I am not asking for conversations.

The Witness: No.

10

Q. There was a gentleman there from the Sheriff's Office? A. Yes, from the jail, he brought me upstairs to have me talk with him.

Q. Any other evidence? A. He did have, he was holding his hand on his chin, this way (illustrating), or around some part of his face, I don't recall where, and there was a mark or two, looked like some scratches to me.

Q. On his face? A. Yes.

20

Q. Did you obtain the writ of habeas corpus from his Honor, Judge Holland in this case? A. I did.

Q. Where was the defendant when you obtained the writ?

The Prosecutor: I object.

The Court: What difference does it make?

30

Mr. Weinberger: We will offer the largest chain of events which I think have a bearing on the subject.

The Court: I think as a matter of fact when he obtained the writ the defendant was actually in the County Jail.

Mr. Weinberger: I don't know.

The Court: He obtained a writ, I have allowed you to say that.

Mr. Weinberger: All right.

40

The Court: It may also be said that the

Aaron Heller—Direct.

writ was never heard, and perhaps, never served, I don't know.

Q. Did you speak to the Prosecutor, Mr. Heller, about this case? A. Yes, I served the writ on the Prosecutor's Office.

Q. Did you report the condition of the defendant to the Prosecutor? A. Yes, through Mr. Meslar sitting here at the table. 10

Q. What did you tell him about his condition as you saw it? A. I told him Locicero was beaten up and had marks on his back.

Q. What did he say? A. "He must have fallen out of bed," in a joking manner.

Cross-examination by the Prosecutor:

Q. Where did you see me, Mr. Heller? A. Right in the Court Room, in Judge Holland's Court Room. 20

Q. And you told me this man had marks on his back? A. Yes.

Q. And I said he fell out of bed? A. Yes.

Q. As a matter of fact, you talked to me about bail, you thought bail of \$50,000 excessive? A. Mr. Billet heard the conversation between you and me.

Q. Who is Mr. Billet? A. From Passaic. 30

Q. He come over with you? A. No, he had a matter himself.

Q. You didn't go to Judge Holland and apply for a physician to examine your client in jail? A. No.

Q. You didn't go before another Court? A. I don't know whether I could go to a Court or not—

Mr. Weinberger: Just a minute.

Aaron Heller—Direct.

The Court: Just a minute.

Mr. Weinberger: I don't mean to excite the Prosecutor.

The Court: I don't think you do.

Mr. Weinberger: May I object to the question on the ground it is highly improper?

10

The Court: He answered by answering he did know whether he could go to a Court or not.

Q. Your writ was directed against who? A. To you as Prosecutor of this County or to any person holding the custody of the body of Locicero.

Q. Wasn't it against Mr. Allen and myself? A. And Mr. Allen too.

20

Q. And when was this served? A. It was served immediately after I had it signed, which was the day before the fixing of the bail, and it was served on Chief—

Q. And at the time it was served your defendant was in the County Jail, up here in the local jail on the hill here? A. I couldn't say that.

Q. Didn't you try to find it out? A. Yes.

30

Mr. Weinberger: Let the witness answer, please.

The Court: Yes, I think that is a fault that applies to both.

The Witness: I couldn't locate his whereabouts because when I came here with the writ I didn't want to present it unless I found where the defendant was, and it was only after making inquiry from your office and making inquiry at the jail, and since I couldn't find out where he was,

40

Aaron Heller—Redirect.

it was only then that I asked the Judge for a writ.

Q. When you asked the Judge and obtained this writ the defendant was in the County Jail?

A. My information was he was not there.

Q. Who did you get your information from?

A. I think that fellow there, if I remember correctly. 10

Q. Who is that fellow there? A. He is the Chief in this County.

Mr. Weinberger: Chief Bellingham.

Q. As a matter of fact the defendant was in jail? A. That I don't know.

Q. You never prosecuted your writ? A. Yes.

Q. You never appeared in behalf of it? A. I beg your pardon, we all appeared on the return day of the writ, and you were there and announced to me in open Court before his Honor, that the defendant was in the County Jail at Morristown, and when I heard that I said that is all I am interested in, now I would like to have bail fixed. 20

Q. As a matter of fact you never appeared before Judge Holland on this writ? A. I beg your pardon, I not only appeared, I even argued, I argued it, and I will tell you what time it was, the Judge went away that afternoon, got through Court early, and I think he came back at 2:30 after adjourning at 11. 30

Redirect-examination by Mr. Weinberger:

Q. Mr. Heller, apparently the Prosecutor has forgotten a lot about this case.

The Court: That is not in the form of a question, let us cut the matter short. 40

Aaron Heller—Recross.

Q. How many places did you go to find out where the defendant was?

The Prosecutor: Objected to, nothing to do with duress.

The Court: Objection sustained.

Mr. Weinberger: I ask an exception.

10

Exception allowed and sealed.

.....,
Judge.

Q. How long after you saw the marks on Lolicero was it you told the Prosecutor about it?

A. Why, within 20 minutes.

Q. Did you tell him he could go down and look at the marks on his back and face? A. Not in that language, but we talked about it.

20

Q. I mean, in substance? A. Yes.

Recross-examination by the Prosecutor:

Q. Very kind to let me go down if I wanted to go down? A. I did not say that.

The Court: No question there.

Q. You are sure you said that to me? A. No, I didn't say that.

30

Q. What did you say? A. We talked about it, in substance.

Q. The conversation was very short? A. Yes, there was another man there.

Q. And I told you what I thought of that defendant? A. Yes.

Mr. Weinberger: I ask that be stricken out. You have a good many thinks that are wrong.

40

Theodore H. Boss—Direct.

The Prosecutor: Not half as many as Mr. Weinberger has.

The Court: Proceed.

(Witness excused.)

Mr. Weinberger: I will call Mr. Boss.

The Court: Limit it to very strict rebuttal. 10

THEODORE H. BOSS, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Weinberger:

Q. Did you speak to Chief Dennis, Mr. Boss, at the Mountain Lakes headquarters? 20

The Prosecutor: I object, no question of duress.

Mr. Weinberger: Strictly rebuttal. If he did, yes or no.

The Court: Objection sustained.

Mr. Weinberger: I pray an exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge. 30

Q. Is it a fact you were told that Locicero, the defendant, was not there by Chief Dennis?

The Prosecutor: Objected to, not a question of duress.

The Court: I will allow it.

A. That was the answer I got off the gentleman who said he was Chief of Mountain Lakes police. 40

Theodore H. Boss—Cross.

Cross-examination by the Prosecutor:

Q. Did you ask whether Locicero was there or Lieut. Allen was there? A. I asked both, first Locicero, then he said to me who is calling, I said, Mr. Boss, of Heller & Boss. He said, no, he is not here.

10

The Prosecutor: That is all.

(Witness excused.)

Mr. Weinberger: I think on this feature of the case we rest.

The Court: The statement may be admitted and marked Exhibit S-2 in evidence. You may have an exception.

Exception allowed and sealed.

20

ALBERT H. HOLLAND,
Judge.

(Exhibit S-2 for Identification received in evidence and marked Exhibit S-2.)

The Prosecutor: I ask permission to read it to the jury.

The Court: Yes, you may read it to the jury.

30

Mr. Weinberger: May I formally object to having it read? I make formal objection at this time that the Prosecutor refrain from reading any portion of that statement relating to any occurrence other than the subject matter now involved in these indictments on the ground it would be prejudicial, purely in violation of law and in violation of State vs. Cohen. I think your Honor will find that case reported.

40

The Court: Objection overruled.

Theodore H. Boss—Cross.

Mr. Weinberger: I ask an exception.
The Court: Exception will be allowed.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

The Prosecutor: The State rests.

Mr. Weinberger: I respectfully move for
a direction of acquittal on the ground the 10
State has failed to prove a prima facie
case, and on the further ground the posture
of proof as it now stands, including the
statement, is based upon matter which le-
gally has no place in the record of the cause
and which if eliminated would nullify the
legal efficacy of the entire proof offered by
the State; on the further ground that the 20
crime charged in the indictment has not
been established by competent evidence.
Those are the grounds on which I move.

The Court: Motion will be denied.

Mr. Weinberger: May I ask the Prose-
cutor to elect on which of the grounds he
proposes to have the case go to the jury?

The Court: You may ask.

The Prosecutor: I don't see where there
are two counts— 30

The Court: He may elect both. If he
says nothing I assume—

The Prosecutor: We stand on the indict-
ment.

The Court: Yes.

Mr. Weinberger: May I briefly state an
opening to the jury?

The Court: Yes, of course.

(Mr. Weinberger opened the case to the
jury.) 40

Anthony Locicero—Recalled—Direct.

ANTHONY LOCICERO, the defendant, recalled as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Weinberger:

Q. How old are you, Mr. Locicero? A. 31 years old.

10 Q. Where do you live? A. 48 Dayton Avenue, Passaic, New Jersey.

Q. How long have you lived in Passaic? A. About 25 years.

Q. Were you ever convicted of a crime? A. No, sir.

Q. On August 29, 1933, were you at Denville or in Morris County at all that day? A. No, sir.

20 Q. Did you have anything to do with the hold-up of any Gotham Silk truck? A. No, sir.

Q. On that day or any other day in Morris County? A. No, sir.

Q. On October 4th, 1933 you remember being at Boonton and making a statement that night? A. Yes.

Q. Now, before you made this statement at Boonton you were at Hackensack, were you not? A. On August—October 3rd in the morning I was in Hackensack, yes.

30 Q. And while you were in Hackensack you were answering a notice to appear in Court? A. Yes, sir.

Q. When you got in Court did you have a lawyer with you? A. Yes.

Q. Who was the attorney? A. Teddy Boss.

Q. Before what Judge were you appearing that morning? A. I think it was Judge Weber.

Q. Judge Weber. When you got into Court or into the Court House what happened? A. Well,
40 I was in the Court House, the lawyer went in the

Anthony Locicero—Recalled—Direct.

front and I in the back, there was no room so I was standing in the room, the Detective, Gallione come over and when I said, "What do you want," he said, "Come over here." I said, "Why, wait a minute until I tell Boss I am going out." He said, "Never mind, come on out I want to tell you about your license." He had taken my license, and I need a license, I need a license.

10

Q. What business are you engaged in? A. Vegetable and fruit business.

Q. How long have you been in that business? A. Since my father died, about ten years.

Q. With whom do you live? A. My mother and sisters and brother.

Q. And your mother is a widow? A. Yes, sir.

Q. Do you support your mother? A. Yes, sir.

Q. And you say for ten years you have been in the vegetable business? A. Yes, sir, that's right.

20

Q. And what kind of car do you drive? A. A small truck.

Q. And where is your place of business at? A. 48 Dayton Avenue.

Q. Is that with your mother? A. Yes.

Q. Now, as a matter of fact, he had your license you say, where did he get your license? A. About a week before they picked me up he took my license and owner's card.

30

Q. Where had you been picked up? A. At home.

Q. And who had picked you up? A. The Passaic detectives, and they turned me over to Bergen County.

Q. What was taken from you at that time? A. License and owner's card for my car, a fountain pen, and a few other small things.

Q. And he said he was going to talk to you

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Anthony Locicero—Recalled—Direct.

about your license? A. Gallione, yes, when he called me out.

Q. Where did you go? A. He took me upstairs to the Prosecutor's office.

Q. That is in Hackensack? A. Yes.

10 Q. What happened? A. He took me up there, four or five men there, Mr. Parks, a few detectives; he sat me down in a chair, and put an officer's hat over my eyes and Mr. Parks sat at my right I think—let me see, that's right, my left, and he looked at me and said, "Yes, that's the fellow." And that's all that was said. Then he took me to Morris County.

Q. Before you had been there that day had you seen Mr. Parks before? A. One time when I was in a cell in Maywood.

20 Q. You were picked up a week before, that was the time you are speaking of? A. That's right, about ten days before.

Q. By the Passaic police and you were handed over to Mr. Gallione? A. And they kept me for three or four days where nobody could find me.

Q. Where? A. In Maywood.

Q. And you were kept in Maywood Jail there? A. Yes, and nobody knew where I was.

30 Q. Could you communicate with your family and tell them where you were? A. No, nobody.

Q. Could you telephone to anybody? A. No telephone, nobody could.

Q. You were kept hidden away? A. For three days.

The Court: This is all previous to the Morris County arrest, you are speaking of Maywood, hasn't anything to do with this trial.

40 Mr. Weinberger: I am trying to connect it.

Anthony Locicero—Recalled—Direct.

The Court: You may connect it, but you are going to show that is where Mr. Parks saw him?

Mr. Weinberger: Yes.

The Court: All right.

Q. And it was there, was it not, that Mr. Parks came to see you? A. Yes, four or five different people came there, and Mr. Parks. 10

Q. Mr. Parks came there, and when you were pointed out he said you weren't the man, didn't he? A. He looked at me and didn't say nothing that I heard him say.

Q. Didn't he say anything? A. He looked, stayed around about five minutes, and then they went out.

Q. Did he say you were the man on that occasion? A. No. 20

Q. Now, as a matter of fact, who was there at the time that they brought him in to see you, brought Mr. Parks in to see you? A. Mr. Gallione was one, and then there were other officers there, I don't know who they were.

Q. Now, what happened then, did Mr. Parks leave that day? A. Yes, they went out.

Q. Were you in a cell? A. I stayed in the cell, yes. 30

Q. Were you taken out of the cell at all when Parks was there?

The Court: Were you brought out?

The Witness: Yes, I believe I was brought out, and I walked up and down, and then they put me in again.

Q. You walked up and down in the presence of Mr. Parks? A. Yes, that is right. 40

Anthony Locicero—Recalled—Direct.

Q. Did you wear a hat or anything then? A. No, nothing.

Q. Were you dressed in your clothes? A. Without a jacket, just in my shirt.

Q. Now, you were placed back in the cell? A. That's right.

10 Q. And then you were allowed out on bail? A. No, I was in there about three days and they brought me to Hackensack County Jail, then they set bail.

Q. You were allowed out on bail? A. Yes.

Q. And it was when you were going back to Court for a hearing that Mr. Gallione got you? A. That's right.

Q. When you got upstairs in the Prosecutor's Office who gave you the hat? A. Mr. Gallione.

20 Q. Did you ever have a policeman's hat in your life? A. No, sir.

Q. Did you ever own one, or get one from anybody? A. No.

Q. Did you ever wear a police hat or uniform anywhere? A. I did in there, he put it on me.

Q. That was the first time? A. Yes, sir.

Q. What happened to you after you got through there with this session in the Prosecutor's Office? A. Well, I waited there awhile, and then they took me to Morris County.

30 Q. Were you permitted to tell your lawyer where you were going? A. No, sir.

Q. Did you ask permission? A. Yes.

Q. Who did you ask permission from? A. I said, "Why don't you let him know?" He said, "He will find out about it."

Q. Then you were taken where? A. Then Mr. Allen and a State Trooper, they took me to the
40 State Troopers' Barracks.

Anthony Locicero—Recalled—Direct.

Q. And you spent how much time there? A. I stayed there until it was dark.

Q. What took place there? A. They took my name, address and fingerprints, took my picture, and questioned me a little. Then they called up Morristown if they could put me in a cell there and they brought me in the cell.

Q. Up to that time had you denied having anything to do with this robbery? A. Yes, sir. 10

Q. Did you tell them where you were on the night of the 29th? A. I told them I was home.

Q. Did you tell them you did not know what had happened at Denville? A. I told him I didn't know anything about it.

Q. Then they took you to Morristown Jail? A. That's right.

Q. What time did you get there about? A. It was dark, about 9 o'clock. 20

Q. Where did you stay that night? A. In Morristown Jail, City Jail.

Q. What time did you leave there the next morning? A. About 11 o'clock.

Q. Up to that time had you received anything to eat or drink? A. No, sir.

Q. And you left that jail at 11 o'clock, who took you out? A. Detective Allen, Chief Bulmer of East Paterson—no, Detective Allen was there and a State Trooper. 30

Q. Where were you taken to? A. I was taken to Mountain Lakes.

Q. When you got to Mountain Lakes what time did you reach there about? A. It was about twenty after, half past 11.

Q. Were you given anything to eat? A. No, sir.

Q. How long did you stay there? A. I stood there until it was dark, about 7 o'clock. 40

Anthony Locicero—Recalled—Direct.

Q. Up to 7 o'clock had you eaten anything? A. No.

Q. What happened there? A. When they took me to Mountain Lakes?

10 Q. Yes. A. First they brought me down the cellar, first in the office they asked my name and address, then they brought me down the cell, then down the cell they took me out of the cell and said here is where it comes now, you are going to tell us everything. I said I haven't got anything to tell you. He said O. K. Then they start beating me, they beat me for about four hours, first couple of hours beat me without anything, then they got tired, one got a night-stick and one a hose, and the Chief of Police of East Paterson says, the only thing about this place they haven't
20 got enough hoses, because he couldn't get a hose. They were beating me. When I was down unconscious they kicked me and pulled me up by my hair, I would be laying down; one time I was laying down, couldn't get up any more, Gallione stepped back five feet and jumped on me with both feet on my chest, he almost killed me at that time. Then I says to him, I will do anything you say, I will even say I murdered somebody, I will
30 do anything you say so long as you leave me alone. Then, tell us where the stuff is. I didn't know where to tell them, I told them any address come to my mind, I don't know whether there is a Bridge Street in Newark, I told them an address, that is how they let me go, they left me go back, put me in a cell, and they went to this address and I was relieved for a couple of hours, and they come back and said, "You sent us on a wild goose chase."

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Anthony Locicero—Recalled—Direct.

Q. Who said that, "sent us on a wild goose chase?" A. Gallione.

Q. What happened? A. They said, "We will fix you for that." I says, "Leave me alone, I will sign." I was all bruised, I could hardly walk, so they said, "All right, if you do that we won't touch you tonight." Then they took me to Boonton to the Police Station in Boonton, put me in a cell there and they asked me if I wanted anything to eat. So I says yes. They brought me a sandwich, and I ordered a sandwich and coffee, I drank the coffee. 10

Q. You did have the coffee? A. I had the coffee.

Q. As a matter of fact up to that time you had been without any food or drink for how long? A. Since the day before, in the morning. 20

Q. Since you were taken from Hackensack? A. That's right.

Q. Did you ever meet Charlie Schlenger, Schiffman or Walker, any of the three? A. No, sir.

Q. At four o'clock in the morning? A. No, sir.

Q. Did you ever agree to meet them in the morning? A. No, sir.

Q. Did you ever ride in an automobile with them that day, a new Hupmobile sedan? A. No, sir. 30

Q. Did you ever have a blue Hupmobile? A. No, sir.

Q. Do you know whether any of these boys rode in one? A. I don't know if they did.

Q. Did you ever drive in the blue Hupmobile sedan that Charley Schiffman drove? A. No, sir.

Q. This statement says you sat with Schiffman and Walker and Schlenger were sitting in the 40

Anthony Locicero—Recalled—Direct.

back, did you sit with those boys in an automobile? A. No, sir.

Q. At any time with regard to any date in August, 29th, or 28th or 30th? A. No, sir.

Q. Did you know that the Gotham Silk Hosiery truck had been hijacked on August 29th? A. They told me about it.

10 Q. Who told you about it? A. They were talking about it.

Q. Who? A. The detectives.

Q. Up to that time did you know anything about any such thing? A. No, sir.

Q. Did you stop a truck of the Gotham Hosiery at 6 o'clock in the morning? A. No, sir.

Q. On the 29th of August did you wear a cop's hat on that night, the 29th of August? A. No, sir.

20 Q. Did you ever have a whistle with a string attached to it? A. No, sir.

Q. Do you know where Bloomfield Avenue is? A. No, sir.

Q. By the way, do you know where Denville is? A. Yes, I know where Denville is.

Q. Have you ever been to Denville? A. I have been through Denville.

Q. You have driven through? A. Yes, sir.

30 Q. Did you ever take a man off a truck and place him in a Hupmobile car or any other car on the 29th of August? A. No, sir.

Q. Did Willie and Eddy get on the truck and Schiffman and you take the driver? A. No, sir.

Q. Did you stop at some place down the Neck at Newark? A. No, sir.

Q. Did you stop at a side street for over half an hour to give them time to drop a load? A. No, sir.

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Anthony Locicero—Recalled—Direct.

Q. Do you know what became of the load taken from the Gotham Hosiery truck? A. No.

Q. Did you ever know what became of the truck? A. No.

Q. Did you have anything to do with the disposition of the truck or hosiery? A. No, sir.

Q. Did you and Schiffman drive over the 23rd Street Ferry in the Hupmobile car? A. No, sir. 10

Q. Were you in that on the morning of the 30th of August or the night of the 29th? A. No, sir.

Q. Did you ever receive \$200.00? A. No, sir.

Q. From anybody on this job? A. No, sir.

Q. Did Willie Walker or anyone else give you any money? A. No, sir.

Q. Did you squawk or say anything to the effect, "Where the hell is it if you didn't sell it?" A. No, sir. 20

Q. Or words to that effect? A. No.

Q. Did you ever have any such conversation with Walker or anybody else? A. No, sir.

Q. Concerning a job in Denville on the night of August 29th? A. No, sir.

The Court: Now, he is bound, Mr. Weinberger, to say, "No, sir," to everyone of those questions. He has denied categorically that he had anything to do with the robbery, I didn't even suggest stopping you for at least 25 or 30 questions. 30

Mr. Weinberger: With your Honor's permission I won't go any further, I think perhaps that was unnecessary. I did it for a reason your Honor will see it possibly later.

Q. Do you know whether Schlenger, Schiffman 40

Anthony Locicero—Recalled—Direct.

and Walker live in a hotel in New York? A. No, sir.

Q. Did you know whether they lived in a hotel near the 50's? A. No, sir.

Q. Did you ever have any conversation with anybody relating to the Gotham Hosiery job? A. No, sir.

10 Q. At any time other than the detectives in this case? A. No, sir.

Q. Did you ever make any arrangement with Walker to leave the car, the Hupmobile, on 42nd Street and Seventh Avenue? A. No, sir.

Q. Did you ever leave the car there? A. No, sir.

Q. Do you know whether it was ever left there? A. No, sir.

20 Q. Did you ever get a gun from Willie Walker? A. No, sir.

Q. Did you ever give Willie Walker a gun back? A. No, sir.

Q. Did you ever have a 38 calibre nickle plated gun, loaded, at any time in your home? A. No, sir.

Q. Did Mr. Heller see you at the jail? A. Yes, sir.

30 Q. Did you show him the marks you had on your back? A. Yes, sir.

Q. Did the jail doctor see you? A. Yes, sir.

Q. Did you show him the marks you had? A. I showed him.

Q. Did you ever have any marks before you went up to Mountain Lakes that you had on your back that you showed to the doctor or anybody else? A. No, sir.

40 Q. Did you have any marks on your face? A. Little small scratches.

Anthony Locicero—Recalled—Cross.

Q. Did you have them before you got to Mountain Lakes? A. No, sir.

Q. Did you get those marks falling out of a bed? A. No, sir.

Cross-examination by the Prosecutor:

Q. When did you get the marks you got on your chin there now, small scratches? A. Shaving. 10

Q. And you didn't get the other marks you had on your face from shaving? A. No, sir.

Q. Where did you get them? A. In Mountain Lakes.

Q. You say after all this beating, three or four hours, the only marks were a couple of scratches on your face and two or three on your back? A. Plenty on my back. 20

Q. The doctor didn't say so, did he?

Mr. Weinberger: That is objected to.

The Court: Objection sustained.

Q. The doctor examined you when? A. About a week after I was in the County Jail.

Q. You heard when he testified he stated he examined you on October 7th?

Mr. Weinberger: I object to a comparison of the testimony of a witness. 30

The Court: Objection is sustained. The question is, when did he go in the County Jail.

Q. Do you know when you did get in the County Jail? A. When did I get in the County Jail?

Q. Yes. Two days after they picked me up.

Q. They picked you up on the 3rd and you went to jail on the 5th? A. Yes. 40

Anthony Locicero—Recalled—Cross.

Q. And the doctor examined you when? A. I don't know when, about, at least about a week after.

Q. At least a week? A. That's right.

Q. Did you get any scratches on yourself over in the Maywood Jail? A. No, sir.

10 Q. You were held over there on another charge, weren't you?

Mr. Weinberger: That is objected to.
The Court: Objection sustained.

Q. You were held there, weren't you? A. Picked me up, yes, sir.

Q. And nobody knew where you were? A. That's right.

20 Q. How long were you there? A. About three days.

Q. Anybody hurt you there? A. No, sir.

Q. Nobody beat you there? A. Yes, sir.

Q. Then you were brought into the Hackensack Jail? A. Yes, sir.

Q. Nobody hurt you there? A. No, sir.

Q. Did you have any scratches on your back? A. Yes, sir.

Q. Did they ever beat you there? A. Yes, sir.

30 Q. Then, you were brought over to Morristown Police Headquarters? A. No, sir, I was out on bail for about ten days.

Q. When did you get back to Hackensack? A. When I was supposed to come up for my hearing, they picked me up.

Q. On October 3rd? A. Yes.

Q. You were brought over to Morristown Police Headquarters that night? A. Yes.

Q. Didn't beat you there? A. No.

40 Q. Feed you there? A. No, sir.

Anthony Locicero—Recalled—Cross.

Q. What time did they bring you there? A. In the afternoon.

Q. All right. After taking you there, taking your picture and fingerprinting you, they took you to Morristown City Jail? A. Yes, sir.

Q. Were you beaten there? A. No.

Q. Were you asked if you wanted anything to eat? A. No. 10

Q. Were not? A. No.

Q. Did you have anything to eat? A. No.

Q. Why couldn't you sleep in the Morristown Jail? A. Nothing to sleep on.

Q. The bed wasn't there? A. Just only an iron thing there.

Q. An iron bed? A. Yes.

Q. What kind did you have over in the Maywood Jail? A. Had blankets and a mattress. 20

Q. You wouldn't sleep on this iron bed? A. Couldn't sleep.

Q. Were you tired enough to sleep? A. I sat down for a while.

Q. Then they brought you where? A. Then they come in the morning at 11 o'clock and brought me to Mountain Lakes.

Q. Did they give you anything to eat there? A. No.

Q. Didn't Chief Dennis give you a Hamburger sandwich? A. No, sir. 30

Q. Is that where you say you were beaten? A. Yes.

Q. You were beaten for four hours? A. Yes.

Q. With pipes and hose and night-sticks and fists? A. Not pipes.

Q. Night-sticks, hose and fists? A. Yes.

Q. Was Lieut. Allen beating you? A. Yes.

Q. Was Chief Bulmer beating you? A. Yes. 40

Anthony Locicero—Recalled—Cross.

Q. Was Trooper Dickerson beating you? A. Yes.

Q. Was Detective Gallione beating you? A. Yes.

Q. All four of them beating you? A. Yes.

Q. And you were able to walk up those stairs and go over to Boonton? A. Yes.

Q. And you walked up the stairs to Boonton Police Headquarters? A. I walked up, but how.

Mr. Weinberger: What did you say?

The Witness: I could hardly walk up.

Q. And when you saw Sergt. Kromka you didn't say anything to him? A. I didn't have to broadcast it.

Q. Didn't you feel like making an outcry and telling somebody how you had been beaten? A. Not to him, he just brought me in and that's all, and I was alone there.

Q. Here was a man, a police officer, didn't you think he could give you assistance and help? A. He brought me coffee and a sandwich.

Q. And then after this they took you upstairs and obtained these two statements from you? A. Yes, sir.

Q. And you say they had this terrible skeleton or this skull there? A. Yes.

Q. Is it because that skull was there you gave them this statement? A. Not because of that.

Q. You weren't afraid of that skull? A. Sure I was.

Q. You knew that skull was dead and it couldn't hurt you? A. That's right.

Q. How were you afraid? A. Because they could do the same thing, it was done more than once.

Anthony Locicero—Recalled—Cross.

Q. You say this gentleman took notes, this gentleman, Mr. Smith? A. Yes.

Q. Why didn't you tell him to put down things in his notes how they beat you? A. He wouldn't put it down if I asked him.

Mr. Weinberger: One minute, I object.

The Court: Just a minute. I don't know 10
about that. He makes the statement he wouldn't put it down if he did ask him, how does he know that, that is the question.

Mr. Weinberger: The question undoubtedly calls for something in the form of the attitude of mind of another person, I don't think this witness can be asked that.

The Court: He does make an answer. 20
You didn't object to the question, he said he wouldn't take it down if he did ask him. Why does he make that charge against Mr. Smith?

The Witness: I could answer it.

Mr. Weinberger: The fact is—

The Court: The witness says he has an answer.

Mr. Weinberger: I still object, I think.

The Court: I will allow him to answer. 30

Mr. Weinberger: Exception.

The Court: Yes; he wants to answer.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

The Witness: There was other things was said and the stenographer said should I put them down, and he said no. 40

Anthony Locicero—Recalled—Cross.

Q. What else did you say that they didn't put down? A. I said, was said in the room?

Q. Anything you said he didn't put down? A. No.

Q. He put down everything you said? A. Yes.

Q. Anyone in the room besides Mr. Gallione, 10 Mr. Dickerson and Mr. Bulmer? A. Yes.

Q. Who else? A. A few other officers.

Q. How many? A. An officer from Newark.

Q. Mr. Adams? A. Yes.

Q. Who else? A. Chief of Police from Mountain Lakes.

Q. Mr. Dennis? A. Yes.

Q. Who else? A. I think that's about all.

Q. And there were others in that room? A. Might have been one more, I don't know.

20 Q. Mr. Richter here. You didn't make any outcries to anyone of these men and say these people are beating me up, I am being compelled to sign this statement? A. No, sir.

Q. You just signed it and signed it voluntarily? A. Voluntarily—after that beating you sign anything.

Q. Where did you go back to jail? A. After that?

30 Q. Yes. A. Took me to Morris County, Morristown City Jail.

Q. They took you to the County Jail? A. City Jail. In the morning they brought me over to the County Jail.

Q. You were left in Boonton overnight, weren't you? A. No, sir.

Q. And taken to a barber shop the next morning? A. Yes.

40 Q. Did you go to the barber shop the next morning? A. Yes.

Anthony Locicero—Recalled—Cross.

Q. Did you tell the barber how they had beaten you up? A. No.

Q. Did the barber say anything about your jaw, it was all swollen? A. No, didn't say anything.

Q. Was your jaw swollen then? A. Yes.

Q. And then you are brought to the County Jail? A. Yes, sir.

Q. And you say while you were over in Mountain Lakes Station downstairs you heard someone call up, your lawyer, Mr. Boss? A. Yes.

Q. How did you know he was calling for you? A. Because I know he was.

Q. You heard that? A. Yes.

Q. You heard that conversation? A. I heard the telephone ring.

Q. Yes? A. And I heard Mr. Allen come down and say the lawyers are looking all over for him.

Q. How did you know? A. I heard him say, this is Heller & Boss' office.

Q. You heard that over the telephone? A. I didn't hear it, the Chief of Police says this is Boss is calling, and Allen come down and says—

Q. You heard that from upstairs? A. The Chief of Police told Mr. Allen.

Q. Upstairs? A. Yes.

Q. And you overheard it? A. I was downstairs.

Q. That's when they beat you up? A. They weren't beating me when the telephone rang, they stopped.

Q. And you were able to hear what took place? A. Yes.

Q. Weren't you unconscious then? A. Not yet.

Q. You were not unconscious then? A. No.

Q. You know Charlie Schiffman, don't you? A. Yes.

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Anthony Locicero—Recalled—Cross.

Q. And you know Willie Walker? A. Yes.

Q. You say you have never been convicted of a crime? A. No, sir.

Q. Where were you on May 3rd, 1932?

Mr. Weinberger: That is objected to.

10 The Court: Well, if it has a tendency to show a conviction I will allow it.

Mr. Weinberger: If it is for that purpose?

The Court: Yes, if it is for that purpose.

Mr. Weinberger: If it is not I will move for a mistrial.

The Court: I understand the Prosecutor wishes to show a conviction.

The Prosecutor: Yes.

20 A. I don't remember where I was.

Q. Weren't you in the Passaic County Jail or Passaic County Town Jail, City Hall? A. Probably might have been.

Q. Don't you remember ever being convicted of a crime? You know what convicted of a crime is? A. I was convicted of disorderly person, if that's a crime. I was fined \$12.00.

Q. \$11.80? A. Something like that.

30 Mr. Weinberger: That certainly is not a conviction of a crime. May I ask it be stricken from the record?

The Court: Yes, I will allow it to be stricken from the record.

Mr. Weinberger: And that your Honor request the jury to disregard it?

40 The Court: You may prepare in your requests any of the matters we have discussed that you feel should be explained to the jury.

Anthony Locicero—Recalled—Cross.

Q. Where were you on August 29, 1933? A. Home.

Q. How old are you? A. 31.

Q. You reside 48 Dayton Avenue, Passaic, New Jersey? A. Yes.

Q. And you knew Eddie Schlenger, Walker and Schiffman? A. Yes.

Q. How long have you known them? A. Well, 10 which one do you mean?

Q. Anyone of them. How long have you known Schlenger? A. Four or five years.

Q. How long have you known Walker? A. A year and a half or two.

Q. How long have you known Schiffman? A. Eight or nine, ten years.

Q. You know the streets in Newark, don't you, downtown Newark? A. No.

Q. Don't you go there for produce? A. Some times. 20

Q. Been going there for eight or ten years? A. No, going to Paterson.

Q. You know where Roberts System is in Newark? A. Yes.

Q. On what street? A. I don't know.

Q. How did you know the truck that was held up was a White? A. I don't know it, they told me it was a White, I will state anything, I don't know what it was. 30

Q. Did you tell them your age? A. Who?

Q. You. A. Tell who my age?

Q. Any of these detectives? A. Yes.

Q. Then that part of this statement is true? A. My age?

Q. Yes. A. Yes.

Q. And where you reside is true? A. Yes.

Q. Who told you to say that? A. I tell everybody where I live. 40

Anthony Locicero—Recalled—Cross.

Q. And the only part of this statement is not true is that about where you confess being in this hold-up in Morris County? A. Yes.

Q. The whole rest of the statement is true?

Mr. Weinberger: I object to characterizing the whole rest of the statement that refers to the Denville robbery.

10

The Court: I will allow it.

Q. You remember Mr. Parks coming to you down in the jail in Hackensack, don't you? A. Yes.

Q. And you remember him sitting alongside of you in the Hackensack room upstairs, in the Court House, don't you? A. Yes, sir.

Q. Did you ever see him before? A. Before them two times?

20

Q. Yes. A. No, sir.

Q. Didn't see him out here in Denville, did you? A. No, sir.

Q. Where did you leave this policeman's hat you had? A. Didn't have any.

Q. Didn't you tell the officers you left it in the car? A. Tell them anything.

30

The Court: It has arrived at the hour of 4:30. This, of course, ladies and gentlemen, is an important case to both the defendant and the State, and none of the members of the jury ought to discuss this case with anyone on the outside or allow anyone to approach you or discuss it with you, and, in the meantime, we will take an adjournment until tomorrow morning at 10 o'clock.

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Adjourned to tomorrow, November 15, 1933, at 10 o'clock A. M.

Anthony Locicero—Recalled—Cross.

Morristown, New Jersey,
November 15, 1933.

TRIAL RESUMED.

Parties present as before.

ANTHONY LOCICERO, the defendant, re- 10
sumes the stand and testifies as follows:

Cross-examination continued by the Prosecutor:

Q. Do you know Joe Russo? A. Yes, sir.

Q. Do you know Fred Seiner? A. Yes.

Q. Do you know where Russo is now? A. Yes.

Q. Do you know where Seiner is? A. Yes, sir.

Q. Know where Charlie Schiffman is now? A.
No. 20

Q. Know where Walker is now? A. No.

Q. Know where Schlenger is now? A. Yes.

Q. Where is Schlenger?

Mr. Weinberger: That is objected to.

The Court: Objection sustained. He
may show how long he knows him, the mere
fact where he is at present is immaterial.

Q. That part of the statement where you say
you know Walker, Schiffman and Schlenger is 30
true? A. Yes.

Q. And the length of time you have known
them? A. Yes.

Q. They are indicted with you, too, aren't
they?

Mr. Weinberger: That is objected to.

The Court: The indictment speaks for
itself. The indictment of course includes
various names, and the jury will have the
indictment. 40

Anthony Locicero—Recalled—Cross.

Mr. Weinberger: May I say, if your Honor please, my objection is the Prosecutor before moving the trial against him, he asked for a severance. I don't want that charged against this defendant.

The Court: I have ruled on the objection and it does not call for explanation.

10 Q. Do you know where you were on July 18th of this year? A. July 18th?

Q. Yes.

Mr. Weinberger: I want to object to that.

The Court: July 18th of this year?

Mr. Weinberger: I would like to have the Prosecutor state what time, I think the witness is entitled to know day or night.

20 The Court: I will allow it, it is only one day.

Mr. Weinberger: Covers 24 hours.

The Court: So it does, so does he.

Q. Do you know where you were on July 18th of this year at 9 o'clock at night? A. 9 o'clock at night?

Q. Yes. A. Must have been home, I don't know.

30 Q. You weren't with Russo and Seiner over here at Mountain Lakes, were you? A. No, sir.

Q. Or at any place? A. No.

Q. Or had you arranged to meet them at any place that night? A. No, sir.

Redirect-examination by Mr. Weinberger:

Q. Who were the members of your family with whom you lived? A. My mother, two sisters and
40 a brother.

Anthony Locicero—Recalled—Redirect.

Q. One of your sisters is a school teacher? A. Yes.

Q. And her name is what? A. Josephine Locicero.

Q. And your other sister's name? A. Katherine.

Q. And what does she do? A. She is a dress-maker. 10

Q. What is your brother's name? A. Thomas.

Q. What does he do? A. He is a mechanic on parlor suites.

Q. The question was asked of you as to whether or not you were with Russo and Seiner on the night of July 18th, were you with them at any night? A. No, sir.

Q. Were you ever out with them at Mountain Lakes? A. No, sir. 20

Q. Russo and Seiner were over here in this jail, were they not? A. Yes, sir.

Q. Are they still there? A. No, sir.

Q. Do you know where they are now? A. Yes, sir.

Q. Did you ever have anything to do with them with any matter at all at any time? A. No, sir.

Recross-examination by the Prosecutor:

Q. Do you know where Schiffman is now? 30

Mr. Weinberger: Object to that.

The Court: I will allow it.

A. No, sir.

Mr. Weinberger: I will withdraw it.

Q. Do you know where Schlenger is now? A. Yes. 40

Anthony Locicero—Recalled—Recross

Q. Where? A. Mr. Allen told me he was in the County Jail, I don't know, as far as Mr. Allen told me.

Q. Who told you where Russo and Seiner are?
A. I know.

Q. How do you know? A. I have been here when they were sent away.

10 Q. They have been sent away? A. Yes.

Mr. Weinberger: I object to that.

The Court: You opened the door, you asked him if he knew where they were.

Mr. Weinberger: He says Mr. Allen told him about the other one.

The Court: Perhaps that is all he knew when he answered your question.

20 Mr. Weinberger: Withdraw the objection.

Q. Didn't you run a pool room on Dayton Avenue, Passaic? A. Pool room?

Q. Yes. A. Yes.

Q. When? A. Years ago.

Q. Since then you have gone in the vegetable business? A. Was always in the vegetable business.

30 *By Mr. Weinberger:*

Q. When did you run a pool room, how long ago? A. A few years ago.

The Court: When, not a few years ago, that might mean 20, that might mean two, when?

The Witness: I guess 1930.

Q. How long were you in that business? A. About six months.

40

Anthony Locicero—Recalled—Recross

Q. Were you running your vegetable business at the same time? A. Yes, it is right next door.

Q. And on whose property was it? A. My mother's.

Q. I suppose you went out of business for what reason? A. Well, didn't like the business.

Q. And you gave that up? A. Yes, sir.

Q. How many times a week do you go to the market? A. Well, about four times a week. 10

Q. What market do you go to? A. Usually go to Paterson, on Thursday I got to New York.

Q. Do you do your own buying? A. Yes, sir.

The Prosecutor: Of course, this is not re-cross-examination.

Mr. Weinberger: I will ask the indulgence of the Court.

The Court: I will allow it on the theory that it has some bearing on his previous and other occupations, a pool room keeper, I will allow it. 20

Q. Do you do your own bringing of your vegetables to your place of business? A. Yes.

Q. How long have you been doing that? A. For about 11 years.

By the Prosecutor:

Q. Is this the skull you saw over in Boonton Court Room? A. That's part of it, I think it is. 30

Q. Where is the crack they were supposed to have pointed to? A. Told me there was a crack.

Q. Didn't you look at it? A. I looked at it.

Q. How far away from you was it? A. About 4 feet.

Q. About here? A. Yes.

Q. Did you see the crack? A. They showed it to me they said was the crack. 40

Anthony Locicero—Recalled—Recross

Q. And you weren't afraid of that? A. Sure I was.

Q. Did you think that would harm you? A. That wouldn't harm you, but if they cracked my skull it would harm me.

Q. Where is the crack on that skull? A. Is that a crack?

10

The Court: Indicating one of the sutures.

Q. Is that the crack you saw? A. They showed it to me, "See that crack there," they said.

Q. Who showed it to you? A. Chief Bulmer.

Q. Who was present? A. All present.

Q. All the police officers and other people there in the Court Room? A. The ones that was in there.

20

Q. There were some people, see any police officers? A. I don't know whether they were or not, there was a few others.

Q. Did he talk very loud? A. So I could hear it.

Q. Is that the crack they pointed to? A. I am not sure if that is the skull, I can't say positive, I saw it four feet away.

30

The Court: The skull you saw, did it have a crack in it?

Q. Was it any different than this one?

The Court: The skull you did see, did that have a crack in it?

The Witness: They said it had a crack.

The Court: Did you see a crack?

The Witness: Something like a crack, yes, sir.

40

Anthony Locicero—Recalled—Recross

The Court: Which way did the crack run?

The Witness: Like this.

The Court: Obliquely on the left hand side from the central suture down to the forehead, is that what you saw?

The Witness: Yes.

10

Q. Then it was a different skull than this? A. I wouldn't say it was different, I wouldn't say it was that one.

Q. Where was the crack that they pointed to on this one? A. I was four feet away, they told me about a crack.

Q. You didn't see the crack? A. I saw the crack.

Q. Where is the crack on this skull? A. Isn't that a crack there(indicating)?

20

Q. Where? A. There.

Q. Now, you are pointing to the suture, I think the Court called it.

The Court: Suture of occipital joint.

Q. Is that the crack that you pointed to a little below—I don't know how you described that before.

Mr. Weinberger: That suture ought to be described somehow as a definite mark there.

30

The Court: You don't mean to say that the Supreme Court won't know what a suture in the skull is, you don't have to describe it any further, when it comes your time to examine on that part, you can put in any description you think proper, fitting and legal.

Mr. Weinberger: The only point I have

40

Anthony Locicero—Recalled—Recross

in mind is our friend don't agree on what a crack looks like.

Q. Was the skull you saw there any different from the one I am showing you? A. I don't know whether that is any different, they look the same.

10 Q. Then the crack you saw there was what crack on this skull? A. They showed me a crack here, "See that crack there," they said, "that is how your head will be if you don't sign."

Q. Indicating part of suture on the left hand side of the skull?

The Prosecutor: I offer it for identification.

20 The Court: No objection. It may be marked the next number.

(Received and marked for Identification Exhibit S-4.)

The Court: You may cross-examine on that, Mr. Weinberger, or consent it may be marked in evidence. The reason it is marked for identification the defendant is on his defense.

30 Mr. Weinberger: I think there ought to be something that that was the skull, he doesn't know. No further questions.

(Witness excused.)

Stephen Balatanacz—Direct.

STEPHEN BALATANACZ, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Heller:

Q. Where do you live, Mr. Balatanacz? A. 44 Dayton Avenue, Passaic.

Q. How long have you lived at Dayton Avenue, Passaic? A. Ever since 1912. 10

Q. And is that in the neighborhood where Anthony Locicero lives? A. Next house to me.

Q. How long have you known Anthony Locicero? A. I no understand.

The Court: How long have you known him?

The Witness: Him (indicating the defendant)? 20

The Court: Yes.

The Witness: I know him about near 20 years, he was a little boy yet.

Q. You knew him you say for about 20 years. Did you know his reputation in the community in which he resided during the past five years? A. Since I know him he was good boy, he never make a lie to anybody or other people.

The Prosecutor: I object; is it good or bad? 30

The Court: Yes. He has answered.

Q. You know he ran his vegetable store? A. Yes, sir.

Cross-examination by the Prosecutor:

Q. Have you talked with anyone concerning Anthony Locicero; did you talk with anyone else 40

Stephen Balatanacz—Cross.

Alois Lesezcz—Direct.

about Locicero? A. Some time we talk together.

Q. You talk to him. Did you speak to anyone else over there about Locicero? A. No, sir.

Q. Never talked to anyone else? A. No.

The Prosecutor: That is all.

(Witness excused.)

10

ALOIS LESECCZ, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Heller:

Q. Mr. Lesezcz, where do you live? A. 44 Dayton Avenue.

20

Q. Passaic? A. Passaic.

Q. What is your business? A. Night watchman, United States Rubber Mill.

Q. How long do you work in the United States Rubber Company? A. I work there for eight months now.

Q. How long you live on Dayton Avenue, Passaic? A. Since I am in this country, ten years ago.

30

Q. How long do you know Locicero, the defendant in this case? A. Since I come to this country.

Q. How far away from where he lives do you live? A. He is my neighbor next door.

Q. Do you know his reputation in the community in which he resides? A. Yes.

Q. What was it? A. He was very nice gentleman.

40

Q. Did you know his business, too? A. Yes.

Alois Lesecz—Cross.

Joseph Sobo—Direct.

Q. What was his business? A. Grocery, fruit and grocery business.

Cross-examination by the Prosecutor:

Q. Have you talked with anyone concerning Loeicero over in Passaic? A. I was talking always with him every day. 10

Q. To anyone else concerning him? A. I don't understand.

Q. Did you talk to anyone else about him? A. About him?

Q. Yes. A. I was talk with my friends about him.

Q. Who? A. My friends there.

Q. Which friend? A. There, Mr. Bellant. 20

Q. When did you talk to him about him? A. We were talking, not about him.

Q. I mean, did you ever talk to them about him before this alleged crime on October 4th, or August 29th? A. No, never.

(Witness excused.)

JOSEPH SOBO, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows: 30

Direct-examination by Mr. Heller:

Q. Mr. Sobo, you are employed by the City of Passaic? A. Yes.

Q. Where do you live? A. 44 Dayton Avenue.

Q. Passaic? A. Yes, Passaic.

Q. How long do you live in Passaic? A. I live 26 year. 40

Joseph Sobo—Cross.

Q. And that 26 years on Dayton Avenue? A. Yes.

Q. Do you know the defendant, Anthony Lolicero? A. Yes.

Q. Does he live near where you live? A. Yes, second door.

Q. And do you know his reputation in the community in which he lived? A. Yes.

Q. What was his reputation? A. Well, he got business, grocery business.

The Prosecutor: I object to that.

The Court: What difference does it make?

The Prosecutor: His reputation.

The Court: Why are you objecting to the answer?

Q. What was his reputation, what did people thing about him? A. I don't know.

Mr. Heller: I didn't hear your answer.

The Court: He says, "I don't know."

Q. I don't think he understands the question. A. He got a grocery business.

Q. He got a grocery business. Do you know whether his reputation is good or bad? A. He was good boy all the time I know for a small boy.

Q. The Prosecutor: I object to all this.

The Court: Yes.

Cross-examination by the Prosecutor:

Q. Did you ever talk to anyone else about Lolicero? A. I talk to him every day.

Q. Did you ever talk with anyone else about him? A. No, nothing.

Q. Never talked with anyone? A. No, nothing.

40

(Witness excused.)

Israel Watner—Direct.

Israel Watner—Cross.

ISRAEL WATNER, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Heller:

Q. Where do you live? A. 55 Dayton Avenue.

Q. Passaic? A. Passaic.

10

Q. How long have you lived on Dayton Avenue, Passaic? A. 24 years.

Q. What is your business? A. Glazier.

Q. Do you know the defendant, Anthony Lolicero? A. I knew his father.

The Court: Do you know him, yes or no?

The Witness: I know him.

Q. How long have you known him? A. About 24 years.

20

Q. How far do you live from where he lives? A. Couple of houses. I live across the street, I live 55.

Q. Do you conduct your glass business from that store, too? A. Yes.

Q. Did you always know his reputation in that community? A. He was nice boy, and he was bright boy.

Q. Did you also know his business? A. His business is fruit, grocery and fruit.

30

Cross-examination by the Prosecutor:

Q. Do you know where he was on August 29th? A. I can know nothing.

The Prosecutor: That is all.

(Witness excused.)

40

Andy Toth—Direct.

ANDY TOTH, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct-examination by Mr. Heller:

Q. Mr. Toth, where do you live? A. I live Dayton Avenue, Passaic.

10 Q. Do you know the defendant, Anthony Locicero? A. I know him, him a good boy every time.

Q. How long you know him? A. Maybe 18 years, 17, 18 years.

Q. Do you know whether his reputation is good or bad? A. No, good boy every time, nobody bother.

Q. Do you know what kind of business he was in?

20 The Court: Everybody has already said that.

A. Grocery, fruit.

Cross-examination by the Prosecutor:

Q. How big a street is Dayton Avenue? A. What?

Q. How big a street is Dayton Avenue? A. What?

30 Q. How big a street is Dayton Avenue? A. I no understand.

Q. A lot of houses on Dayton Avenue? A. I know, 46.

Q. Where do you live? A. Dayton Avenue, 61.

Q. And do you know where Locicero was on August 29th of this year? A. I don't know.

Q. You don't know where he was, do you? A. We know, hear him, good, you know.

40

(Witness excused.)

Catherine Locicero—Direct.

CATHERINE LOCICERO, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Weinberger:

Q. Miss Locicero, you are a sister, are you not, of the defendant? A. I am.

Q. And where do you live? A. 48 Dayton Avenue. 10

Q. How long have you lived there? A. About 18 years.

Q. What is your business? A. Dressmaking.

Q. And how long have you been doing that kind of work? A. Eight years.

Q. Have you lived with your brother all that time? A. Yes.

Q. And your mother and other sister and brother? A. Yes. 20

Q. First, with regard to your brother's business, what business does he do? A. Vegetables and fruit.

Q. And has that business kept him busy? A. Yes.

Q. Who took care of the store generally? A. My brother.

Q. Who went to the market to get the produce and things? A. He did. 30

Q. First of all, referring to August 29th, 1933, that was a Tuesday, I see—will you tell us whether or not your brother was home that night? A. Well, he was home every night.

Q. And when you say "every night," you mean what? A. Every night.

Q. He was. Was he a boy that ran around at all nights? A. No, sir.

Q. Do you recall when it was that your brother was first arrested? A. Yes, sir. 40

Catherine Locicero—Direct.

Q. Can you give us the date when that was?

A. The detectives from Passaic came to get him on Saturday afternoon, I think it was, September 16th.

Q. Was your brother home at the time? A. Yes.

Q. Where was he? A. He was home, he had dinner.

10 Q. He was having dinner? A. Right.

Q. Now, up to the date he was taken by the police was he home generally every night? A. Yes, sir.

Q. Now, referring to August 29th, you include that in one of the nights he was home? A. Right.

Q. Did your brother ever have a Hupmobile car?

The Court: Did your brother ever have a Hupmobile car?

20 A. He had one a long time ago.

Q. How many years ago—he had a car you mean? A. Yes.

Q. What was the make of the car? A. I don't know.

Q. What kind of car has he now, and has had for the last two years? A. He has no car now.

Q. Did he have a truck? A. Yes, a small truck.

Q. What kind of truck? A. A little Ford.

30 Q. Was that the truck he uses to get produce in? A. Yes.

Q. Still has that truck? A. Yes.

Q. How long has he had that? A. Two years, I think.

Q. Now, during those two years has your brother ever owned a pleasure car or automobile at all? A. No, sir.

Q. Did your brother ever have a police uniform at home of any kind? A. No, sir.

Catherine Locicero—Cross.

Q. Ever have a gun in the house for the last two years anyhow? A. No, sir.

Cross-examination by the Prosecutor:

Q. Were you home on the night of August 29th?
A. Yes.

Q. Are you home every night, too? A. Yes, sir. 10

Q. Never go out any night? A. No.

Q. And your brother never goes out any night?
A. No, sir.

Q. What time did he get home that night? A.
He is home 11 o'clock every night the latest, because my mother waits for him.

Q. Were you home that night at 11? A. Yes.

Q. Did you see him come in? A. Yes.

Q. Were you up at that late hour? A. Yes. 20

Q. Did you generally see him come in every night? A. Yes.

Q. Always waited up for him? A. Yes, we have no father so we wait until we all get home.

Q. You wait until you all get home before you go to bed? A. Yes.

Q. You say he was arrested noontime September 16th? A. Yes.

Q. Wasn't it before noon? A. Just at noon.

Q. What time did you get home that day? A. 30
12, on Saturday.

Q. Get home every noon together? A. Yes.

Q. You work downstairs in the vegetable shop?

A. No, I work in a dress shop.

Q. Did you ever see him riding around in Joe Russo's old Studebaker? A. No.

Q. You know Joe Russo? A. Yes.

Q. Do you know Seiner? A. No.

Q. Do you know Schiffman? A. No.

Q. Do you know Walker? A. No. 40

Catherine Locicero—Cross.

Q. Do you know whether or not your brother went around with these men, Schiffman, Walker and Schlenger? A. No.

Mr. Weinberger: Objected to. The Prosecutor makes her his witness.

The Court: She said she didn't know.

10 Q. Never saw him with any of those men? A. No.

Q. Never saw him in a blue Hupmobile sedan? A. No.

Q. You saw him on August 29th? A. Yes.

Q. What time did he get in the night of August 29th? A. He always gets home about 11.

Q. Does he have the store open Sundays? A. Yes.

20 Q. What time does he close Sunday? A. Close always 10.

Q. Every night? A. Yes.

Q. Keeps his store open every day? A. Yes.

Q. Who helps him there? A. My mother.

Redirect-examination by Mr. Weinberger:

Q. How old is your mother? A. 58.

Q. Is she here in Court?

30 The Prosecutor: That must be hearsay.

Mr. Weinberger: I guess it is hearsay, all right.

(Witness excused.)

Thomas Locicero—Direct.

THOMAS LOCICERO, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Weinberger:

Q. Your first name is Thomas? A. Yes.

Q. Where do you live, Thomas? A. 48 Dayton Avenue, Passaic. 10

Q. How old are you? A. 20.

Q. 20? A. Yes.

Q. What is your business? A. Upholsterer.

Q. Upholsterer? A. Yes.

Q. And working where? A. Essex Reed & Fibre, Newark.

Q. Where is that concern at? A. Newark.

Q. How long have you worked there? A. I am working there about three months now.

Q. How many months? A. Three. 20

The Court: Speak a bit louder.

Q. Before that where did you work? A. Modern Upholsterer.

Q. Whereabouts? A. In Newark, too.

Q. Work with them how long? A. About three years.

Q. First of all, whom do you sleep with at home? A. My brother.

Q. And what business, if any, is your brother in? A. Grocery, fruit store. 30

Q. And what is the number of the place of business? A. 48 Dayton Avenue.

Q. And how long has your brother been in that business? A. Ever since my father died.

Q. How long is that? A. About ten years now.

Q. Who takes care of purchasing and bringing in of supplies for the store? A. My brother does.

Q. And who else assists in the running of the business there? A. My mother. 40

Thomas Locicero—Direct.

The Court: Anyone else?

The Witness: No.

Q. Anybody else at all? A. No.

Q. Now, on August 29th, or any particular evening, now tell the Court and Jury about what time your brother would invariably be home? A. He is always home around 11 o'clock.

10 Q. What time does he get up in the morning? A. Half past six.

Q. Is that the regular hour, generally? A. That is the regular time; we both get up at the same time.

Q. Did you ever see a policeman's uniform in your house? A. No.

Q. Was there ever one in that house, a uniform? A. No, sir.

20 Q. On August 29, 1933, can you tell us whether or not your brother was home that night? A. Must have been home, he is always home.

Q. Has he ever been out in the ten years any particular night at all? A. No.

Q. Has he always slept home? A. He has always slept home with me.

Q. Did he ever have a gun in the house there? A. No.

30 *Cross-examination by the Prosecutor:*

Q. You say he has never been out in ten years? A. Well, never been out that I know of.

Q. Well, you just said he has never been out of the house in ten years? A. No.

Q. Just goes to work, to the market and back? A. Yes.

Q. Do you ever go out? A. No.

40 Q. You don't go out either? A. No.

Thomas Locicero—Cross.

Q. You wait up until your whole family comes in and go to bed, too? A. Yes.

Q. Never go out after you come home from work? A. Certainly, I go out.

Q. You just said you never did. A. I am home by 11 o'clock.

Q. You never went out after 11, is that it? A. 10
Yes.

Q. How about four in the morning, did you ever go out at that hour? A. No.

Q. Did your brother ever go out at that hour? A. No.

Q. You are sure he was in bed with you every night? A. Yes.

Q. And was he on 28th of August? A. Yes.

Q. And he got up at 6 o'clock? A. Yes.

Q. And he did not leave the bed during that 20
time? A. No.

Q. Did you know your brother was suffering from a venereal disease?

Mr. Weinberger: I object to that.

The Court: I will allow it.

Mr. Weinberger: I pray an exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,

Judge. 30

Q. Did you? A. No.

Q. Have you ever had a venereal disease? A.
No.

Mr. Weinberger: I object to that.

The Court: That will be sustained; the witness is entitled to the answer. He said no.

Mr. Weinberger: I appreciate the fact. I should not object if he answers no, but the

40

Thomas Locicero—Redirect.

Prosecutor should know better than to ask it.

The Court: He has a right to ask the question, and it is your duty to object, and my duty to rule upon your objection. I will rule it out.

10 *Redirect-examination by Mr. Weinberger:*

Q. Did you ever have a venereal disease?

The Court: He has already said no.

Mr. Weinberger: I beg your pardon.

(Witness excused.)

20 ANNIE LOCICERO, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct-examination by Mr. Weinberger:

The Court: Do you speak English?

The Witness: No.

The Court: Don't you wait on customers?

The Witness: Yes.

30 The Court: We need an Italian interpreter. Mr. Bontempo may be sworn as an interpreter of the Italian language.

(Mr. Bontempo was sworn as the interpreter in the case.)

The Court: Proceed, Mr. Weinberger. Conduct the examination in the first person.

40 Q. Mrs. Locicero, you are the mother, are you, of the defendant? A. Yes.

Annie Locicero—Direct.

Q. And how old is your boy? A. 32 years.

Q. And where do you live? A. 48 Dayton Avenue.

Q. How long do you live there? A. 26 years, 27, I don't know.

Q. What is your boy's business? A. My boy go all day in the house.

Q. What is his business? A. I got a store.

Q. What kind of store? A. Grocery store, fruit store.

Q. Who goes to the market and buys the stuff? A. Paterson.

Q. Who goes? A. My boy.

Q. How long has he been doing that? A. It is a long time since his father died. Why he has been doing it—

Q. And has he been doing that every day since the death of your husband? A. Every day.

Q. Has he ever been away from the house at night in the last ten years? A. In bed 11 o'clock, I wouldn't turn out my light until he was home.

Q. Has he ever been away any night in the last ten years? A. No, because I wouldn't turn out the light.

Mr. Weinberger: I didn't turn out the light?

The Court: Just a moment, let the question be answered.

The Witness: No, not even one time.

Q. Did your son ever have a policeman's uniform in the house? A. No, no, no.

Q. Ever have a gun in the house? A. No, sir.

The Prosecutor: No questions.

(Witness excused.)

Albert Parks—Recalled—Direct.

Mr. Weinberger: May I recall Mr. Parks?

The Court: As your witness?

Mr. Weinberger: Yes.

The Court: He may resume the stand.

10 ALBERT PARKS, recalled as a witness on behalf of the defendant, testifies as follows:

Direct-examination by Mr. Weinberger:

Q. You testified, Mr. Parks—

The Prosecutor: What is this, on his direct case?

The Court: Witness for defendant, I don't know.

20 The Prosecutor: He is on his own case now.

Mr. Weinberger: The Court asked me and I thought I had answered that.

The Court: You may proceed.

Q. Mr. Parks, you testified that you found yourself later on out on 18th Street and 11th Avenue, New York City, is that right? A. Yes, sir.

The Prosecutor: I object to that.

30 Mr. Weinberger: I want to give the witness something to base my question on.

The Court: You are laying a basis for something you want to prove, I will allow it.

Q. May I ask you whether that was the point where the Erie Railroad tracks run in? A. Yes, sir.

Q. You are sure of that? A. Erie freight yards.

Anthony Locicero—Recalled—Direct.

Mr. Weinberger: That is all.

The Prosecutor: No questions.

(Witness excused.)

Mr. Weinberger: We rest.

The Prosecutor: I would like to recall Anthony Locicero back to the stand for a few questions I want to ask him. 10

Mr. Weinberger: Counsel is not entitled to call him back, but I will waive the privilege.

The Court: He may resume the stand.

ANTHONY LOCICERO, the defendant, recalled. 20

Direct-examination by the Prosecutor:

Q. Do you remember a marathon dance that was conducted in East Paterson in the latter part of 1932 and first part of 1933? A. Yes, sir.

Q. Did you go to this dance? A. Once in a while.

Q. You went there quite often, didn't you? A. Well, once in a while I went there.

Q. What time did you close your shop up? A. Around 10 o'clock. 30

Q. And you went to this dance after that? A. No, sir.

Q. Before you closed your shop up? A. Yes, sir.

Q. Who did you leave in charge of your shop? A. My mother, sometimes.

Q. Who else? A. Well, my brother and sisters come home. 40

Anthony Locicero—Recalled—Direct.

Q. They come from work and you put them down the shop to work? A. We live right in the back there.

Q. And you would go off to this dance or wherever else you wanted to go? A. Once in a while, yes, sir.

10 Q. You were at this dance almost every night?
A. No, sir.

Q. How many nights did you go, if you remember, approximately? A. Once in a while.

Q. 10 times, 20 times? A. Six, not so many.

Q. Yes. A. Maybe six or seven times.

Q. No more than that? A. No.

Q. This dance lasted from December, 1932 until early 1933? A. I don't know.

Q. It lasted a long time? A. I guess it did.

20 Q. You went there six times? A. Yes.

Q. What time did you leave this dance if you went there at 10 o'clock?

Mr. Weinberger: I object to that, he didn't say that.

The Court: The witness says he didn't go there after 10 o'clock.

Q. What time did you go? A. Go there early.

Q. About what time? A. 7 o'clock.

30 Q. How long would you stay? A. Couple of hours, an hour.

Q. Then you would go home? A. Yes, sir.

Q. Where does Willie Walker live?

Mr. Weinberger: Object to that, counsel has had the chance to go over that.

The Court: You asked him before, he said he didn't know.

Q. Where did you meet Willie Walker?

Anthony Locicero—Recalled—Direct.

Mr. Weinberger: That is objected to, your Honor please, I submit that all of these questions—I concluded my questions—

The Court: Yes, but you waived your privilege, you cannot take it back now.

Mr. Weinberger: I am not taking it back, I submit that which has been gone over on cross-examination is certainly not the proper subject matter of a discretionary right which he has asked your Honor with regard to a marathon dance which he apparently covered and is now going back. 10

The Court: What are you arguing about? I sustained the objection.

Mr. Weinberger: I beg your pardon.

The Prosecutor: I don't recall whether he said he recalled where they lived or where he met them. 20

The Court: It is too late.

The Prosecutor: Mr. Weinberger waived any objection to that. That is all, then.

Mr. Weinberger: That is all, Mr. Locicero.

(Witness excused.)

Mr. Weinberger: We rest.

The Prosecutor: I will call Chief Bulmer in rebuttal. 30

WILLIAM BULMER, recalled, in rebuttal, by the State, testified as follows:

Direct-examination by the Prosecutor:

Q. Chief Bulmer, while you were Chief of Police of East Paterson was there a marathon con- 40

William Bulmer—Rebuttal—Direct.

ducted in East Paterson in December, 1932 until early 1933? A. Yes, sir.

Q. And did you attend this marathon to supervise it, police protection, etc.? A. I did.

Q. Did you ever see the defendant Anthony Locicero there?

10 Mr. Weinberger: That is objected to, collateral matter, not proper rebuttal, has no bearing on the subject matter of the indictment.

The Court: Objection overruled. You may have an exception.

Mr. Weinberger: I pray an exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,

20 Judge.

The Witness: I did.

Q. How many times did you see him there?
A. Why, the average of three or four times a week.

Q. And what time of night did you see him there? A. Anywheres from 10 o'clock to maybe 12, 1 o'clock in the morning.

Q. Did you ever speak to him? A. I have.

30 Q. You knew him, didn't you? A. Yes.

Cross-examination by Mr. Weinberger:

Q. What night did you last speak to him? A. I don't recall the dates, I was there every night.

Q. What night did you last speak to him, then?

The Prosecutor: It was answered.

The Court: I will allow him to answer.

A. I don't know.

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William Bulmer—Rebuttal—Cross.

Q. What was the first night you spoke to him?

A. I do not recall.

Q. The second time you spoke to him? A. I do not recall.

Q. The third time you spoke to him? A. I do not recall.

Q. Could you mention any date that you spoke to him? A. Not any specific date. 10

Q. Can you give us any specific hour or any specific date that you spoke to him?

The Court: Of course, you include that in the same question; he has already said he couldn't give you any specific date.

Mr. Weinberger: That is why I put the hour in.

The Court: If you mention any date put in the hour. 20

Mr. Weinberger: May I have my question answered?

The Court: You are just merely repeating the same thing all over again. How can he give you a specific hour when he tells you he can't give you a specific date?

Mr. Weinberger: May I urge the question?

The Court: No.

Mr. Weinberger: May I have an exception? 30

The Court: Yes.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

Mr. Weinberger: That is all, Chief.

(Witness excused.)

Frank Robert Kromka—Rebuttal—Direct.
Frank Robert Kromka—Rebuttal—Cross.

FRANK ROBERT KROMKA, recalled, in rebuttal, by the State, testifies as follows:

Direct-examination by the Prosecutor:

Q. I show you a skull marked S-4 for Identification, and ask you if that is the skull that was
 10 in the Boonton Court Room or Police Headquarters the night that Locicero gave the statements?
 A. It was.

The Prosecutor: I offer this in evidence now.

Mr. Weinberger: I object to it on the ground not proper rebuttal.

The Court: It may be admitted and marked Exhibit S-4, and you may have an exception.
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Exception allowed and sealed.

ALBERT H. HOLLAND,
 Judge.

The Prosecutor: That is all.

The Court: Any cross?

Cross-examination by Mr. Weinberger:

Q. Where are the nails that were spoken of?
 30 A. There (indicating).

The Court: Indicating what?

The Witness: Two points, I don't know whether they are screws or nails or what it is.

The Court: Two metallic points?

The Witness: Yes.

The Court: On each side of the skull.

Mr. Weinberger: That is all.

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(Witness excused.)

Motion for Direction of Acquittal.

The Prosecutor: That is all, your Honor.

Mr. Weinberger: May I formally move for a direction of acquittal?

The Court: Motion may be noted, denial will be made, and you may have an exception.

Exception allowed and sealed.

ALBERT H. HOLLAND, 10
Judge.

Mr. Weinberger: On the ground the evidence is such now that the Court should direct a verdict in favor of the defendant.

The Court: The Court cannot agree with you on that; it becomes a question for the jury, consequently the motion is denied.

Mr. Weinberger: Your Honor will allow me an exception? 20

The Court: Yes, of course.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

(Mr. Weinberger, while summing up to the jury stated "No greater outrage was ever committed than was committed in the great State of New York.") 30

The Prosecutor: I object to counsel referring to anything not a part of this case.

Mr. Weinberger: I think I have a right to refer to any illustration concerning the Third Degree for the purpose of showing the jury the impropriety of it and I should like to be permitted to refer to the Long Island case.

The Court: The Court rules that your comment

Motion for Direction of Acquittal.

and address to the jury must be confined solely to the testimony in this case, and is not proper comment thereon.

Mr. Weinberger: May I state the comment I desire to make is the very thing involved in the subject matter of this case.

10 The Court: It is not a part of this case.

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

The Court: Of course.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

(During the summing up to the jury by the Prosecutor, Mr. Meslar, the following colloquy occurred with regard to a statement made by the Prosecutor):

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Mr. Weinberger: May I except to that, it was there for that purpose, that that is illegal; he is talking about the skull, he said the skull if it was placed there was a perfectly proper thing, because it was in order that the defendant would know what the consequences would be in the hereafter.

The Court: I don't understand that.

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Mr. Weinberger: He is here, let him state to the Court: I except to that remark.

The Court: I say that anything the Prosecutor says is merely a comment on the evidence, and the evidence will speak for itself; you may have an exception.

Exception allowed and sealed.

ALBERT H. HOLLAND,
Judge.

Charge of the Court.

Mr. Weinberger: Thank you, and to the statement I accuse him of making.

The Court: You may have an exception to my ruling; the Prosecutor may proceed.

Exception allowed and sealed.

ALBERT H. HOLLAND,

Judge. 10

The Court charged the Jury as follows:

Ladies and Gentlemen of the Jury:

A serious question is about to be turned over to you for deliberation, and you must take it and consider it as cool, impartial judges, free from sympathy, free from prejudice, and acting only under the sanctity of the oath which you took, that you would justly determine the issue between the State and this defendant, and when you have done that you have done everything that you are required to do, and your responsibility thereupon ceases. 20

In order that you may have a clear comprehension of what it is that your duty comprises, it becomes the office of the Court to charge you the law that governs this case.

The Gotham Silk Hosiery Company is a manufacturing concern which has a factory in Morris County. On the 29th of August, 1933, a truck belonging to the Gotham Silk Hosiery Company, driven by Albert C. Parks, was held up at Denville, and whoever the perpetrator of that crime was became guilty of highway robbery. 30

After due investigations and examinations the case eventually was presented to the grand jury of the County of Morris, and the October Term 40

Charge of the Court.

of the Grand Jury returned an indictment against this defendant, Anthony Locicero, together with William Walker, Edward Schlenger and Charles Schiffman, charging all of them with an assault and with highway robbery.

10 Your duty is to determine from the evidence whether or not Anthony Locicero is guilty of the crime as charged in the indictment. The indictment is no proof of his guilt, the indictment is no evidence of his guilt; it is merely the charging instrument by which he is brought to trial before you, and throughout the entire proceedings the defendant is presumed to be innocent until proven guilty beyond a reasonable doubt.

20 In proving him guilty, it becomes the duty of the State to sustain the burden of proof; the burden of proof is on the State, and it must prove the defendant guilty by the evidence in this case, not in any other case; not by suspicions or conjectures, but by the evidence in this case and the proper inferences that you are entitled to draw from the evidence produced before you. If on this evidence it is your determination that you find the defendant guilty beyond a reasonable doubt, and you have no such reasonable doubt as to his guilt, then he should be convicted, and 30 if the State has not proven his guilt to that extent that he is entitled to be acquitted. That is your duty, to find out from this evidence whether or not you determine that he is guilty beyond a reasonable doubt, or whether the measure of proof does not satisfy you that he is guilty beyond such a reasonable doubt.

40 While the defendant was indicted with three or four other defendants, a severance was granted in this case and he was tried alone. The mere

Charge of the Court.

fact that the others were not tried in this proceeding is no evidence either for or against this defendant, because this defendant can be tried only on the evidence introduced in this case for your consideration.

The State charges in the first count that he was guilty of an assault by assaulting Parks with a gun, and, in the second count, that Locicero was one of the principals in committing the highway robbery whereby some \$29,000.00 or \$30,000.00 worth of raw silk materials, or whatever they were, were taken away from Park's custody, being the property of the Gotham Silk Hosiery Company, and stolen under those circumstances. In proof of that the State produces the driver of the truck, Parks, whose testimony concerning the recognition and the identification of the defendant you heard from the witness-stand. Parks described to you what the man who held him up looked like. He said that he posed as a police officer, and he had a policeman's cap, that he had a whistle, and that he wore a raincoat. Whatever it was, Parks gave you his recollection of the description of the man who actually held him up.

There is no dispute in this case that Parks was held up. The dispute is who did it; and so Parks testified that he first saw pictures, and, second, he saw this defendant, Locicero, in the Maywood jail, and, third, that he saw him again in a Hackensack courthouse.

Counsel had a perfect right to comment to you on every phase of this case and every phase of the testimony, and the Court, too, has a right in its laying down of the law for your benefit to comment on the testimony, but nothing that Counsel said, and nothing that the Court has said or

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Charge of the Court.

may say on the questions of the facts can in any way influence or disturb or restrict or limit your judgment as to what the facts are; for you, as a jury, are the sole and exclusive judges of the facts, of the testimony and of the proper inferences to be drawn from the evidence in this case, and you alone must assume that burden and nothing that Counsel has said, nothing that the Court can say concerning the facts can in any way alter or diminish that jurisdiction of yours. So you had Park's testimony concerning the man he says held him up, and his various meetings with this defendant in the Maywood jail and in the Hackensack jail, and Park's testimony concerning his recognition of the defendant.

The State also relied on the fact that when the defendant was apprehended and taken into custody, he gave a statement which was introduced in evidence, which was read to you, and which you will have an opportunity to examine; and from that the State contends that the defendant admitted his guilt and admitted his participation in that hold-up on the 29th of August, 1933.

To meet that situation the defendant introduced two defenses, which he has a perfect right to urge before you: First, his denial that he participated in the crime, that is, that he did not take part in it, he was not the man, that any recognition or identification of him was erroneous, or a mistake; and, second, he claims an alibi, which is a proper legal term for the defense which tends to show that at the time and place where the crime was committed, the defendant was not present but that he was somewhere else, and, consequently, he could not have taken part in the crime; and the defendant, in furtherance of those pleas, both of which defenses he has a right to introduce, also

Charge of the Court.

procured and produced some of his neighbors and friends in the same district in which he lived, who come here to testify as to his previous good reputation and to the fact that they say he is a good boy, or a good man—and that constitutes in brief the main contentions of the State and the main defenses of the defendant.

The Court does not limit anything in the evidence for your consideration, because, as sole and exclusive judges of the facts, you are entitled and it is your duty to consider all the evidence, all the facts, and all the matters that have been properly placed before you. Comment of the Court is merely to permit a basis upon which to render you the charges of law. 10

With reference to the contentions of the State: If you find, and if you are satisfied beyond a reasonable doubt that Parks did identify without error this defendant as the very person who held him up and committed the highway robbery, if you are satisfied of the guilt of the defendant in that respect beyond a reasonable doubt, your verdict in that case would be guilty. If you are not satisfied beyond a reasonable doubt upon the question or the identification, that doubt should be resolved in favor of the defendant—that is the law. 20

With regard to the second contention of the State: Concerning the confession, so-called, or statement, the defendant contends that he was coerced and forced to give that under duress and in fear of threats and bodily harm, and the law in that regard is that a defendant in making a statement is entitled to make it voluntarily. Any statement which is forced out of him by fear, by threats, by intimidation, or by promises, you would have a right to say you will not accept, and, therefore, you would discredit it. And so it be- 30
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Charge of the Court.

comes necessary for you to determine in what way and manner the statement was procured.

10 If you determine that he gave it as the officers say, voluntarily, you would be entitled to receive it in evidence and pass upon it. If you determine that it was forced out of the defendant as he says it was, you would be entitled to discredit it and not use it, and give the benefit of that doubt to the defendant.

On that question you may consider the story of the defendant that the only place where he contends that he was beaten was in the Mountain Lakes Police Station, and that afterwards in the Boonton Police Station he was not beaten, but that he was scared and intimidated by having been shown a skull.

20 On that score it will be for you to consider the testimony of the respective witnesses with regard thereto; the testimony of the officers who brought him there at a certain time of day, the testimony that they indulged or engaged in a conversation with him for a period of time and left and went to Newark, and came back again.

30 In the light of all the circumstances it is for you to find what actually did occur and what the truth of the situation is. You would have a right to consider the testimony of the officer who had the warrant and said he intended to have the defendant arraigned before a justice of the peace or recorder, whatever he may have been, in Mountain Lakes, a magistrate, who, according to the testimony of the officer held sessions in courtrooms in both Mountain Lakes and in Boonton.

40 If you determine that the statement was forced out of this defendant by beatings that he was subjected to, or by fear and by fright in which he was placed, it will be your duty to disregard

Charge of the Court.

it and pay no attention to it; but if you believe that the statement was properly made in the usual course, without any promise, fear or threat, without any punishment or duress, it would be your duty to consider it.

There has been something said by both counsel about the effects upon other people, or upon other cases, of your accepting the statement or not accepting the statement. Both counsel know that neither of them should say that to you. Your duty in this particular lies not to other people who may be prosecuted, not to other people who may be held up and robbed, but your duty lies to the State and to this defendant to decide the proper issues in this case on the evidence produced in this case. 10

If you find that the defendant's statement to the police was voluntary and that it showed his participation in the crime, you have a perfect right to consider it. And if on the whole case and on all the evidence you reach the conclusion, whether it be from the one testimony or the other, or both that the State has proven this defendant guilty beyond a reasonable doubt you should convict him: and if the State has failed to prove it beyond a reasonable doubt, you should acquit him—he would be entitled to the benefit of that doubt. 20

In that connection the testimony of the alibi need not be conclusive to raise the question of whether or not a reasonable doubt exists, but the rule of law is this: That if the testimony of the alibi raises a reasonable doubt in your mind, even though the testimony of the alibi itself is not conclusive as to the alibi, but if it raises a reasonable doubt in your mind as to the defendant's whereabouts or as to his participation in the crime, he is entitled to that doubt, and then your 30 40

Charge of the Court.

verdict would necessarily be one of not guilty. But if you do not believe the testimony of the alibi, and if upon considering it you nevertheless find him guilty beyond a reasonable doubt, it would be your clear duty to convict.

10 In that regard the Courts have also laid down the rule concerning testimony of a man's previous good reputation and the consideration and weight which you should give to it, and have held that in a criminal trial the jury should consider all the relevant testimony including that as to the defendant's good character or reputation, and if there exists a reasonable doubt of his guilt, even though that doubt be engendered merely by his previous good repute, he is entitled to an acquittal; but if
20 from the entire evidence including that of good character, the jury believe him guilty beyond a reasonable doubt, he should be convicted; for the Courts have said that in case of doubt, good character should turn the scale in favor of the defendant, but, if he is in fact proven guilty, his previous good character can avail him nothing. And so in like manner the Courts have also held that if a reasonable doubt of guilt is raised, even by inconclusive evidence of the alibi, the defendant is entitled to the benefit thereof and should be ac-
30 quitted; but if on the whole case you are satisfied beyond a reasonable doubt of the defendant's guilt, he should be convicted.

One of the principal considerations which will engage your attention is the meaning, the definition and the extent of a reasonable doubt. It has been defined by our highest courts in language which states that proof beyond a reasonable doubt does not mean that the guilt of the accused must

Charge of the Court.

be established with the absolute certainty of a mathematical demonstration; matters of fact are required to be proved to a moral certainty, and to require more in dealing with human conduct and the affairs of life would be impracticable and therefore unreasonable. It is sufficient that any disputed fact in the case shall be established by that amount of competent and appropriate evidence which will satisfy a fair and unprejudiced mind beyond a reasonable doubt. 10

Reasonable doubt in the legal sense, therefore, does not mean a vague and speculative or a whimsical doubt or a mere possible doubt, but a substantial doubt, and such as intelligent, reasonable and impartial men may honestly entertain after a careful examination and conscientious consideration of all the evidence. If, after the entire comparison and consideration of all the evidence the minds of the jurors are in that condition that they can say they feel an abiding conviction to a moral certainty of the truth of the charge, then it becomes their duty under their obligation to return a verdict of guilty; otherwise, to acquit the defendant. 20

I have been requested on behalf of the defendant to give you several charges of law. I do find them to be in proper form nor submitted within the time prescribed by the rules, but I believe that most of them have been substantially included in the Court's charge. The exhibits may now be handed to the Jury, and after an officer has been properly sworn the Jury may retire to its deliberation, having in mind that there is only one object to be accomplished, and that is to render a just and proper determination in this case, which 30

Charge of the Court.

will be fair to all the parties concerned, based on the evidence in this case.

(The Jury retired.)

Mr. Heller: Just a general exception to your Honor's charge.

The Court: Granted.

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Exception allowed and sealed.

ALBERT H. HOLLAND,

Judge.

Certificate of Judge.

I hereby certify that the foregoing record constitutes the entire record of the proceedings had upon the trial of the cause wherein the State of New Jersey is complainant and Anthony Locicero is defendant.

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In witness whereof I have hereunto set my hand and seal this 13th day of February, 1934.

ALBERT H. HOLLAND,

Judge.

Stenographer's Certificate.

I do hereby certify that the foregoing record is a true and accurate transcript of the testimony and proceedings had in the case of The State against Anthony Locicero, Defendant, before Honorable Albert H. Holland, Judge, and a Jury, in Morris County Quarter Sessions Court, Morristown, New Jersey, on November 14th and 15th, 1933.

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GEORGE SMITH,

Stenographer.

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Assignments of Error.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant-in-Error.

vs.

ANTHONY LOCICERO,
Plaintiff-in-Error,

On Appeal
from Morris
County
Court of
Quarter
Sessions.

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State of New Jersey }
County of Morris } ss.:

And now comes the said plaintiff-in-error, Anthony Locicero, by his attorneys, Messrs. Minturn & Weinberger, and having caused the entire record of the proceedings had upon the trial to be certified and returned with this writ of error, and says that in the record and proceedings aforesaid had before and at the trial of the said issue so joined between the State of New Jersey and the said Anthony Locicero, and also in the matters recited and contained in said Bill of Exceptions, and also in giving the judgment aforesaid the plaintiff-in-error suffered manifest wrong and injury and hereby certifies the following causes upon which he relies for the reversal of said judgment.

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1. The Court overruled the objection of the attorney for the defendant, Anthony Locicero, to the introduction of an alleged voluntary confession made by the defendant and marked as Exhibit "S-2". It appeared that at the time of dictating the statement to the stenographer in the presence of five police officers a human skull was pro-

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Assignments of Error.

duced and used in such a manner by such police officers as to place the defendant in mortal fear and cause and compel him to sign said statement against his will, and in a manner contrary to law, and the same was not a voluntary statement such as is required under the law.

10 2. The Court erred in referring in its charge to the statement marked Exhibit "S-2" as a voluntary statement and directly and indirectly conveying to the jury the impression that said statement was in all respects a voluntary one.

3. The verdict was against the weight of evidence.

20 Wherefore, the plaintiff-in-error prays that because of said specification of causes for reversal the said judgment may be reversed, annulled and for nothing holden and that said plaintiff-in-error may be restored to all things that he has lost by reason thereof.

MINTURN & WEINBERGER,
Attorneys for Anthony Locicero,
Plaintiff-in-Error.

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Specifications of Causes for Reversal.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant-in-Error.

vs.

ANTHONY LOCICERO,
Plaintiff-in-Error,

On Appeal
from Morris
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Quarter
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Specifications of Causes for Reversal.

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2. The Court erred in referring in its charge to the statement marked Exhibit "S-2" as a voluntary statement and directly and indirectly conveying to the jury the impression that said statement was in all respects a voluntary one.

3. The verdict was against the weight of evidence.

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Wherefore, the plaintiff-in-error prays that because of said specification of causes for reversal the said judgment may be reversed, annulled and for nothing holden and that said plaintiff-in-error may be restored to all things that he has lost by reason thereof.

MINTURN & WEINBERGER,
Attorneys for Anthony Locicero,
Plaintiff-in-Error.

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Joinder in Error.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTHONY LOCICERO,
Plaintiff-in-Error.

} In Error.

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And thereupon, afterwards the said State of New Jersey, by Orville V. Meslar, Prosecutor of the Pleas, of the County of Morris, comes into Court and says; that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays that the Court may proceed to examine as well the record and proceedings aforesaid, as also the several causes before assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

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ORVILLE V. MESLAR,
Prosecutor of the Pleas for the
County of Morris.

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Dated: April 18, 1934.

Opinion of Supreme Court.

Filed December 4, 1934.

NEW JERSEY SUPREME COURT.

No. 2, MAY TERM, 1934.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTHONY LOCICERO,
Plaintiff-in-Error.

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Argued May 1, 1934; decided November 30,
1934.

On Error from Morris County Court of Quar-
ter Sessions.

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Before BROGAN, Chief Justice, and Justices PAR-
KER and BODINE.

For defendant-in-error, ORVILLE V. MESLAR,
Prosecutor of the Pleas.

For plaintiff-in-error, HELLER & BOSS, (HARRY
H. WEINBERGER, of Counsel).

PER CURIAM.

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The plaintiff-in-error was convicted in the Mor-
ris County Court of Quarter Sessions of assault
and robbery. The case comes before us for re-
view on strict bill of exceptions and also under the
136th section of the Criminal Procedure Act.

A review of the entire record of the proceed-
ings does not persuade us that the plaintiff-in-er-
ror suffered manifest wrong or injury at his trial.

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Opinion of Supreme Court.

He was identified as the culprit by one of the state's witnesses, Parks, the driver of the truck, as the man who assaulted him and made off with the truck; the written confession of defendant below was admitted into evidence and contained the story of the crime substantially as the witness, Parks, says it happened; the jury had the whole situation before it and determined the guilt of the defendant. Furthermore, it is not specifically argued that the verdict was against the weight of the evidence on the whole case. The only argument made for a reversal of the conviction is that the court received in evidence, over objection, the defendant's confession of guilt. Before making and signing the confession, the defendant testified that he was harassed, kicked, and brutally beaten for hours at a time by members of the Police Department and the Detective Bureau. His testimony in this respect was denied by each of those so accused. The jail physician testified that as a matter of routine he examined the defendant and found him in sound physical condition; that no contusions or discoloration appeared on his body. This examination was made three days after these alleged occurrences but even at that time some evidences of the beatings would be present if he had been treated as he says.

The other point made in support of the proposition that the trial court should have rejected the confession as not voluntary, is based on the fact that one of the police officers, at the time the confession was obtained, brought into the room a skull and set it on the table. This skull, according to the testimony, had been at Boonton Police Headquarters for about eight years and one of the witnesses, the Chief of Police of East Pater-

Opinion of Supreme Court.

son, it appears, had some curiosity about it with the result that the Boonton police officer brought it from downstairs in the building up into the room where the plaintiff-in-error was being questioned. There is testimony to the effect that it was in the plain view of the prisoner and there is testimony to the contrary. The trial court, after hearing all of the testimony regarding the conditions surrounding the prisoner at the time he is alleged to have signed the confession, admitted it in evidence. The testimony concerning the admissibility of the confession and whether or not it was voluntarily made, was a question for the court. *State v. Brooks*, 30 N. J. L. 356, at 364. At any rate, it has been determined again and again that the question of the admissibility of confessions is for the court solely and that it is not reviewable on writ of error if there is any legal evidence to support its findings. *State v. Young*, 67 N. J. L. 223, 227, 228; *State v. Hernia*, 68 Id. 299, 302; *State v. MacQueen*, 69 Id. 522, 524; *State v. Monich*, 74 Id. 522, 526; *State v. Kwiatkowski*, 83 Id. 650, 655; *State v. Dolan*, 86 Id. 192, 195; *State v. Murphy*, 87 Id. 515, 525; *State v. Compo*, 108 Id. 499, 503.

The jury heard and considered all this testimony and was privileged under the law to give the confession such weight as it merited. In criminal cases juries undoubtedly, in accordance with their prerogative, make up their minds on the whole case. What weight was given to the confession we do not know. Suffice it to say, there was legal evidence supporting the judge's finding that the confession was voluntary.

The judgment of the court below is affirmed.

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Rule of Affirmance.

Filed December 24, 1934.

NEW JERSEY SUPREME COURT.

10	STATE OF NEW JERSEY, Defendant-in-Error,	}	On Error from Morris Quarter Sessions.
	vs.		
	ANTHONY LOCICERO, Plaintiff-in-Error.		

20 The above entitled cause having been regularly on the May 1934 Term of this Court and having been argued by counsel for the respective parties, and the record and briefs having been read and considered:

It Is ORDERED that the judgment of conviction of the plaintiff-in-error in the Morris County Court of Quarter Sessions be and the same is in all respects affirmed and the record be remitted to the court below with the costs of the State to be taxed.

30 Dated:
Entered:
On Motion of
ORVILLE V. MESLAR,
Prosecutor of Morris County.

Writ of Error.*New Jersey, ss.:*

(L.S.) The State of New Jersey to the
 Chief Justice and Other Justices
 of our Supreme Court of Judica-
 ture, GREETING :

Because in the record and proceedings, and also
 in giving of judgment upon a certain indictment
 against Anthony Locicero, of the City of Passaic,
 County of Passaic and State of New Jersey, for
 highway robbery and assault, Pro Ut the said in-
 dictment and the several counts therein, whereof,
 before you, he hath been indicted, and is thereof
 convicted by a certain jury of the County, taken
 between the State of New Jersey and the said
 Anthony Locicero, as it is said, manifest error
 hath intervened to the great damage of the said
 Anthony Locicero, as from his complaint we have
 received information, we being willing, in his be-
 half to correct the error in due manner, if any
 there shall be, and that speedy justice be done
 to him, the said Anthony Locicero, command you
 that if judgment be thereon given then that you
 distinctly and openly send, under your seal, the
 record and proceedings aforesaid, with all things
 touching the same to our Court of Errors and
 Appeals in the last resort in all causes at Tren-
 ton, on the 23 day of January, 1935, together with
 this writ, that the record and proceedings afore-
 said being inspected, we may cause to be done
 thereupon, for correcting that error, what of right
 and according to the law and custom of the State
 of New Jersey, ought to be done.

Witness, our Chancellor and President Judge

Writ of Error.

of our said Court of Errors and Appeals, at Trenton, aforesaid, the 3rd day of January, 1935.

THOMAS A. MATHIS,
Clerk.

HELLER & BOSS,
Attorneys for Anthony Locicero.

10 MINTURN & WEINBERGER,
Of Counsel.

Return to Writ of Error.

NEW JERSEY SUPREME COURT.

20

STATE OF NEW JERSEY,
Defendant-in-Error,

VS.

ANTHONY LOCICERO,
Plaintiff-in-Error.

30 The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed as within we are commanded.

THOMAS J. BROGAN,
Chief Justice.

40

Assignment of Error.**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

STATE OF NEW JERSEY,
Defendant-in-Error,

VS.

ANTHONY LOCICERO,
Plaintiff-in-Error.

10

New Jersey, ss.

Afterwards, to wit, on return of said writ before the New Jersey Court of Errors and Appeals at Trenton, came the said Anthony Locicero, by Heller & Boss, his attorneys, and Minturn & Weinberger, of counsel, and says that in the record and proceedings aforesaid and also in the giving of judgment there is manifest error, to wit:

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1. Because the Supreme Court erred in giving judgment for the State of New Jersey and affirming the judgment of the Morris County Court of Quarter Sessions instead of giving judgment for the plaintiff-in-error and reversing the judgment of the Morris County Court of Quarter Sessions, for the several reasons set forth in the assignments of error and specifications for reversal.

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HELLER & BOSS,
Attorneys of Plaintiff-in-Error.
MINTURN & WEINBERGER,
Of Counsel.

19

Notice of Argument.**NEW JERSEY COURT OF ERRORS
AND APPEALS.****ORAL ARGUMENT.**

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STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTHONY LOCICERO,
Plaintiff-in-Error.

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Sir: Please To Take Notice, that the argument of the issue joined in this cause will be moved before said Court, in the presence of such Justices thereof, as shall then be holding said Court, on the 1st Tuesday of February A. D. 1935, at the State House, in Trenton in and for the County of Mercer at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated January 4th, A. D. 1935.

30

HELLER & BOSS,
Attorneys of Plaintiff-in-Error.
MINTURN & WEINBERGER,
Of Counsel.

To Orville V. Meslar, Esq.,
Attorney of Defendant-in-Error.

Sat Below:

Chief Justice BROGAN,
Justices PARKER and BODINE.

40

New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY,
Defendant-in-Error,

VS.

ANTHONY LOCICERO,
Plaintiff-in-Error.

On Error to Supreme Court

BRIEF OF DEFENDANT-
IN-ERROR

Statement of Facts.

Shortly after five-ten A. M. on the morning of August 29th, 1933, Albert Parks, an employee of the Gotham Silk Company, was driving a White five-ton truck of the value of \$4,500., loaded with bales of silk stockings of the value between \$25,000. to \$30,000. That he was proceeding east on New Jersey State Highway Route 6 and that when he reached a point near Rainbow Lakes in the Township of Denville, Morris County, a man with a brown raincoat, policeman's cap and a revolver blew a whistle and stopped him. That the man got on the truck and demanded him to drive on. That he proceeded along Route 6 until they reached Pine Brook. That there he was commanded to stop, was taken from the truck, blindfolded and thrown into another car and driven off with. That later he found himself in New York City on 18th Street and 11th Avenue along the Erie Railroad tracks. (Printed Case, pp. 3 and 4.) That later on, in the company of detectives, he visited the Rogues' Gallery, New York City, where he was shown a number of pictures and that he recog-

nized the defendant from one of the pictures. That he later saw that man at Police Headquarters in Hackensack and that it was the same man who was the defendant in this case. (Printed Case, p. 8, lines 1-13.) That the White truck of the Gotham Hosiery Company was located on August 30th, 1933, in front of the premises of 503 West 26th Street, New York City. (Printed Case, p. 40, lines 30 and 40.) That afterwards on October 4th, 1933, the defendant was brought to Boonton Police Headquarters and in the presence of Detective Daniel Allen of the Morris County Prosecutor's Office, Trooper John H. Dickerson of the New Jersey State Police, John R. Galione of the Bergen County Prosecutor's Office, Chief William Bulmer of the East Paterson Police Force, Chief Harry Dennis of the Mountain Lakes Police Force, Sergt. Frank Kromka and George Smith, Court Stenographer, the defendant made a statement in which he admitted the commission of the crime. That before the statement was admitted in evidence Mr. Harry Weinberger appearing for the defendant formally objected to the statement and asked leave to submit proof that the same was not a voluntary statement under the law which request the court granted. That all of the above named men testified that the statement was made voluntarily. That the defendant alleged that he was beaten, although on examination of the defendant by Doctor George W. Comeau, County Physician of Morris County, made four days after the alleged beating did not disclose any evidence of the defendant having been kicked and pounded as he alleged in his testimony. The testimony of the witness George Smith on page 86, and it must be remembered that Smith had no connection with any law enforcement agency, showed that there was no evidence of the de-

fendant having been beaten. This matter having been tried the statement was admitted in evidence and read to the jury.

The defense consisted of an attempt to show an alibi by the defendant and his mother and brother together with some character witnesses on behalf of the defendant. The defendant was found guilty by the jury on November 15th, 1933, as charged in the indictment and was sentenced to be confined in State's Prison at hard labor for a minimum term of ten years and a maximum term of fifteen years.

Argument.

The only question raised by the plaintiff-in-error is with respect to the admission of the statement of the defendant in evidence and a consideration of the same by the jury. This statement was made by the defendant in the Boonton Police Headquarters in the presence of several police officers and was taken on the typewriter by George Smith, an official court stenographer. (Printed Case, p. 86.) All of these persons testified in practically the same manner that the statement was not obtained by force or threats, but was a voluntary statement made by the defendant. That the defendant had not been kept without food or drink for twenty-four hours before the making of the statement. Prior to the offer Mr. Weinberger the attorney for the defendant objected to the statement and asked to put in proof with regard to the fact that it was not a voluntary statement under the law and the Court permitted him to do so. (Printed Case, p. 50, lines 18-25.) The defendant testified that he had been kept without food and drink, that he had been beaten and that the statement had been induced by the exhibition to him

of a human skull by one of the detectives. There is some testimony on the part of some of the witnesses that there had been left at the Boonton Police Headquarters sometime before a human skull and that during the questioning of the defendant some discussion had been had between Chief Bulmer of the East Paterson Police and Sergt. Kromka of the Boonton Police but that the discussion was not in connection with the examination of the defendant and that no remarks were directed to him concerning the skull. After hearing the testimony concerning the voluntary character of the statement, the statement was offered and admitted in evidence. (Printed Case, p. 140.)

It is respectfully submitted that the admission of the statement was discretionary with the court. In accordance with the rule laid down in the *State vs. Compo*, 180 N. J. Law, page 499 at 502, which is as follows:

“It is urged by the plaintiff in error that the court should have instructed the jury to disregard or reject the confessions if it determined that the same were not voluntarily given. We do not think that this is the law. The court having determined that the confessions were admissible as a court question, the jury could not reverse that finding and reject the evidence. Professor Wigmore says that a contrary doctrine, although it exists in some jurisdictions, is pure legal heresy. 2 Wigmore on Evidence, 860, 861.

In 1828, Judge Drake charged a jury that if they found that the confessions received in evidence were involuntary they were under a duty to reject them. His action in so doing was approved in *State v. Guild*, 10 N. J. L. 192.

In *Bullock v. State*, 65 N. J. L. 557, Chief Justice Depue states on page 565, by way of dicta, that where there was doubt from the whole evidence whether the confession was or was not voluntary that such question should be

left to the jury with instructions to reject the confession, if upon the whole evidence they were satisfied that it was not a voluntary act. He had previously decided in *Roesel v. State*, 62 *Id.* 216, 236, that a preliminary examination respecting the admissibility of confessions comprised a mixed question of law and fact. However, as early as *State v. Brooks*, 30 *Id.* 356 (at p. 364), the Supreme Court took the view that the admissibility of confessions was a question for the court, and that the court admits or rejects the confession after weighing the evidence upon the question of its voluntariness. The weight that the jury is to give to the confession is another matter and depends upon their belief in the truthfulness thereof.

The later decisions of our courts make it perfectly clear that the admission in evidence of a confession, where there is an objection interposed that the same was not voluntary, presents a fact question solely for the trial court, which is not reviewable on error, if there be any legal evidence to support the finding of the court. *State v. Young*, 67 N. J. L. 223, 227, 228; *State v. Hernia*, 68 *Id.* 229, 302; *State v. MacQueen*, 69 *Id.* 522, 524; *State v. Monich*, 74 *Id.* 522, 526; *State v. Kwistkowski*, 83 *Id.* 650, 655; *State v. Dolan*, 86 *Id.* 192, 195; *State v. Murphy*, 87 *Id.* 515, 525."

It is further respectfully submitted that this point was fully covered with the Court's charge with respect to the confession which was as follows (Printed Case, p. 199, line 35 to p. 200, line 20):

"Any statement which is forced out of him by fear, by threats, by intimidation, or by promises, you would have a right to say you will not accept, and, therefore, you would discredit it. And so it becomes necessary for you to determine in what way and manner the statement was procured.

If you determine that he gave it as the officers say, voluntarily, you would be entitled to receive

it in evidence and pass upon it. If you determine that it was forced out of the defendant as he says it was, you would be entitled to discredit it and not use it, and give the benefit of that doubt to the defendant.

On that question you may consider the story of the defendant that the only place where he contends that he was beaten was in the Mountain Lakes Police Station, and that afterwards in the Boonton Police Station he was not beaten, but that he was scared and intimidated by having been shown a skull."

And further covered therein on page 200, line 36 to page 201, line 5.

"If you determine that the statement was forced out of this defendant by beatings that he was subjected to, or by fear and fright in which he was placed, it will be your duty to disregard it and pay no attention to it; but if you believe that the statement was properly made, in the usual course, without any promise, fear or threat, without any punishment or duress, it would be your duty to consider it."

It is further respectfully submitted that regardless of the confession that there had been a positive identification of the defendant as the person who committed the crime and that a *prima facie* case had been established.

The following is a copy of the opinion rendered by the Supreme Court during the May term, 1934:

NEW JERSEY SUPREME COURT.

No. 2, MAY TERM, 1934.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTHONY LOCICERO,
Plaintiff-in-Error.

Argued May 1, 1934; decided November 30, 1934. On Error from Morris County Court of Quarter Sessions. Before Brogan, Chief Justice, and Justices Parker & Bodine. For defendant-in-error, Orville V. Meslar, Prosecutor of the Pleas. For plaintiff-in-error, Heller & Boss (Harry H. Weinberger, of Counsel).

PER CURIAM.

The plaintiff-in-error was convicted in the Morris County Court of Quarter Sessions of assault and robbery. The case comes before us for review on strict bill of exceptions and also under the 136th section of the Criminal Procedure Act.

A review of the entire record of the proceedings does not persuade us that the plaintiff-in-error suffered manifest wrong or injury at his trial. He was identified as the culprit by one of the state's witnesses, Parks, the driver of the truck, as the man who assaulted him and made off with the truck; the written confession of defendant below was admitted into evidence and contained the story of the crime substantially as the witness, Parks, says it happened; the jury had the whole situation before it and determined the guilt of the defendant. Furthermore, it is not specifically argued that the verdict was against the weight of the evidence on the whole

case. The only argument made for a reversal of the conviction is that the court received in evidence, over objection, the defendant's confession of guilt. Before making and signing the confession, the defendant testified that he was harassed, kicked, and brutally beaten for hours at a time by members of the Police Department and the Detective Bureau. His testimony in this respect was denied by each of those so accused. The jail physician testified that as a matter of routine he examined the defendant and found him in sound physical condition; that no contusions or discoloration appeared on his body. This examination was made three days after these alleged occurrences but even at that time some evidences of the beatings would be present if he had been treated as he says.

The other point made in support of the proposition that the trial court should have rejected the confession as not voluntary, is based on the fact that one of the police officers, at the time the confession was obtained, brought into the room a skull and set it on the table. This skull, according to the testimony, had been at Boonton Police Headquarters for about eight years and one of the witnesses, the Chief of Police of East Paterson, it appears, had some curiosity about it with the result that the Boonton Police officer brought it from downstairs in the building up into the room where the plaintiff-in-error was being questioned. There is testimony to the effect that it was in the plain view of the prisoner and there is testimony to the contrary. The trial court, after hearing all of the testimony regarding the conditions surrounding the prisoner at the time he is alleged to have signed the confession, admitted it in evidence. The testimony concerning the admissibility of the confession and whether or not it was voluntarily made, was a question for the court. *State v. Brooks*, 30 N. J. L. 356, at 364. At any rate, it has been determined again and again that the question of the admissibility of confessions is for the court solely and that it is not reviewable on writ of error if there is any legal evidence to

support its findings. *State v. Young*, 67 N. J. L. 223, 227, 228; *State v. Hernia*, 68 *Id.* 299, 302; *State v. MacQueen*, 69 *Id.* 522, 524; *State v. Monich*, 74 *Id.* 522, 526; *State v. Kwiatkowski*, 83 *Id.* 650, 655; *State v. Dolan*, 86 *Id.* 192, 195; *State v. Murphy*, 87 *Id.* 515, 525; *State v. Compo*, 108 *Id.* 499, 503.

The jury heard and considered all this testimony and was privileged under the law to give the confession such weight as it merited. In criminal cases juries undoubtedly; in accordance with their prerogative, make up their minds on the whole case. What weight was given to the confession we do not know. Suffice it to say, there was legal evidence supporting the judge's finding that the confession was voluntary.

The judgment of the court below is affirmed.

It is, therefore, respectfully submitted that there was no error committed and that the judgment should be affirmed.

Respectfully submitted,

ORVILLE V. MESLAR,
Prosecutor of the Pleas,
Attorney for Defendant-
in-Error.

77 FEB.T.1935

New Jersey Court of Errors and Appeals

• STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

ANTHONY LOCICERO,
Plaintiff-in-Error.

On Error to
Supreme
Court.

BRIEF ON BEHALF OF PLAINTIFF-IN- ERROR, ANTHONY LOCICERO.

This writ brings up for review, the conviction and sentence to imprisonment of Anthony Locicero, upon an indictment charging him and three others with assault and robbery. The indictment charges in one count that the defendants on August 29th, 1933, did commit an assault upon one, Albert C. Parks. The second count charges that on the same date, the defendants assaulted said Albert C. Parks and stole certain merchandise of the value of \$35,615.05, the property of Gotham Silk Hosiery, Inc., which was then and there in the custody and control of the said Albert C. Parks. (S. of C., pp. 3-4).

At the time of trial the State moved the case against Anthony Locicero and requested a severance so that Locicero alone would be tried. The motion was granted (S. of C., p. 1) and the trial proceeded.

After the verdict and judgment of conviction a writ of error was sued out to the Morris County Court of Quarter Sessions. The Supreme Court

in a *per curiam* opinion affirmed the judgment of the court below (S. of C., p. 211). The writ herein followed.

This case comes before this honorable court on Bill of Exceptions and on Specifications of Causes for Reversal and on Assignments of Error in accordance with the 136th section of the Criminal Procedure Act of 1898. The entire record of the case is thus brought up for review.

It is our contention that the Supreme Court erred in two respects in affirming the judgment of conviction. First, there was no definite and positive identification of the defendant as the person who it was alleged committed the crime. Second, the confession of the defendant was illegally and improperly admitted in evidence.

(Italics our own except where otherwise indicated.)

POINT I.

There was no definite and positive identification of the defendant as the person who it was alleged committed the crime and the verdict is therefore against the weight of the evidence.

There was an assignment of error that the verdict was against the weight of the evidence, assignment No. 3 (S. of C., p. 206, ll. 15-16) and specification of causes for reversal No. 3 (S. of C., p. 208, ll. 16-17).

The Supreme Court in its opinion made the following remarks with reference to the identification (S. of C., p. 212, ll. 1-4):

“He was identified as the culprit by one of the State’s witnesses, Parks, the driver of the truck, as the man who assaulted him and made off with the truck; the written

confession of the defendant below was admitted into evidence and contained the story of the crime substantially as the witness, Parks, says it happened; the jury had the whole situation before it and determined the guilt of the defendant."

It is our firm contention that the evidence of the case does not warrant the conclusion of the Supreme Court that Parks, the complaining witness, actually identified Locicero. The fact that a statement was signed by the defendant and related the story substantially as the witness Parks, testified it happened, is not an indicia of truth but rather evidence of the fact that the statement was involuntary and signed as prepared by the officers, because of the beatings administered. We shall deal with the worth of the confession under Point II.

We resort to the testimony to elicit therefrom the evidence concerning the identification.

On direct-examination Parks said (S. of C., p. 3, ll. 31-36) :

"Q. Just tell what happened?

A. A man come out and stopped me with the whistle, with a police cap on, got on my truck and demanded me to drive on.

Q. What else did he have?

A. He had a brown raincoat on, a gun and his whistle."

Further (S. of C., p. 4, ll. 33-40) :

"Q. During this drive during which you were stopped by these men in the Township of Denville, could you look at him?

A. No, I couldn't.

Q. Did you see his features when he got in the truck?

A. When he got in the truck I seen his features.

Q. Did you see them when you got out of the truck?

A. I did not."

Further (S. of C., p. 5, ll. 8-11):

“Q. Did you see the same man that held you up any time later?

A. No, sir.”

Thus far it is evident that all that Parks remembers is a policeman's cap, brown raincoat, whistle and gun.

After some time had elapsed since the commission of the crime, Parks was taken to Hackensack, where he identified Locicero as the man. The method of identification is indeed interesting and reveals with certainty its indefiniteness and the power of suggestion. The cross-examination bears out this argument. It is to be recalled that Parks was taken to the Hackensack jail where Locicero had in the meantime been brought. Parks was accompanied by several detectives. What happened at Hackensack is here revealed (S. of C., p. 16, ll. 16-38):

“Q. Did he take you right to the cell where this defendant was?

A. Yes.

Q. Did he point him out to you?

A. He got him to come outside of the cell.

Q. And how long was he out there with you?

A. Out of the cell?

Q. Yes.

A. Oh, probably five minutes.

Q. Have any conversation with him?

A. No, sir.

Q. *Was there any conversation with him in your presence?*

A. *No, sir.*

Q. What were you doing during those five minutes?

A. Looking at the gentleman.

Q. Looking at him?

A. Yes.

Q. That was the first time you had seen him?

A. Since the hold up, yes, sir.

Q. *Did you say to the man, you are the man?*

A. I didn't say it that morning.

Q. Why not?

A. Well, I didn't say it, that's all."

The court interjected with a question (S. of C., 17, ll. 10-16):

"The Court: Was there any reason for your not saying anything to him that morning?

The Witness: *Well, if you want to know, I was afraid of the gentleman.*

Q. Fear was it?

A. Yes, sir."

We thus have the situation where Parks is brought to Hackensack by two men one of whom was a police officer, brought directly to the defendant's cell, the defendant brought out to face him, without any conversation between them and studied him for about five minutes, yet he did not say to Locicero that he was the man. The reason he states for the absence of the direct identification was because of fear.

What is most surprising is that after all this had occurred he left the jail without identifying him (S. of C., p. 18, ll. 15-19).

"Q. *You left that morning without identifying him, didn't you?*

A. Yes."

This in spite of the fact that on direct-examination he stated that he identified him at the Hackensack jail (S. of C., p. 8, ll. 3-7).

Evidently this first meeting was insufficient because another meeting was arranged for a week hence (S. of C., p. 18, ll. 20-26).

"Q. Then you came out again—pardon me, withdraw it. Another session was ar-

ranged to see if you could identify him a week or a week and a half later?

A. About a week later.

Q. Who arranged this second session to try and see if you could identify him?

A. These same people."

If Parks identified Locicero the first time we then inquire the purpose of the second meeting. Certainly it must be said that if he identified him the first time there could be absolutely no purpose or object in meeting again unless there was no identification the first time. That was the truth of the matter. The first meeting not having been successful so far as an identification was concerned, the second meeting was arranged. Most amazing is the method employed and arranged in bringing about the identification. It is here that the power of suggestion if not persuasion comes into play and marks the second alleged identification as a travesty.

Proceeding with the cross-examination the following circumstances are revealed (S. of C., p. 20, ll. 8-10).

"Q. Tell the Court and jury in your own way how this was staged?

A. He fetched this gentleman in for to be identified."

(ll. 35-39):

Q. To see if he was the man?

A. Yes.

Q. What did you say?

A. I said yes, sir.

Q. Your fear had gone, had it, of a couple of weeks before?

A. Just a minute—they put an officer's hat on to the gentleman."

(S. of C., p. 21, ll. 5-31):

"Q. Who put it on?

A. The officer back there.

Q. Mr. Galleone put a policeman's hat on him?

A. Yes.

Q. What kind of a hat?

A. Policeman's.

Q. There are a lot of them.

A. Well, a badge on the front.

Q. Big hat or just a cap?

A. A cap.

Q. Put that on him?

A. Yes.

Q. Who arranged that, to get that policeman's cap, Mr. Galleone?

A. I suppose.

Q. Did you know he was going to have it?

A. No, I did not know.

Q. Was it discussed?

A. *Put that on him, I could tell him better.*

Q. Wasn't that discussed before?

A. They said that, yes.

Q. Did they say if we put a police cap on him—

A. *I told them if they put a police cap on him I could identify him better.*

Further (S. of C., p. 22, ll. 5-14):

“Q. Who suggested that they wanted to have a policeman's hat on him to be sure that's the man?

A. I did.

Q. Well, if you are sure he was the man the first time you were there, why did you want to have a policeman's hat on him?

A. Well, it showed up much better.”

Further (S. of C., p. 23, ll. 3-6):

“Q. How far did they put the cap—withdraw that. Just tell the court and jury—

A. They put the cap down, tried to—down around his head, the same as I seen him with it.”

(and on p. 27, ll. 27-29):

“Q. What makes you so sure that is the man?

A. Well, he has got the looks in every way when he had the hat on looks more like him.”

The only items he could remember of the man were the policeman's cap, the whistle, and the brown coat. He could not recognize any facial characteristics or voice or height.

At (S. of C., p. 29, ll.22-34):

“Q. The gun, the whistle, the cap and the raincoat?

A. The gun, the cap, the whistle and the raincoat.

Q. Aside from those things there is nothing you recognized on the defendant at all, is that right?

A. No.

Q. No facial characteristic at all, height, you couldn't identify, that's right?

A. Yes, sir.

Q. And it is also true that you could not identify him by the tone of voice, because you did not hear him speak, that is true, too, isn't it?

A. Yes.

The above comprises substantially all of the evidence and proof dealing with the identification. Certain features of it stand out very prominently. When Parks first faced Locicero at the Hackensack jail, he did not identify him as the man because he did not say, “that is the man”. He admitted leaving that time without identifying him and had to return a week later to do so.

It is to be carefully noted that Locicero was placed in no line up; he was singled out and brought before Parks, and with all that there was no identification. A week later he was brought back. Now we come to the very ingenious method

of establishing the so called identification. Parks could not definitely state Locicero was the man. It was at that point that the police officers employed a very powerful means of suggestion. Parks had already stated that the man was dressed in a policeman's cap. Consequently a policeman's cap was placed on Locicero and then it was that he identified him. Of course Parks, it is to be recalled, said that he could "identify him better with the police cap on."

We can think of no better way or means of establishing an identification, true or false, as was employed in this case. Had there been any independent proof that Locicero was the man, our argument would indeed be hollow. But the state produced absolutely nothing of a corroborative nature even tending to establish the identification of Locicero. The Supreme Court stated that the statement of Locicero tallied with the story of Parks. It is more accurate to state that Parks' proof was made to tally with the involuntary confession of Locicero. We submit that there never was an identification of Locicero and the proof submitted by the state testifies to that.

The testimony of the defendant is a clear denial of the commission of the crime and also that he was not in the Town or in the vicinity at the time and place the crime was alleged to have been committed (S. of C., pp. 142 and 151). To corroborate this statement that he had nothing to do with the alleged crime, and that in fact he was home on the night of the alleged commission of the crime, there were produced several witnesses, namely, his sister, brother and mother, with whom he testified he lived.

His sister, Catherine, testified that he was home on the night of August 29, 1933 which is the date alleged that the crime was committed by the de-

fendant (S. of C., p. 177, ll. 31-36 and p. 178, ll. 14-15).

His brother, Thomas, also testified that he was home on that particular night (S. of C., p. 182, ll. 20-24).

His mother, Annie, also testified to the same fact (S. of C., p. 185, ll. 20-27).

This evidence as to the defendant's alibi for the night of August 29, 1933, stands uncontradicted, and unimpeached, and further bears out the contention that the defendant was absolutely innocent of the crime charged against him; that the statement he made was involuntary, and that Parks identified him only by reason of the fact that the surrounding circumstances employed by the police officers created a strong power of suggestion.

All of these circumstances are indicative of the argument that the verdict is against the weight of the evidence.

Although not discussed in the brief, in the oral argument of the matter before the Supreme Court it was very vigorously argued that the verdict was against the weight of the evidence, and at that time this testimony with which we have just dealt was also pointed out to the court. At that time, as is now, it was urged that the confession was improperly admitted into evidence and also that the proof failed to convince that Parks identified Locicero. And on the entire set of circumstances it was argued that the verdict was against the weight of the evidence.

POINT II.

The confession of the defendant was illegally and improperly admitted into evidence.

There is assigned as error by proper specifications of cause for reversal (S. of C., pp. 207 to 208, under Specification I), the action of the trial Court in admitting into evidence (S. of C., p. 140), over objection of counsel for the defendant (S. of C., p. 42) and exception taken and allowed (S. of C., p. 140), the confession of the defendant (S. of C., pp. 210-211). When the same was offered by the State, counsel for the defendant exercised his prerogative of ascertaining by evidence whether or not it was voluntary. Most of the record is consumed by that feature of the case (S. of C., pp. 42-142). This argument revolves itself around the legality of its admission and we respectfully submit, that the Court erred in admitting the same when there was no evidence to support its admission. The fact was that the evidence forbade its admission, since the proof is that a skull was brought in and shown the defendant as a result of which he signed the confession.

A.

Statement of Facts.

It becomes advisable to relate the circumstances under which the statement was made. The recital which follows, draws exclusively from the evidence in the case. On the 3rd of October, 1933, the defendant, Locicero, was first apprehended at Hackensack, New Jersey, by Detective David Allen and some other gentlemen of the police and detective force. (S. of C., p. 44, line 30). Allen states that from there Locicero was taken to the

Mountain Lakes Jail (S. of C., p. 44, lines 21-23). The testimony is somewhat confusing as to the chronology of the trips made by the detectives to the Morristown City Jail, and the State Troopers' Headquarters. Suffice to say, however, that there was a general scurrying around by the defendant in the company of the sleuths. Hackensack State Troopers Headquarters, Morristown City Jail, Mountain Lakes Jail and finally Boonton Police Headquarters, made up the stopping places. The latter site, served as the final scene of the drama where the denouement is so definitely and easily enacted.

The detectives admit taking Locicero from place to place. The important feature of the case, however, is the transfer from Mountain Lakes to Boonton. The defendant, Locicero, testified that he was severely beaten at Mountain Lakes (S. of C., p. 53), and was placed on a strict diet of no food at all. Finally, at Boonton, he admits he was given some edibles, but his physical condition made it impossible for him to eat. The detectives of course expressed indignation when questioned as to beatings they administered. They most emphatically, of course, deny their indulgence in any such conduct. Then, however, we reach that portion of the story which presents itself as the crux of the case.

At about 8 in the evening, of October 4th, the defendant arrived at Boonton Police headquarters (S. of C., p. 48, lines 29-31). There the defendant shared the company of about half a dozen detectives of some sort or other (S. of C., p. 50, lines 11-12). In fact, George Smith the stenographer was present (S. of C., p. 86, lines 11-12), Detectives Daniel Allen (S. of C., p. 41, lines 21-22), Sergeant Robert Kromka (S. of C., p. 68, lines 10-11), Trooper John Dickerson, Detective John Gallione, Chief William Bulmer (S. of C., p. 74,

lines 15-17) and Detective Frank Adams (S. of C., p. 127, lines 12-20). In all seven. The meeting or assemblage was in session from about 8 in the evening of October 3rd till about 2 o'clock the next morning. (S. of C., p. 48, lines 29-31).

The most significant occurrence transpired that evening sometime during the hours aforementioned. While all the aforesaid gentlemen were simultaneously present with their subject, the defendant, a human skull was brought upon the scene by Chief Bulmer and placed in the midst of this quiet assemblage. This fact is admitted by all the witnesses for the State. The testimony of several witnesses differs only as to details of minor importance. The defendant testified that he refused to sign because he did not have anything to do with the crime (S. of C., p. 59, lines 1-3). Thereupon "Chief Bulmer brought a skeleton head" and said "If you don't sign here is what is going to happen, we will crack your skull too" (S. of C., p. 59, lines 4-11). Locicero stated that "I was like crazy, I said I would sign anything" (S. of C., p. 59, lines 16-18).

The State's witness, Dickerson, with reference thereto, testified as follows (S. of C., p. 81, lines 1-17):

"Q. Did you see a skeleton there that night?

A. Boonton Police Headquarters?

Q. Yes.

A. I seen a skull.

Q. Did anyone show him the skull?

A. I believe they did.

Q. Did it have a crack in it?

A. I believe it did * * *

And at page 82, lines 1-8:

"Q. Whereabouts?

A. It was on the table when I seen it.

Q. What table?

A. On the left as you go in the door?"

The stenographer with reference thereto, stated (S. of C., p. 93):

“Q. * * * someone showed him a skeleton, didn't they, in your presence?

A. A skull.

Q. Who showed him that?

A. Chief Bulmer went downstairs and came back with a skull and laid it on the table and that is all I know.

Q. Didn't it have a crack in it?

A. I think there was; they were talking between them; all I could gather, looks like a fractured skull there.

Q. Where did he lay it?

A. Just on the desk there.

Q. On what desk?

A. Why, there were desks around and he came in and laid it on a desk in front of him.

Q. In front of who?

A. Chief Bulmer.

Q. Where the defendant was sitting?

A. No, he was sitting right at my side.

Q. Where he could see it and you could see it?

A. Oh, I saw it.”

B.

Law.

The above testimony comprises the direct evidence surrounding the skull episode. It is an admitted fact that such skull was brought into the room and shown to the defendant and that thereafter he signed the confession which was made the subject of the objection. After testimony revealing the above state of fact was taken to test whether or not the confession was voluntary, the Court still allowed the same into evidence. It is on this score that we contend reversible error was committed.

It is elementary law that a confession which is

involuntary is inadmissible and cannot be used against the defendant.

State v. Guild, 10 N. J. L. 163;

State v. Yarrow, 104 N. J. L. 512;

Roesel v. State, 62 N. J. L. 216.

What constitutes an involuntary confession has oft been defined by our tribunals. It must be shown that it was not extorted by any sort of threats of violence or obtained by any direct or indirect promise.

State v. Genese, 102 N. J. L. 134;

State v. Murphy, 87 N. J. L. 515;

State v. Dolan, 86 N. J. L. 192.

A confession to be voluntary must be one which emanates from the free will of the accused; it must not be induced by improper influences.

State v. Murphy, supra.

A confession which is elicited by threats, brutality, menaces or other form of duress is worthless. We submit that the confession in the case *sub judice* comes within disqualifications referred to.

We are cognizant of the rule of law applicable to the admission of confessions. It presents a mixed question of law and fact. It is for the Court alone to decide whether it is voluntary or not; of course, once admitted, the jury may decide as to the truthfulness of it. Such is the law as may be found in the case of

State v. Yarrow, 104 N. J. L. 512,

wherein Chancellor WALKER speaks for our highest Court. Recently, in the case of

State v. Compo, 108 L. 499,

the Court of Errors and Appeals reiterated that

doctrine. Such has always been the law as evidenced by the following cases:

State v. Young, 67 N. J. L. 223;

State v. Hernea, 68 Id. 299;

State v. MacQueen, 69 Id. 522;

State v. Monich, 74 Id. 522;

State v. Kuratkowski, 83 Id. 650;

State v. Dolan, 86 Id. 192;

State v. Murphy, 87 Id. 515.

The only questions, therefore, to be decided by this Court, are whether the facts of the case indicate that the confession was not voluntary and that its admission constituted an abuse of discretion and prejudicial harm to the defendant.

We submit that a fair understanding of the facts of the case conclusively establish the involuntariness of such confession.

May we therefore retrace some of the important facts of the case and picture them with all the incidents and background. The defendant, Locicero, was seized at Hackensack on October 3rd, 1933 and from there whisked away to the State Troopers Barracks at Morristown. Thence to the Morristown City Jail. He spent a very uncomfortable night there in a cold cell, with an iron seat as its only furnishing. Not a morsel of food was offered him and sometime in the morning of the next day, he was ushered away to the Mountain Lakes Jail with a number of detectives leading the procession. The name of Mountain Lakes lends itself as an apropos title to the vicinity. It smacks of the seclusion of a spot closeted away in the mountains with the lake and the wilderness forming a beautiful picture of solitude and quietude, and fit for any and all purposes. For what was to follow, Mountain Lakes served a purpose most useful as a preparation for Boonton.

After dusk and when night had already spread

its black wings over the countryside, the defendant was again transported to Boonton. There between the hours of 8 and 12, he finds himself the center of an interested and fervid attraction, not because he was a celebrity worthy of emulation, but rather, because it was a cause celebre of which he was to be the victim. The purpose of the gathering was no mystery and was well known to all. The detectives desired a confession in their own language, sworn and subscribed to by the defendant, in accordance with the customary method of a sworn document. But the defendant shrank from their exhortations and harangues. He would not admit a crime for which he was not responsible. But be that as it may, the detectives were obstinate and persistent in their vociferous demand—nothing could shirk them from their duty. No doubt several hours passed in their vainless efforts. The detectives even took shifts and divided their efforts. The hour of midnight was creeping on, their mission was in no wise to be thwarted. Then suddenly, Chief Bulmer became the protagonist. He mustered up an idea. Whether it was original or not is of no consequence; but in any event, he left the room.

The defendant of course, unlike the detectives, could not call for assistance to temporarily relieve him of his, at least, irksome job of answering question upon question and refusing to sign a statement. This, of course, precipitated a desire upon the part of the detectives to administer their persuasions with greater celerity and efficiency. After all, the stenographer was there ready to transcribe, the detectives ready to dictate and the car ready to take them away, but only the defendant refused and delayed them to the point of exasperation. He was their *bete noire*.

There reentered upon the scene, Chief Bulmer, and without uttering a word, he carried into the

room with him what transpired to be the simplest and quickest token of persuasion. He gently laid it upon a desk in full view of the defendant. Words of persuasion directed at the defendant were no longer needed. It was a piece of magic—an eighth wonder—at least the records of the Courts of this State and so far as our research reveals, of any other State, fail to record such a sight. The detective dictated, the defendant like an automaton said “yes”, the typewriter keys clicked with precision, the defendant signed, five detectives witnessed it and the detectives shouted “Eureka”!

What was this piece of sleuthic artistry which might make the detectives worthy subjects of emulation. It was a cracked human skull tattooed with ordinary nails. Of course, to one who may be reclining in an easy chair surrounded by the comforts and safety that fellow men provide, without being faced by six detectives who had made up their minds to get a confession; without being pounded for hours by questioning; without being beaten; without deprivation of food or drink; not without a friend to help and without being faced with a ghastly spectre in the middle of the night, from such a person at first blush, a demurrer might emanate.

Words cannot really describe the horror, the terror and the fear which must have been Locicero's. An emblem of death was brought into the room and pierced into his eyes to impress upon his mind the importance of the meeting. After all, what can be more powerful than just such a thing. Certainly Chief Bulmer was not a Yale man who was leading the ceremonies in the induction of Anthony Locicero into that well known fraternity of “Skull and Cross Bones.” The skull was brought in for no other purpose than to

place Locicero in such a state of mortal fear and terror, that even death would be sweeter than to stare at its grim mask.

The scene enacted reminds us somewhat of Hamlet's soliloquy wherein he was cogitating the benefits of suicide:

"To be, or not to be: that is the question.
Whether 'tis nobler in the mind to suffer
The slings and arrows of outrageous fortune,
Or to take arms against a sea of troubles,
And by opposing end them? To Die; to sleep;
No more; and by a sleep to say we end
The heartache and the thousand natural shocks
That flesh is heir to, 'tis a consummation
Devoutly to be risked."

Hamlet at least possessed the alternative of tarrying; and what is more he was not forcefully reminded of death by the presence of a skull. The most he encountered was the apparition of the ghost from whose midst he was at liberty to flee.

The facts of the case prevent us from attaching to the skull episode, a tea room atmosphere where one sips with ease and comfort. The impression made by the entry of the skull cannot be more eloquent than in the memory of the subject whom it affected. To one whose brain was never arrested by the horror at heart that must have been the defendant's, true description, at its best, is mild. Here we have a host of detectives who wantonly disregarded the decora of custom. Their plans were bold and fiery and their conception of duty at one time glowed with a barbaric lustre. They exercised illimitable domain over their prisoner, bore him from place to place at such a rapid pace that they even outran the limit of the limitless and were compelled to pause from

their wearisomeness. They reached the point when their objection meant all and they even mocked death by bringing its spectre upon the scene to intimidate their man. They accomplished their purpose.

There are chords in the hearts of even the most reckless which cannot be touched without emotion. Even with the utterly lost and the wicked criminals to whom life and death are equally jests, there are matters of which no jest can be made. The acumen of the detectives struck upon just that. In their unbridled efforts displayed by the inquisitorial proceedings, they resorted to those tactics which were much of the wanton, much of the bizzare, a great deal of the terrible and not too little of that which excited fear, terror, horror and disgust. In Locicero beat feverishly the heart of life, and there came to him delirious fancies such as the madman fashions. What man's courage would not have died, who would not have given way to fear and terror, who would not have lost his reason and given way to do anything that would deliver him from the sight of this skull of a human kept from its cerement to play havoc with what it was not yet ready to face?

Under such circumstances, body and mind become weak, their movements are involuntary and their acts cannot be attributed to those who are able to exercise reason, volition and will. Such was the confession. To stamp it as voluntary, would be prostituting the facts which are so evident.

We respectfully submit, that the facts of the case conclusively establish that the statement was not voluntary, but compulsory, elicited under a form of duress quite original and most potent.

Such a confession under the law is improper and inadmissible as evidence, and the Court's allowing it as such, constituted prejudicial harm to the defendant when the evidence was not sufficient to warrant its offer.

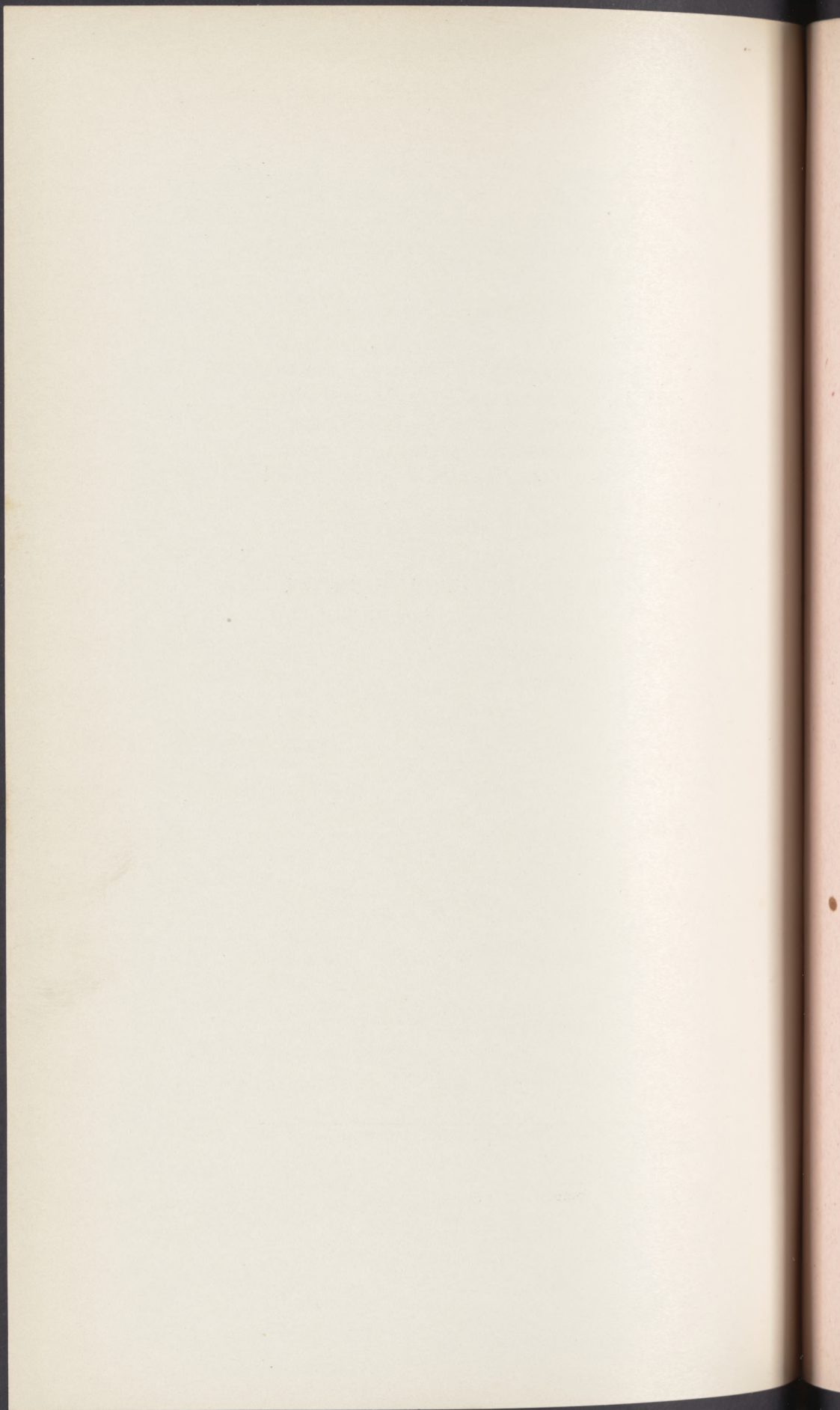
Conclusion.

For the reasons urged we respectfully submit first that the verdict was against the weight of the evidence in that the proof was entirely insufficient to establish the identification of the defendant and second that the confession was improperly admitted and that therefore, a venire *do novo* should be awarded.

Respectfully submitted,

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INDEX

	Page
State and Governor of Appeal	1
Amend	5
Complaint	6
Declaratory	7
Effect of Motion	11
Enacted by Bill of Congress	12
Order	14
Order to Amend Allegations of Court	16
Order to Strike Out Complaint	18
Motion of David B. B. B.	19
Motion of Henry S. S. S.	23
Answering Affidavits	25
Samuel W. W. W.	28
Henry S. S. S.	28
Henry S. S. S.	30
Order to Strike Out Complaint	31
Amend	36
Motion to Vacate Order	37
Revised Order	39
Order Denying Motion to Vacate Order	40
Order's Certificate	43

