INDEX

	PAGE
Writ of Error	1
Return by Court of Oyer and Terminer to Writ of Error	3
Indictment	4
Endorsements on Indictment	5
Notice of Motion for Struck Jury	9
Order for Struck Jury	11
Endorsements on Order for Struck Jury	12
Notice of Striking Jury	13
Affidavit of Service of Michael Polioka as to Notice of Striking Jury	14
List of Names of Persons to Serve as Jurors	15
Challenge to Array	20
Demurrer of Challenge to the Array	21
Venire for Struck Jury	22
List of Names for Struck Jury	23
Indictment	26
Endorsements on List of Names and Venire for Struck Jury	28
Affidavit of Service of James Philip, as to List of Names and Venire for Struck Jury	29
Defendant's Challenge to Judge A. Demorest Del Mar, Sitting in This Cause	30
Opinion of Del Mar, *J.*, on Defendant's Foregoing Challenge	32
Stipulation as to Admitted Exhibit	37

PAGE

Order Permitting Defendant to Retain Medical or Mental Expert 38

Minutes of Hearing on State's Motion for a Struck Jury 39

Minutes of Hearing on Defendant's Challenge to Array and State's Demurrer to Challenge 44

Minutes of Hearing (1) on Defendant's Motion to Retain Medical or Mental Expert, and (2) on Defendant's Challenge to Hon. A. D. Del Mar, Sitting in This Cause 55

Emil M. Wulster—for Defendant—Direct 58

Emil M. Wulster—for Defendant—Cross 59

Emil M. Wulster—for Defendant—By the Court 60

Emil M. Wulster—for Defendant—Redirect 65

John B. Zabriskie—for Defendant—Direct 66

Statement by the Court 66

John B. Zabriskie—for Defendant—Cross 72

Testimony 73

Examination of Jurors on Their Voir Dire 74

State's Opening 156

Defendant's Opening 164

Defendant's Summation 412

PAGE

State's Summation 422

The Court's Charge 438

Exceptions 455

Verdict 459

Dismissal of Jury 460

Motion in Arrest of Judgment..... 461

Defendant's Requests to Charge..... 462

Certificate of Stenographer 469

Stipulation as to Exhibits 471

Request to Court Stenographer for Transcript of Testimony and Acknowledgment. 472

Order in re Printing of State of Case and Brief for Defendant 474

Authentication of Entire Record of Proceedings 475

Assignments of Error 476

Specification of Causes and Reasons for Reversal 507

TESTIMONY

State's Witnesses

PAGE

Eugene Leo Touhill:
Direct 172

Joseph E. Popick:
Direct 176

Anna Hansen:
Direct 178

Emma Pekarek:
Direct 181

Joseph Mansfield:
Direct 183

Herbert Allmers:
Direct 186
Cross 201

Suzanne Reynolds:
Direct 204
Cross 207
Redirect 209
Recross 210

Raymond Hamilton:
Direct 210
Cross 212

Nathan H. Allyn:
Direct 212
Cross 215

Confession of Defendant, Deegan, Read into Record 217

Frank Herrman:
Direct 227

PAGE

Ruth Oberempt:
Direct 231
Cross 240

Dr. Lorenz C. Nicol:
Direct 245

Carolyn Twing:
Direct 247
Cross 251

Martin Hoffman:
Direct 253
Cross 268

Dr. Arthur W. Greenfield:
Direct 269

Dr. Paul Barringer Means:
(Rebuttal)
Direct 391
Cross 394
Redirect 396

Dr. Christopher C. Beling:
(Rebuttal)
Direct 397
Cross 404

Dr. Laurence M. Collins:
(Rebuttal)
Direct 404
Cross 410
Redirect 411
Recross 411

DEFENDANT'S WITNESSES

PAGE

Morris Deegan:
Direct 271
Cross 280

Deposition of 2nd Lt. Henry R. Davis:
Direct 283
Cross 286

William Henry Holmes:
Direct 291
Cross 296

Ophelia Holmes:
Direct 297
Cross 299

Dorothy Frink:
Direct 300

Helen Louise Dickson:
Direct 301
Cross 304

Myrtle E. Cole:
Direct 307
Cross 310

Sarah Heller:
Direct 311
Cross 314

Antoinette Peterson:
Direct 315
Cross 319

Edgar Hunt Deegan:
Direct 321

Richard M. Deegan:
Direct 328
Cross 330

PAGE

Madeline Deegan:
Direct 331
Cross 332

Donald George Deegan:
Direct 333

Max Tell:
Direct 335
Cross 336

Edna Deegan:
Direct 337
Cross 348

Dr. Geoffrey C. Burns:
Direct 349
Cross 360
Redirect 371
Recross 372
Re-redirect 373

Dr. William Leavitt:
Direct 373
Cross 383

COURT'S EXHIBITS ON PRELIMINARY HEARING

1 and 2—(omitted pursuant to stipulation), marked in evidence at page 56, folio 10.

STATE'S EXHIBITS

S-1 to S-15, Inclusive (omitted pursuant to stipulation), marked in evidence at pages 172 to 253.

DEFENDANT'S EXHIBIT

D-1—(omitted pursuant to stipulation), marked in evidence at page 282, folio 20.

Writ of Error

(Issued—February 6, 1945)

New Jersey, ss.:

The State of New Jersey to Joseph L. Bodine, Esquire, one of the Justices of the Supreme Court of the State of New Jersey, and the President Judges
(L. S.) of the Court of Common Pleas of the County of Bergen, constituting the Court of Oyer and Terminer, holden at Hackensack, in and for the County of Bergen.

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Robert Deegan, Martin Hoffman, Ruth Oberempt and Carolyn Twing, late of the Borough of Dumont, in the County of Bergen, aforesaid:

For that the said Robert Deegan, Martin Hoffman, Ruth Oberempt and Carolyn Twing, late of the Borough of Dumont in the said County of Bergen on the fourteenth day of January in the year of our Lord one thousand nine hundred and forty-four at the Borough aforesaid, in the County aforesaid, and within the jurisdiction of this Court, they did wilfully, feloniously and of their malice aforethought, kill and murder one Ethel Hermann, contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same.

Pro ut the said indictment and the several counts therein, whereof, before you, he, the said

Robert Deegan hath been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Robert Deegan, as it is said, manifest error hath intervened to the great damage of the said Robert Deegan, as from his complaint we have received information; we being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Robert Deegan, command you, that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings had upon the trial, with all things touching the same, including the entire record of the proceedings had upon the trial, to our Court of Errors and Appeals, in the last resort in all cases, to be held at Trenton, on the twenty-sixth day of February instant and this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right and according to law ought to be done.

Witness, Luther A. Campbell, Esquire, our Chancellor and the President Judge of our said Court of Errors and Appeals at Trenton, aforesaid this sixth day of February, A. D. one thousand nine hundred and forty-five.

J. A. Brophy
Clerk

John B. Zabriskie

Emil Wulster
Attorneys

Return by Court of Oyer and Terminer to Writ of Error

(Filed—March 26, 1945.)

BERGEN COUNTY COURT OF OYER AND TERMINER

DECEMBER TERM, 1944

STATE OF NEW JERSEY, *v.* ROBERT DEEGAN, *Defendant.*	Return by Court of Oyer and Terminer to Writ of Error

The answer of Herman Vanderwart, President Judge of the Court of Common Pleas, in and for the County of Bergen, holding and constituting the Court of Oyer and Terminer therein, in the absence of a Justice of the Supreme Court, the record and proceedings whereof mention is within made, with all things touching and concerning the same, including the entire record of the proceedings had upon the trial, I certify to the Judges of our Court of Errors and Appeals in the last resort in all causes at Trenton, at the day and year within contained in a certain schedule to this writ annexed, as within I am commanded.

HERMAN VANDERWART,
Judge.

Attest:

ALEXANDER ALLAN
Alexander Allan, Clerk

(Seal)

Indictment

BERGEN OYER AND TERMINER

DECEMBER TERM A. D. 1943

BERGEN COUNTY, TO WIT: The Grand Inquest of the State of New Jersey, in and for the County of Bergen, upon their respective oaths, PRESENT, That ROBERT DEEGAN, MARTIN HOFFMAN, RUTH OBEREMPT, and CAROLYN TWING late of the Borough of Dumont in the said County of Bergen, on the fourteenth day of January in the year of our Lord one thousand nine hundred and forty-four at the Borough aforesaid, in the County aforesaid, and within the jurisdiction of this Court, they did wilfully, feloniously and of their malice aforethought kill and murder one Ethel Hermann

Contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same.

JOHN J. BRESLIN, JR.
Prosecutor

Endorsements on Indictment

BERGEN COUNTY COURT OF OYER AND TERMINER

Honorable Herman Vanderwart, *Presiding*

January 29th, 1945

#15328

The State of New Jersey *vs.* Robert Deegan, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943

Walter G. Winne, Esquire
Prosecutor of the Pleas.

John B. Zabriskie, Esquire

Emil M. Wulster, Esquire
Attorneys for Defendant.

Challenges:

State: 3 Cause: 2 Consent: 3 Defense: 5

Jury.

1. Joseph H. Schroeder
2. Clayton L. King
3. Bessie P. Dickson
4. Frederick Pfizenmaier
5. William L. Baker
6. Henry Scheer
7. Grace Blackledge
8. Herbert Rigby
9. Bernard H. Lueneberg
10. William B. Heward
11. George R. Muller
12. Edmond J. Dumeny
13. Clarence G. Kratz

Endorsements on Indictment

Prosecutor Walter G. Winne, Esquire, moved for a severance of indictment as to Oberempt and Twing, Deegan to be tried individually. Motion granted.

All Jurors were sworn as accepted and given seats in the Jury Box. The Jury was then polled by the Clerk. Officers Ryman, Staib, Dansen and Kent were sworn as attendants in charge of the Jury. Juror number 13 was impaneled and sworn as an alternate in accordance with the Statutes. Both sides opened to the Court and Jury. Court recessed at 1:00 P. M. until 2:30 P. M. for lunch. Court reconvened at 2:45 P. M. and the Jury was polled by the Clerk.

STATE WITNESSES:

1. Eugene Touhill
2. Joseph B. Popick
3. Anna Hansen
4. Emma Pekarek
5. Lieut. Joseph Mansfield
6. Capt. Herbert Allmers
7. Suzanne Reynolds
8. Officer Raymond Hamilton
9. Nathan Allyn
10. Frank Herman

Court adjourned at 4:25 P. M. until Tuesday, January 30th, 1945 at 10:00 A. M. Court reconvened Tuesday, January 30th, 1945 at 10:00 A. M. and the Jury was polled by the Clerk. The State's case continued:

11. Ruth Oberempt
12. L. C. Nichol
13. Carolyn Twing
14. Martin Hoffman
15. Dr. Arthur Greenfield

Endorsements on Indictment

State rests.

DEFENSE WITNESSES:

1. Maurice Deegan

Court recessed for ten minutes at 11:25 A. M. Court reconvened at 11:35 A. M. and the Jury was polled by the Clerk. The Defendant's case continued:

2. William Holmes
3. Ophelia Holmes
4. Dorothy Frinck
5. Helen Louise Dickson
6. Myrtle E. Cole
7. Sarah Heller
8. Antoinette Peterson
9. Edgar Hunt Deegan

Court recessed at 12:45 P. M. until 2:15 P. M. for lunch. Court reconvened at 2:20 P. M. and the Jury was polled by the Clerk. The defendant's case continued:

10. Richard M. Deegan
11. Madeline Deegan
12. Donald Deegan
13. Max Tell
14. Edna Deegan
15. Dr. Jeffrey C. Burns
16. Dr. William Leavitt

Court adjourned at 4:25 P. M. until Wednesday, January 31st, 1945 at 10:00 A. M. Court reconvened Wednesday, January 31st, 1945 at 10:00 A. M. and the Jury was polled by the Clerk. The Defendant's case continued:

DEFENSE RESTS.

Court recessed at 10:05 A. M. until 10:30 A. M. Court reconvened at 11:10 A. M. and the Jury was polled by the Clerk.

Endorsements on Indictment

REBUTTALS:

1. Dr. Paul B. Means
2. Dr. Christopher C. Beling
3. Dr. Lawrence Collins.

State rests.

CASE CLOSED.

Both sides summed up to the Court and Jury. Court recessed at 12:55 P. M. to 2:15 P. M. for lunch. Court reconvened at 2:20 P. M. and the Jury was polled by the Clerk. The Court charged the Jury from 2:21 P. M. to 3:07 P. M.

At this point the Court in accordance with R. S. 2:91A-3, ordered the Clerk to prepare slips with the names of the thirteen Jurors, each one being folded to conceal the names and place them in a suitable box provided for that purpose and draw twelve names. The following are the twelve Jurors drawn and duly impaneled to consider the Verdict.

JURY

1. Henry Scheer
2. Edmond J. Dumeny
3. Clarence G. Kratz
4. Joseph H. Schroeder
5. William B. Heward
6. George R. Muller
7. Bessie P. Dickson
8. Bernard H. Lueneberg
9. Clayton L. King
10. Frederick Pfizenmaier
11. Grace Blackledge
12. Herbert Rigby

The remaining Juror William L. Baker, was excused by the Court with thanks. The Officers were sworn by the Clerk and the Jury retired at 3:15 P. M. for purpose of deliberating and returned to the Court at 5:02 P. M. announcing

that they had reached a Verdict. The Jury was polled by the Clerk.

VERDICT: Guilty of First degree Murder with no recommendation. Defense Counsel requested the Court to poll the Jury. The Jury was polled by the Clerk under orders of the Court and each and every Juror answered in the affirmative.

Notice of Motion for Struck Jury

BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Notice of Motion for Struck Jury

PLEASE TAKE NOTICE, that I shall apply to the Bergen County Court of Oyer and Terminer, at the Court House, Hackensack, on Monday, December 4th, 1944, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard for an Order for a struck jury for the trial of the issue framed under the above indictment.

Dated: November 27th, 1944.

Respectfully,

WALTER G. WINNE,
Prosecutor of the Pleas of Bergen County.

Notice of Motion for Struck Jury

To:

Robert Deegan, Defendant, and

John B. Zabriskie, Esquire, and

Emil Wulster, Esquire,
Attorneys for Defendant.

Service of a copy of within notice is hereby acknowledged this 27th day of November, 1944.

Robert Deegan 11/27/44
Defendant

John B. Zabriskie 11/28/44
Attorney for Defendant

Emil M. Wulster 11/27/44
Attorney for Defendant

Eluia G. Anderson 11/27/44
Jury Commissioner

Robert L. Neff 11/27/44
Sheriff of Bergen County

Order for Struck Jury

BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Order for Struck Jury

ON MOTION on behalf of the State, and upon Notice given to the defendant, Robert Deegan, and to John B. Zabriskie, Esquire, and Emil Wulster, Esquire, Attorneys for the defendant, duly served as appears by acknowledgment of service on said Notice;

It is on this 4th day of December, 1944, ORDERED, in open court, in the presence of the defendant and his Attorneys, that a jury be struck for the trial of the issue framed under the indictment in the above cause.

By the Court.

A. DEMOREST DEL MAR,
Judge of the Court of Common Pleas of the County of Bergen, sitting in and holding the Court of Oyer and Terminer in and for said County, in the absence of a Justice of the Supreme Court.

On Motion of
WALTER G. WINNE,
Prosecutor of the Pleas of Bergen County.

Endorsements on Order for Struck Jury

Service of a copy of within order is hereby acknowledged this 4th day of December, 1944.

ROBERT DEEGAN
Defendant

JOHN B. ZABRISKIE
Attorney for Defendant

EMIL M. WULSTER
Attorney for Defendant

ROBERT S. TIPPING, Sheriff and
JOHN H. EDWARDS, under Sheriff
Sheriff of Bergen County

ELUIA G. ANDERSON
Jury Commissioner

Notice of Striking Jury

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Notice of Striking Jury

PLEASE TAKE NOTICE that a jury will be struck under the Statutes and the Order of this Court, made the 4th day of December, A. D. 1944, for a struck jury for the trial of the above named defendant, on indictment as above, at the Court House, Hackensack, on the 26th day of December, 1944, at ten o'clock in the forenoon, by and before the above named Court.

Dated: December 19th, 1944.

Respectfully,

WALTER G. WINNE,
Prosecutor of the Pleas of Bergen County.

To:

ROBERT DEEGAN, Defendant,

JOHN B. ZABRISKIE, Esquire, and

EMIL WULSTER, Esquire,

Attorneys for Defendant.

Affidavit of Service of Michael Polioka as to Notice of Striking Jury

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Affidavit

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

MICHAEL POLIOKA, of full age, being duly sworn according to law, on his oath deposes and says:

I am an Investigator attached to the Prosecutor's Office of the County of Bergen.

On December 20th, 1944, I served the Notice of the Striking of the Jury in the case of the State of New Jersey vs. Robert Deegan, upon Emil Wulster, Esquire, an attorney for the said Robert Deegan, by leaving a copy of said Notice with Albena Cardosi, Secretary for Emil Wulster, at his law office, located at 210 Main Street, Hackensack, New Jersey.

MICHAEL POLIOKA.

Sworn and subscribed to before me }
this 21st day of December, 1944. }

MADELINE R. BRESCIA
Notary Public of N. J.

List of Names of Persons to Serve as Jurors

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY

vs.

ROBERT DEEGAN,
Defendant.

Sur Indictment for Murder
December Term, A. D. 1943
List of Names of Persons to Serve as Jurors

A Rule for a Struck Jury having been entered in the above entitled cause on motion of the Prosecutor, the following is a list of one hundred names of persons qualified to serve as jurors in and for the County of Bergen with their places of abode, from which the Prosecutor and the defendant shall each strike twelve names in the usual way, in accordance with the statute in such case made and provided:

	Name	*Occupation*	*Municipality*
1.	Dorothy K. Brown,	Housewife	Englewood
2.	Alfred H. Springhorn,	Sales Planning	Bogota
3.	Henry G. Hitchcock,	R. E. Salesman	Bogota
4.	George E. Weeks,	P. S. E. & G. Co.	Hackensack
5.	Zabriskie T. Banta,	Engineer	Hackensack
6.	Elwood R. Alden,	Sales Manager	Hackensack
7.	Mary A. Templeton,	Housewife	Hackensack
8.	Evelyn G. Oliver,	Housewife	Leonia
9.	Frank S. Smith	Engineer	Leonia
10.	Thomas H. Joyce,	Insurance Inspector	Leonia

List of Names of Persons to Serve as Jurors

	Name	*Occupation*	*Municipality*
	11. Edmond D. Toomy,	Foreman	New Milford
	12. Elizabeth Hughes,	Housewife	North Arlington
	13. Clara E. Plympton,	Housewife	Oradell
	14. Annabelle Nixon,	Housewife	Palisades Park
10	15. Katherine M. Cook,	Housewife	Ridgefield Park
	16. Martha Adams,	Asst. Supervisor	Little Ferry Boro
	17. C. Henry Ahlert,	Cashier	River Edge Boro
	18. Rose Anello,	Secretary	Lodi Boro
	19. Theodore Arnhols,	Office Manager	Bogota Boro
	20. Charles Baker,	Accountant	Hasbrouck Hgts. Boro
	21. Neil D. Baker,	Plumber	Hasbrouck Hgts. Boro
	22. William L. Baker,	Asst. Librarian	Hackensack City
	23. Henry J. Beaufrere,	Accountant	Hackensack City
	24. Grace Blackledge,	Bookkeeper	Wood-Ridge Boro
20	25. William F. Borg, Jr.,	Bank Clerk	Ridgefield Boro
	26. Lillian A. Braun,	Instructor	Bogota Boro
	27. Gladys V. Bull,	Secretary	Hackensack City
	28. Edna B. Bush,	Renting Agent	Hackensack City
	29. Edward J. Carney,	Advertising	Ridgefield Boro
	30. Philip B. Coltiletti,	Accountant	Bogota Boro
	31. Florence O. Dalitz,	Secretary	Bogota Boro
	32. Mildred B. Davie,	Housewife	Rutherford Boro
	33. Robert L. Demarest,	Merchant	Maywood Boro
	34. Bessie P. Dickson,	Secretary	Hackensack City
30	35. Hans A. Diener,	Retired	Ridgefield Park Twp.
	36. John A. Digney,	Publisher	River Edge Boro
	37. William B. Doig,	Salesman	Bogota Boro
	38. Edmond J. Dumeny,	Insurance	Bogota Boro
	39. Jacob H. Dunn,	Merchant	Hackensack City
	40. Franklin Felter, Jr.,	Statistician	Ridgefield Park Twp.
	41. Warren B. Felter,	Retailer	Bogota Boro
	42. Louis E. Fernandez,	Translator	Ridgefield Park Twp.
	43. Julian L. Fish,	Buyer	Ridgewood Twp.
	44. Albert L. Fox,	Accountant	Ridgefield Park Twp.
40			

List of Names of Persons to Serve as Jurors

	Name	*Occupation*	*Municipality*	
45.	Mildred E. Frank,	Secretary	Wood-Ridge Boro	
46.	George A. Freschi,	Supervisor	Wood-Ridge Boro	
47.	Martha A. Gilady,	Housewife	Hackensack City	
48.	John R. Gough,	Engineer	Ridgefield Park Twp.	
49.	Michael Guarino,	Stationary Engineer	Hasbrouck Hgts. Boro	10
50.	Roy A. Gussman,	Met. Life Ins. Co.	Ridgefield Park Twp.	
51.	Herant J. Hammalian,	Superintendent	Hackensack City	
52.	Samuel B. Hayes, Jr.,	Telephone Engineer	Ridgewood Twp.	
53.	John Heck,	Broker	Ridgefield Park Twp.	
54.	George D. Heilman,	Accountant	Bogota Boro	
55.	William B. Heward,	Title Closer	Hasbrouck Hgts. Boro	
56.	Arthur B. Hill,	Accountant	Bogota Boro	
57.	Ruth G. Hinds,	Housewife	Hackensack	
58.	William G. Hitchcock,	Boiler Utilityman	Bogota Boro	
59.	Cornelius J. Hogan,	Jeweler	Maywood Boro	20
60.	Dorothea R. Hunter,	Teacher	River Edge Boro	
61.	Lillian Jenkins,	Housewife	Bergenfield Boro	
62.	Ethel S. Johnson,	Housewife	Bogota Boro	
63.	Elizabeth Kardy,	Housewife	Dumont Boro	
64.	Louise H. Kerr,	Bank Clerk	Bogota Boro	
65.	Francis E. Kielb,	Auditor	Leonia Boro	
66.	Clayton L. King,	Civil Engineer	Hackensack City	
67.	Clarence G. Kratz,	Bookkeeper	Ridgefield Park Twp.	
68.	Knud E. Lerche,	Bank Clerk	Bogota Boro	
69.	George W. Leslie,	Sales Manager	Bogota Boro	30
70.	Bernard H. Lueneberg,	Salesman	Ridgefield Boro	
71.	Francis K. Lynch,	Retired	Hasbrouck Hgts. Boro	
72.	William Lynch,	Contractor	Maywood Boro	
73.	Florence M. Macdonald,	Housewife	Bogota Boro	
74.	Herbert C. MacDonald,	Salesman	Tenafly Boro	
75.	John C. Marsh,	Accountant	Ridgefield Park Twp.	
76.	Justin A. McCarthy,	Banker	Bogota Boro	
77.	George L. McKinney,	Office Manager	Bogota Boro	
78.	George R. Muller,	Salesman	Maywood Boro	
				40

New Jersey State Library

List of Names of Persons to Serve as Jurors

	Name	*Occupation*	*Municipality*
79.	Harold F. Noble,	Life Insurance	Hackensack City
80.	Robert Oakley, Jr.,	Manager	Ridgefield Boro
81.	John Obeda,	Banker	Haworth Boro
82.	Abram M. Ottignon,	Executive	Bogota Boro
83.	Frederick Pfizenmaier,	Bank Teller	Hackensack City
84.	John T. Powers,	Insurance Broker	Bogota Boro
85.	George D. Rank,	Accountant	Hackensack City
86.	Herbert Rigby,	Salesman	Hackensack City
87.	Theodore Romaine,	Hardware Dealer	Hackensack City
88.	John N. Roos,	Secretary	Maywood Boro
89.	Lucile G. Russell,	Radio Writer	Ridgefield Park Twp.
90.	Henry Scheer,	Commercial Artist	Rochelle Park Twp.
91.	Joseph H. Schroeder,	Switchman	Wood-Ridge Boro
92.	Jessie M. Snedeker,	Housewife	Bogota Boro
93.	William Tisch,	Advertising Artist	Ridgefield Boro
94.	Clark Torrance,	Bookkeeper	Dumont Boro
95.	Alfred J. Uhlmann,	Sales Manager	Hackensack City
96.	Charles R. Walker,	Dept. Manager	Ridgefield Park Twp.
97.	Louis Weintraub,	Salesman	Ridgefield Park Twp.
98.	Clifton R. White,	Office Manager	Hackensack City
99.	Robert H. Wolff,	Banker	Hasbrouck Hgts. Boro
100.	Frederick G. Zwetsch,	Insurance	Glen Rock Boro

Dated: December 19th, 1944.

A. D. Del Mar,
Judge of the Common Pleas Court, holding the Court of Oyer and Terminer in and for the County of Bergen in the absence of a Justice of the Supreme Court.

List of Names of Persons to Serve as Jurors

Service of a copy of within notice is hereby acknowledged this 20th day of December, 1944.

ROBERT DEEGAN,
Defendant.

JOHN B. ZABRISKIE,
Attorney for Defendant.

ROBERT S. TIPPING,
Sheriff of Bergen County.

BEATRICE J. FANNING,
Jury Commissioner.

Challenge to Array

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*		Sur Indictment for Murder December Term, A. D. 1943 Challenge to Array

ROBERT DEEGAN, defendant, hereby challenges the array of jurors chosen by Honorable A. D. Del Mar, Judge of the Common Pleas Court, holding the Court of Oyer and Terminer in and for the County of Bergen in the absence of a Justice of the Supreme Court, being one charged with the duty of preparing the list from which the panel of jurors in the above entitled cause should be drawn after the striking of the number of jurors permitted by law, because the said Judge is biased and prejudiced against the defendant, Robert Deegan, and does not stand indifferent between The State of New Jersey and the said Robert Deegan. And this challenge to the array this defendant demands that the Court try.

JOHN B. ZABRISKIE
EMIL WULSTER
Attorneys for the defendant,
Robert Deegan.

Demurrer of Challenge to the Array

BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	On Indictment for Murder Demurrer of Challenge to the Array

Now comes the State of New Jersey by Walter G. Winne, Prosecutor, and having read the challenge to the array says that said challenge in manner and form is not sufficient in law and this it is ready to verify.

Said challenge is insufficient in that it does not set forth the facts upon which said challenge is based; said challenge is insufficient in that it expresses only conclusions of law; said challenge is insufficient because it does not state in what manner the court is prejudiced and impartial and disqualified.

WHEREFORE, the Prosecutor of the Pleas of Bergen County says that the matters contained in said challenge are not sufficient in law to bar, disqualify and preclude the said A. Demorest Del Mar from sitting in judgment upon the trial of the indictment of the above named defendant.

WHEREFORE, the said Walter G. Winne, Prosecutor as aforesaid prays judgment.

WALTER G. WINNE
Prosecutor of the Pleas of
Bergen County

Venire for Struck Jury

Bergen County, ss.:

THE STATE OF NEW JERSEY to our (Seal) Sheriff of the County of Bergen. We command you that you cause to come before the Court of Oyer and Terminer to be holden at Hackensack, in and for the County of Bergen, on Monday, the 29th day of January, A. D. 1945, at the hour of ten o'clock in the forenoon of that day, the persons named in the annexed list or panel subscribed by the Judge of said Court to make a certain jury of the said County of Bergen between the State of New Jersey and Robert Deegan, in a plea of Not Guilty to an indictment for Murder, December Term, A. D. 1943, because as well the State of New Jersey as the said Robert Deegan, between whom the contention is, have put themselves on the said Jury, and in what manner you shall have executed this our writ, make appear at Hackensack aforesaid, and have you then and there the names of those persons and this writ.

WITNESS, Honorable A. Demorest Del Mar, Judge of said Court, at Hackensack aforesaid, this 29th day of December A. D. 1944.

ALEXANDER ALLAN
Clerk.

L. S. MATHIS,
Deputy

WALTER G. WINNE
Prosecutor of the Pleas
of Bergen County.

List of Names for Struck Jury, Annexed to Foregoing Venire for Struck Jury

BERGEN COUNTY COURT OF OYER AND TERMINER

DECEMBER TERM, A. D. 1944

THE STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 List of Names for Struck Jury

Number	*Name*	*Occupation*	*Address*
1.	George E. Weeks,	P.S.E. & G. Co.	Hackensack
2.	Evelyn G. Oliver,	Housewife	Leonia
3.	Edmond D. Toomy,	Foreman	New Milford
4.	Elizabeth Hughes,	Housewife	North Arlington
5.	Clara E. Plympton,	Housewife	Oradell
6.	Annabelle Nixon,	Housewife	Palisades Park
7.	Katherine M. Cook,	Housewife	Ridgefield Park
8.	Martha Adams,	Asst. Supervisor	Little Ferry Boro
9.	C. Henry Ahlert,	Cashier	River Edge Boro
10.	Rose Anello,	Secretary	Lodi Boro
11.	Charles Baker,	Accountant	Hasbrouck Hgt. Boro
12.	Neil D. Baker,	Plumber	Hasbrouck Hgt. Boro
13.	William L. Baker,	Asst. Librarian	Hackensack City
14.	Henry J. Beaufrere,	Accountant	Hackensack City
15.	Grace Blackledge,	Bookkeeper	Wood-Ridge Boro
16.	William F. Borg, Jr.,	Bank Clerk	Ridgefield Boro
17.	Gladys V. Bull,	Secretary	Hackensack City
18.	Edna B. Bush,	Renting Agent	Hackensack City
19.	Edward J. Carney,	Advertising	Ridgefield Boro
20.	Philip B. Coltiletti,	Accountant	Bogota Boro
21.	Robert L. Demarest,	Merchant	Maywood Boro
22.	Bessie P. Dickson,	Secretary	Hackensack City

List of Names for Struck Jury, Annexed to Foregoing Venire for Struck Jury

	Number	*Name*	*Occupation*	*Address*	*N*
	23.	John A. Digney,	Publisher	River Edge Boro	57
	24.	William B. Doig,	Salesman	Bogota Boro	58
	25.	Edmond J. Dumeny,	Insurance	Bogota Boro	59
10	26.	Franklin Felter, Jr.,	Statistician	Ridgefield Park Twp.	60
	27.	Warren B. Felter,	Retailer	Bogota Boro	61
	28.	Louis E. Fernandez,	Translator	Ridgefield Park Twp.	62
	29.	Julian L. Fish,	Buyer	Ridgewood Twp.	63
	30.	Albert L. Fox,	Accountant	Ridgefield Park Twp.	64
	31.	Mildred E. Frank,	Secretary	Wood-Ridge Boro	65
	32.	George A. Freschi,	Supervisor	Wood-Ridge Boro	66
	33.	John R. Gough,	Engineer	Ridgefield Park Twp.	67
	34.	Michael Guarino,	Stationary Engineer	Hasbrouck Hgt. Boro	68
20	35.	Roy A. Gussman,	Met. Life Ins. Co.	Ridgefield Park Twp.	69
	36.	Herant J. Hammalian,	Superintendent	Hackensack City	70
	37.	Samuel B. Hayes, Jr.,	Telephone Engineer	Ridgewood Twp.	71
	38.	John Heck,	Broker	Ridgefield Park Twp.	72
	39.	George D. Heilman,	Accountant	Bogota Boro	73
	40.	William B. Heward,	Title Closer	Hasbrouck Hgts. Boro	74
	41.	Arthur B. Hill,	Accountant	Bogota Boro	75
	42.	William G. Hitchcock,	Boiler Utilityman	Bogota Boro	76
	43.	Cornelius J. Hogan,	Jeweler	Maywood Boro	
	44.	Dorothea R. Hunter,	Teacher	River Edge Boro	
	45.	Ethel S. Johnson,	Housewife	Bogota Boro	
30	46.	Elizabeth Kardy,	Housewife	Dumont Boro	
	47.	Louise H. Kerr,	Bank Clerk	Bogota Boro	
	48.	Francis E. Kielb,	Auditor	Leonia Boro	
	49.	Clayton L. King,	Civil Engineer	Hackensack City	
	50.	Clarence G. Kratz,	Bookkeeper	Ridgefield Park Twp.	
	51.	George W. Leslie,	Sales Manager	Bogota Boro	
	52.	Bernard H. Lueneberg,	Salesman	Ridgefield Boro	
	53.	Francis K. Lynch,	Retired	Hasbrouck Hgts. Boro	
	54.	William Lynch,	Contractor	Maywood Boro	
40	55.	Florence M. Macdonald,	Housewife	Bogota Boro	
	56.	Herbert C. MacDonald,	Salesman	Tenafly Boro	

List of Names for Struck Jury, Annexed to Foregoing Venire for Struck Jury

Number	*Name*	*Occupation*	*Address*
57.	John C. Marsh,	Accountant	Ridgefield Park Twp.
58.	George R. Muller,	Salesman	Maywood Boro
59.	Harold F. Noble,	Life Insurance	Hackensack City
60.	Robert Oakley, Jr.,	Manager	Ridgefield Boro
61.	Abram M. Ottignon,	Executive	Bogota Boro
62.	Frederick Pfizenmaier,	Bank Teller	Hackensack City
63.	John T. Powers,	Insurance Broker	Bogota Boro
64.	George D. Rank,	Accountant	Hackensack City
65.	Herbert Rigby,	Salesman	Hackensack City
66.	Theodore Romaine,	Hardware Dealer	Hackensack City
67.	John N. Roos,	Secretary	Maywood Boro
68.	Lucile G. Russell,	Radio Writer	Ridgefield Park Twp.
69.	Henry Scheer,	Commercial Artist	Rochelle Park Twp.
70.	Joseph H. Schroeder,	Switchman	Wood-Ridge Boro
71.	Jessie M. Snedeker,	Housewife	Bogota Boro
72.	William Tisch,	Advertising Artist	Ridgefield Boro
73.	Clark Torrance,	Bookkeeper	Dumont Boro
74.	Charles R. Walker,	Dept. Manager	Ridgefield Park Twp.
75.	Clifton R. White,	Office Manager	Hackensack City
76.	Frederick G. Zwetsch,	Insurance	Glen Rock Boro

I, Hon. A. Demorest Del Mar, Judge of the said Court, do hereby certify that the foregoing is a list of Jurors struck for the trial of the above entitled cause.

Dated: December 29th, 1944.

A. Demorest Del Mar,
Judge of the Court of Common Pleas of the County of Bergen, sitting in and holding the Court of Oyer and Terminer in and for said County, in the absence of a Justice of the Supreme Court.

Indictment, Annexed to Foregoing Venire for Struck Jury

BERGEN OYER AND TERMINER

DECEMBER TERM A. D. 1943

BERGEN COUNTY, TO WIT: The Grand Inquest of the State of New Jersey, in and for the County of Bergen, upon their respective oaths, PRESENT, That ROBERT DEEGAN, MARTIN HOFFMAN, RUTH OBEREMPT, and CAROLYN TWING late of the Borough of Dumont in the said County of Bergen, on the fourteenth day of January in the year of our Lord one thousand nine hundred and forty-four at the Borough aforesaid, in the County aforesaid, and within the jurisdiction of this Court, they did wilfully, feloniously and of their malice aforethought kill and murder one Ethel Hermann

Contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same.

JOHN J. BRESLIN, JR.
Prosecutor

Indictment, Annexed to Foregoing Venire for Struck Jury

State of New Jersey }
Bergen County } ss.:

I, ALEXANDER ALLAN, Clerk of the County of Bergen, and also Clerk of the Court of Oyer and Terminer in and for said County, do hereby certify that the foregoing is a true copy of the original Indictment as the same remains on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County, this 5th day of December A. D. nineteen hundred and forty-four.

ALEXANDER ALLAN
Clerk.

(Seal)

L. S. MATHIS
Deputy Clerk.

Endorsements on List of Names and Venire for Struck Jury

Service of a copy of within list of names and venire for struck jury is hereby acknowledged this 3rd day of January, 1945.

ROBERT DEEGAN
Defendant

JOHN B. ZABRISKIE
Attorney for Defendant

See affidavit of James Philp as to service on

EMIL WULSTER
Attorney for Defendant

ROBERT S. TIPPING, Sheriff and
JOHN H. EDWARDS Under Sheriff
Sheriff of Bergen County

BEATRICE J. FANNING
Jury Commissioner

Affidavit of Service of James Philp, as to List of Names and Venire for Struck Jury

BERGEN OYER AND TERMINER COURT

THE STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Affidavit

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

JAMES PHILP, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am an Investigator attached to the Prosecutor's Office of Bergen County, New Jersey.

2. That on Wednesday, January 3rd, 1945, I served the List of Names and Venire for Struck Jury, in the above-entitled matter, on Emil M. Wulster, Esquire, an attorney representing the defendant, Robert Deegan, by leaving a copy of said List of Names and Venire for Struck Jury with Mr. Wulster's secretary, Albena Cardosi, at his office located at 210 Main St., Hackensack, New Jersey.

JAMES PHILP

Sworn and subscribed to before me }
this 5th day of January, 1945. }

MADELINE R. BRESCIA
Notary Public of New Jersey.

Defendant's Challenge to Judge A. Demorest Del Mar, Sitting in This Cause

BERGEN COUNTY COURT OF OYER AND TERMINER

DECEMBER TERM, A. D. 1943

STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder Challenge of Judge A. Demorest Del Mar sitting in this cause.

And whereupon the defendant, Robert Deegan, by John B. Zabriskie and Emil Wulster, his attorneys, comes and challenges Hon. A. Demorest Del Mar, Judge of the Bergen County Court of Common Pleas, holding the Bergen County Court of Oyer and Terminer, because he says that the interest of the said Judge A. Demorest Del Mar as shown by the following enumerated acts of the said Judge A. Demorest Del Mar is such as to indicate a state of mind and an opinion contrary to the impartial administration of justice towards this defendant, and has given his opinion upon the guilt or innocence of this defendant, a matter in question in the above entitled cause:

1. At the conclusion of the trial of the issue in this cause, after a verdict of guilty without recommendation of life imprisonment, the said Judge A. Demorest Del Mar stated to the jury after it had rendered a verdict of guilty without

recommendation as aforesaid, "I want you to know, that I concur in this verdict."

2. That subsequent to the reversal of the verdict rendered in the cause of State of New Jersey against Robert Deegan, Martin Hoffman, Ruth Oberempt and Carolyn Twing, and prior to the retrial of said defendant, and in discussion relative thereto, the said Judge A. Demorest Del Mar stated his opinion by saying that the said defendant Robert Deegan was guilty, and stated further that "He ought to be hung, drawn and quartered" and did thereby show his malice and bias against this defendant, Robert Deegan.

And this the defendant is ready to verify, wherefore he prays judgment, and that the said Judge A. Demorest Del Mar may not sit in judgment upon the argument or trial of the above entitled case pending in the said Bergen County Court of Oyer and Terminer.

JOHN B. ZABRISKIE,
EMIL WULSTER,
Attorneys for Defendant,
Robert Deegan.

Opinion of Del Mar, *J.*, on Defendant's Foregoing Challenge

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	On Challenge to Judge Del Mar Sitting Opinion

January 19, 1945

For the State:

Hon. WALTER G. WINNE,
Prosecutor of the Pleas

For the Defendant:

JOHN B. ZABRISKIE, Esq.

EMIL M. WULSTER, Esq.

The defendant challenges my holding the above-entitled Court because of bias or prejudice towards him and at the same time inconsistently applies to me as Judge of said Court to allow him to retain an additional medical expert, which matter has already been disposed of.

The defendant's counsel were both sworn and testified as witnesses for the defendant as to statements alleged to have been made by me expressing my opinion as to the guilt of the defendant and what form of punishment he ought to suffer therefor.

Opinion of Del Mar, J., on Defendant's Foregoing Challenge

It appears from Mr. Wulster's testimony that the statements that are alleged to have been made were uttered in my Chambers some time between October 17 and December 4 of last year, and yet on the latter date both lawyers appeared before me, accepted a reappointment, and offered a plea of non vult without any claim of prejudice or bias on my part, and asked for a delay in order to apply to the Supreme Court for a writ of certiorari in order to secure "a foreign jury or a change of venue."

On December 26, 1944, both of the above-named attorneys appeared before me and filed a Challenge to the array of the struck jury panel on the ground that I was biased, prejudiced, etc.—the first time this issue had been raised. A Demurrer was filed to the Challenge.

At the argument in open court Judge Zabriskie announced that he had no witnesses "in Court," but he might produce one at a later time, and yet at the very moment, if their testimony is to be believed, the two witnesses, Zabriskie and Wulster, were both present in open Court. I believe it to be the settled law of this State that when a party knows of ground of objection to a judge and does not make it at the first opportunity, he may not be heard to make it at a later stage of the proceedings. (*In re. Hague*, 103 N. J. Eq. 505, and cases cited therein.)

On December 26th last, January 29th was set for the trial of the issues joined between the parties. Many arrangements have been made in preparation for the trial and the trial cannot be

postponed now without great expense to the State and great inconvenience to the public.

Counsel for the defendant are guilty of reprehensible conduct in not filing their challenge at the earliest possible moment and in not presenting whatever evidence they had at their first opportunity. Everything they knew on January 18th they knew by their own admissions at some time before December 4th. They have presented no excuse for their strange and unseemly conduct. Furthermore, any statements they have attributed to me fall far short of showing any bias against the defendant. In *State* v. *Bolitho,* 103 N. J. L. at page 251,

> "We may safely assume that every law-abiding citizen is naturally at war with violators of the law, and, hence, is more or less interested in the suppression of crime, which interest springs not only from a sense of self-protection, but also from a duty to protect the community, as well, against unlawful acts of its members, and, therefore, it is quite obvious that in order to entertain the notion stressed in the brief of counsel of plaintiff in error, we would be driven to the ludicrous declaration that such an interest, as above indicated, disqualifies a judge or juror from sitting in judgment, impartially, between the state and the accused. Such a course would deal a disastrous blow to our judicial system.
>
> "In *State* v. *Spencer,* 21 N. J. L. 196, Chief Justice Hornblower (at p. 198)

> stated a sound legal rule to be applied when he said: 'A declaration of opinion to disqualify a juror, therefore, must be such an one as implies malice or ill-will against the prisoner, thereby showing that the person challenged does not stand indifferent between the state and him. This is the uniform language of the books and cases which are of authority under our constitution, as well as of the English courts up to the present time.' This legal rule had become firmly imbedded in the law of this state. The salutariness of the rule is luminously dealt with by Chief Justice Green, in *State* v. *Fox,* 25 Id. 566 (commencing at p. 586). We cannot conjure up any good reason why the legal principle enunciated is not equally applicable to a challenge to a judge upon the ground of interest and bias. We think it is."

I find myself free from any bias or prejudice insofar as the defendant is concerned and, therefore, overrule the challenge.

The only evidence in this case is the testimony of the two defense lawyers. The practice of attorneys testifying as to matters affecting their clients has been severely condemned by both the Chancery and Law Courts of this State. (See *White* v. *State Board of Tax Appeals,* 123 N. J. L. 350, and cases therein cited, and the following quotation therein which is cited with approval:

> "As respects an attorney connected with the case on trial, the practice of counsel

testifying is of doubtful propriety and he should ordinarily *withdraw before becoming a witness* (italics mine), and if counsel testifies, generally it is unbecoming for him to examine witnesses or address the jury, etc."

Counsel for the defendant in this case not only testified, and examined each other, and addressed the Court, which in a case of this kind sits in place of a jury to decide the facts, but further, they attempted to induce me to be sworn as a witness in my own Court, a practice forbidden in New Jersey (See *State* v. *De Maio,* 69 N. J. L. 590).

I might appoint three triors under the Statute to try the issue raised, but this also would delay the trial of the main issue.

A. D. Del Mar
Judge.

Stipulation as to Admitted Exhibit

(Filed—February 5, 1945)

BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Stipulation

It is hereby consented, stipulated and agreed that Exhibit DD 4 marked March 22nd, 1944 in the cause of the State of New Jersey against Robert Deegan, Martin Hoffman, Ruth Oberempt and Carolyn Twing, Defendants, be admitted in evidence and become part of and be copied into the record in the pending cause of the State of New Jersey against Robert Deegan.

WALTER G. WINNE
Prosecutor of the Pleas

JOHN B. ZABRISKIE
EMIL WULSTER
Attorneys for the Defendant
Robert Deegan

Order Permitting Defendant to Retain Medical or Mental Expert

BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Order

Application hereby having been made by John B. Zabriskie and Emil Wulster, representing Robert Deegan, the defendant herein, indicted by the Bergen County Grand Jury, and it appearing that the said petitioners believe he was insane at the time of the commission of the said act alleged in the said indictment;

IT IS on this 19th day of January, 1945, ORDERED that said counsel be permitted and they are hereby authorized to again retain Geoffrey C. H. Burns, M. D. in connection with the above entitled cause; and

IT IS FURTHER ORDERED that said counsel be and they hereby are authorized to retain an additional medical or mental expert at an expense not to exceed Three Hundred (300) dollars.

A. D. DEL MAR
Judge

Minutes of Hearing on State's Motion for a Struck Jury

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE

vs.

ROBERT DEEGAN,
Defendant.

Hackensack, New Jersey,
December 4th, 1944.

Before:

Honorable J. DEMOREST DEL MAR,
Judge.

APPEARANCES:

For the State: Honorable WALTER G. WINNE, Prosecutor of the Pleas.

For the Defendant: JOHN B. ZABRISKIE, Esq., EMIL M. WULSTER, Esq.

Mr. Winne: Your Honor, this is the return day—Mr. Zabriskie and Mr. Wulster, and the defendant have been given notice of this motion, which is a motion that a jury be struck. That is the only purpose of my being here, to move that an order be entered directing the striking of a jury for the trial of the indictment. I have shown Mr. Zabriskie and Mr. Wulster the proposed order.

Minutes of Hearing on State's Motion for a Struck Jury

The Court: All right, both sides are prepared?

Mr. Winne: Yes.

Mr. Zabriskie: Your Honor, please, of course I see the Prosecutor recognizes us as counsel, I presume we are still continued under the original order?

The Court: There has been no change. The defendant has not expressed any dissatisfaction with the attorneys assigned to him, and I have not heard the attorneys express any dissatisfaction, so I suppose you carry right on. If you think you need a formal appointment I am willing to put one in writing, but I do not conceive that is necessary.

Mr. Zabriskie: I presume what is being put on the record will act as a continuance—

The Court (to Defendant Deegan): Are you satisfied with the counsel assigned to you by the Court, Deegan?

Deft. Deegan: Yes, I am.

Mr. Zabriskie: That matter being disposed of satisfactorily to everybody apparently, I might say that we feel in view of all the circumstances in this case that we should tender a plea of non vult in this case, and we do that at this time with your Honor's permission.

The Court: I think this case ought to be retried. I will not accept the plea offered or tendered on behalf of the defendant.

Mr. Zabriskie: I will take an exception.

The Court: All right, you may have it.

There is a plea of not guilty already on the record.

Minutes of Hearing on State's Motion for a Struck Jury

Mr. Zabriskie: Yes. I would ask permission to withdraw that plea and enter a plea of non vult.

The Court: All right, the motion is denied.

Mr. Zabriskie: In connection with this motion, your Honor, please, we would like to have this adjourned long enough to make application to the Supreme Court for writ of certiorari in order to bring the case before the Supreme Court to make application for a foreign jury, or change of venue, of one or the other, and I have not been able to find out as to when we can make that application before the Supreme Court, but I will find that out as soon as possible. I think that in view of all the circumstances that it is the duty of counsel to make that application.

The Court: I was under the impression that you had been noticed today to strike a jury.

Mr. Zabriskie: That is true.

Mr. Winne: That is right.

The Court: Isn't that what you are here for?

Mr. Zabriskie: Yes.

The Court: Do I understand you are interposing some objection?

Mr. Zabriskie: I am asking for an adjournment of this motion to give counsel an opportunity before the motion is argued, to present the matter to the Supreme Court—to see if we can take it to the Supreme Court, which we cannot do here—with respect to trying the case before a foreign jury.

Mr. Winne: That is opposed. If Mr. Zabriskie wants to make such a motion, that is his privilege; if he wants to attempt to remove this indict-

ment he had a substantial length of time since the knowledge has been apparent to all of us that there has been a reversal in this case to make such a motion. All I want to do is to dispose of the matter. I have no particular reason to want to urge haste, but it seems to me they have had time, and it seems to me they have been dilatory, and I urge the motion for the striking of a jury, and I state to your Honor and to counsel that we are going to try to get this case tried next month if we can do it. We have no reason to wish to be arbitrary or in any way to inconvenience any one if there is a legitimate excuse for any delay I want to accommodate Counsel. But this case is not a hard case to prepare, Counsel knows more about it than I do, and I do not think I will have any difficulty getting ready in a month, so I want to proceed with all diligence.

The Court: I don't see any reason to delay striking the jury this morning. When the jury is struck it will be some weeks before the case will be tried, and the application can be made to the Supreme Court in the meanwhile. Should the Supreme Court grant your motion for a foreign jury I suppose that would have the effect of vacating the order for the struck jury in this Court, that is, this Court would certainly vacate its order, and a foreign jury would then be empanelled. Do we have the jury list here?

Mr. Winne: This is for a motion to strike, and then we give notice.

The Court: Is that your application?

Mr. Zabriskie: It is my application; it isn't an objection, it is an application for an adjourn-

ment so that we may have an opportunity to make application to the Supreme Court for a Writ of Certiorari to remove the cause in the Supreme Court.

The Court: I will deny the motion. I will order a struck jury.

Mr. Zabriskie: Your Honor will allow me an exception for the record?

The Court: You may have it. The defendant will be remanded for trial.

Minutes of Hearing on Defendant's Challenge to Array and State's Demurrer to Challenge

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE, *vs.* ROBERT DEEGAN, *Defendant.*	Motion to Strike a jury; Challenge to the Array

Hackensack, New Jersey,
December 26th, 1944.

Before:
Honorable A. DEMOREST DEL MAR,
Judge.

APPEARANCES:

For the State: Hon. WALTER G. WINNE, Prosecutor of the Pleas.

For the Defendant: JOHN B. ZABRISKIE, Esq., EMIL M. WULSTER, Esq.

Mr. Winne: Your Honor, this is the return day of a motion to strike a jury in the indictment of the State against Robert Deegan. Notice of the motion was given to the defendant and to his Counsel, and the defendant and his Counsel are

present in Court. This morning I was served with a paper purporting to be a challenge to the array to which the State has demurred. I have stated to Counsel for Deegan that I was prepared if they were prepared to proceed to try the challenge which has been filed. I understand they are not prepared to do that today and want an adjournment of a week, is that correct, Judge Zabriskie?

Mr. Zabriskie: Yes, sir.

Mr. Winne: Under the circumstances I press the demurrer. I would have been glad to accommodate Counsel if they had not been ready as I think they should have been ready having known for a great many weeks that we had the expectation to try this case early in January. I think it was only reasonable to expect if they had such motion to argue this morning they should have been prepared to produce evidence to substantiate the challenge which they have filed in this Court, and since they are not ready this morning, which I understand to be the fact, Judge Zabriskie?

Mr. Zabriskie: That's true, we haven't any witnesses in court.

Mr. Winne: Since they are not ready to prove the facts they have alleged I therefore demurr to their challenge and am prepared to argue the demurrer.

The Court: Mr. Zabriskie, do you want to be heard?

Mr. Winne: The formal written demurrer is on your desk and has been filed.

The Court: I have it, and both this and the written challenge will be marked, filed.

Mr. Zabriskie: What is your Honor's ruling?

Minutes of Hearing on Defendant's Challenge to Array and State's Demurrer to Challenge

The Court: I ask you if you want to be heard?

Mr. Winne: I would like to be heard, your Honor.

The Court: Yes.

Mr. Winne: Your Honor, please, this indictment was tried about a year ago and this defendant convicted and sentenced, and his sentence, his conviction was reversed, and the case is back here for re-trial, and the defendant, Deegan, has been in the County Jail for a month or six weeks.

About a month ago we made a motion for a struck jury, which was granted, and formal notice returnable today was given to counsel for the defendant. The same Counsel represent the defendant today that represented him for a year. I can not understand why there should be any delay at all in trying this case. Every one interested in the case expected to get it disposed of, and it is the kind of case that should be disposed of, and my point in stating today that I think Counsel should be ready to try this case promptly is that I am going to do everything—the State is going to do everything it can and get this man tried as fairly as possible but as quickly as possible. I feel that to be my duty as Prosecutor.

In view of what I said concerning striking a jury this morning, I was quite surprised to walk in Court at ten o'clock and have handed to me this piece of paper, "Challenge to Array: Robert Deegan, defendant, hereby challenges the array of jurors chosen by Honorable A. D. Del Mar, Judge of the Common Pleas Court, holding the Court of Oyer and Terminer in and for the County of Bergen in the absence of a Justice of the Supreme

Minutes of Hearing on Defendant's Challenge to Array and State's Demurrer to Challenge

Court, being one charged with the duty of preparing the list from which the panel of jurors in the above entitled cause should be drawn after the striking of the number of jurors permitted by law, because the said Judge is biased and prejudiced against the defendant, Robert Deegan, and does not stand indifferent between The State of New Jersey and the said Robert Deegan. And this challenge to the array this defendant demands that the Court try." Signed by John B. Zabriskie and Emil Wulster.

Now, if your Honor please, for Counsel to come in court on the return of the motion to strike a jury and by a piece of paper allege bias and prejudice against the Judge presiding in this County without offering any reason, without any other paper, or any other argument, or any other discussion with the Court, citing any good reason for this challenge causes me to say that the challenge should be overridden both in law and in fairness to the Court.

Now, these gentlemen know, or should know what the law is; they know or should know that in a challenge of this kind, of the serious character that this challenge is, going to the integrity of the presiding Judge in this Court of Oyer and Terminer, making allegations of the seriousness they have, that it would be cowardly for this Judge to retire in the face of this challenge and should demand that the challenge be proven and heard. I say your Honor it would be a great pleasure for me, for both of us to walk out of this case and let some other prosecutor and judge try it. I say, your Honor you cannot do that. This

challenge having been made to your impartiality, alleging bias to the prejudice of this defendant is all the more reason that this case must be tried by you, unless the defendants mean at some time to submit proof—something more than a piece of paper that you could dictate in three minutes.

What is the law? No question about what the law is, our Courts have spoken time and time again.

In State v. Barker, tried in the Supreme Court of this State, decided in 1902, in that case a challenge to the array of jurors was filed,—

> "The challenge, which was in writing, set out many grounds for quashing the array."

The Court considered these various grounds first saying that the names of the persons who had been chosen as jurors were not disqualified.

The Court then quotes: "Whether disqualifications of one or more of the jurors is good ground for challenge to the array may at least be doubted." Then the Court said:

> "Assuming, however, that the persons upon the panel of persons who are disqualified is good ground of challenge to the array, the challenger must set forth in its challenge the facts from which the disqualification arose. Whether or not a man is disqualified to serve as a juror is a conclusion of law to be drawn by the Court from the facts submitted to it."

Minutes of Hearing on Defendant's Challenge to Array and State's Demurrer to Challenge

Quoting Justice Hornblower,—

> "A challenge must be in such terms that the Court can determine whether the facts, if true, are sufficient to support such challenge. The defendant says he challenges a juror because 'he does not stand indifferent between the parties,' but these words do not constitute a challenge; they express only the reason for making the challenge or the judgment or conclusion of law consequent upon finding the ground of the challenge to be true. He must go further, and state why the juror does not stand indifferent; he must state some facts or circumstances which, if true, will show that the juror is positively and legally disqualified."

The reasoning is the same in our case, they must state some facts other than their naked conclusion that the Judge is disqualified. That case was cited with approval in the Court of Errors and Appeals in the recent case of State v. Bolitho, in 1927, in the Supreme Court of this State based on exactly the same question. They had a challenge to the array in that case, and the Court said:

> "To this challenge the State filed a demurrer. It is to be observed that the challenge is radically defective, in that it fails to set out any facts disclosing the sheriff to have been improperly interested in the outcome of the trial of the case against the

defendant. It will not be presumed that he was improperly interested. Whether or not he was improperly interested in the outcome of the trial of the defendant was a burden on the defendant to establish by competent evidence. This he made no attempt to do."

And that is exactly our situation. The law is stated in Wharton on Criminal Evidence, Sec. 1541, that the evidence must state the facts; it will not be allowed unless facts are stated in the challenge which, if true, would lead to the conclusion that the array was improperly drawn.

I urge that the challenge be overruled.

The Court: Mr. Zabriskie do you care to reply?

Mr. Zabriskie: The question the Prosecutor says we do not offer to take proof, that is just exactly what we do.

The Court: I am sorry, I don't understand you. Will the stenographer repeat the statement Mr. Zabriskie just made.

(Mr. Zabriskie's statement repeated.)

Mr. Zabriskie: That's what we ask for in our challenge, that evidence be taken.

The Court: Anything further?

Mr. Zabriskie: Nothing further.

The Court: All right; do you wish to reply to that Mr. Winne?

Mr. Winne: No, sir.

The Court: It seems to me that it must be obvious to everyone that if the grounds set forth in what is called a Challenge to the Array are true

that I ought not preside at any part of the trial when it comes to drawing up a list of jurors sitting in here in some motion or subsequent proceeding at the actual trying of the issues involved. But I think when Counsel has had sufficient time to prepare, as Counsel have in this case on this motion to strike, when they come into court with the bare statement or allegation of a conclusion not a fact with no witnesses in Court to even make out a prima facie case, that I would be failing to perform my duty as a judge if I did not sustain the demurrer.

Counsel for the defendant does not even offer to argue it. I think the Prosecutor has pointed out the leading cases in the State of New Jersey bearing upon the question. Since there are two methods of trying a challenge, one, by the Judge trying it himself; the other, two, appointing triers, it is important that the Court be informed in the first instance as to the facts upon which the challenge was predicated, that is, the facts which the attorney is going to try to prove, in order to know what method of trying the challenge ought to be adopted.

I think my duty is clear, the demurrer is sustained, and in case there be any doubt about it, I know I, myself, have no malice toward this defendant, and I cannot conceive upon what alleged facts this challenge is based. The Court will proceed to strike a jury.

Mr. Zabriskie: Your Honor will allow me an exception to your Honor's ruling. I want to make a further objection to the proceeding at this time, that is, it was only on the 20th of December we

were served with this list of one hundred names. I think your Honor will take judicial notice that this is the holiday season, and also take judicial notice of the fact that weather conditions have been such that travel has been almost at a standstill. I say despite the fact, both Counsel, Mr. Wulster and I, have investigated as far as we could go with the facilities and time we have had. We never have been able to cover the ground as it is our duty as to these jurors. Some of them are unknown, and at this season of the year, you call up on the telephone and get the opinion of some man who you think is well posted and you find he is not available, and we were only served on the 20th and in this length of time, although we spent as much time as we could consistent with the weather, we have not begun to cover the investigation of the one hundred names, for that reason I ask for an extension of a week for the purpose of making a more thorough and careful investigation. I understand that is what they are served for, so that we could make investigation. Of course the Prosecutor has a staff for that purpose. Mr. Wulster and I are not so situated. I used every bit of Christmas Day and the day preceding. Some of the jurors in Ridgewood were unknown to people I thought might know them.

Mr. Winne: Your Honor I have no objection to a little more time. I think they might have told me they were going to ask for it, but if they want another week I have no objection to that.

Mr. Zabriskie: I might say to the Prosecutor, just by way of clearing the atmosphere, I didn't realize how difficult it was going to be even on

Christmas Day. I didn't realize until last night how impossible it was to get information.

The Court: If it will be of any help to Counsel, this entire struck jury list was taken by lot from the list prepared by the Commissioner of Jurors of this County. It so happens we have already drawn one struck jury from that list. Not wanting to put the name of a person on two different struck juries I took the remainder of the names on that list and added 26 additional names to it from the book in the Jury Commissioner's Office, in the first instance drawing jurors with even numbers, in the other case those with odd numbers, the list originally contained 150 names, and when I came to strike the jury I took what was left from the records of the Jury Commissioner's Office, in which there is a loose-leaf book of names of those they propose to put on the struck jury list in the future, so I took the balance of the names from that loose-leaf book. If you go down to the Commissioner of Jurors Office you will get a number of details about these people.

Mr. Zabriskie: I appreciate that.

The Court: It may be a week won't be necessary after you see the data on the Jury Commissioner's list. There is not one single name on this entire list which does not come from the list of struck jurors of this County. I have been informed by the Jury Commissioner that the cards in their records are available to Counsel in this case.

Mr. Zabriskie: That ought to assist us, then, a week should be ample.

Minutes of Hearing on Defendant's Challenge to Array and State's Demurrer to Challenge

Mr. Winne: I understand it is not that you did not have legal notice?

Mr. Zabriskie: No.

Mr. Winne: Merely as to the time.

Mr. Zabriskie: We had six days allowed by law.

The Court: Before I grant a week's adjournment, suppose I grant a temporary adjournment of a few days, and after Defendant's Counsel has had a chance to investigate the list they may not need a week.

Mr. Winne: May we then continue the matter until Thursday and if Judge Zabriskie needs until next Monday—we will adjourn it until Friday morning and Judge Zabriskie can advise us as soon as possible.

The Court: All right, the defendant will be remanded. Friday.

Mr. Winne: The record ought to show that the defendant, Deegan, was present during the entire proceeding.

The Court: Yes. The Court remands the defendant.

Minutes of Hearing (1) on Defendant's Motion to Retain Medical or Mental Expert, and (2) on Defendant's Challenge to Hon. A. D. Del Mar, Sitting in This Cause

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	On Indictment for Murder Notice of Motion and Challenge to Court

Hackensack, New Jersey,
Friday, January 19, 1945.

Before:

Honorable A. DEMOREST DEL MAR,
Judge.

APPEARANCES:

For the State, Hon. WALTER G. WINNE, Prosecutor of the Pleas.

For the Defendant, JOHN B. ZABRISKIE, Esq.; EMIL M. WULSTER, Esq.

The Court: I suppose I ought to note on the record that about ten minutes or so ago I was served with or handed two papers by the Clerk of the Court. They can be marked by the stenographer, without particularly referring to what their nature is. One of them is a notice of motion

to be made this morning at ten o'clock, and the other one is entitled a challenge to my sitting in the case of State v. Deegan. I will ask the stenographer to mark them both.

(Two papers marked Exhibits 1 and 2 respectively.)

I am prepared to hear the motion and the challenge.

Mr. Zabriskie: On the application for the medical experts, yes. I might say in that case, your Honor, we have located an alienist or, perhaps, he cannot be called an alienist, but, anyway, a man whom we think is qualified to testify in the case of State v. Deegan as to sanity, and so forth, and he will do the work that was done by Doctor Burns, although perhaps not so extensively, and his fee will not exceed $300.00; it might even be as low as $250.00. We feel we ought to have the benefit of two alienists in view of the fact that the State will have these two, and we feel that we can work in conjunction with Dr. Burns, and he really is necessary for the proper preparation of the trial of this case.

The Court: In view of your challenge to me, perhaps I ought not to make any ruling on this application until I have heard the challenge. If you honestly feel that I am prejudiced against your client and you think I am prejudiced against you also, perhaps this question of prejudice entering into this case, I ought to hear your challenge first and not make any ruling on the motion.

Mr. Zabriskie: The challenge is filed and is in writing.

The Court: Well, I am prepared to hear your witnesses. I suppose, Mr. Prosecutor, you do not want the trial of this case delayed if it possibly can be tried on the date set.

The Prosecutor: No. So far as the application for further alienists is concerned, when the case was tried by the former prosecutor he used three alienists, two really as alienists, and I think it is not unfair that the defense should have a second alienist, and whether your Honor rules on it or someone else, I am perfectly willing to state on the record I have no objection to the employment by the defense of a second medical expert. I certainly want the case tried on the 29th. I am going to try to do everything I can to see it is tried on the 29th.

The Court: Is this fee $300.00, Judge Zabriskie?

Mr. Zabriskie: Not to exceed $300.00.

The Court: Does that include the examination before trial?

Mr. Zabriskie: The examination before trial and testifying in court.

The Court: I do not suppose anyone could say that the defendant would be prejudiced by granting your application, so perhaps that will expedite the trial of this case, and I will grant your application.

Mr. Zabriskie: Of course, if I called the witnesses, the first witness I would want to call in this case is your Honor.

The Court: I do not think I am permitted to testify in my own court. I do not know. I never had a case of this nature before. If you want me to tell you what I said, I have read your applica-

tion and I will very frankly say that it is my recollection that at the end of the trial I did say that I concurred in the verdict rendered by the jury. As to the other statement, I deny ever having made it in any such sense as was implied in your challenge. However, whether it is some fragment of a conversation which someone has culled out, and repeated, I do not know. I would have to hear the circumstances to try to refresh my recollection as to whether any such statement was made in any manner, form or way, and I have no present recollection of having used those particular words. And I am sure of this: I have no hesitation in saying I bear this defendant no malice at this time, nor have I ever borne him any malice.

Mr. Zabriskie: I would like to call Mr. Wulster as a witness to testify.

The Court: Well, I do not know. I am not going to rule on your application to call me as a witness, because I do not see very well how I can be judge and witness in my own court. However, I will reserve decision on that.

Mr. Zabriskie: I will call Mr. Wulster.

EMIL M. WULSTER, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Mr. Wulster, do you recall the first conversation we had in Judge Del Mar's chambers after the reversal in the case of the State against Deegan? A. I do recall the conversation at which

you and Judge Del Mar and myself were present.

Q. And can you recall what was said by Judge Del Mar with reference to Deegan? A. I recall specifically that he said that he should be hung, drawn and quartered. I also recall specifically that he said that he was guilty.

Q. Yes. And that was in the chambers in the Court House at Hackensack? A. That is right.

Mr. Zabriskie: That is all.

Cross examination by the Prosecutor:

Q. He was guilty at that time and so adjudged by the jury, Mr. Wulster? A. Yes. He had been found guilty.

Q. And, of course, you know that under the laws of this state and of every civilized nation, there is no such punishment as hanging, drawing and quartering, do you not? A. I know that there is no such punishment in New Jersey.

Q. It is a relic of medieval days which has been obsolete in civilized nations in many years? A. I think that is so.

Q. So that it is an expression of speech, an exaggerated description, and not a reference to any legal proceeding? A. I thought it designated feeling toward the individual at the time it was spoken.

Q. You are now trying to interpret the Judge's feeling and say the words to you would not import a literal meaning of the words, they imported a figure of speech? A. I could not say whether they imported a figure of speech or not, Mr. Winne.

Q. Well, I am not sparring with you. You know perfectly well, I am sure, counselor, that

there is no such punishment as these words describe. A. That is correct.

Q. On the part of the State? A. That is correct.

The Prosecutor: That is all.

The Court: I have a few questions, I think.

By the Court:

Q. When did this conversation take place? A. As I recall, the reversal was handed down on October 17th. It was some time after that, and prior to the return on the application for an order for a struck jury, which I think was returnable December the 4th. So that it would be between October 17th and December 4th. It was the 1st—the first conference that we had after the reversal.

Q. What was the subject matter of the conference? A. Discussion was had in connection with the reversal in connection with application on allowances. And a great deal of time was spent in discussing the life of the Spartans.

Q. What was the purpose of the meeting? A. I think that Judge Zabriskie and I called upon your Honor to discuss the fact that there had been a reversal, that there would be a retrial. I think there was some discussion as to whether or not we were to continue in the case, and we discussed allowances on the appeal.

Q. Well, wasn't the subject of allowances the purpose of Judge Zabriskie and you calling upon me? A. Yes. I would say that that was—that was one of the purposes, and to find out whether or not we were to continue in the matter.

Q. So far as your continuation in the matter is concerned, I very promptly said that, in my judgment, I saw no reason to change? A. That is right.

Q. Isn't that so? A. That is right.

Q. So that that part of the conversation did not take more than a minute or two, did it? A. That is right.

Q. And the main part of the conversation was devoted to the question of fees, was it not? A. Well, the main part of the conversation so far as the Deegan case was concerned; but the major portion of the conversation, the major portion of what was said was discussion as to the Spartans. I remember that very well.

Q. What was said immediately before and as a part of the sentence or paragraph in which you have taken this expression, "hung, drawn and quartered"? A. There was general discussion as to the appeal, and your Honor indicated that the appeal was a lot of legal hokus pocus. And then there was some discussion as to whether or not the appeal should have been taken, some discussion as to whether or not counsel was obligated to take appeals, in these matters, in general, discussion as to Deegan, and it was at that time that your Honor stated that he should be hung, drawn and quartered, and that he was guilty.

Q. Is that the entire conversation so far as you can recall it? A. Those were the portions of the conversation that I specifically recall, because, as Judge Zabriskie and I left the courtroom, we discussed the matter. We—I was personally somewhat shocked at the expression.

Q. Wasn't your real reason for being shocked

that I very severely criticized, not you directly, but the action of counsel in the trial of the case in this court? A. I do not think your Honor severely criticized our action, because I know at the conclusion of that last trial your Honor stated on the record that it was your feeling that counsel had done their best in the matter. There was some criticism. However, at another conversation, I indicated to your Honor—

Q. I am speaking about the same conference you are talking about in my chambers. A. I do not think there was severe criticism.

Q. Did I not say privately, I thought in view of Judge Zabriskie's standing at the bar and the fact that he had been a judge of the court and such other considerations led me to make no public criticism, that I was telling him in chambers what I thought? A. Yes. There was a statement made along those lines.

Q. Didn't you understand from this, what I said in Chambers was not intended to become public; it was simply a private conversation which I discussed with Judge Zabriskie, what I thought about his conduct of the trial in this court? A. I did not feel—I did not have any feeling as to whether it was public or private, sir. It was a conversation had between counsel and the court.

Q. Didn't I very clearly say that I was unwilling to express these thoughts in public? I thought it would be unfair to a man of the standing of Judge Zabriskie in the bar of Bergen County to express any such thoughts in public, but I did think I had a duty to express them in private? A. Well, there was conversation along that line.

Q. Wasn't that the sole reason for the heat? A. What heat, sir?

Q. Well, you said there was some heat there? A. Oh, I didn't say there was any heat.

Q. Didn't you say you were somewhat shocked when you were here? A. Yes. But I do not recall there was any heat. The conversation was in an average tone of voice. There was no wrangling between counsel, and when counsel made application to your Honor to discuss the case, there was no evidence of heat, so far as counsel was concerned.

Q. Well, you won't say there was any evidence of heat, so far as I was concerned? Would you? A. I wouldn't use the word "heat."

Q. Wouldn't the fact that I said I would reappoint you in the case without any question show no heat on my part? A. Well, your Honor just expressed the feeling in your question that there was criticism in the handling of the case. Whether your Honor was heated or not, I am not in position to say. I think your Honor felt, shall I say, injured or that your pride felt hurt because of the reversal. I think there was that atmosphere, but I do not think there was any atmosphere of heat.

Q. You were present, I think, on the occasion when a challenge was filed against the array? A. That is correct.

Q. And did you not hear Judge Zabriskie say that he had no witnesses on that date? A. I would want the record read, sir, in order to state one way or another.

Q. Well, perhaps I can refresh your recollection. Did you not hear Judge Zabriskie tell the Court on that occasion that he had no witnesses, because he had looked around, hoping to find one?

A. I do not know whether or not they were his exact words, but the record is available. If I could have the transcript of the record, I would be glad to answer the question.

Q. Wasn't this conversation that you allege took place in my chambers, the only thing you had in your mind at the time was my authority to sit in this case? A. Well, I did not argue that motion. If the question is, what did Judge Zabriskie have in his mind, I cannot answer.

Q. You were present in court, were you not? A. That is correct.

Q. You heard what Judge Zabriskie said, did you not? A. That is correct.

Q. Do you mean that you have no recollection of such a statement having been made in court? A. There was a statement made as to the production of witnesses; but what the exact words were, sir, I am not in a position to testify. I would rather rely upon the record as taken by the stenographer. I certainly would.

Q. Well, isn't this very conversation to which you have testified this morning the only thing that you have had in mind all along? I mean, so far as saying that I am allegedly biased against your client?

Mr. Zazriskie: May I interject a question?

A. I do not know that I am in a position to answer that question because I did not argue the matter. I do not know what was in Judge Zabriskie's mind at the time he argued the matter.

The Court: I have nothing more.

Redirect examination by Mr. Zabriskie:

Q. I want to call your attention, Mr. Wulster,—isn't it a fact that about the time this was argued, we were endeavoring to get some confirmation of statements alleged to have been made by Judge Del Mar in a restaurant in the City of Hackensack? A. That is correct, sir.

Q. And isn't it a fact that at the time of the conference in which the words "hung, drawn and quartered" were used, there was a statement made by the Court as to whether or not there should be another appeal in this case in case there was a conviction? A. Well, there was discussion as to whether or not there should be another appeal.

Q. And whether or not another appeal was always justifiable or not in capital cases? A. Judge Del Mar indicated that they were not always justified in capital cases.

The Prosecutor: I have no questions.

The Court: I think that is all. Well, for the record, I shall content myself for the present by making a statement for whatever effect it may have. Before I do that, I think I ought to ask you whether you have any other witnesses you desire to call?

Mr. Zabriskie: Well, unless I testify myself, and I would just testify to one statement, that your Honor said that the man was guilty, and he ought to be hung, drawn and quartered. I think that stands out very clearly in my mind.

The Court: Well, I do not think I ought to instruct you as to what your duty is

toward your client. I think you ought to use your own judgment.

Mr. Zabriskie: Well, I will take the stand for that purpose.

JOHN B. ZABRISKIE, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Wulster:

Q. Judge Zabriskie, were you present at the conversation concerning which I just testified? A. Yes.

Q. And when did that conversation take place? A. I cannot fix the exact date, but I knew it was the first interview we had in the Judge's chambers after the reversal.

Q. Can you tell us what Judge Del Mar said in reference to the defendant Deegan at that time? A. For his part, he said he was satisfied he was guilty, and should be hung, drawn and quartered.

Mr. Wulster: That is all.

The Prosecutor: I have no questions.

The Court: That is all.

I will say for the record that a conference was held in my chambers, attended by Judge Zabriskie and Mr. Wulster, and the subject matter of the conversation was, first, the fees that these two gentlemen thought I ought to allow for their services in the Court of Errors and Appeals; secondly, the question of whether they should

continue as counsel for the defendant. The latter part or the latter question took but a brief period of time because, in my judgment, if the defendant was satisfied with their services, I ought not to interfere. Having once made the assignment, I think that the Court should have in mind only the defendant's interest, so that, when the defendant was brought back here, I asked him if he was satisfied to have the same two lawyers continue to represent him and, in open court, he said yes, and that was the end of the matter so far as I was concerned. And so the only thought that I had in connection with the question of reappointment was whether the reappointment followed as a matter of law from the initial appointment. I do not know. I did not give that matter any particular consideration. But Judge Zabriskie did raise the question as to whether there should be a reappointment, and I said, if necessary, I would sign an order for that purpose.

There was a considerable discussion about the trial of the issues in this court, and I admit I severely criticized counsel in the trial. I did not, as Mr. Wulster has said,—I withdraw that—my pride was not injured at the reversal, as stated by Mr. Wulster. I did feel very badly, and I still do, that the taxpayers in this county have been put to a considerable expense, or will be put to a considerable expense, in a retrial of this case, and I think it is most unfortunate that that result has come about.

It is not a matter of pride. It is a matter of sorrow on my part that it is necessary that the case be retried.

There was some discussion of the law relating to appeals in capital cases, and I did say that I did not think that the common practice of taking such appeals was required under the law; but I recognized that it was a practice which was followed in every case where capital punishment was inflicted, and there was no criticism on my part of counsel having taken an appeal, and as a matter of fact, I would have done the same in their place.

I never made any such statement as attributed to me by Mr. Wulster that I thought the appeal was a lot of hokus pocus. I say it is a figment of his imagination. I have already made a statement in regard to the language, "hung, drawn and quartered," which I think was a statement taken out of its context. I never made any such statement, meaning that I never actually thought that this defendant ought to suffer any punishment of that nature or any particular punishment. There was no question pending as to what punishment he should suffer. The case was ordered to be retried. The question of punishment is one peculiarly for the jury, and one in which it is not necessary for me to form any opinion, and about which I have never formed any particular opinion. That the defendant is guilty, I thought at the end of the trial, and I still think so; and if that is any

reason for disqualifying myself, then I should be disqualified.

I reserve decision on the application.

Mr. Zabriskie: Of course, I might say I would like to go on the stand and say this:—

The Court: Well, I thought you had closed. I simply made a statement, and I have not testified. If it is necessary to reopen the matter, I will reopen it to bring in any other witness. I do not know whether it is even proper for me to consider the statement which I have made or whether I should consider what I have in my mind. Under the statute, a judge is permitted to hear an application of this sort, and whether he should accept everything that is said by the witnesses as being true, or pass judgment on this, or whether he should take into consideration what he knows himself, I do not know.

The matter is one of some gravity, and if upon a reflection of the law and the defendant's rights in this case, I think that I ought to be called as a witness, perhaps I should simply set aside the proceedings had so far and appoint three triors.

You may depend upon it, whatever I do, that the defendant's rights will be protected.

Mr. Wulster: I should like to ask Judge Zabriskie one question which I neglected to ask him before.

The Court: Well, I have closed the matter for the time being.

Mr. Wulster: May I ask him one question?

The Court: The proceeding is finished for the moment.

Mr. Wulster: May I have an exception, sir?

The Court: You may recall Judge Zabriskie at some future time. I want a chance to examine the law.

Mr. Wulster: I just want to ask him whether he heard you say that the appeal was legal hokus pocus. May I ask that question?

The Court: I have already denied your application, and continued the matter.

Mr. Wulster: May I have an exception?

The Court: I mean, to continue the examination. The matter itself is continued.

Mr. Wulster: I think, in view of the fact that Judge Zabriskie is here, and your Honor pointed out that my testimony—

The Court: Well, he will be here every time any phase of this matter is brought up.

Mr. Wulster: May I state this on the record? In view of the fact that I testified and used the expression "legal hokus pocus," in view of the fact that the Court said that was a figment of my imagination, I should like to ask Judge Zabriskie to take the stand and ask him one question, as to whether or not Judge Del Mar stated the appeal was legal hokus pocus and call him for that purpose.

The Court: Mr. Winne, as an innocent bystander, what do you think about this?

The Prosecutor: I think, the proceedings having taken the turn they have this morning, that the defendant should be permitted to show anything and everything he wants to show.

Mr. Wulster: Judge Zabriskie, will you take the stand?

The Court: I shall so order.

JOHN B. ZABRISKIE, recalled, testified further as follows:

Direct examination by Mr. Wulster:

Q. Judge Zabriskie, Judge Del Mar stated on the record that my testimony that he had said with reference to the appeal that it was legal hokus pocus was a figment of my imagination. Were you present at the discussion had between Judge Del Mar, myself and yourself when those words were used? A. I was, yes.

Q. Who spoke and what was said? A. Well, I could not give it in detail, but that expression was used. The Judge, in talking about the case, said there had been a lot of legal hokus pocus. I would not attempt to use exactly the words or procedure followed.

Q. But those words were used? A. Those words were used.

Q. By Judge Del Mar? A. Yes, sir.

Cross examination by the Prosecutor:

Q. Well, Judge Zabriskie, there was a lot of legal hokus pocus at the Deegan trial, was there not? A. Well, I do not know just what that means, from the legal point of view, Mr. Prosecutor.

Q. Well, there were matters testified to in the nature of your defense that, if you were disinterested in this case, you would say were unusual, would you not? A. Well, I do not know just—can you—can the Prosecutor designate any particular line of testimony? For instance, we produced a lot of witnesses, or attempting to show what the traits of this young man had been in past years.

Q. Don't you think, if the defendant knew people at the moment before he commits a crime and is not insane, and the moment he commits a crime he is insane, or that he is only insane at the time the crime is committed, that that is legal hokus pocus? A. Well, that is a question for an alienist, I would think.

Q. And it was in relation to matters of that kind that the Judge used the expression? A. Well, it may have been.

Q. It was not that the taking of the appeal of itself was legal hokus pocus? A. Well, that I cannot really say.

Q. All right.

The Prosecutor: That is all.

The Court: No questions.

Is there anything else to be heard today in relation to this matter?

The Prosecutor: Nothing that I have, your Honor.

The Court: All right. The defendant will be remanded for trial.

Testimony

BERGEN COUNTY COURT OF OYER AND TERMINER

On Indictment for Murder

THE STATE OF NEW JERSEY,

vs.

ROBERT DEEGAN,
Defendant.

Hackensack, New Jersey,
January 29, 1945.

Before:

Honorable HERMAN VANDERWART,
Judge and a Jury.

APPEARANCES:

For the State, Hon. WALTER G. WINNE, Prosecutor of the Pleas.

For the Defendant, JOHN B. ZABRISKIE, Esq., and EMIL M. WULSTER, Esq.

The Prosecutor: Your Honor, there is pending in this Court an indictment against Robert Deegan and others. I am not sure that the record shows a severance as between Robert Deegan and the other defendants. I move a severance of the indictment so that we may proceed with the trial of Robert Deegan.

Mr. Zabriskie: No objection.

The Court: The motion is granted.

The Prosecutor: If your Honor please, we move the trial of the indictment.

The Court: Are counsel all here?

The Prosecutor: Yes. The defendant is in court, Mr. Wulster is in court, and Mr. Zabriskie is in court.

The Court: Let a jury be empanelled.

The Sheriff: Number 2, Evelyn G. Oliver.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

EVELYN G. OLIVER, sworn as to her eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Mrs. Oliver, you live at 108 Grand Avenue, Leonia? A. I do, sir.

Q. You are married? A. Yes, sir.

Q. And do you keep house with your husband at that address? A. Yes, sir.

Q. Have you children? A. Yes, sir.

Q. What is Mr. Oliver's occupation? A. He is in the service at the present time.

Q. Mrs. Oliver, do you know anything about this case that we are going to try today? A. I do not, sir.

Q. You never heard of the case of the State against Robert Deegan? A. No, sir.

Q. You have not read anything about it? A. No, sir.

Q. Well, it is a trial against this young man who sits at the end of the table, Robert Deegan, and he is represented by Mr. Wulster, who sits immediately next to him, and Mr. John Zabriskie, who sits second away from Deegan. I do not suppose you know those three persons or any one of them? A. No, sir.

Q. Have you any conviction in regard to capital punishment, Mrs. Oliver? In other words, have you any objection, conscientious, religious or otherwise, against bringing in a verdict that would carry with it the penalty of capital punishment if, from the evidence and the law as the Court gave you the law, it was the kind of a case that merited that punishment? A. If it were justifiable.

Q. You would bring in a verdict if it were justifiable? A. If it were justifiable.

The Prosecutor: The juror is satisfactory to the State.

By Mr. Zabriskie:

Q. Mrs. Oliver, there is a statute or law in our State which provides as follows:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

New Jersey State Library

Now, in the light of that statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty?

The Prosecutor: Now, if your Honor please, I do not think that is a fair question. I think that question is objectionable. Do you understand the question, Mrs. Oliver?

The Juror: Whether some should go to the chair, and some should not; is that the idea?

Mr. Zabriskie: Yes.

The Juror: Well, wouldn't that be proven according to law?

By Mr. Zabriskie:

Q. The question I am asking is whether you think everyone convicted of murder in the first degree, even though we have that statute, do you still think everyone convicted of murder in the first degree should suffer the death penalty?

The Prosecutor: The reason I think the question is objectionable is that the Court will deal with question when the question arises. The Court will charge the jury under what circumstances they are impelled to bring in a recommendation, and so it is unfair to say to a juror in advance of knowing the facts, would you or would you not bring in in every instance the verdict in question.

The Court: I will allow the question.

Q. What is your answer to that?

The Court: I think she has answered it.

Mr. Zabriskie: And what is the answer?

The Court: Just let the stenographer read the answer.

(Answer read as follows:)

"Well, wouldn't that be proven according to law?"

Mr. Zabriskie: Well, that is sort of answering the question by asking another one.

Q. You see, what I want to get at is this:— A. Do I think everyone should go to the chair who is convicted of murder in the first degree?

Q. In this case, if there is a conviction of murder, it would have to be murder in the first degree, as the Court will undoubtedly charge; that in the event, if you find this man guilty of murder in the first degree, just from the fact that he has been found guilty of murder in the first degree, would you feel that he should be sent to the electric chair? A. In other words, it is a question of whether he should have life imprisonment or—

The Prosecutor: Or go to the chair.

A. (Continuing) —go to the chair? Wouldn't that be proven by some of them?

The Court: I think that the witness has answered the question, don't you? She states that in the form of a question.

The Juror: May I answer yes, that everyone should go to the chair? That is what you want me to say?

Q. Well, I want to know whether you think everyone convicted of murder should go to the chair?

By the Court:

Q. In the light of this statute that counsel has outlined recommending life imprisonment at hard labor, in the light of that statute, counsel asks you whether you think that everyone— A. No, sir.

Q. —who is convicted of murder should go to the electric chair? A. No, sir.

The Court: Is that your question?

Mr. Zabriskie: That is the question. She says, "No, sir." And I just want to add to that with one question more.

By Mr. Zabriskie:

Q. Now, in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death?

The Prosecutor: Now, that is objected to. I think that is no part of the facts. As to whether a juror could find a recommendation upon the facts is from all the evidence. I do not think that it is a fair question to pick out any one thing and ask the

juror if that one thing would influence the juror, and particularly to ask the juror if a thing, which is not a defense but which is pleaded as a defense, would mitigate the punishment.

The Court: I will sustain the objection.

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

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Q. How many children have you? A. I have a son and a daughter.

Q. About what age are they? A. My son is in service, and my daughter is in Saint Luke's Hospital in training.

Q. I do not suppose you know Prosecutor Winne? A. I do not, no.

Q. Or any parties in this case? A. I do not.

Q. You have not read anything in the newspapers about the case at all? A. No, sir; just as it happened, that is all.

Mr. Zabriskie: I will excuse Mrs. Oliver.

The Juror: Thank you.

The Court: Mrs. Oliver, excused.

(Juror excused.)

The Sheriff: Number 23, John A. Digney.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

JOHN A. DIGNEY, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Digney, you live at 241 Moore Street, Hackensack? A. No. I live at 461 Bogert Road, River Edge.

The Prosecutor: Number 36 on the original list.

Q. Bogert Road, River Edge? A. That is right.

Q. How old are you? A. 32.

Q. 32 years. Married? A. That is right; yes, sir.

Q. Any children? A. One child.

Q. A boy or a girl? A. Girl.

Q. How old is she? A. Two and a half.

Q. Two and a half years of age? A. Yes, sir.

Q. What is your occupation? A. I am in the publishing business.

Q. Publishing? A. Publishing. "Time" Magazine.

Q. What magazinze? A. The "Time" Magazine.

Q. How long have you been with "Time" Magazine in the publishing business? A. Since 1937.

Q. Have you read anything about this case in the newspapers. A. Yes, I had read about it in the newspapers.

Q. Have you followed it rather carefully? A. Not particularly, no.

Q. What newspapers have you read in connection with it? A. Well, the New York newspapers.

New York Times, World-Telegram. Possibly the Bergen Evening Record. I am not sure.

Q. Do you live with your wife, Mr. Digney? A. Yes, sir.

Q. Mr. Digney, there is a statute in the State of New Jersey that reads as follows:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, sir, in the light of that statute, do you feel that everyone convicted of murder in the first degree should suffer the death penalty? A. It depends upon the circumstances, I would say.

Q. In the light of that statute, if you found the defendant guilty of murder in the first degree, and in determining whether or not you should recommend imprisonment for life, would you take into consideration all of the evidence, would you take into consideration evidence which would show a mental deficiency or mental insufficiency, would that aid you in arriving at a determination as to whether or not your verdict should be death or life imprisonment? A. If that were part of the evidence, yes.

Q. So that you would weigh the evidence and decide the case purely on its merits? A. I believe so, yes.

Q. Do you know Mr. Walter Winne, the Prosecutor of Bergen County? A. No.

Q. Do you know the members of his staff present in the court room, or otherwise? A. No.

Q. Did you know the family of the decedent in this case or any of her relatives? A. No.

Q. You did not know any of them? A. I do not know the name.

Q. Did you or any member of your family at any time have any experience which might in any wise deter you from bringing in a just verdict according to the evidence? A. No.

Q. Do you have any fixed conviction that could not be disturbed by the evidence,— A. No.

Q. —that anyone guilty of murder in the first degree, and who contributes nothing to society, were better off if he were electrocuted? A. No.

Q. You do not have such a pre-conceived— A. No.

Q. —conviction? A. No, I do not.

Q. Do you find it objectionable, in the event that the State or society confines people to jail for life, that they should be fed and cared for? A. No.

The Prosecutor: That question is objected to, your Honor please. I think it is immaterial in the questioning between counsel and the juror as to whether he thinks people should be fed or they should not be fed.

The Court: I will sustain that objection.

Mr. Wulster: May I have an exception on the record.

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Mr. Wulster: The Prosecutor?

By the Prosecutor:

Q. If I understand you, Mr. Digney, you will try this case on the evidence and will take the law from the Court, and will not enter the jury box with your mind made up one way or the other; is that correct? A. Yes, sir.

Q. And that if, under the evidence and the charge of the Court, you had the conviction in your own mind that it was a case where the extreme penalty should be invoked, you would do that, whether it was distasteful or whether it was not distasteful? A. Yes, sir.

The Prosecutor: The juror is satisfactory to the State.

The Court: Just a minute. Is there a challenge?

Mr. Wulster: The juror is excused, sir..

The Court: Just a minute.

Mr. Wulster: Excuse me.

The Court: You have been excused. The juror is excused, a peremptory challenge.

(Juror excused.)

The Sheriff: Number 73, Clark Torrance.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Examination of Jurors on Their Voir Dire

CLARK TORRANCE, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Do I know you, Mr. Torrance? A. No, sir.

Q. I thought there might be something familiar about your appearance. You live in Dumont? A. That is true.

Q. And I suppose you know the Deegan family? A. I do not.

Q. You do not? A. No, sir.

Q. Did you live in Dumont in January of 1944? A. Yes, I did.

Q. Do you know the Herrmann family? A. No, sir.

Q. Did you know at the time when this offense took place in January, 1944? Did you hear about it? A. Well, I heard something about it. I read a little about it.

Q. Yes. Now, from anything you read or anything you heard, is your mind this morning in such condition that if you are sworn as a juror in this case, you have any opinion that will prevent you taking the evidence as it is testified to here in Court, and the law as it is charged by the Judge, and decide the case fairly on the evidence? A. I will.

Q. Now, if it should appear to you from the evidence that it was the kind of a case where the extreme penalty, death, should be invoked, would you, regardless of your feeling about that matter, bring in that verdict if the evidence and the charge of the Court warranted it? A. If the evidence was correct.

Q. You have no such feeling about capital punishment that you would not under any circumstances vote that way?

The Prosecutor: The juror is satisfactory to the State.

By Mr. Zabriskie:

Q. Well, of course, you have heard quite a good deal about this case, haven't you? A. No, I have not heard quite a good deal about it.

Q. You have heard some things about it? A. No, I haven't heard anything about it, to tell you the truth; just what I read in the paper, headlines; but I wasn't very much interested in it at the time.

Q. Did you read it in the "Evening Record"? A. Just the headline i nthe "Evening Record"; that is all.

Q. How long have you lived in Dumont? A. Three and a half years.

Mr. Zabriskie: I will excuse Mr. Torrance.

The Court: Pardon?

Mr. Zabriskie: Excused.

The Court: Peremptorily excused.

(Juror excused.)

The Sheriff: Number 70, Joseph H. Schroeder.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

JOSEPH H. SCHROEDER, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Schroeder, where do you live, sir? A. Woodridge, New Jersey.

Q. And how long have you resided there? A. Since 1928.

Q. Are you married? A. Yes, sir.

Q. Any children? A. No.

Q. What is your business, Mr. Schroeder? A. I work for the New York Telephone Company, switchman, inside repair.

Q. Inside repair work? A. Inside man, repair work; yes, sir.

Q. Have you heard about this case of Robert Deegan? A. Outside of what I have read in the paper. I usually read a New York paper, and I haven't read too much about it.

Q. Have you read something about it? A. Something, I have.

Q. As a result of that reading, have you come to any conviction in connection with it? A. No, definitely not.

Q. You have no fixed ideas in connection with the crime at all? A. No, sir.

Q. Mr. Schroeder, a statute of this State reads in language as follows:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after considering

all of the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, do you feel that everyone convicted of murder in the first degree should suffer the death penalty? A. No. I think that it is up to the evidence to show that. The first degree penalty is either weak or strong; that it is dependent upon the evidence that is submitted.

Q. And if the defense were to show by testimony circumstances, would you take into consideration such circumstances as might be shown in arriving at your verdict, whether or not it should be death or life imprisonment? A. Well, that is according to your circumstances. In other words, my mind is open. I have no convictions. And the State shows either the death penalty or life imprisonment, I should think that the evidence as presented about that would influence my decision as to how it would be voted.

Q. In the event that you and the jury should feel that this is a first degree murder case, and you should find accordingly, do you have any preconceived convictions that society or the State is better off by inflicting the death penalty rather than imposing imprisonment at hard labor for life?

The Prosecutor: That question is objected to. The juror has said he would decide the case on the evidence and the law. I think the question as to whether he

has any feeling outside that question of whether he would decide the case on the evidence and the law is objectionable.

The Court: Objection sustained.

Mr. Wulster: May I have an exception, sir?

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Q. You do not know any member of the family of the decedent, do you? A. No, sir.

Q. Her name was Ethel Herrmann. Do you know them? A. No, sir; I do not even know the name.

Q. She lived in Dumont. A. No, sir; I do not.

Q. Do you know Mr. Winne, Mr. Walter Winne, the Prosecutor, sitting at the end of the counsel table? A. No, sir.

Q. Or Mr. Allyn, the Chief of the—or one of the Bergen County Detectives? A. No, sir.

Q. Do you know any of the other gentlemen connected with the Prosecutor's Office? A. No, sir; none at all.

Q. So that you feel, Mr. Schroeder, that you could listen to the evidence and bring in a fair verdict in accordance therewith and in accordance with the law as the Judge would charge it to you? A. I believe so.

Mr. Wulster: The juror is satisfactory.

The Court: The juror is satisfactory to the defendant.

Examination of Jurors on Their Voir Dire

By the Prosecutor:

Q. Mr. Schroeder, you are not acquainted with Mr. Wulster, who has been interrogating you? A. No, sir.

Q. Or Mr. Zabriskie? A. No, sir.

Q. No reason at all in your mind why you could not be a fair juror in this case, Mr. Schroeder? A. None at all.

Q. And if it should appear from the evidence and the law of the Court that it was a case under the statute where, after considering all of the evidence, the extreme penalty should be invoked, have you any feling, conscientious or otherwise, that you would not vote for capital punishment? A. No, sir.

The Prosecutor: The juror is satisfactory to the State.

The Court: Let him be sworn.

(Sworn as Juror Number 1.)

The Sheriff: Number 61, Abram M. Ottignon.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

ABRAM M. OTTIGNON, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. How do you pronounce your name, sir? A. Ottignon.

Q. You live at 131 Elm Avenue, Bogota? A. I do.

Q. What is your business? A. Executive with the Texas Company.

Q. What company? A. The Texas Company.

Q. The Texas Company? A. Yes, sir.

Q. You are married and have a wife and family who live with you? A. Yes, sir.

Q. How many children? A. One.

Q. Now, Mr. Ottignon, are you familiar with the case that is about to be tried? A. Only from reading it in the paper.

Q. Well, the defendant is this man Deegan. A. Yes.

Q. At the end of the table, Mr. Wulster, Mr. Zabriskie, are his counsel. Do you know them, or anything about the case which would make it difficult for you to sit on the case? A. No, sir.

Q. And if, as a result,—first, let me ask you if you will sit impartially and fairly in judgment between the State and this defendant and try the case on the evidence and on the evidence only, taking the law from the Court? A. Yes.

Q. So that you will not be influenced by anything outside of what you hear in the court room during the trial of the case? A. That is right.

Q. Now, if it should happen that the evidence was of such a character that under the charge of the Court, a verdict of murder in the first degree were warranted, and without a recommendation from the jury, and you learned from the Court that that carried with it the extreme penalty, would you vote for that verdict notwithstanding the fact that it did carry the death penalty with it, sir? A. I would.

The Prosecutor: The juror is satisfactory to the State.

By Mr. Zabriskie:

Q. Mr. Ottignon, as is indicated in this paragraph of the law that I am going to read, so that when you arrive at a verdict, of course, if you arrive at a verdict of not guilty, why, then that would end the matter and you would not go any further; but, under the law, if you should decide the defendant was guilty of murder in the first degree, which is the only degree that you can find, if you find at all, in this case, after you have found that, as a part of your verdict, you have a right, and it is your duty to go further and determine whether or not from the evidence, life imprisonment should be recommended. Now, for the sake of accuracy, I will read that statute. You have heard it already, but for the sake of accuracy and for the sake of the record, the law says this:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty? A. I do.

Q. You believe that everyone should suffer—
A. Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Prosecutor: May I interrogate the juror further?

The Court: Certainly.

By the Prosecutor:

Q. It may be that you do not exactly understand the question Mr. Ottignon. In this case the State contends that the prisoner brought about the death of Mrs. Ethel Herrmann in perpetrating a robbery; that is to say, that as a result of robbing her, he struck her and she died. Now, it has been suggested that if the State proves that is murder in the first degree, the juror then must under the law consider, if he finds that the State has proved murder in the first degree, that from all the evidence in the case, the youth of the young man, his bringing up, everything that you hear in the case, shall he suffer the extreme penalty, or shall he suffer life imprisonment; and the Judge will charge you, I am sure, that you should consider all of the evidence and, after having considered the evidence, if you find first degree, and further find either a recommendation of life imprisonment or not find the recommendation, in which case death would be the result.

Now, the question is if, no matter what the evidence was, if you found it was murder in the first degree, would you also find the extreme penalty, and under no circumstances, regardless of the evidence, bring in a recommendation of life imprisonment?

Mr. Zabriskie: He has already answered that question.

The Court: I will allow it.

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

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Juror: May I answer?

The Court: Yes.

A. My answer to that, if the evidence shows he is guilty of murder in the first degree, I believe in the death penalty.

By the Court:

Q. Do you believe in the death penalty to the exclusion of the law as it has been read to you, namely, that the jury, if they are satisfied from all of the evidence that it is wise, may bring in a verdict of life imprisonment at hard labor? A. You ask a specific question. What do you mean?

Q. I ask you whether you agree with that law? A. I agree with the law, sure.

Q. As it is expressed? A. I agree with the law. I have no objection to that.

The Court: Is there a challenge?

Mr. Zabriskie: Yes. I enter a peremptory challenge for cause, I should say.

The Prosecutor: Of course, I do not think the juror should be challenged for cause, your Honor please. I understand

the juror said to your Honor he would decide the case according to the law as charged by the Judge.

The Court: Yes. If you should be chosen to sit as a juror in this case, knowing the law as you have heard it read by counsel, would you be willing and are you in a position to decide the case upon the evidence as it is adduced before you and the law as I may charge it, bearing in mind what has been said as to a recommendation for life imprisonment?

The Juror: I think so.

The Court: I will overrule the challenge.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: The juror may be sworn.

Mr. Zabriskie: Now I will challenge peremptorily, in view of the fact that the challenge for cause has been overruled, and in view of the fact that our challenges are getting very low.

The Court (to the juror): You have been excused by a peremptory challenge.

(Juror excused.)

The Sheriff: Number 14, Henry J. Beaufrere.

The Clerk: Juror look upon the pris-

oner, prisoner look upon the juror; do you challenge?

HENRY J. BEAUFRERE, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Beaufrere, you live at 406 Prospect Avenue, Hackensack? A. Yes, sir.

Q. Do you know Mr. Walter Winne, the Prosecutor, who sits at the end of the table here? A. No, sir.

Q. Who lives on Summit Avenue, Hackensack? A. No, sir.

Q. Do you know any member of the family of Ethel Herrmann of Dumont? A. No, sir.

Q. Who is the decedent in this case. A. No, sir.

Q. Have you read anything about the case— A. Yes, sir.

Q. —of Robert Deegan in the newspapers? A. Yes, sir.

Q. What newspapers have you read, Mr. Beaufrere? A. "The Bergen Record."

Q. Do you subscribe to that and read it daily? A. Yes, sir.

Q. Have you formed any opinion in connection with this matter from having read the newspaper? A. Yes, sir.

Q. You have formed an opinion? A. Yes, sir.

Mr. Wulster: I challenged for cause.

The Prosecutor: Oh, I object to the challenge for cause, your Honor please.

The Court: I think you should ask him further or, if you do not choose, the Court will.

By the Court:

Q. The opinion which you formed, the opinion which you have at the present time from, you say, having read the newspapers, would that preclude you from bringing in a proper verdict in this case after hearing the sworn evidence in court, and hearing the law as charged by the Court? A. Yes; that and other matters that I have heard on —on the case.

Q. You would let such other matters and you would let the reading of the newspaper form an opinion in your mind which would be overcome— which would not be overcome by the evidence produced through sworn testimony here in court? A. Yes, sir.

Q. What? A. The matters that I have heard of would certainly have an influence on my verdict.

Q. And do you feel that from those matters that you could not render an opinion in accordance with the evidence? A. Yes, sir.

Q. What is the nature of this information which you have heard? A. Well, must I tell it? I would rather not.

Q. No.

The Court: I will sustain the challenge. You are excused, Mr. Beaufrere.

The Juror: I am sorry.

The Prosecutor: For cause, your Honor?

The Court: Pardon?

The Juror: I am sorry.

The Court: Well, I think it is something to be sorry about, because it is a most unusual circumstance, in my humble opinion, that opinions can influence us over and above sworn testimony. Nevertheless, the juror is excused.

Mr. Wulster: May I put on the record, sir, an exception to your Honor's statement to the juror?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

(Juror excused.)

The Sheriff: Number 5, Clara E. Plympton.

The Prosecutor: Just a minute, please. Mrs. Plympton,—for circumstances which I think are familiar to the Court and to counsel, the State is willing to excuse Mrs. Plympton by consent, and I understand counsel are.

Mr. Zabriskie: Yes.

The Court: As I understand it, those circumstances are that there is a case of illness in the family at the present time?

The Prosecutor: Yes. She is the only person in charge of her husband who is bedridden and unable to help himself.

The Court: It will be granted. Mrs. Plympton is excused.

Mr. Zabriskie: By consent?

The Court: By consent. What number was Mrs. Plympton?

The Sheriff: Number 5.

Number 17, Gladys V. Bull.

She did not answer, your Honor.

The Court: Did any word come from this juror?

The Sheriff: No, sir.

The Court: I think she should immediately be brought into court, and I will so order. I do not know where we are going to get if the jurors refuse to answer the call of the Court in a serious matter of this type. Let her be brought before the Court.

The Sheriff: Number 49, Clayton L. King.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

CLAYTON L. KING, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Mr. King, you live at 74 Clarendon Place, Hackensack? A. That is right.

Q. And your occupation is civil engineer? A. That is right; yes, sir.

Q. Do you work for someone? A. Yes, sir.

Q. What is the concern? A. Well, mostly for the State, for the Board of Commerce and Navigation.

Q. For the Board of Commerce and Navigation of the State? A. Yes, sir.

Q. I live at Summit Avenue and Anderson Street. Do you know me? A. No, sir.

Q. Or my family? A. No, sir.

Q. Do you know either of the defense counsel or the defendant, Mr. King? A. No, sir.

Q. Do you know anything about this case that we are going to try? A. I heard of it; that is all.

Q. Has anything that you have heard influenced you in such a manner that there would be any difficulty about trying the case on the evidence and on the charge of the Court? A. No, sir.

Q. You will take the evidence as it is produced here in court and the law as it is given to you by the Court and, without favor to either side, decide the case; is that right? A. Yes, sir.

Q. Now, if it should happen that from the evidence and the charge, the jury found it was a case where the defendant should be convicted of murder in the first degree, would you bring in a verdict in that form after consideration of all the evidence, under the charge of the Court, and notwithstanding the fact that it carried the extreme penalty? A. Yes, sir.

The Prosecutor: The juror is satisfactory.

By Mr. Zabriskie:

Q. As I have outlined to other jurors, there is a statute in this State which says that,

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death

unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty? A. No, not necessarily.

Q. And now, in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death?

The Prosecutor: I think the question is objectionable. I have no objection to the question if it includes that and all the other evidence in the case.

The Court: I will hear your question again. I thought it did include that; but I will hear it. Will you repeat it, please?

Q. Now, in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is

proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death.

The Prosecutor: He would not take that into consideration. I do not see anything the matter with that.

The Court: I will allow it. The objection is withdrawn.

The Prosecutor: Yes.

A. I would, yes.

Q. You would take it into consideration? A. Yes, sir.

Mr. Zabriskie: Satisfactory.

The Court: Be sworn, Mr. King.

(Sworn as Juror Number 2.)

The Sheriff: Number 22, Bessie P. Dickson.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

BESSIE P. DICKSON, sworn as to her eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mrs. Dickson, where do you reside? A. Catalpa Avenue, Hackensack.

Q. How long have you resided there? A. Almost 10 years.

Q. Almost 10 years. Do you know Mr. Winne,

the Prosecutor in this case, who also resides in Hackensack? A. By sight only.

Q. By sight only? A. Yes, sir.

Q. Do you know any members of his family? A. No.

Q. Knowledge that might influence you? A. No.

Q. Have you heard about this case against Robert Deegan? A. Very sketchily. I just saw it in "The Record," that is all.

Q. You have read of it in "The Bergen Evening Record"? A. No. Just the headlines.

Q. Just the headlines? A. Yes.

Q. Have you formed any preconceived opinion in connection with the case from what you have read? A. No.

Q. Have you discussed the case with anyone? A. No.

Q. So that you have an open mind to the case? A. Yes.

Q. Do you have any children, Mrs. Dickson? A. Yes.

Q. How many? A. Two daughters.

Q. And how old are they? A. One is thirty-nine and the other is about thirty-five.

Q. You do not know the defendant Deegan or any member of his family? They come from Dumont. A. No.

Q. Did you know the decedent, Ethel Herrmann, or any member of her family? A. No.

Q. The law of the State of New Jersey contains a statute which reads as follows:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers,"—

The Court: Not too fast, Mr. Wulster. You see, she has never heard it before, and it is difficult at first.

Mr. Wulster: "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

In the light of that statute and law, Mrs. Dickson, do you believe that everyone convicted of murder in the first degree should suffer the death penalty?

The Juror: Well, I would try to make my decision on the evidence if it was clearly proven, and they were incompetent, that would—

Q. That would aid you in arriving— A. Yes.

Q. —at your verdict? A. I am not averse to capital punishment.

Q. You are not averse to it? A. No.

Mr. Wulster: Prosecutor?

By the Prosecutor:

Q. As I understand it, Mrs. Dickson,—

The Court: Mr. Prosecutor, I am a little puzzled here. Isn't this the place where counsel should interpose a challenge before the Prosecutor begins to exercise his

prerogatives? I notice you have skipped it on two occasions, and we want to proceed as orderly as possible. You have had an opportunity to fully cross examine the juror, and it seems to me that you have a right at this point, if you wish, to execute or exercise a challenge.

Mr. Wulster: Of course, something might be brought out in the questioning by the Prosecutor which might form the basis of a challenge, either for cause or by way of peremptory challenge.

The Court: That is quite right, and the Court is not going to pre-empt you at this time if it seems to me that a challenge should be exercised now, if you care to—

Mr. Wulster: Well,—

The Court: —upon your examination. Do you disagree with that?

Mr. Wulster: Only if I might have the right, if something is brought out by the Prosecutor's questioning which would then give us the right to withdraw our decision, because something might come out, sir, by the juror where she should be excused for cause.

The Court: I am trying to save time.

Mr. Wulster: As far as I am now concerned, may I say this: Mrs. Dickson is satisfactory. But if something comes out which would give rise for cause, may we then interpose it?

The Court: You may.

The Prosecutor: I would like to state for the record that it is my opinion that a

challenge can be interposed at any time before the juror is sworn to try the case, and they cannot be prevented from challenging later if they want to.

The Court: That is right.

By the Prosecutor:

Q. Mrs. Dickson, as I understand it from your replies to counsel, you are in the frame of mind where you will listen in this case to the evidence as it is produced in court and you will take the law from his Honor as he charges the law, and then you will decide the case on the facts and on the law as the Judge gives it to you; is that right? A. That is right.

Q. And you have no religious or conscientious scruples against capital punishment that would prevent you bringing in a verdict that might carry that penalty if the law and the facts seemed to warrant it; is that correct? A. That is right.

Q. And you have no acquaintance with the gentlemen at the table, or with anyone which would in any way prevent you being a fair juror, just as fair to the State as to the defendant? A. That is right.

The Court: The answer is yes?

The Prosecutor: Yes.

Q. I have a memorandum here that you are employed, is that correct? A. Yes.

Q. Whom do you work for? A. William F. Ricardo & Son.

Q. Ricardo & Son here in Hackensack? A. That is right.

The Prosecutor: The State is satisfied.
Mr. Wulster: The defense is satisfied.
The Court: The juror may be sworn.

(Juror sworn as Number 3.)

The Sheriff: Number 62, Frederick Pfizenmaier.

The Clerk: Juror, look upon the prisoner; prisoner, look upon the juror; do you challenge?

FREDERICK PFIZENMAIER, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Mr. Pfizenmaier, you live in Hackensack? A. I do, sir.

Q. You are acquainted with me? A. Yes, sir. I know your name. We don't have any—through business contact.

Q. Through what? A. Through business contact.

Q. Yes. You have never been in my house, and I have never been in your house? A. No.

Q. I know your name and probably know members of your family? A. Yes, sir.

Q. Is there anything about your acquaintance with me or my family that would make you partial to me? A. Nothing at all.

Q. What is your business? A. I am teller in the Hackensack Trust Company.

Q. Do you know Mr. Wulster or Mr. Zabriskie? A. I do.

Q. Anything about your acquaintance with them that would prejudice you one way or another? A. Not at all.

Q. Do you know something about the case we are about to try, Mr. Pfizenmaier? A. I just read a few passages in "The Record," that is all.

Q. Have you any mental reservations as to why you would not be a fair juror in the case, fair to both sides? A. I have none.

Q. Will you try the case on the evidence as it appears and on the charge of the Court as the Court charges the law to you, regardless of anything you have heard or any friendship, or anything of that sort? A. Surely.

Q. And if it should appear from the evidence that it was the kind of a case where the Court charged you you could bring in a verdict which would carry the death penalty, and you felt it was that kind of a case, would you vote that way, regardless of any feelings you might have? A. Yes. I have no feelings against it.

The Prosecutor: Satisfactory to the State.

By Mr. Zabriskie:

Q. You may have in substance answered this question, but I am going to ask it. The law states that,

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict and as

a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, do you feel that everyone convicted of murder in the first degree should suffer the death penalty? A. Not—not altogether, no.

Q. Well, what do you mean by "not altogether"? A. I mean it is according to the evidence.

Q. You may decide for a prison term, that is life imprisonment? A. I am not opposed to capital punishment, the extreme penalty; but it would be all according to the evidence supplied.

Q. As to whether or not you would recommend life imprisonment? A. Yes.

Q. You understand, do you not, that when a person is convicted of murder in the first degree, the jury can say,—and they have the control—they can say if they believe from the evidence that the man should be sent to State's Prison and be at hard labor for life, that they can substitute —they can bring in that recommendation, in which case he would not go to the chair; you understand that? A. Yes.

Q. And, for the sake of the record, I will just ask you this one question more: Now, in the light of that statute that I read a few moments ago,—and for Mr. Robinson's benefit I will say that is in Revision 2:138-4,—in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not

you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death? A. Well,—

Q. Would you take that into consideration? A. —if it was proven by the evidence, proved that he was mentally incapable.

Q. You would take that into consideration? A. Yes.

Mr. Zabriskie: Satisfactory to the defense.

The Court: The juror may be sworn.

(Sworn as Juror Number 4.)

The Sheriff: Number 44, Dorothea R. Hunter.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

DOROTHEA R. HUNTER, sworn as to her eligiblity to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mrs. Hunter, I think you recall me from school. We know each other, do we not? A. That is right, Mr. Wulster.

Q. In years gone by. Would that have any prejudice whatsoever so far as you trying this case on the evidence— A. No, sir.

Q. —is concerned? Do you know the defendant Deegan? A. No, sir.

Q. Do you know Mr. Winne or Mr. Allyn. A. No, sir.

Q. Mr. Zabriskie? A. Just by name.

Q. As counsel. Have you formed any preconceived opinion of this case by anything that you have heard or read? A. No, sir. I know nothing of the case.

Q. And you can decide it fairly and squarely on the evidence? A. I can.

Mr. Wulster: Satisfactory to the defense, subject to—

The Sheriff: The State?

By the Prosecutor:

Q. Are you in the public school system, Mrs. Hunter? A. Yes, sir.

Q. Where, in River Edge? A. No. In Wanaque Borough.

Q. And at one time were you an instructor when Mr. Wulster was a little boy A. Hardly.

Q. I wondered what your connection was with Mr. Wulster. A. I just knew of Mr. Wulster through school, when we went to school together.

Q. Oh, you were classmates in school? A. Oh, well, I think I was about two classes ahead of Mr. Wulster.

Q. And that was in what school, Mrs. Hunter? A. That was in Hackensack High School.

Q. Would you say that your familiarity with him would not be embarrassing to you as a juror? The fact that you were in school with him would

not make you favor him in trying this case? A. No, sir.

The Prosecutor: I think I will excuse Mrs. Hunter. I think maybe you would be a little bit embarrassed to sit on the jury when Mr. Wulster tried the case.

The Court: Mrs. Hunter is peremptorily challenged.

The Prosecutor: Yes, sir.

(Juror excused.)

The Sheriff: Number 55, Florence M. Macdonald.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

FLORENCE M. MACDONALD, sworn as to her eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. My office has done business for you, hasn't it, Mrs. Macdonald? A. Yes.

Q. We have been your counsel since your husband died? A. That is right.

The Prosecutor: I think the lady should be excused by consent, if your Honor please.

Mr. Zabriskie: I will agree to that, surely.

The Court: The juror is excused by consent.

The Prosecutor: I am sure that it would not be fair to the defendant to have Mrs. Macdonald sit on this jury.

The Court: So ordered.

(Juror excused.)

The Sheriff: Number 21, Robert L. Demarest. He is over age, your Honor, he is seventy-one.

The Court: Is he here?

The Sheriff: He is supposed to be here, your Honor.

The Court: Call his name.

The Sheriff: Robert L. Demarest?

(No response.)

The Court. This juror, however, should have answered the call and should be in court. Simply writing a letter in no way absolves him from his appearance or his duty. What is the over age? I understand there is some information as to his age, that he is over the limit of seventy?

The Sheriff: He states, your Honor, he will be seventy-one this April.

The Court: I think he should be brought into court.

The Sheriff: All right, sir.

The Court: Call your next.

The Sheriff: Number 13, William L. Baker.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Examination of Jurors on Their Voir Dire

WILLIAM L. BAKER, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Mr. Baker, you live in Hackensack on Park Street? A. That is right.

Q. I live in Hackensack. Are you acquainted with me at all? A. Not at all.

Q. Are you acquainted with Mr. Wulster or Mr. Zabriskie? A. No, sir.

Q. I do not suppose you know Deegan or any member of his family? A. No, I do not.

Q. Do you know something about this case, Mr. Baker? A. I know nothing about it at all.

Q. What is your occupation? A. I am a librarian with Moody's Investor's Service.

Q. Well, this is a murder case. Have you any conscientious or other objections against capital punishment? A. No, sir.

Q. Will you try this case fairly on the evidence as it is produced in this courtroom by the witnesses, take the law from the Judge, and sit fairly between the rights of the defendant and the rights of the State, Mr. Baker? A. I will.

Q. Do you have any reason in your knowledge why you could not be a fair juror in this case? A. None whatever.

The Prosecutor: Satisfactory to the State.

By Mr. Zabriskie:

Q. You are a librarian in Moody's Investor's Service in New York City? A. Yes, sir.

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

Q. Now, this case, or this class of cases, will be governed to some extent by a statute which I will read to you, which states that,

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor, for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty? A. No, I do not.

Q. And in the light of that statute, if you find that the defendant Robert Deegan is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death? A. I would take it into consideration if it were proved.

Mr. Zabriskie: Satisfactory.

The Court: Let him be sworn.

(Juror sworn as Number 5.)

The Sheriff: Number 69, Henry Scheer.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

HENRY SCHEER, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Scheer, you reside in Rochelle Park? A. Yes, sir.

Q. Do you know Mr. Walter Winne, the Prosecutor in this case? A. No, not personally.

Q. Or Mr. Zabriskie, or myself? A. No, sir.

Q. Do you know the defendant Robert Deegan or any— A. No, sir.

Q. —member of his family? A. No, sir.

Q. The decedent in this case is Ethel Herrmann of Dumont. Did you know her? A. No, sir.

Q. Or any member of her family? A. No.

Q. Have you read about the case in the newspapers, Mr. Scheer? A. Nothing about the case directly. Only about how, what Judge was to preside, recently, here, about the last week or so.

Q. Anything that you might have read or heard, would that influence you to such an extent that you would not bring in a fair verdict based on the evidence? A. No.

Q. And the Judge's instructions to you? A. That would not influence me, no.

Q. You would be able to bring in a fair evidence— A. I think I would.

Q. —a fair verdict, rather, according to the evidence? A. Yes, sir.

Q. A statute of New Jersey reads as follows:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Mr. Scheer, in the light of that statute, do you feel that everyone convicted of murder in the first degree should suffer the death penalty? A. I think there may be circumstances in certain cases where I would say no.

Q. You would feel that after consideration of the proof and the evidence in the case that there could be circumstances by which you could conscientiously find, after listening to the Judge's charge, that life imprisonment might be a proper verdict, is that right? A. Well, it is—there may be something—I would say there might be something that would cause me to change my mind that way.

Q. Would you take into consideration the evidence, and part of such evidence if it were produced, showing a mental deficiency or a mental insufficiency, would you take such proof into consideration— A. If it—

Q. —in arriving at your verdict? A. If the proof was strong enough; it would have to be

strong proof. Yes, I think I would take that into consideration.

Q. If there were a doubt in your mind as to the proof, would you resolve such a doubt in favor of the defendant or against the defendant?

The Prosecutor: I will object to that. I do not know what doubt we are talking about. If there were a doubt of his guilt, he certainly would resolve that in favor of the defendant.

Q. A reasonable doubt, would you resolve that in favor of the defendant or against the defendant?

The Court: The objection is withdrawn.

A. Well, I don't quite understand that question. Now, just repeat that.

Q. If there were a doubt in your mind after listening to the evidence in the case as to whether or not the defendant was guilty or not guilty, would you resolve such doubt in favor of the defendant or against the defendant, if there was a doubt in your mind? A. Well, if there was a doubt in my mind, of course, I would favor the defendant.

Q. You would favor the defendant if the Judge were so to charge you? A. Exactly. It would depend largely upon the charge of the Court.

Q. And you would follow the law as charged by the Court and bring in your verdict on the basis of that and a consideration of all the evidence, is that right? A. I think I would, yes.

Mr. Wulster: Satisfactory.

By the Prosecutor:

Q. What is your business, Mr. Scheer? A. A commercial artist.

Q. And do you work for yourself, or— A. No. I work for the Artistic Weaving Company in New York.

Q. You commute to New York? A. Yes.

Q. Between Rochelle Park and New York? A. Yes.

Q. And you say that there is nothing that you know about this case that would cause you to be anything but fair to the State and fair to the defendant? A. Not a bit.

Q. You have no scruples, religious or conscientious scruples, against capital punishment if the evidence and the Court's charge seem to warrant that finding? A. No.

Q. You would take the law from the Court, and you would take the evidence as it was produced here in court, and decide the case fairly on the evidence and on the law as the Judge gave it to you, sir? And there is no mental reservation or anything in your mind which would prevent you from doing that fairly and honestly? A. Not whatsoever.

The Prosecutor: The State is satisfied.

The Court: Satisfactory?

The Prosecutor: Yes, sir.

Mr. Wulster: Satisfactory to the defendant.

The Court: Let the juror be sworn.

(Juror sworn as Number 6.)

The Sheriff: Number 15, Grace Blackledge.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

GRACE BLACKLEDGE, sworn as to her eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. I have the name of Blackledge; is that correct? A. Yes.

Q. It is Mrs. Blackledge? A. Mrs., yes.

Q. And you are employed, Mrs. Blackledge? A. Yes.

Q. And who is your employer? A. Clifton Printing.

Q. Clifton Printing? A. Yes.

Q. In Clifton, New Jersey? A. Yes.

Q. And you live in Woodridge? A. Yes.

Q. So you go daily from Woodridge to Clifton? A. From Woodridge to Clifton, yes.

Q. You are a bookkeeper, is that right? A. Yes.

Q. Do you have any children? A. Yes, I have a daughter.

Q. Is Mr. Blackledge living? A. Yes.

Q. What is his business? A. He is a freight forwarder.

Q. A freight forwarder? A. Yes, sir.

Q. What is your child, a girl or boy? A. A girl.

Q. How old is she? A. Thirty.

Q. Does she live home? A. At present, yes, because her husband is in service.

Q. Oh, I see. Now, Mrs. Blackledge, do you know anything about this case? A. I just read about it in the paper.

Q. Is there anything that you have read or anything that you have heard, anything that has come to you in any manner, which would prevent you being a fair juror in this case between Mr. Robert Deegan and the State of New Jersey? A. No.

Q. Have you any acquaintance with counsel in the case, either myself or Mr. Zabriskie or Mr. Wulster? A. I just know who you are, that is all.

Q. But that does not prejudice you against us? I do not think I will ask you what you know about it. You do not know Deegan or his family or anything about the situation in Dumont that would, in your opinion, make you unfair, either to him or to us, to the State, is that right? A. No. I don't know anything about him. Now, it is a murder case as I understand, what?

Q. I must ask you if you would decide the case on the evidence which is produced by witnesses whom you will hear and who will testify in this courtroom, and on the law as the law is given to you by the Judge, and on that and on that alone? In other words, you will not decide the case on anything except the evidence and the law that you take from the Court? A. No.

Q. Do you understand the question? A. Yes, yes.

Q. And your answer is yes. Now, have you any opposition, religious or otherwise, against capital punishment? A. No.

Q. And if in this case the evidence was of such a character that under the charge of the Court

you were required to bring in a verdict of murder in the first degree, and after a consideration of all the evidence it seemed to you that that verdict were a proper verdict, although it carried with it the death penalty, would you, notwithstanding that, bring in that verdict? Is the question clear, Mrs. Blackledge? A. Whether I would bring in a verdict if it was clear it was first degree murder, is that it?

The Prosecutor: Maybe I had better ask the question again. I will withdraw that question.

Q. If you found, you and the other jurors found that it was a case where the verdict of murder in the first degree should be returned, you would then consider under the Judge's charge whether you should bring in in addition a recommendation of life imprisonment; if you did not bring in such a recommendation, the penalty would be death. Now, I ask you if in the juryroom you and the other jurors came to the conclusion it was a case in which a verdict of murder in the first degree should be returned, would you then consider this other question of life or death and, from the evidence and from the charge of the Court, it seemed to you that it was a case in which you should not bring in a recommendation, would you then bring in a verdict, notwithstanding the fact that it meant death for this defendant? A. Yes.

The Prosecutor: The juror is satisfactory.

By Mr. Zabriskie:

Q. I will just ask you one question, Mrs. Blackledge. Now, in the light of the statute that you have heard read, which says that,

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death. Would you take that into consideration? A. Yes.

Mr. Zabriskie: Satisfactory.

The Court: You may be sworn.

(Juror sworn as Number 7.)

The Sheriff: Number 39, George D. Heilman.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Examination of Jurors on Their Voir Dire

GEORGE D. HEILMAN, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Heilman, you live in Bogota? A. Yes, sir, I do.

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

Q. Any children? A. No.

Q. No children? A. No, sir.

Q. How long have you lived in Bogota? A. Twenty-two years.

Q. Have you read or heard about this case of Robert Deegan? A. No, sir, I have not.

Q. You have not heard or read about it? A. That is right.

Q. You know nothing about it? A. No, sir.

Q. Your business is where? A. Western Electric.

Q. Western Electric? A. That is right.

Q. Where do you go for your work? A. Kearny, New Jersey.

Q. That was where, sir? A. Kearny.

Q. Kearny, New Jersey? A. That is right.

Q. Do you know the defendant Robert Deegan? A. No.

Q. Or any member of his family? A. No, sir, I do not.

Q. The decedent in this case was Ethel Herrmann of Dumont. Did you know her or any member of her family? A. No, sir, I didn't.

Q. Has anything occurred to you or to any member of your family which would influence you to such a degree that you could not bring in a verdict in this case based on the evidence as it is adduced in court and on the law as the Judge

charges it to you? A. No, sir. I have an open mind in this case.

Q. You have an open mind? A. That is right.

Q. So you could definitely bring in a verdict according to the evidence and the law as charged? A. Yes, sir, I could.

Q. Is that right? A. That is right.

Q. A statute of New Jersey reads as follows:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers shall suffer death unless the jury shall by its verdict and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, if you should find the defendant to be guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that if it were proven by the evidence that he was mentally weak or mentally deficient at the time of committing the act that resulted in death? A. Yes, sir, I would.

Q. You would take that into consideration? A. Yes, sir.

Mr. Wulster: Satisfactory to the defendant.

By the Prosecutor:

Q. Mr. Heilman, is your address in Bogota or Ridgefield Park? A. Bogota.

Q. Is it close to the Ridgefield Park line? A. About two blocks away.

Q. How old are you? A. Twenty-seven.

Q. Twenty-seven? A. That is right.

Q. Have you any feeling against capital punishment, Mr. Heilman? A. No, sir, I haven't.

Q. If the evidence were of a character that under the law of the Court, the jury thought that the verdict should be returned which carried with it that penalty, you would vote according to the evidence and the charge of the Court? A. Yes, sir, I would.

Q. Is there anything that you know about this case or about counsel or any other matter that prevents you being a fair juror so that you can sit fairly in judgment between the State and Robert Deegan? A. No, sir, there isn't.

Q. Do you know either of the gentlemen— A. No, sir, I don't.

Q. —who are representing Mr. Deegan? A. No, sir.

Q. You do not know Deegan or his family or any circumstances in Dumont which would influence you at all in the case? A. I don't know a thing about the case.

Q. You are an accountant? A. That is right. I have a letter, sir, I would like to present, in all fairness to my firm and the Court.

Q. You mean it is going to be a little hardship for you to serve, is that right? A. In fairness to my concern, I believe I should present the letter, which they requested me to do, and then it is up to the Judge and you folks.

The Prosecutor: Does you Honor care to—

The Court: Is the juror otherwise satisfactory to the State?

The Prosecutor: May I have one moment, please, sir?

The Court: Certainly.

The Prosecutor: I think I will excuse the juror, if your Honor please. The State will excuse this juror.

The Court: Mr. Heilman, you are excused.

(Juror excused.)

The Sheriff: Number 65, Herbert Rigby.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

HERBERT RIGBY, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Mr. Rigby, I see you live on Moore Street, Hackensack. A. No. I live on South Lake Drive.

Q. Are you acquainted with me? A. Yes, sir.

Q. What did you do, put a roof on the house for Mr. Peterson? A. No, sir.

Q. How do you know me, Mr. Rigby? A. We are in the florist business.

Q. Does my family deal with you? A. That is right.

Q. Is our relationship of such a character that it would be any embarrassment to you to sit? A. No, sir.

Q. Pardon me. I did not recognize you. A. That is right.

Q. I just asked the question, do you know anything about this case? A. Just what I read in the paper.

Q. Do you also have the good luck to serve Mr. Zabriskie and Mr. Wulster with flowers? A. No, sir. I know Mr. Wulster.

Q. They do not give you their business? A. No, sir.

Q. Well, that does not prejudice you against them, does it? A. No.

Q. Because there must be a lot of people that do not give you their business. A. That is right.

Q. Now, will you try this case fairly on the evidence as it is produced here in court? A. Yes, sir.

Q. And the charge of the Court? A. Yes, sir.

Q. Have you any feeling against capital punishment? A. Not at all.

Q. And if it should happen that on the evidence and the charge of the Court you and the other jurors, if you are sworn, even though this was a first degree murder case and that, after consideration of your right to recommend life imprisonment, you and the other jurors concluded it was a case where such a recommendation was not warranted, would you bring in such a verdict, notwithstanding any natural feeling a person might have against taking anyone's life? A. Yes, sir.

Q. You could do that? A. Yes, sir.

Q. And you will do that? A. I sure will.

Q. There is no reason you know of why you cannot be a good juror in this case? A. None whatsoever.

The Prosecutor: Satisfactory to the State.

By Mr. Zabriskie:

Q. There is a statute or law in this state which says:

"Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers shall suffer death unless the jury shall by its verdict and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no other greater punishment shall be imposed."

Now, in the light of that statute, if you find that the defendant Robert Deegan is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death? A. Yes, sir.

Mr. Zabriskie: Satisfactory.

The Court: Be sworn, Mr. Rigby.

(Sworn as Juror Number 8.)

The Sheriff: Number 38, John Heck.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Examination of Jurors on Their Voir Dire

JOHN HECK, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Heck, what is your business? A. Stock broker.

Q. Where do you do business? A. 120 Broadway and at the New York Stock Exchange.

Q. Are you married, Mr. Heck? A. Yes, sir.

Q. Any children? A. I have got a son in the armed forces, and a daughter at college.

Q. Have you read or heard anything about this case against Robert Deegan? A. A little about it.

Q. Has what you have read or heard fixed any thought in your mind whereby it would be unable —whereby you would be unable to bring in a fair and just verdict according to the evidence and the law as charged? A. Well, from what I have read so far, I mean, in the papers, unless new evidence is brought out, whether this Court is going to bring new evidence, I think I have.

Q. You think you have formed an opinion? A. I have formed an opinion.

Q. You have formed an opinion? A. On the old evidence.

Q. Do you know the defendant Robert Deegan or any member of his family? A. I do not.

Q. Do you know the decedent Ethel Herrmann, or do you know any member of her family? A. I do not.

Q. Do you know the Prosecutor, Mr. Winne? A. I know of him. I have played golf behind him, but I don't know him personally.

Q. You both belong to the same golf club? A. No. I played in the Grand Juror's tournament right behind him and spoke to him.

Q. Do you know Mr. Allyn? A. No. I never had the pleasure.

Q. Have you any fixed opinion in your mind which would prevent you from bringing in a fair and just verdict according to the evidence and the law as charged by the Judge? A. On new evidence as presented in court.

Mr. Wulster: May we have the question read?

(Question read.)

A. No, I think I could.

Q. You think that perhaps your mind is so open that you could decide it on the evidence adduced in court? A. If there was new evidence, as I said, presented, from what I have read and from what I have heard.

Q. You have an opinion, a fixed opinion now, on the case? A. I have a fixed opinion on the case unless I hear new evidence.

Q. And if you did not hear new evidence, that fixed opinion would prevail? A. It would stand.

Mr. Wulster: Excused for cause.

The Prosecutor: Well, I object to that.

Mr. Wulster: Challenged for cause.

The Prosecutor: I object to that. All the evidence is going to be new evidence. There is no old evidence in this case. The question is, Mr. Juror, on the evidence produced here beginning today and continuing

until this case is over, would you try the case on that evidence and not on something you heard before you came to court?

A. No, I would try the case on new evidence presented in court.

The Court: You have not heard any evidence yet.

The Juror: That is what I said.

The Court: Then what you are going to hear today, you would not describe as new evidence, would you? You have not heard any yet.

The Juror: I have heard nothing yet.

The Court: Well, if you could say what you are about to hear is the evidence in the case,—

The Juror: That is right.

The Court: —through the sworn testimony of witnesses—

The Juror: That is right.

The Court: The question is, sitting as a juror in this case and hearing the testimony as sworn testimony from the witnesses, all of the evidence in the case, and having been charged by the Court, would any opinion which you had heretofore formed guide you in bringing in your verdict, or would that testimony and evidence and Court's charge direct your mind?

The Juror: I think new testimony would have a lot to do with my verdict.

The Court: What is the motion before the Court?

Mr. Wulster: The challenge is that the juror be excused for cause.

The Court: Is that opposed by the Prosecutor?

The Prosecutor: Yes, sir. I think the juror has stated that he would try the case on the evidence, and I think the cases are uniform that, although a man may come into court with an opinion based on what he has heard outside of the courtroom, if his statement is that he will try the case on the evidence produced in court and the charge of the Court fairly, regardless of what he has previously heard, he is an acceptable juror. That is held in the most recent case of Jefferson, with which we are all familiar.

The Court: I will overrule the challenge and allow the juror to sit.

Mr. Wulster: May I have an exception to that ruling, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Mr. Wulster: And excuse the juror by way of peremptory challenge.

The Court: You are excused, Mr. Heck, by the peremptory challenge.

Mr. Zabriskie: I think that is the defense's last peremptory challenge, is that right?

The Court: Is that correct?

The Sheriff: That is correct, sir. Number 52, Bernard H. Lueneberg.

The Clerk: Juror look at the prisoner, prisoner look upon the juror; do you challenge?

BERNARD H. LUENEBERG, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Mr. Lueneberg, you live in Ridgefield? A. That is right.

Q. What is your business? A. I am a bake goods salesman.

Q. Who do you work for? A. Fischer Baking Company.

Q. You are married? A. That is right.

Q. How many children have you? A. Two children.

Q. You have the children at home with you? A. That is right.

Q. How old are they? A. Fourteen and eleven.

Q. Mr. Lueneberg, are you acquainted with either counsel in this case or myself? A. No, sir.

Q. Do you know anything about the case? A. Very little.

Q. Do you know any reason why you could not sit as a fair juror in the trial of this case, Mr. Lueneberg? A. No, sir, I do not.

Q. Now, it is a case involving the death of a lady named Ethel Herrmann, who died just a year ago this month as a result of actions of

which the defendant is accused, and if the evidence proves that this act was during the perpetration of a robbery upon this unfortunate woman, the State will ask for a first degree conviction against this man Deegan. Have you any scruples of any kind against capital punishment? A. No, sir.

Q. If the evidence is of such a character that under the charge of the Court you and the other jurors find this man guilty of murder in the first degree, will you bring in that verdict, notwithstanding the fact that it carries with it the extreme penalty of death? A. I would.

The Prosecutor: The juror is satisfactory.

By Mr. Zabriskie:

Q. Mr. Lueneberg, you have heard me read this section of the law, have you? A. Yes, sir.

Q. Now, in view of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act which resulted in death? A. I would.

Mr. Zabriskie: That is all. Satisfactory.

The Court: Be sworn, Mr. Lueneberg.

(Sworn as Juror Number 9.)

The Court: I am going to ask that the next juror be sworn out in the open before the Court.

The Sheriff: Number 9, C. Henry Ahlert.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

C. HENRY AHLERT, sworn as to his eligibility to sit as a juror, testifies as follows:

The Prosecutor: I think I should say to the Court that this juror called upon me in my office a few days ago and asked if he could be excused, and had a fifteen-minutes' conversation with me, at which time I told him he could not be excused.

The Court: All right.

By Mr. Wulster:

Q. Mr. Ahlert, you are cashier? A. Not now no longer.

Q. Retired now? A. No, not exactly. I have changed my business.

Q. I see. A. I am a special representative working on the outside in the field now.

Q. And was your reason for wanting to be excused one that would prevent you from bringing in a fair and just verdict under the evidence and under the law as charged by the Court? A. No, sir.

Q. Some time ago, if I recall correctly, Mr.

Ahlert, I represented a party opposed to your interests? A. That is correct.

Q. In another matter? A. Yes, sir.

Q. Would that influence you in any way whatsoever? A. No, sir.

Q. In deciding this case? A. No, sir.

Q. Would my representation of the party whose interest was adverse to you at the time reflect in any way on the defendant in so far as you might be concerned in judging the evidence and accepting the law as charged by the Court? A. It would not affect my—

Q. You have a perfect open mind, despite that? A. Correct.

Q. Now, do you know the defendant, Mr.— A. I do not.

Q. —Robert Deegan? Do you know any member of his family? A. I do not.

Q. The decedent in this case is Ethel Herrmann of Dumont. Did you know her or any member of her family? A. I do not.

Q. Have you read about the case in the newspaper? A. Why, just recently, when the case came up again. Previous to that, it was hearsay. Just what—

Q. From hearsay or from what you have read, was that so and of such a nature that you formed an opinion in connection with the matter that would have such an influencing effect that you could not decide it solely and squarely on the basis of the evidence produced in court and the law as charged by the Judge? A. No.

Q. Would you take into consideration, in arriving at your verdict, whether or not it should be death or life imprisonment at hard labor, evi-

dence might be produced which goes toward the defendant's mental deficiency and insufficiency, or would you exclude such evidence from your mind entirely in arrising at your verdict? A. No, I would include such evidence.

Q. You would include it? A. Yes, sir.

Mr. Wulster: The juror is satisfactory.

By the Prosecutor:

Q. Mr. Ahlert, Mr. Wulster represented you, on one side, and we were on the other side of some lawsuit? A. It was not a lawsuit.

Q. It was not? A. It was a real estate deal.

Q. Oh, I see. He did not represent you? A. No.

Q. Now, you saw Judge Del Mar, and he sent you to me? A. Yes, sir.

Q. To talk about getting off? A. Yes, sir.

Q. You did not want to serve, did you, Mr. Ahlert? A. Not particularly.

Q. And I told you I had no right to excuse you and it was your duty as a citizen to serve, is that right? A. Correct.

Q. Does that make you a little bit mad at me? A. No.

Q. Because you wanted me to leave you off, didn't you? A. You are doing your duty.

Q. All right. Now, we had some talk about your reasons, and I understand you work for the John Hancock Insurance Company, and you thought it might hurt you with your clientele if you served on this jury? A. That is right.

Q. You are satisfied if you are chosen you can serve fairly and conscientiously, Mr. Ahlert, so

that you will render a true verdict without favor to either side? A. I believe I could.

Q. Have you any reservation at all in your mind about capital punishment, Mr. Ahlert? A. Well, not if the offense warranted it.

Q. In other words, if the evidence warranted it and, according to the law as the Judge charged you that the law was, you would do what you considered your duty and bring in a verdict, even if it carried with it the extreme penalty? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And you would not allow anything outside of the evidence and the charge of the Court to influence you in determining your verdict? A. That is correct.

The Prosecutor: I think I will excuse Mr. Ahlert.

The Court: Excused, Mr. Ahlert.

(Juror excused.)

The Sheriff: Number 29, Julian L. Fish. She was not served, your Honor.

The Court: Was not served?

The Sheriff: Was not served.

The Court: Call your next.

The Sheriff: Number 59, Harold F. Noble.

Mr. Zabriskie: For the purpose of the record, I interpose or take an exception to the fact that the jury serving in this case, the names that were served did not constitute the panel required by law, which would be seventy-six names, only seventy-five hav-

ing been served. Just for the purpose of the record.

Juror Noble: Your Honor, if it please the Court, I would like to submit this letter to you for your consideration.

The Court: In the meantime, you be sworn.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

HAROLD F. NOBLE, sworn as to his eligibility to sit as a juror, testifies as follows:

The Court: Will counsel come forward?

(Conference between the Court and counsel at the bar, off the record.)

The Court: The juror, Mr. Harold Noble, presents evidence to the Court of medical disability due to a chronic thrombosis and a recommendation of his physician that he should not be subjected to any undue excitement during the trial and, by consent of counsel, the juror will be excused from service.

(Juror excused.)

The Sheriff: Number 40, William B. Heward.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Examination of Jurors on Their Voir Dire

WILLIAM B. HEWARD, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Now, Mr. Heward, you are acquainted with me, aren't you? A. I am, Mr. Winne.

Q. Let us see. I think you are with some governmental agency as a title man? A. I was. I am with the Manufacturer's Trust Company now in New York.

Q. When I knew you, you were closing titles for one of the government agencies, is that correct? A. I was doing some F.H.A. loans.

Q. Would your acquaintance with me embarrass you in the trial of this case at all? A. Not in the least.

Q. So that you would feel you were influenced either for me or against me? A. Not in the least.

Q. Do you know anything about the case, Mr. Heward? A. Nothing, vaguely, except that I hear there is a new trial going on.

Q. Yes. A. That is the only thing I know about it.

Q. Your residence is in Hasbrouck Heights? A. Yes.

Q. How long have you lived there? A. At that address four years.

Q. Are you married? A. I am.

Q. Any children, Mr. Heward? A. No.

Q. And what do you do now for the Manufacturer's Trust? A. I am a mortgage negotiator.

Q. Do you feel that you could try this case without any prejudice by reason of any acquaintance you have with any of us at the counsel table,

or anyone else, Mr. Heward? A. I have no feelings one way or the other.

Q. And would you try it on the evidence and the charge of the Court and on nothing else? A. I would.

Q. Have you any reluctance to find a verdict if the evidence and the law warranted it which carried with it capital punishment? A. I have not.

The Prosecutor: The juror is satisfactory.

By Mr. Zabriskie:

Q. Mr. Heward, you have studied law to quite an extent, yourself, have you not? A. Well, I clerked with Kappes and Hille for two years in Union City.

Q. Yes. A. Back in '19 and '20.

Q. Now, as you know, there is a provision of the law which says that:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurer shall suffer death unless the jury shall by its verdict and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, if you find that the defendant Robert Deegan is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard

labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death? Would you take that into consideration? A. I would take that into consideration.

Q. Do you know Mr. Winne, you say? Do you know Mr. Winne fairly well? A. Just as an acquaintance.

Q. Do you know Mr. Wulster? A. I know Mr. Wulster, and I know you, Judge.

Q. There is nothing, and you have no animous against any of us? A. No.

Q. And no special favoritism toward us? A. Not a bit, no.

Mr. Zabriskie: Satisfactory.

By the Court:

Q. Mr. Heward, have you any physical impairment of any kind? A. No.

Q. Yout are not afflicted with being hard of hearing? A. No.

Q. Your hearing is perfectly satisfactory? A. It was two years ago.

Q. Yes. You were not admitted to the bar? A. Oh, no.

Q. No.

The Court: Be sworn.

(Sworn as Juror Number 10.)

Mr. Wulster: May we, sir, review the challenges? I believe the defense has used up its full five. And the State?

The Sheriff: Three.

Mr. Wulster: The State has used up three?

The Court: I think that is correct, Mr. Prosecutor.

The Prosecutor: That is my record of it, sir.

The Sheriff: Number 74, Charles R. Walker.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

CHARLES R. WALKER, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Walker, you reside in Ridgefield Park, sir? A. I do.

Q. What is your business? A. I work for Devoe and Raynolds, paint house in New York.

Q. In New York? A. Yes, sir.

Q. And what is your work, briefly? A. Department manager.

Q. Department manager? A. Yes, sir.

Q. Have you read about this case in the newspapers? A. I have.

Q. Have you heard about it and discussed it? A. I beg pardon?

Q. Have you heard anything about it from others or discussed it with others? A. No.

Q. You have merely read about it? A. That is right.

Q. Has anything that you might have read caused you to form an opinion, and is that opinion such as might preclude or prevent you from finding a verdict based solely on the evidence and the law as charged by the Court? A. Nothing that I have read or heard, except I am not entirely in favor of capital punishment.

Q. If the Court were to charge you the law on the question of your verdict, should you find the defendant guilty, and bring to your attention a statute of the State of New Jersey which gives to you or to the jurors the right to recommend imprisonment at hard labor for life, or to invoke the death penalty, would you be able to, fairly on the basis of the evidence and the law as charged, bring in either one of those two verdicts? A. Will you repeat that again?

Mr. Wulster: May we have it read, Mr. Robinson, please?

(Question read.)

A. I believe so.

Q. Do you know Mr. Winne? Mr. Walter W. Winne, the Prosecutor of the Pleas? A. No, I do not.

Q. Mr. Allyn? A. I do not.

Q. The defendant Deegan? A. No.

Q. The decedent in this case was Ethel Herrmann of Dumont. Did you know her? A. No.

Q. Or any member of her family? A. No.

Mr. Wulster: The juror is satisfactory.

By the Prosecutor:

Q. Mr. Walker, are you acquainted with Mr. Wulster, who is interrogating you? A. No, sir.

Q. Or Mr. Zabriskie, who sits alongside of him? A. No, sir.

Q. Now, do you start off with a prejudice against capital punishment? A. I have had a feeling, not a positive feeling. It has just been a question in my mind.

Q. Well now, I understand, Mr. Walker, that under the law in this state in certain types of crimes, the punishment is death by electrocution. Is your feeling of such a character that it would be difficult, no matter what the evidence was, no matter what the Judge's charge was, to bring in a verdict that brought about the death by electrocution of the defendant?

Mr. Wulster: I object to that form of the question. I think the test is, religious scruples against the death penalty.

The Prosecutor: No. The Favorito case, and a number of other cases say, if he has any prejudice of any kind.

The Court: I will allow the question.

Mr. Wulster: Your Honor will allow me an exception?

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

A. Will you repeat that?

(Question read.)

A. I do not believe so.

By the Prosecutor:

Q. You do not believe it will be difficult? A. It would be hard, yes. It would depend on the evidence as presented.

Q. Yes. So, Mr. Walker, you start right in laboring to overcome prejudice, don't you? A. Yes.

The Prosecutor: I challenge the cause, your Honor please.

Mr. Wulster: I object to the challenge.

By the Court:

Q. Upon what is that feeling of yours based? Would you tell the Court, Mr. Walker? A. Well, as I said before, it has not been of a definite nature. I have felt a leaning towards that, though it really has not eliminated the question of murder, and it has been a question in my mind as to whether it was really the right thing.

Q. The question in your mind is as to whether punishment by death is really the right thing? A. Yes, sir.

Q. Now, is that based upon a religious—has that a religious basis in your mind? A. No, not entirely.

The Court: I will sustain the challenge.

Mr. Zabriskie: You will allow me an exception for the record?

The Court: I will allow you an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: You may be excused.

(Juror excused.)

The Sheriff: Number 58, George R. Muller.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

GEORGE R. MULLER, sworn as to his eligibility to sit as a juror, testifies as follows:

By the Prosecutor:

Q. Mr. Muller. you live in Maywood? A. That is right.

Q. What is your business? A. Life insurance.

Q. Are you married? A. Right.

Q. One child? A. That is right.

Q. What is it, a boy or girl? A. A boy.

Q. How old is the boy? A. Nine.

Q. Are you acquainted with me or Mr. Wulster? A. No, sir.

Q. Or Zabriskie? A. No, sir.

Q. Are you acquainted with any of the principals in this matter, the Deegan family or the Herrmann family? A. No.

Q. Do you know anything about the case? A. I have read about it in "The Bergen Record."

Q. Is there anything that you have read or heard about the case that would make it difficult for you to try the case on the evidence? A. No.

Q. And on the charge of the Court? A. No.

Q. Do you believe you could do that honestly and fairly? A. Honestly I do.

Q. Do you feel you would be just as fair to the State as you would be to Mr. Deegan, and just as fair to him? A. I think so.

Q. Now, have you objection at all to capital punishment? A. No, if the crime warrants it.

Q. And if, in this case the evidence and the charge of the Court were of such a character that the jury believed a first degree verdict should be returned, after considering all of the evidence, would you vote to return such a verdict, although it might cause the death of the defendant? A. I would base it on the evidence.

The Prosecutor: I am satisfied.

By Mr. Zabriskie:

Q. Now, you have heard this statute read here several times— A. Yes, sir.

Q. —this morning. Now, in the light of that statute, if you find that the defendant was guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death? A. I would take the evidence into consideration that showed that.

Mr. Zabriskie: Satisfactory.

The Court: Be sworn, Mr. Muller.

(Sworn as Juror Number 11.)

The Sheriff: Number 25, Edmund J. Dumeny.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

EDMOND J. DUMENY, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Wulster:

Q. Mr. Dumeny? A. Dumeny.

Q. Dumeny. You reside in Bogota? A. That is right.

Q. And your occupation is what? A. Life insurance.

Q. How long have you been so engaged? A. Twelve years.

Q. Are you married? A. Yes, sir.

Q. Any children? A. No, sir.

Q. For how long a period of time would say you have lived in Botoga? A. Five years.

Q. Five years. Have you read about this case in the newspapers? A. Yes, sir.

Q. Has anything that you have read created such an influence in your mind that it might prevent you from deciding the issue squarely on the evidence and on the law as charged by the Court? A. No, sir.

Q. You could bring in a verdict, and you have an open mind— A. That is right.

Q. —toward the case? Have you any opinion whatsoever in connection with the case? A. Well, from what I have read in the paper I have formed an—

Q. You have formed an opinion? A. Not a definite one, but a leaning.

Q. Would that leaning prevent you from resolving any doubt that might exist in the case— A. No, sir.

Q. —as to the guilt or innocence of the defendant against him? A. No. I would be governed by evidence produced.

Q. To put that affirmatively, if any doubt existed in your mind at the conclusion of the case as to the guilt or innocence of the defendant, would you resolve such doubt in favor of the defendant or against him? A. Well,—

Q. Would you give him the benefit of that doubt in your verdict? A. Yes, sir.

Q. You would? A statute of New Jersey reads as follows. You have heard it, but I will read it to you again.

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers shall suffer death unless the jury by its verdict and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

In the light of that statute, do you feel that everyone convicted of murder in the first degree

should suffer the death penalty? A. No. Of course, it depends on what is—on the evidence produced.

Q. Then, following that, I ask you, in the light of the statute, should you find the defendant guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the evidence produced, evidence as to his mental deficiency or weakness, in arriving at your conclusion? A. Yes, sir.

Q. You would take such into consideration? A. Yes, sir.

Mr. Wulster: Satisfactory.

By the Prosecutor:

Q. Mr. Dumeny, all this adds up to this: Will you be fair in considering this case on the evidence that is sworn to in this courtroom and on the law as you get the law from the Judge, and be fair to this man Deegan and fair to the State? A. Yes, sir.

Q. No reason you know of why you won't be. You have no such acquaintance with any counsel, or any such knowledge about the case, that you start out with a prejudice one way or the other? A. No.

Q. Now, have you any feeling against capital punishment? A. No, sir.

Q. If the evidence was of a character that under the charge of the Court, the crime was first degree murder, and you took into consideration all that evidence, and the other jurors were led to bring in a verdict in that respect, would you bring in

such a verdict notwithstanding the fact that it might result in the death of the defendant? A. Yes, sir.

The Prosecutor: The juror is satisfactory to the State.

The Court: Satisfactory to both sides. He will be sworn.

(Sworn as Juror Number 12.)

The Court: We will at this time poll the jury in order to check and make sure that we are all in agreement.

(The Clerk polled the jury.)

The Court: I would just like to ask counsel is there any purpose in selecting more than twelve jurors, in their opinion?

The Prosecutor: Well, if your Honor please, the case is bound to go into the second day, and I would think into the third day. I have tried cases where it was advantageous in having an alternate juror. I would be inclined to recommend it, if your Honor please.

The Court: Mr. Zabriskie?

Mr. Zabriskie: Why, I have no objection, of course.

The Prosecutor: Shall we draw one alternate juror in case someone is taken ill, or something of that sort?

The Court: I think it would be a proper and a wise procedure. Suppose we do that.

The Sheriff: Number 50, Clarence G. Kratz.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

CLARENCE G. KRATZ, sworn as to his eligibility to sit as a juror, testifies as follows:

By Mr. Zabriskie:

Q. Mr. Kratz, you live in Ridgefield Park? A. That is right, sir.

Q. And you have heard the question that has been propounded to several of the jurors? A. Yes, sir.

Q. And in which I read the statute which says that,

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, in the light of that statute, if you find that the defendant Robert Deegan is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient if it was proved to you that he was mentally weak or mentally deficient at the time of

commiting the act which resulted in the death of Ethel Herrmann? A. Yes, sir; I would.

Q. You would take that into consideration? A. Yes, sir.

Q. Do you know any of the parties, counsel at the table here? A. No, sir.

Q. Or Ethel Herrmann, or the Deegan family? A. No one connected with the case.

Mr. Zabriskie: That is all.

By the Prosecutor:

Q. Whom are you employed by, Mr. Kratz? A. Real estate and insurance brokers in New York.

Q. Oh, New York City? A. Yes, sir.

Q. And you live in Ridgefield Park? A. Yes, sir.

Q. With your wife and children; is that right? A. That is right, sir.

Q. Now, do you know anything about this case? A. Just what I have read at the time it happened.

Q. Yes. And what you have read won't in any way prevent you being fair in the trial of the case? A. No, sir.

Q. Have you any feeling against capital punishment, sir? A. No, sir.

Q. If the evidence was of such a character and under the charge of the Court the jurors felt that a verdict of first degree murder should be returned, would you vote for such a verdict notwithstanding the fact that it might result in the electrocution of the defendant? A. I think the circumstances would have to be that way, and weigh the evidence as presented to the Court, and taking everything into consideration at the time.

Q. Well, having heard the evidence and the charge of the Court, would it be difficult for you to do that by reason of the fact that it took the life of a human being? A. No, sir.

Q. You would do it if the evidence were of that character and the Judge said the law was of the type that it was warranted under the evidence? A. Yes, sir.

The Prosecutor: The juror is satisfactory to the State.

The Court: Be sworn.

The Juror: Thank you.

The Court: And stand out in front of the jurors in open court, please, Mr. Kratz.

(Sworn as alternate Juror No. 13.)

The Court: I think at this time it is proper to swear the officers who have been assigned to take charge of the jury by the Sheriff of the County, Chief Court Officer Ryman, Court Officer Staib, Court Officer Dansen and Court Officer Kent.

(The four officers are sworn.)

The Court: Before proceeding any further with the conduct of the trial I am very happy to extend the thanks of the Court of Oyer and Terminer to the entire panel, including the ladies and gentlemen who have been selected, for having come here this morning in answer to the call of your State. We know that it has entailed some sacrifice, and it is appreciated.

Insofar as the balance of the panel is

concerned, since we have selected an adequate number of jurors, the balance of the panel may be excused. Is there any objection on the part of counsel? The balance of the panel may be excused at this time, having had the thanks of the Court.

(The balance of the panel not called retire.)

The Court: I will reserve any remarks concerning the jury and the conduct of the jury until we proceed to adjourn for the noon recess.

The Prosecutor: May I proceed, if your Honor please?

The Court: Mr. Prosecutor.

(The Prosecutor opens the case to the jury on behalf of the State, as follows:)

The Prosecutor: Your Honor, Mr. Foreman and ladies and gentlemen of the jury: As you have gathered by now, you are empanelled here on a very serious mission. It is a very serious undertaking for me, not a pleasant one, not a pleasant one for you; but a duty we have as citizens of this State to perform.

Just a little over a year ago, on the 14th day of January, 1944, Mrs. Ethel Herrmann, a lady residing in Dumont, married, one child, was killed. She was slugged by a baseball bat over the head, without a chance. Injuries were inflicted that day from which she died a week later. There is very little in dispute about this case.

Deegan slugged her. He had the bat, and he hit her, for the paltry sum of four or five dollars, he took her life. I think they are going to try to say he was insane when he did it. I do not know what they are going to try to say.

I know what the State says. The State says that this woman lost her life as the result of a blow inflicted by Robert Deegan while he was perpetrating a robbery, and that that is first degree murder for which the penalty is death. We will ask you to return such a verdict, and all this hocus-pocus about insanity was just for the purpose of trying to have you find some other verdict.

Now, if he were insane at the moment of this crime, he should be acquitted. If he was so insane legally, as you will be told by the Court, that he did not know what he was doing and did not know what he was doing was wrong, then it is not a case of life imprisonment; it is a case of walk out free. He is a free man, unless he is insane today, which I do not think anybody charges. I say that in anticipation because, so far as I can understand from the case, that is the most that you are going to think about. You are not going to have to think very much about how this crime happened, because we are going to prove it so overwhelmingly that, if the defendant takes the stand himself, he won't say anything different, in general, except what we say.

New Jersey State Library

Now, we have put the map on the board, and I understand I may refer to it?

Mr. Zabriskie: No objection at all, Mr. Prosecutor.

The Prosecutor: If you look at this map, you will see a long street which is New Milford Avenue, which runs east and west, running north to Washington Street which is the main street through Dumont. The lady lived on Lawrence Avenue at the extremely westerly part of Dumont, and she walked from her house to play bridge at the home of a friend here on Park Avenue just east of the West Shore Railroad tracks. When she got as far as Prospect Street, Deegan and another man, Hoffman, who will be a witness for the State, saw her, and Deegan accosted her and engaged in conversation. Deegan had previously gone to his home, he having been a resident of Dumont, and secured a baseball bat which will be in evidence, and had concealed it under his overcoat, walking through the streets of Dumont, looking for a victim, and this poor, unfortunate woman was the person he found. It was dark, it was about eight o'clock at night, and he was broke, and I will tell you in a few minutes something about the circumstances which brought him to Dumont.

He spoke to this woman, obviously to see whether she had anything worth stealing, and he followed her from that point this distance, which is a quarter of a mile or

more, across the railroad track to Park Avenue. The poor soul was going into one of these houses, 145 Park Avenue, to play bridge with some friends who will be here in court to testify. And just as she got to the home of her friends, some people named Hansen, Deegan struck her over the head, grabbed the pocketbook, and started to run. He and his confederate emptied the pocketbook. They came back across to this point on Park Avenue, and they came back and ran across lots, across an open lot to cross the railroad track and back of the railroad track, and they dumped the purse before they got to the railroad track, and they divided the money.

It does not sound very much like a man who did not know what he was doing.

Now, the background to the case is this: Deegan was brought up, I guess,—born, certainly—brought up in Dumont. He had some little adventure with the CCC. It didn't turn out too well. He was in the Army for a while. That did not turn out too well, and in the winter of 1944 he came to New York, and he led a sort of a ne'er-do-well life around Times Square, taking various jobs and being most of the time on the bum, getting a dollar here and there as well as he could live, and he took up with this confederate of his, Hoffman, and just before this murder happened, a few days before the murder happened, they met a couple of girls, they were introduced to a couple of girls, girls who will testify; a girl

named Carolyn Twing and a girl named Ruth Oberempt. They became friendly with the girls. They ate around and went to the movies together, and one night the four of them slept in a hotel together. I think the night following they did not go to bed at all, but just hung around, and they were down to where they had to borrow enough money to get to Dumont. The four of them went to Dumont. Deegan was the only one, as far as I know, who had been in Dumont before. They went to Deegan's home to try to get some money from his people. His people gave him nothing.

While in his home, Deegan took a knife, a kitchen knife, which will be in evidence, and which you will see, and concealed it in his pocket. I think the evidence will be from several witnesses that he said he was going to get money one way or the other. They ran into an acquaintance of his, a lady named Reynolds, who will be here to testify, and then went to her house. They were waiting for darkness to come, and they stayed in her house until some time late that afternoon, and they took the girls to the Dumont railroad station where the girls waited during all the time until the crime was over. They left the girls and went back to their house and then came back to the girls and got a pair of gloves which will be in evidence. The gloves were given to one of the boys, and by him given to Hoffman, and by Hoffman given to

Deegan, and returned later by Deegan to the girl who owned them. Deegan's explanation of them was that he did not know whether he wanted to wear the gloves, or he did not know whether he took the gloves to keep his hands warm.

They went back to the home of Robert Deegan. As it got to be dark, sometime after seven o'clock, he, Deegan, went around to the back and looked under the porch for some weapon. He found this bat which turned out to be the deadly weapon in this terrible crime. And they saw two people whom they had under observation for a few moments, before they picked up the trail of Mrs. Herrmann. Those persons, for one reason or another, got out of their way and escaped luckily.

Now, when the crime was committed, they ran back, as I indicated, to the station hurriedly, got the girls and through a back way went away from Dumont to Bergenfield, and took a bus from Bergenfield to New York.

They had some conversation. Deegan said, "I think I hit that woman too hard." And the girls, for the first time, learned something had happened, and said, "What happened?" "Well," he said, "I am afraid I hit that woman too hard." I tell you that because it is important on this question of whether he knew what he was doing and knew whether it was right or whether it was wrong.

As soon as they got to New York, or before they got to New York, he began to worry about what was going to be in the newspapers about this offense. And then the office of the Prosecutor of this County and the Police of Dumont did some very fine police work. And Sunday,—this was on a Friday, at eight o'clock the following day, Saturday, they went to New York, and by Sunday morning, quite early Sunday morning, they arrested Deegan and they arrested Hoffman, and they arrested one of the girls, and later they arrested the other girl. And by reason of the prompt, efficient work of the police of this County, and while the crime was still in the mind and the blood was still warm, Deegan made a complete confession. He told the entire story exactly as I have related it to you with some embellishments in that confession, and it will go to you, ladies and gentlemen of the jury, and you will have plenty of time to read it and digest it.

Mr. Allyn and Captain Allmers of the Dumont Police arrested Deegan, and he said, "How is that woman?" Deegan said. "What woman?" He said, "The woman I hit on Park Avenue." So he told them the entire story exactly as I have told it to you. And, ladies and gentlemen of the jury, I will not exaggerate what happened. I will not ask you to do anything except what I think is the right thing to do and what you in your hearts will know is the

right thing to do, and God forbid I should do one thing now that we do not prove by ample testimony before you in this trial. He made a complete confession to the officers at that time. The then Prosecutor of this County had him examined immediately, anticipating just what happened, by two outstanding medical men who probably will be called if necessary in this trial, and to them Deegan told the story as I have told it to you.

He was promptly indicted and put on trial, and at the trial, and at the trial Deegan took the witness stand and under oath told this story substantially as I have told it to you, excepting for this: He said, "Just after I raised the bat and just before I brought it down, I heard my grandmother, who has been dead for years, tell me, 'Stop, Stop,' and then some unseen force brought the bat down. I don't think I brought the bat down."

He never said that to the arresting officers. He never said that in his confession which he signed in this building to the Prosecutor. But on the trial comes out that he did not do this; some unseen force did this.

We say these facts are going to be proven completely to your satisfaction. You cannot find any other conclusion except that Deegan killed this lady for her money, and that is a first degree murder.

Now, they are going to try what you have observed, try to have sympathy for this

man because of circumstances that they are going to relate to you. We are going to say, the State is going to say that you have a duty to perform. It is not a very pleasant duty; but you have taken an oath to do it, and we are going to ask you to observe that oath and bring in a verdict that the evidence requires and that the charge of the Judge justifies. We will be just as expeditious as we can and get you out of here just as soon as we can.

(Mr. Zabriskie opens the case to the jury on behalf of the defendant as follows:

Mr. Zabriskie: May it please your Honor and ladies and gentlemen of the jury, the act that resulted in this death of a woman occurred on January the 14th, 1944, just about a year ago; but the evidence that we shall produce in this case will go twenty-six or twenty-seven years back; in fact, it will go farther back than that. I will not at this time attempt to burden you with all the things that we intend to prove, excepting in a somewhat general way; excepting I want to say to you right now that you are going to hear in this case one of those terrible examples of not taking up the child's defects early enough in life. We will show you that before this boy was born he was burdened by an ancestry in which there was some insanity. We will show you that he belongs to a very fine family in which there

are five young men, four of them as perfect as boys go; but he was different. Why? We will show you that from the time of his birth he was behind, that he did not—I won't attempt to be accurate about the periods of time, because the evidence will disclose exactly; but he was far behind the ordinary child in learning to speak, far behind the ordinary child in learning to walk.

So, as he went through school, he had gotten to be eighteen or nineteen years old, I am not quite positive which, and they were trying to get him through grammar school, and they gave it up as a bad job.

We will show you that during all that period, he was mentally deficient; that it was talked of between the father and the mother about having him examined by a psychiatrist; but through family pride, perhaps, that was never attended to. We will show you that all through life right up until the time that he was inducted into the Army he was not what a man should be. Twenty-seven years old, I think. He is practically twenty-eight now. And, of course, all these things happened long before this crime. And, of course, it is difficult to get evidence; but we are fortunate in one thing. We will show you beyond a shadow of a doubt that he was fired out of the Army because they found that he was what they call a constitutional psychopathic state, he had an inadequate person-

ality. We will show you, through all the employments he had, he would start a thing, and the first thing you know, he couldn't put it through. We will show you that he was a man who was led, but he could not go ahead on his own. He could either be led or influenced by somebody else. And so, after he got out of the Army, I think it was on July the 3rd of last year, he went to New York, and he had a few dollars. And we will show you that he did not go to his father and mother at that time immediately, who lived right up here in Dumont; that he stayed around New York, doing dishwashing, and making a dollar here and a dollar there. The reason why he did not go I will leave to you from the evidence that will be produced for you to determine.

We will show you that during practically six months he just lived the life of one of these fellows in New York who gets a job here and a job there and exists, living in one of these lodging houses, not bad lodging houses, but the ordinary lodging house. And then we will show you, right at the beginning of January, just a few days before this crime occurred, he got well acquainted with a very shrewd young fellow by the name of Hoffman, who had come down from Boston with a hundred dollars or so, and who had blown it in and was broke, and he wanted to get back to Boston. And although this fellow was shrewd and did not talk much, we will show you at

about that same time Deegan, for the first time, during all those activities in New York, became infatuated with a girl who will be put on the stand, the State says, and he wanted to marry her right away.

We will show you that Hoffman said, "Well, now, if you can get the money to go to Boston, I will get you a job, and you can marry this girl right away." All this happened inside of a week. After, at Hoffman's instigation, he made up his mind he was going to get the money. And we will show you he went over to his father's, and he spent a day, a good part of the day, there. He borrowed just enough money to get over, and his father and his mother did not give him anything. They brought the girls along with them, all four of them together. And when it was not possible to get money at home, why, Hoffman, with him, now serving a sentence of life imprisonment for this very offense, he committed this terrible deed.

After it was all over, they went back to New York, and he did not have enough sense to try to run away. All the time that he was hanging around in New York, he was right around one particular little district, people from Dumont seeing him as they commuted back and forth, right around Forty-first and Forty-second Street; eating at Bickford's on Forty-second Street, eating at the Automats on Forty-second Street, eating at the Cadillac on Forty-second Street, or at the Oyster Bay just a few steps north of Forty-second Street.

And after this crime has been committed, he goes back to the same place, not trying to run away, a simple soul that he was, and he was apprehended. Now, I won't go into details because we are trying to streamline this case as much as possible, to cause you as little inconvenience as possible. I am not going to produce a great many witnesses, but I am going to give you a simple and distinct kind of evidence, and that kind of evidence which will bear out the theory that this boy has never been up to the standard mentally, far from it.

Of course, his defense, the technical defense, is insanity, at the time of the commission of the offense. If you believe that, why, of course, your verdict would be simply not guilty and that would end the matter. But if you go a step further and find a verdict of guilty, then comes the real struggle for you to do what I would do, or what I think should be done in a case of this kind, which should have been done long before, which should have been done at the time when the Army threw this fellow out, because he did not have the right kind of a mind to do anything in the Army, but should be restrained permanently.

And now, members of the jury, this is just one of those cases which results, as I said, from society failing to do its duty early in the game because, if it had, this offense would have never been committed.

The Court: Ladies and gentlemen of the jury, we are about to take a recess for

luncheon, and I understand the court officers will conduct you and you will be in their custody from now on. This case is likely to be somewhat prolonged; it will certainly take the rest of today and all of tomorrow, and it may even go further than that. It is, therefore, quite apparent that as a jury you will have to be very careful in your conduct, and as the Court I want to now caution you that you should not speak with anyone at all about any features of this case while you are in the custody of the officers, or even while you shall be on your own.

It will be necessary, also, ladies and gentlemen, that you be locked up over night. The Sheriff has made arrangements, as I understand it, for that purpose with the Alexander Hamilton Hotel in the City of Paterson, and you will all be escorted there in a group within the custody of these good court officers of ours. Now, of course, that makes it necessary for you—I know you did not come prepared to go through such an experience, and, therefore, I think you should during your luncheon hour today equip yourselves with a list of such articles as you may require, and give those several lists to the court officers, and they in turn will communicate with your homes and see that those articles are secured. And before we adjourn or at the time we adjourn this afternoon session, which should conclude probably around between four and five o'clock,—is that correct, Mr. Sheriff?

The Sheriff: Yes, sir.

The Court: —the officers will equip you with pencils in order to make out such a list.

Now, is there any question any of you wish to ask about that?

A Juror: I have my car outside.

The Court: You have your car outside?

A Juror: Yes, sir.

The Court: Well, I presume probably that is true of quite a few of us. Are there any others that have their cars outside? What is the practice with reference to that?

The Sheriff: We will get them home for them, your Honor, if they will give us the keys.

The Court: You can either do that or we might even keep them down here, I suppose.

The Sheriff: I do not think we have room.

The Court: You would rather send them home?

The Sheriff: Yes, sir.

The Court: We will see that the court officers, or the Sheriff, will see that they are sent to your homes. Are there any other questions?

A Juror: Any objection to making a telephone call to New York in regards to my job to notify them that I will not be in?

The Court: Well, in reference to a telephone call, we would suggest this: In order to be quite uniform throughout and to make it applicable in each and every case, you

will just give that message to the court officer, and he will make that telephone call for you. That will be satisfactory, won't it?

A Juror: That will; yes, sir.

The Court: And that is true of any of you. If you have a message to give or to communicate with what might be called the outside world, just tell the court officer about it, and you will find them most cooperative in their efforts to see that we secure what both of these parties are entitled to, a most fair and impartial trial. That is our purpose, and if you will just bear that one thought in mind as you go your way in the custody of these officers, I think we will reach and arrive at a proper conclusion. You know what you are supposed to do. We are all well acquainted with our duty, and that duty is to keep to ourselves entirely and absolutely during the progress of the trial.

We are going to adjourn now until two-thirty. Is that correct?

The Sheriff: Yes, sir.

The Court: I think your lunch is going to be ready for one-fifteen. Have you any other questions? If not, have counsel anything else at this time?

Mr. Zabriskie: How long are we going to operate today?

The Court: Well, I think we could well afford to run until around quarter of five. Is that satisfactory?

Mr. Zabriskie: Yes. I just wanted to get some idea.

The Court: The Court then will be adjourned until two-thirty.

(Recess at 1:00 P. M. until 2:30 P. M.)

AFTER RECESS

2:30 P. M.

(The Clerk polled the jury.)

The Court: All right, Mr. Prosecutor.

The Prosecutor: May the map be marked in evidence by consent? We excused Mr. McClave, so they have been good enough to say they consent to have it marked.

Mr. Zabriskie: No objection.

The Court: Let it be marked.

(Map marked Exhibit S-1 in evidence.)

The Prosecutor: I call Mr. Eugene Touhill.

EUGENE LEO TOUHILL, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct examination by the Prosecutor:

Q. Do you pronounce it Touhill, Mr. Touhill? A. Touhill.

Q. Where do you live, sir? A. Dumont, New Jersey.

Q. How long have you lived in Dumont? A. For the past three and a half years.

Q. Then you lived there on January 14th, 1944? A. Yes, sir. That is correct.

Q. At that time, where was your home? A. 179 New Milford Avenue, Dumont, New Jersey.

Q. Now, on the evening of January 14, 1944, were you in an automobile on Park Avenue in Dumont? A. That is correct.

Q. About what time of night was that? A. Shortly prior to eight o'clock, I believe.

Q. Mr. Touhill, it was dark at that time? A. Yes, sir.

Q. Had you turned into Park Avenue from New Milford Avenue? A. No. I—from New Milford Avenue, I was going south in Park Avenue.

Q. In other words, you had come in an easterly direction along New Milford Avenue, across the railroad track, until you came to Park Avenue? A. That is correct.

Q. As it appears on S-1, and then turned— A. South.

Q. —in a southerly direction on Park Avenue? A. That is right.

Q. I suppose you were on the right-hand side of Park Avenue? A. That is correct.

Q. Now, on that exhibit there appear three houses, Number 140, 144 and 148. Are you familiar with those three houses? A. I am not very familiar with them.

Q. All right. Now, I show you a photograph and ask you if you can identify that photograph,

the houses that appear therein? A. This would be—I believe this is the house that I carried the lady into, that is, the deceased.

Q. Will you be good enough to take a pen and make a "T," indicating your name, in front of the house you carried the lady in? A. Yes, sir. (The witness marks on photograph.)

Q. All right. Now, does that correctly portray the appearance of those houses as they were at that time? A. Yes, sir.

The Prosecutor: I would like to offer it in evidence.

Mr. Zabriskie: No objection.

The Court: It may be marked.

(Photograph marked Exhibit S-2 in evidence.)

Q. Now, Mr. Touhill, you said something about the house which you have indicated as "T" on this picture being the house you carried the lady into. Will you amplify that, please? A. Do you mean would I swear to it?

The Court: No.

Q. What did you see? A. Do you mean the whole story?

Q. Yes. You were driving on Park Avenue? A. I was driving south on Park Avenue with my wife, and I saw this lady lying on the sidewalk. So I told my wife some woman was lying there hurt, and we better stop and see what was the matter. So I stopped and got out, and I went over and spoke to the lady, and she was uncon-

scious, bleeding from the face and the ears. So I picked her up, and she did not answer. So I picked her up and put her in the back seat of my car. And when I did this she slightly regained consciousness. And she said—muttered something about friends, and pointed to that house there that I indicated I carried her into.

Q. That turned out to be the house of a Mrs. Hansen? A. That is correct.

Q. Then what did you do, sir? A. I carried her into that house, and they notified the police. I laid her on the sofa in there. First of all, when she was rational, I asked her if she wanted to go to the police or to the hospital. And she just said no, kept muttering about some two young fellows after her. So I thought possibly them people knew her, and my wife went up and knocked on the door. I believe Mrs. Hansen came to the door, and she came out and recognized this woman. So I carried her in and put her on the sofa there.

Q. What was her condition so far as any bruises were concerned? A. I would say that she had a lump on the back of her head, and the front of her face was bloody and bruised, and I would say that she was bleeding from the mouth and possibly from the ears.

Q. Now, Mr. Touhill, did someone help you carry her in the house? A. From the—from the car, I carried her in about to the steps, and then a fellow, another man, I believe, Mr. Popick,—

Q. Mr. Popick? A. Popick. He assisted me.

The Prosecutor: Is Mr. Popick in the court room?

(A man stands.)

Q. Do you recognize the gentleman? A. Yes, sir; that is him.

Q. Thank you.

The Prosecutor: All right, your witness, Mr. Zabriskie.

Mr. Zabriskie: No questions.

The Prosecutor: That is all, thank you, Mr. Touhill. Is Mrs. Touhill here?

The Witness: No. My two children are sick and my wife could not come. I am sorry, if the Court please.

The Prosecutor: All right.

(Witness excused.)

The Prosecutor: I will call Mr. Popick.

JOSEPH E. POPICK, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct examination by the Prosecutor:

Q. Mr. Popick, where do you live? A. Dumont, New Jersey, sir.

Q. What is your street address? A. Now, 42 Stanley Street.

Q. On January 14th of last year, where did you live? A. 144 Park Avenue.

Q. Now, does this picture S-2 show your house? A. Yes, sir.

Q. Which is your house? A. Right here (indicating).

Q. Will you be good enough to mark a "P" in front of your house? A. Right here (indicating).

Q. Mark it down in the roadway right here. This is your house, isn't it? A. That is the one right here (indicating).

Q. Mark it right down there. A. (The witness marks on photograph S-2.)

Q. Thank you. Now, do you recall the evening of January 14th, 1944, along toward eight o'clock? A. Yes, sir.

Q. What happened? A. Well, I went out to put the car in the garage across the street, and I saw Mr. Touhill trying to pick up this woman from the sidewalk, and he wanted to carry her into the home of Mrs. Hansen living one door down, 140.

Q. In other words, on the exhibit,— A. On the south of my house.

Q. Mrs. Hansen's house is on the left of your house? A. That is right.

Q. And your house is the house immediately next to it? A. Yes.

Q. Did you know the lady whom you were helping at the time? A. No, I did not.

Q. What was the condition of this lady? A. When we carried her in, her face was bleeding, and she had a lump on the back of her head, quite a few cuts or bruises around the face.

Q. Did you know the neighbors, the Hansen family? A. Very well.

Q. Did they know the lady? A. Oh, yes. They were quite friendly, and understood.

Q. And after you helped the lady who was hurt and bleeding into the house, did you make a telephone call? A. I called up the Police Department and spoke to Sergeant Corcoran.

Q. Never mind what you told him. A. I made the call.

Q. And then subsequently were you there when an ambulance came? A. Yes, sir.

Q. And the lady was removed in the ambulance? A. That is right.

The Prosecutor: Your witness, Mr. Zabriskie.

Mr. Zabriskie: No questions, your Honor please.

The Court: No questions?

Mr. Zabriskie: No, sir.

(Witness excused.)

The Prosecutor: I call Mrs. Hansen.

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

Direct examination by the Prosecutor:

Q. Mrs. Hansen, in January of last year, were you living at 140 Park Avenue, Dumont? A. I was.

Q. You live there yet? A. Yes, I do.

Q. On this Exhibit S-2, is this in front of which the gentleman marked a "T" your house? A. Yes.

Q. And the house next door marked "P" Mr. Popick's house? A. Yes.

Q. Were you acquainted with Mrs. Ethel Herrmann in her lifetime? A. Yes; quite a few years.

Q. Did you have an appointment with her on the 14th day of January, 1944, at your home? A. I did.

Q. Where did she live? A. On Lawrence Avenue, Dumont.

Q. That is on Lawrence Avenue near New Milford? A. Yes.

Q. And what was the appointment for, Mrs. Hansen? A. Well, a game of cards. Bridge we usually played.

Q. So you were expecting her around eight o'clock that night? A. Yes.

Q. Now, did something happen just around eight o'clock that night, Mrs. Hansen? A. Well, the door bell rang, and we were sitting there, and this Mr. Touhill came. He said there was somebody hurt outside, and he wanted to come into the house. She was going to visit us. I rushed out to the car and I saw it was Ethel Herrmann.

Q. It was Ethel Herrman who was hurt and in the car? A. Yes.

Q. And what happened? A. Well, when I recognized her, I ran in and told my sister, and she was acquainted with her too, and then we thought we had better bring her in. I sent the sister out to help take her in.

Q. What is your sister's name? A. Anna Pekarek.

Q. What is her last name? A. Pekarek.

Q. You and your sister live together? A. Yes.

Q. At 140 Park Avenue. And Mrs. Herrmann was helped into your house, is that correct? A. Yes.

Q. What was her condition? A. Well, it was pretty bad. She did not recognize me. She was quite bashed up.

Q. Where? A. On the left side of her head. And so we got her in and on the couch. And I ran out to look for the bag and I couldn't find it, and Mr. Popick—

Q. You ran outside to look around and see what you could find? A. Yes.

Q. And you did not find anything? A. Yes.

Q. And then the ambulance came and took her away; is that right? A. Yes.

Q. Did she get some immediate medical attention in your home? A. Well, we—one of the doctors, Sealey, I guess it was, came in and attended to her.

Q. Yes. All right.

The Prosecutor: That is all. Mr. Zabriskie?

Mr. Zabriskie: No questions, your Honor.

The Prosecutor: Thank you very much, Mrs. Hansen.

(Witness excused.)

The Prosecutor: Miss Pekarek, please.

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

Direct examination by the Prosecutor:

Q. Is it Miss Pekarek? A. Miss.

Q. You are the sister of Mrs. Hansen who just testified? A. Yes.

Q. You lived with her in January of last year at 140 Park Avenue, Dumont? A. (The witness nods head in the affirmative.)

Q. You better speak so the stenographer can hear you. A. Yes.

The Court: Answer so the stenographer may get it.

Q. And it was in that house that Mrs. Ethel Herrmann was brought about eight o'clock that night, was it not? A. Yes.

Q. Were you there, Madam? A. Yes.

Q. Were you one of the persons who expected to play cards with Mrs. Herrmann? A. Yes.

Q. I understand that was a custom of some standing that you were to play cards together? A. Yes; just an informal club.

Q. Now, was Mrs. Herrmann brought into the house in the manner that has been testified to? A. Well, just—just a little different. I think Mr. Touhill brought her in alone. I ran out to the car and helped him in; that is, I ran ahead and opened the doors, and he carried her in—

Q. Yes. A. —alone, as far as I remember.

Q. I see. Now, what was her condition? A. Well, she was very incoherent and crying. That

is,—well, she didn't exactly cry out, but she moaned quite a bit.

Q. What physical manifestation of injury did she show? A. Well, her face was quite covered with blood, and her hair was pretty well matted with it.

Q. Did she get some immediate first aid in your home? A. Well, a nurse from the neighborhood came in and took care of her until the doctor came, and then—

Q. What doctor came, if you please? A. Doctor Sealey, I believe.

Q. Doctor Sealey looked at her in your home? A. Yes.

Q. And then was she taken away in an ambulance? A. Yes.

Q. Did you accompany her in the ambulance? A. Yes.

Q. Where to, Madam? A. Holy Name.

Q. Holy Name Hospital in Teaneck? A. Teaneck.

The Prosecutor: Your witness, Mr. Zabriskie.

Mr. Zabriskie: No questions.

The Prosecutor: Thank you very much.

(Witness excused.)

The Prosecutor: Sergeant Joseph Mansfield.

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

Direct examination by the Prosecutor:

Q. It is now Lieutenant Mansfield, is that right? A. Correct.

Q. That is fine. You are connected with the Dumont police force? A. Yes, sir.

Q. And last January, you were Sergeant Mansfield? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. How long have you been on the police force there, Lieutenant? A. Over twenty-one years.

Q. Did you know Mrs. Herrmann before this accident? A. Yes, sir.

Q. What time did you get to the Hansen house the night of January 14th? A. Well, between eight-five and eight-seven.

Q. Is that as a result of an alarm, a call that was sent in to police headquarters? A. Yes; at eight-four the alarm came over.

Q. Did you go in the house? A. Yes, sir.

Q. Whom did you see? A. Well, I saw Mrs. Hansen, I saw Miss Pekarek, I saw Joe Popick, Mr. Touhill, and I saw Mrs. Herrmann laying on the couch.

Q. What was her condition? A. She was covered with blood, her entire face and side, left side of her head, just above the ear here, quite a lump on it. She was bleeding quite a lot. And Miss Pekarek was bathing it with towels.

Q. What search did you make in the neighborhood? A. Well, as soon as I gave orders for a doctor and the ambulance there, then I went out

and searched the neighborhood for anything I could find pertaining to this, and in front of 148 Park Avenue, I found the baseball bat.

Q. Is this the bat? A. Yes, sir; that is the bat.

The Prosecutor: I offer it in evidence.

Mr. Zabriskie: No objection.

The Court: Let it be marked.

The Prosecutor: It has got the same S-3 from the last trial.

(Baseball bat marked Exhibit S-3 in evidence.)

Q. Now, first, on S-2, do you recognize the Hansen house and the Popick house? A. Yes, sir.

Q. Can you indicate about where you found the bat? A. Yes, sir.

Q. Will you put an "M" for Mansfield about where you found the bat, please? A. I think last time you had a better picture. There it is out here, a little bit further, lying by this house. And I presume it is here.

Q. All right. We will find a better picture for you. Did you see any markings on the sidewalk in the neighborhood? A. Yes, sir; about eight stains of what I presumed to be blood.

Q. Did it have the appearance of blood? A. Yes, sir.

Q. Were you present when a photograph was taken of that blood indication? A. No, sir; I was not.

The Prosecutor: Well, can we agree that this is the picture of the sidewalk?

Mr. Zabriskie: Yes. No objection.

The Prosecutor: Marked as a photograph of the sidewalk, in evidence, please.

(Photograph marked Exhibit S-4 in evidence.)

Q. Lieutenant, counsel have been good enough to agree that this is a picture of the sidewalk in front of the premises. I ask you if the spot on S-4 indicates the position where you saw blood stains? A. Yes, sir; right here (indicating).

Q. Indicating the stains which appear in the center of the photograph. I show you another photograph and ask you if this is the one that you say enabled you to place the bat better than the other one? A. No, sir.

Q. No? A. No, sir. This photograph you just showed me here with blood stains is perfect.

Q. Oh, you can show the bat on that? A. Yes, sir.

Q. I show you another photograph and ask you if that is the intersection of New Milford and Park? A. Yes, sir; right here (indicating).

Q. And it is taken looking toward New Milford from the southerly— A. Looking north.

Q. Looking north? A. Yes, sir.

The Prosecutor: May I have that marked?

(Photograph marked Exhibit S-5 in evidence.)

Q. Now, referring back to S-4, you say that you can place the bat in relation to the blood stains? A. Yes. sir.

Q. Will you do that with the initial of your name, Lieutenant? A. Yes, sir. (The witness marks on photograph.)

Q. So that the bat was in from the sidewalk a distance of how far, would you say? A. Approximately seven feet; six or seven feet.

The Prosecutor: Your witness, Mr. Zabriskie.

Mr. Zabriskie: No questions, your Honor.

The Prosecutor: Thank you, Lieutenant.

The Court: That is all, Lieutenant.

(Witness excused.)

The Prosecutor: I call Mrs. Suzanne Reynolds.

(The witness does not respond.)

The Prosecutor: I will call Captain Allmers.

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

Direct examination by the Prosecutor:

Q. Captain, you are connected with the Dumont Police; is that right? A. I am; yes, sir.

Q. And you were a Captain there in January 1944? A. I was.

Q. Do you remember the occasion January 14th? A. I do.

Q. Had you known the defendant Deegan before that time, Captain? A. I did.

Q. Did you know Mrs. Ethel Herrmann before that time? A. I did.

Q. What time did you get to the Hansen home? A. The first time, just as the ambulance was leaving, about twenty after eight.

Q. Now, did you make a search of the neighborhood that night and find some things? A. I did.

Q. Now, I show you a photograph and ask you what that represents? A. The Dumont railroad station.

Q. All right.

The Prosecutor: I would like to have it marked.

(Photograph marked Exhibit S-6 in evidence.)

Q. Now, I show you another photograph and ask you what that represents? A. That is the westerly side of the railroad tracks, taking in the railroad station and north of the railroad station.

Q. Looking from north to south, is that right? A. Looking from north to south is correct.

Q. Looking toward New York? A. Yes, sir.

(Photograph marked Exhibit S-7 in evidence.)

Q. I show you another photograph, Captain, and ask you what that represents? A. That is a hollow north of the railroad station approximately several hundred feet, taking in—taking

in the scene of where the contents of the purse or pocketbook and personal belongings of the late Ethel Herrmann were found by Officer Hamilton and myself after the crime had been committed.

Q. Yes, sir. Now, where is this in relation to the railroad tracks that we just saw on Exhibit S-7? A. In relation to the railroad tracks, this is the westerly part of the platform along here, on the westerly side of the railroad tracks.

Q. Indicating a fence line at the upper portion of the photograph? A. Yes. That is the platform used by railroad commuters to and from boarding the trains.

Q. So do the railroad tracks lie parallel to the fence line and easterly therefrom? A. They do, yes.

The Prosecutor: I will have that marked.

(Photograph marked Exhibit S-8 in evidence.)

Q. Now, referring to S-8, was there something you found at a point that you can indicate on that photograph? A. Yes.

Q. What was it, sir? A. On this particular photograph, the second object—would indicate the second and third object that we found, but not the first object.

Q. All right. Will you state the second and third object, sir? A. Alongside of this square pole, we found an envelope used to—a photographer's envelope used to place the developed and undeveloped films inside of it, next to this square post here.

Q. I show you an envelope and ask you if that envelope and its contents are the things you refer to as having been found? A. This envelope itself.

Q. With the contents out of it? A. With the contents out of it, yes.

Q. I see. All right.

The Prosecutor: I would like to have the envelope marked.

The Court: No objection?

Mr. Zabriskie: Not the envelope. I do not see any use of the contents going in. There is no question of identity in this case.

(Envelope marked Exhibit S-9 in evidence.)

Q. Will you indicate on the Exhibit S-8 where the envelope was found by putting your initial "A"? A. (The witness marks on photograph.)

Q. Now, you suggested something else was found, Captain? A. Right this side of the rock, was a lady's pocketbook and a small inside pocketbook ladies usually carry, and eight or ten developed and undeveloped films that I recognized as the intimate families of the late—the late Ethel Herrmann.

Q. I show you this lady's purse and ask you if that is the pocketbook that you refer to? A. That is the pocketbook we found just this side of that stone or boulder.

Q. And this wallet, is that the insert? A. No, sir.

Q. No? A. There is a small pocketbook, I believe, that was inside of it. This here pocketbook was lying open, and this here was lying open alongside of it, along with those developed and undeveloped films.

The Prosecutor: I would like to have the pocketbook and the purse marked as one exhibit.

(Pocketbook and purse marked Exhibit S-10 in evidence.)

Q. Now, will you be good enough to mark on the Exhibit S-8 "A-1" indicating the place where you found the pocketbook and the purse? A. Yes, sir. (The witness marks on photograph.) Maybe I ought to make that larger.

Q. Yes. Make that "A" larger. A. (The witness marks on photograph.)

Q. Then, mark this one "A-1." A. (The witness marks on photograph.)

Q. Now, I understand you to say that at the point "A-1" you also found some films and developed photographs? A. Yes, sir; developed and undeveloped.

Q. And are they the films and photographs that are here in this envelope, sir? A. Yes, sir.

Q. And you say you recognize the family of the late Ethel Herrmann as being portrayed by these pictures? A. Yes, sir.

The Prosecutor: May they go in evidence without a separate number, if your Honor please?

Mr. Zabriskie: I do not see the mate-

riality of this. There is no question of identity in this case.

The Court: I will allow that.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: That will be marked as a separate—I think, in view of the objection, you had better mark them as a separate entity, Mr. Winne.

The Prosecutor: Yes.

The Court: Take some other envelope.

The Prosecutor: Yes; get a plain envelope.

(Photographs and films marked Exhibit S-11 in evidence.)

Q. How long a time did it take to find these articles that are marked in evidence? A. I would say about two hours.

Q. Well, that takes it down to some time after ten o'clock that same evening? A. No. It was later than that. About eleven, if I recall; about eleven-twenty; eleven-twenty when we found those articles, and just about three hours and twenty minutes after the crime had been committed.

Q. You were making the search with Officer Hamilton, you say? A. Yes, sir.

Q. It was dark. How did you proceed to search?

A. Well, Officer Hamilton and myself proceeded on foot, trying to find some evidence or something that we could connect the crime up with, and after proceeding on foot for approximately three hours or more with a flashlight, in and out through fields and private property, and what not, we finally came on the contents, as has been explained.

Q. Now, that same night, did you do anything else toward finding the person who perpetrated this crime? A. Yes, sir.

Q. What did you do next? A. We immediately —we then called up the Prosecutor's office, and Lieutenant Allyn came up and we attempted to lift prints from the contents that we had found, but were not successful in lifting any prints. We then came back and I visited the home of Mrs. Reynolds, whom I had heard that the defendant Deegan—

Q. Yes. Well, you should not tell us what someone told you. You had some reason to go to the home of Mrs. Reynolds, and you went there; is that correct? A. That is correct.

Q. And you learned something there which caused you to proceed on that information somewhere else? A. That is correct.

Q. Where did you go after you got some information from Mrs. Reynolds? A. We continued on with the investigation, and then decided that the defendant Deegan was the man that we wanted relative to the crime committed. And on Sunday morning, January 16th, about one A. M., I observed the defendant Deegan,—at least, I thought it was him—entering a restaurant on Forty-second Street just east of Eighth Avenue.

Q. Well, now, Captain, there is quite a gap of time, around midnight or thereabouts Friday. Your suspicion was directed to the defendant Deegan, is that correct? A. That is correct.

Q. Did you do something to identify the Exhibit S-3 as having some relationship to Deegan? A. Yes, sir; we did.

Q. What was that? A. That Saturday morning, Lieutenant Allyn and myself, we interviewed a member of the Deegan family.

Q. At that time, did you have the bat with you? A. Yes, sir.

Q. And from the result of that interview, you had reason to believe that Deegan might be implicated, is that correct? A. Pretty well definite information; yes, sir.

Q. Now, acting on that, I assume you started to hunt for Deegan, is that right? A. That is correct.

Q. You had some reason to think he might be in the neighborhood of Forty-second Street, New York City? A. We had—we had a reason, and we didn't have a reason. We took a chance of finding him in New York City.

Q. At any rate, you did proceed on Saturday the 15th of January, 1944, to the vicinity of Forty-second Street and Broadway, in that general vicinity. And when you say you proceeded, who went with you? A. Officer Hamilton.

Q. Allyn? A. Yes, he came; Lieutenant Allyn came later.

Q. What time did you get to New York? A. We—Officer Hamilton and I left Dumont around six o'clock Saturday night and got in New York about seven P. M.

Q. That is seven o'clock in the evening on Saturday? A. That is correct.

Q. And it was about one o'clock the following morning that you saw Deegan, is that right? A. Sunday morning; yes, sir.

Q. What did you do between seven o'clock Saturday and one o'clock A. M., Sunday? A. We had information that they might board a bus and go to Boston. So we covered all of the Boston terminals, bus terminals, and we also covered—that is, went in and visited different—all types of taverns, roadhouses, taverns, poolrooms, restaurants, subway holes, and any place where anybody might want to hang out.

Q. That is how you used up this time. And, finally, where were you when you saw the man you suspected to be Robert Deegan? A. That particular time, I happened to be sitting in my car, and I observed a man walking in this restaurant who I thought looked like the defendant Deegan.

Q. And it turned out to be him? A. It did.

Q. What restaurant was that? A. That was at Rudley's Restaurant on West Forty-second Street. About 229 is the address.

By the Court:

Q. And what time was that? A. Around one o'clock Sunday morning, January 16th.

By the Prosecutor:

Q. What did you do, Captain? A. As I walked in the restaurant, the restaurant was a type where

they just had—this was a stool restaurant, no tables. The restaurant was filled and numerous people waiting to occupy a stool. As I got about half-way into the restaurant, I observed the defendant Deegan standing to the extreme rear of the restaurant. By his manner, he appeared that he observed me, and stepped back in an alcove to the rear of the restaurant. I proceeded back to the rear and reached back, and I told the defendant that this was different than the type of an arrest than he had been arrested previously. And, with that, I asked immediately where his boy friend was.

Q. At that time, were you aware that there was a second person in the affair? A. Yes, sir.

Q. And you were looking for the second person? A. And also two girls which we were—who, through our investigation, we were informed that they would be—

Q. Now, were you able to make the arrest of the second man and the two girls? A. I asked the defendant Deegan immediately who was his boy friend, or where his boy friend was, and he pointed out the other previous defendant.

Q. That is Martin Hoffman? A. Martin Hoffman.

Q. You arrested him right then and there? A. I arrested him.

Q. And did you arrest both of the girls? A. No. I brought those two outside, and Officer Hamilton who was covering the outside, I brought him out, and Officer Hamilton on the outside then frisked Hoffman and Deegan. And we then connected up with two New York men who were

working on a case of their own just up the street, and we took them up to the Eighteenth Precinct.

Q. Now, you have not got either of the girls, heretofore? A. No, sir.

Q. Now, besides saying to Deegan in substance, "This is a different kind of an arrest," did you have any conversation with Deegan at the time you arrested him? A. I did.

Q. What did he say? A. At the time of the arrest, I informed him that he was being arrested for something different than what he had been arrested for previously. He said, "I know it," and he said, "I guess the jig is up." Then we brought him up to the Eighteenth Precinct, and there I had a further conversation wth him.

Q. Well, before we go into the detailed statement, did he say anything at all about this offense that we are trying him for? A. Not at that particular time.

Q. When was the first time he made reference to a woman being hit? A. That was immediately after we arrived at the Eighteenth Precinct.

Q. What was that conversation, now? A. The defendant Deegan asked how was that woman.

Q. Up until that time, had you said anything about a woman? A. No, nothing at all.

Q. And you had not told him for what he was being arrested except it was something different? A. Different from what he had been arrested on previously.

Q. What did he say? A. He said how was that woman.

Q. What did you say to him? A. And I said, "What woman?"

Q. What did he say? A. He said, "That woman we hit on the head with the baseball bat." And I asked him, "What woman?" And he said, "That woman up on Park Avenue."

Q. And this was said at the time you were in the Police Headquarters in New York City? A. That is correct.

Q. Now, who was present when that happened? A. Officer Hamilton and myself.

Q. Now, at that time, had you separated Hoffman from Deegan? A. Yes, I had.

Q. Up until that time, was Mr. Allyn in the picture? A. No. But, later, he also made a further statement in the presence of Lieutenant Allyn and myself.

Q. Now, that I am coming to. How late in the morning was it before Lieutenant Allyn and you took the detailed statement from Deegan? A. I presume about half past two or three o'clock.

Q. And where was that statement taken? A. That was in one of the offices, Detective Bureau, the Eighteenth Precinct, Fifty-fourth Street.

Q. Now, Captain, did you or Lieutenant Allyn, or anybody in your presence, make any inducement to Deegan to get him to talk, any promise, or anything of that sort? A. None whatsoever.

Q. Did you or Mr. Allyn or any person make any threat to Deegan as to what would happen to him if he did not talk? A. No, sir.

Q. Any violence of any kind used by anyone in your presence on Deegan? A. None whatsoever.

Q. Did he say those things that he said to you without urging, completely voluntarily? A. He did; yes, sir.

Q. Now, tell us what he said. A. He again immediately asked, how was that woman. He—Mr. Allyn told him that the woman was in pretty bad shape. We then asked him what had happened, what had occurred. And he told us that he needed money; that he and Hoffman had committed this crime; that he had with Hoffman left the railroad station, where they had been, up at Sue Reynolds' home up until four-thirty.

Q. Just say that again, please? A. They had been at Sue Reynolds' home up until four-thirty, and then they took the girls over to the Dumont railroad station, and then proceeded with Hoffman to the home of his parents, where he went to look for some kind of an object to use in the proposed robbery. When he went to the home in the back, under the rear porch, he said he found a baseball bat. He said he put this baseball bat under his coat, and then he and Hoffman proceeded down to the vicinity of Maple Avenue. That is the dividing line of Dumont and Bergenfield. And that they had come across a victim, a man. They changed their mind and came on back to the Dumont railroad station, where he, Deegan, or Hoffman, either he or Hoffman, got a pair of grey gloves from one of the girls, and that they then proceeded from the railroad station down to McKinley Avenue, through McKinley Avenue to Prospect Street, and when at the corner of Prospect Street and McKinley Avenue, they observed a woman walking north, and they started to follow that lady, but she went in on one of the side streets.

Q. Now, Officer, it might be a little help to the jury if you referred to this Exhibit S-1. The

railroad station is here on this exhibit, is that correct? A. I think I will have to come down.

Q. That is all right; come down here. A. You will have to help me.

Q. This indicates the station? A. That is correct.

Q. Now, Prospect Avenue is here; this is the intersection of Prospect and New Milford? A. That is correct.

Q. Now, on this map, they proceeded, you say, from the railroad station to McKinley, which is indicated here? A. That is right.

Q. And up to Prospect, which is not projected, is that right? A. That is right.

Q. And then on this Prospect, you say they saw a lady? A. A lady.

Q. All right, go back and take the witness stand, please. A. (The witness resumes the stand.)

Q. What happened to that lady? A. According to what the defendant Deegan stated, she went up a side street, and they left her go. Then they proceeded north on Prospect Street to New Milford Avenue, where they observed the late Ethel Herrmann walking east on New Milford Avenue, and that he, the defendant Deegan, asked the late Ethel Herrmann, the name of some street. She told them that she did not know the name of the street, and she continued on, and they followed her.

Q. Now, I have on this map the intersection of Prospect Avenue and New Milford Avenue. Did Deegan tell you with any detail where it was he spoke to Ethel Herrmann? A. No. He said at the intersection there of Prospect and New Milford Avenue.

Q. You do not know whether it was on the north side or the south side of New Milford? A. No, I do not.

Q. At any rate, he spoke to her and asked her some question and she replied. And then what happened? A. She continued on her way east along New Milford Avenue to Park Avenue, where she turned south on Park Avenue, where Deegan stated that he brought the bat down on her head.

Q. What did he say he did after that? A. Then he stated that as she fell he threw the bat away and picked up the pocketbook, and they ran north on New Milford Avenue to the railroad tracks and down the railroad tracks, where they stopped and took the contents—down the railroad tracks near the railroad station, he stated, where they stopped and they took the contents from the pocketbook.

Q. Did he state what— A. And that he, Deegan, gave Hoffman the $4.35 that was in the pocketbook, and the rest of the contents he kept.

Q. What was the rest of the contents that he said he kept? A. At that particular time, I was not aware. I did not ask him. I later found out.

Q. Now, at that time, did Deegan say anything to you about any hallucinations, any voices, or any other person being there except Hoffman? A. No, sir.

Q. He did not say to you he heard some strange voices talking to him, and some strange impulse made him do this? A. No. He did not say anything like that.

Q. He just made a clean breast, as you have stated? A. Yes, sir.

Q. Now, back at the railroad station, what happened then? A. He said they went out then to Madison Avenue, and then west on Madison Avenue to Johnson Avenue, where the two boys—I am going ahead there. He said, at the railroad station, one of them knocked at the window and motioned to the two girls to come out, and they proceeded to Madison Avenue by way of Cortland Avenue, through Johnson Avenue, and then south on Johnson Avenue to Maple Avenue; from Maple Avenue east to Washington, and south on Washington, down a ways, where they boarded a New York City bus and went to New York.

The Prosecutor: You may examine the witness, Mr. Zabriskie.

Cross examination by Mr. Zabriskie:

Q. That place where you say they spoke to Mrs. Herrmann is at the corner of New Milford and Prospect. They had an arc light there, didn't they, or some kind of an electric light? A. Yes. That street is fairly well lit up.

Q. That is pretty well lit up? A. Yes, fairly well.

Q. The spot where they spoke. You have been associated with the Dumont Police Force for how many years, Captain? A. Pretty near 22 years.

Q. Pretty near 22 years. Do you remember once or twice or oftener saying to either Mr. or Mrs. Deegan that this boy ought to be taken to a psychiatrist to be examined?

The Prosecutor: Well, I do not think that is proper cross examination. I have no particular objection to the witness an-

swering the question, except it certainly is not cross examination.

The Court: Do you—

The Prosecutor: No. I withdraw the objection. I won't press it.

Q. Just answer that yes or no. A. Yes, I have.

Q. Yes. That is all. That was long before this crime was committed? A. That is correct.

By the Prosecutor:

Q. That was because he was an habitual criminal, is it not, Captain? A. That is right.

Q. And he made a lot of trouble for you and the Police—

Mr. Zabriskie: Now,—

Q. —in Dumont for a long period of time? A. That is right.

Q. And you thought that kind of person ought to be looked at? A. I thought they ought to find out what was wrong with him. And I understand after they took him.

Q. And that is the reason you said this arrest is a different kind of arrest from the others? A. That is right.

The Prosecutor: That is all.

By Mr. Zabriskie:

Q. You knew for a long time there was something wrong with his mind?

The Prosecutor: I object to that.

The Court: I will sustain the objection. That calls for a conclusion.

By the Prosecutor:

Q. Are you the officer who took this knife from Mrs. Reynolds? A. Yes, sir.

Q. All right.

The Prosecutor: I had intended to call Mrs. Reynolds first. I would like to have—I am going to connect it up. Have you any objection to it going in evidence, Judge Zabriskie?

Mr. Zabriskie: No.

Q. I show you a knife and ask you where you got that from? A. From Mrs. Reynolds at her home.

The Prosecutor: I would like to have it marked in evidence.

(Knife marked Exhibit S-12 in evidence.)

The Prosecutor: Have you finished with the witness?

Mr. Zabriskie: Yes.

The Prosecutor: Thank you, Captain.

(Witness excused.)

The Prosecutor: I will call Mrs. Reynolds now.

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

Direct examination by the Prosecutor:

Q. Do you feel all right, Mrs. Reynolds? Do you want a glass of water? A. (No audible response.)

Q. Where do you live now? A. (The witness cries.)

The Court: Take your time, Mrs. Reynolds. We have got all day.

Q. Where do you live now, Mrs. Reynolds? A. I live in Red Bank.

Q. And last January, 1944, where did you live? A. I lived in Dumont.

Q. That is on Railroad Avenue near the Dumont station? A. 136 Cortland Street.

Q. Yes. It is close to the railroad station, isn't it? A. Yes, it is.

Q. Now, you knew Deegan before January 14, 1944, Mrs. Reynolds? A. Yes, I did.

Q. And when did you first see him on that day? A. I saw him in the morning on Madison Avenue while I was standing in the cleaner's.

Q. Was he alone? A. No, he wasn't. He was with another boy, this Hoffman.

Q. Which turned out to be Hoffman? A. Yes.

Q. At that time, the girls were not with him? A. No.

Q. Did they have some talk with you because of which he went to your home? A. Yes, he did.

He asked if he could come to my home, and I said,—"Well," I said, "You can, but" I said, "My husband is not home."

"Well," he said, "We are not ready. We have two girls. They are down at my parents' home."

Q. But because of your old acquaintance with him, you permitted him to go with his three friends to your home? A. That is right.

Q. And they were at your home when you arrived there sometime later, is that right? A. Yes. I had gone up to the store first.

Q. What time would you say it was that you arrived at your home and found all four of them there? A. About quarter to twelve, quarter to twelve, noon time.

Q. That is on January 14th? A. Yes.

Q. Now, as I understand it, the girls stayed continuously at your home until they left to get— A. Yes, they did.

Q. But the boys left on one or more occasions, and returned? A. Yes.

Q. And, finally, all four of them left? A. Yes.

Q. What time was it that all four of them left? A. They left about, approximately, four o'clock.

Q. Did you have some conversation with Deegan during this period of time concerning his relationship with the girls? Who was his girl friend? A. Yes. Carolyn Twing.

Q. What was that conversation? A. He said he intended to marry her. And I said, "Well, do you really think you ought to?"

And he said, "Yes, I think I have her in trouble."

I said, "What kind of trouble?"

He said, "Well, I think I have her in a family way."

And I said, "How long have you known her?"

He says, "About a week." And I laughed at him.

I said, "That is not possible."

He said, "I have been to a doctor." And it made me laugh even more.

And he said, "Well, I have her in trouble, and I am desperate. I don't know what to do."

Q. He said he was desperate? A. Yes.

Q. He did not know what to do? A. Yes.

Q. Now, some time during the time they were at your home, did you obtain this Exhibit S-12 from Robert Deegan? A. Yes, I did.

Q. Will you tell us the circumstances under which you obtained that knife? A. Well, he left my home with Hoffman, and they come back, and they both brought eggs with them, because I told them I couldn't feed them. So they brought eight eggs back. Each of them had two eggs in their coat pocket; and they put the eggs on the kitchen table.

Then he walked inside, and he acted very suspicious. He had been nervous all the time he had been there. So he walked into the bed room, and I walked in there and asked him what was the matter. He says, "Nothing." He says, "I have something, but I don't know whether I should show it to you or not."

I said, "Yes, you can show it to me, anyway."

So he opened his coat, and he had the knife in his inner coat pocket.

Q. You saw it in his inner coat pocket? A. Yes. I saw the blade. And I said to him, "Let

me see it, Bobby." And I said to him, "I don't want anything to happen here in my home, because I have three small children here." And I didn't want an accident to happen.

Q. Did you get the knife away from him? A. Yes. He handed it to me. There was no struggle. I said I would like to have it, and he gave it to me.

Q. Now, you lived in this home at that time with your husband and family? A. That is right.

Q. And since then you have moved away? A. Yes.

Q. You are still living with your husband— A. Yes.

Q. —and family? You said that Deegan said Carolyn was in a family way? A. Yes. And he was desperate; he didn't know what to do.

The Prosecutor: Your witness, Mr. Zabriskie.

Cross examination by Mr. Zabriskie:

Q. Did he seem to be desperate because he thought he had this young lady pregnant,— A. Yes.

Q. —so far as you could tell, at that time? A. Yes.

Q. And was Hoffman right there too when he was talking about having the knife? A. Yes.

Q. Do you recall Hoffman saying, "Don't give her the knife," or something like that? A. Well, he said something. I don't recall just what he said.

Q. But he kind of said, "You hold onto it," or something like that, did he? A. No. He just

said to Bobbie, "Can you trust her?" And, with that, no more was said.

Q. I see. Now, of course, you had known him for quite a long while, hadn't you? A. Yes, I had.

Q. And you did not have any fears of him of any kind, did you? A. No. I have no fear of Bobbie at all.

Q. In fact, he used to like your children, and your children used to like him; isn't that so? A. Yes, very much.

Q. And he used to pay a lot of attention to your children? A. He liked to play with them and talk to them, and they liked him and he liked them; but, I don't know, they didn't treat him any different than they treated anybody else who liked them.

Q. Don't you remember saying in the former trial that he always seemed to like my three children? A. Yes. He did like them.

Q. Those children were, one eight and a half at that time, and one was six, and one was four and a half? A. That is right.

Q. And you did not have any fears of his being alone with these two girls and this other young man with your three children, did you? A. No.

Q. In fact, it was quite a while before you eventually got back home that day? A. Yes. I was gone about a half an hour.

Q. But you did notice then, did you not, that he was twitching his face and lowering his lip and making kind of funny expressions with his face? A. Well, I noticed it. He usually did that, anyway, when anything bothered him.

Q. So his face was twitching, was it? A. Yes.

Q. And his lips were making certain motions that you noticed? A. No; just one characteristic that he had; but I couldn't—I couldn't demonstrate it at all.

Q. I do not want a demonstration. A. Well, I couldn't do it if I wanted to.

Q. Well, his face was twitching and he was making some movements with his lips which ordinary people do not make, isn't that so? A. Well, I don't know. Everybody has something about them.

Q. Well, his face was twitching, wasn't it? A. Well, he had this one characteristic as though something bothered him.

Q. You were in court before, weren't you? A. Yes.

Q. And at that time, "Bobby had a way of twitching his face and lowering his lip, and I knew something was bothering him." That is what you testified to before? A. Yes.

Q. And that is so? A. Yes.

Mr. Zabriskie: I think that is all.

Redirect examination by the Prosecutor:

Q. Mrs. Reynolds, your little girls did not have any money on their person, did they? A. They certainly did not.

Q. You did not have any money in the house when you left these boys in the house? A. I didn't let them in. My little girl let them in, and there was no money there at all.

Q. You would have been quite different in your attitude if there had been money around? A. I

don't know. I had money around, and I wasn't suspicious of Bobbie.

Q. Certainly. This time you had no money that your little girl had to worry about? A. No.

The Prosecutor: That is all, thank you.

Recross examination by Mr. Zabriskie:

Q. You would never hesitate to trust this man, money or no money, isn't that so?

The Prosecutor: Objected to.

The Court: Sustained.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Prosecutor: That is all.

(Witness excused.)

The Prosecutor: I will call Officer Hamilton.

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

Direct examination by the Prosecutor:

Q. Mr. Hamilton, you are connected with the Dumont Police Department? A. Yes, sir.

Q. And were so in January of last year? A. Yes, sir.

Q. Now, were you in the company of Captain Allmers who has testified earlier in the afternoon? A. Yes, sir.

Q. Did you accompany him when the search was made that he described when he was on the witness stand? A. Yes, sir.

Q. Some of the things that were testified to, I understand he found; and some of the things you found,— A. Yes, sir.

Q. —is that correct? A. That is correct.

Q. But, in substance, what he said is what you would say if I went over the same testimony with you, is that right? A. That is correct.

Q. Now, did you also go to New York with Captain Allmers on the following afternoon, Saturday? A. I did.

Q. And, in order to be brief, I won't go over the same thing with you, but is what Captain Allmers said, what transpired while you were in New York? A. That is true; yes, sir.

Q. Were you present when the arrest was made? A. Yes, sir.

Q. Did you hear the conversations that have been testified to by Captain Allmers? A. Well, not the statement that was taken in the New York Police Department.

Q. You were not present— A. No.

Q. —when the statement was taken? A. No.

Q. But, in general, the arrest was made in the manner that Captain Allmers described? A. That is correct.

Q. And then the men were taken to Police Headquarters and the statement was taken; but you were not present? A. That is right.

The Prosecutor: Your witness, sir.

Cross examination by Mr. Zabriskie:

Q. You walked right into Rudley's and arrested him without any trouble of any kind, isn't that so? A. I covered the outside and the Captain went in and saw them in there, and he went in and brought them out, and I frisked them.

Q. Did you see him go in? You saw the Captain go in? A. Yes, certainly.

Q. And you saw Deegan in there? A. That is right.

Q. And he walked right up to Deegan without any trouble? A. Well, Deegan went to the back.

Q. Well, it is all a great big square room? A. No. There is a little alcove in the back.

Q. Well, he did not try to get away? A. I do not think so.

Q. No.

Mr. Zabriskie: That is all.

The Court: That is all, Officer.

(Witness excused.)

The Prosecutor: I will call Mr. Allyn.

NATHAN H. ALLYN, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct examination by the Prosecutor:

Q. Mr. Allyn, you are a detective attached to the Office of the Prosecutor of the County of Bergen? A. Yes.

Q. And have been for a great many years? A. Yes.

Q. And were on January 14th, 1944, when this crime was committed, were you not? A. Yes.

Q. Now, you went up to Dumont sometime after you were called by the Dumont Police to help them in the investigation; is that correct? A. I did.

Q. Were you with Captain Allmers when Deegan was interrogated in the Police Headquarters in New York City on Sunday morning? A. I was.

Q. And is that which Captain Allmers testified to in court substantially as you recollect what was said by Deegan? A. It is.

Q. In particular, did Deegan at that time make any reference to any voices of persons not present talking to him at the time of the crime? A. He did not.

Q. Did he say in substance, or effect, that he heard his dead grandmother say, "You are doing wrong," or anything of that kind? A. He never mentioned it.

Q. Did he say that he felt some unseen force pulling his arms down when he struck Mrs. Herrmann that day? A. He said nothing about it.

Q. He told the story just as Captain Allmers told it? A. Yes.

Q. Was any promise or threat made to him in order to get him to talk? A. There was not.

Q. Anybody touch him or lay any physical violence to him in any way? A. They did not.

Q. Now, did he come voluntarily to New Jersey when he was turned over to you in New York City? A. Yes. In the Felony Court in New York City, he waived extradition and came over.

New Jersey State Library

Q. You had some formal arraignment? A. He signed a waiver and came over.

Q. Came over with you? A. Yes, sir.

Q. And when did you get back to Hackensack? A. On Tuesday, which would be January 18th, 1944, we came in to the Court House, Hackensack, at exactly twelve o'clock.

Q. That was twelve o'clock noon? A. Yes.

Q. Oh! So that he was kept in custody in New York from Sunday until Tuesday while you went through the legal machinery to get him back to Jersey? A. That is correct.

Q. Now, when he was brought to Hackensack, was a formal written statement taken from the defendant Deegan? A. There was.

Q. By whom? A. Mr. Mehler questioned him, and Mr. Mehler was then one of the assistant prosecutors. I was in the room, and Mr. Robinson, who is now taking the notes, was—took down the—transcribed the statement.

Q. In other words, Mr. Robinson, who is reporting the case today? A. That is true.

Q. Is the person who took the testimony? A. The same man.

Q. On January 18th, took the confession on January 18th.

The Prosecutor: I am going to offer the paper. Have you any objection?

Mr. Zabriskie: That is the confession?

The Prosecutor: That is the confession signed by Deegan.

Mr. Zabriskie: No. No objection.

Q. I show you this paper signed "Robert Deegan," and witnessed, "Nathan H. Allyn," and

ask you if that signature was made in your presence? A. It was made in my presence.

Q. And witnessed by you? A. As a Notary Public.

Q. All right.

The Prosecutor: I offer it in evidence.

The Court: It will be admitted.

(Paper marked Exhibit S-13 in evidence.)

Cross examination by Mr. Zabriskie:

Q. Mr. Allyn, you say he did not say anything about why he did it? He did not tell you; but did you ask him any questions that would tend to indicate to him that you were inquiring as to whether he had hallucinations or anything of that sort? A. I did not ask him anything about hallucinations, Judge, and he mentioned none to me.

Q. So you did not put to him any question about—anything that would bring forth an answer about hallucinations then? A. Nothing was said about hallucinations.

Q. And, as a matter of fact, did you ask him why he did it, or what caused him to do it, or anything of that sort, which would bring forth any answer along the lines of what the Prosecutor has interrogated you about? A. Well, he was short of money. He intimated that he needed money.

Q. Did you put any question to him about—you did not deal at all with the subject of hallucinations? A. No. I did not.

The Court: This is the confession you are going to read to the jury?

Confession of Defendant, Deegan, Read into Record—for State

The Prosecutor: Yes, sir.

(Reading Exhibit S-13 in evidence.)

"ROBERT DEEGAN, in answer to questions, states as follows:

By Mr. Mehler:

Q. Now, Bob, my name is Mehler, as you know. A. Yes.

Q. And you know Lieutenant Allyn and Mr. Dietrichs. I am going to ask you some questions in connection with this crime that you are charged with. A. Yes.

Q. And you do not have to answer them if you do not want to. A. I will answer whatever I can.

Q. But any statement you make has got to be voluntary, with the understanding that in the event there should be a trial, anything you say can be used against you. A. Yes.

Q. Now, what is your full name? A. Robert Phillip Deegan.

Q. And how old are you, Bob? A. Twenty-six.

Q. Are you married or single? A. Single.

Q. And where have you been living? A. Well, I have been living in quite a few different places in New York.

Q. You have been living in New York City? A. Since I have been discharged from the Army.

Q. When were you discharged from the Army? A. July 3, 1943.

Confession of Defendant, Deegan, Read into Record—for State

Q. Where were you discharged? A. Fort Meade, Maryland.

Q. How long were you down there? A. Fourteen months.

Q. Why were you discharged from the Army, Bob? A. Well, I believe it was my own fault that I was discharged. I think it was for being AWOL and not getting myself down to their way of thinking.

Q. Yes. Now, after you were discharged from the Army, where did you go? A. I came right up to New York.

Q. You have been in New York ever since? A. Yes, outside of a couple of times I went up to see my folks.

Q. Now, where did you live in New York? A. Well, I lived at 101 West Forty-fifth Street; I stayed at the Hotel Lincoln a couple of times, and I was staying at 303 West Fifty-fourth Street, and the Mills Hotel on West Thirty-sixth Street. I stayed in the Roxy one night.

Q. Yes. Where were you staying on the 14th, last Friday? A. Last Friday, we didn't have a room at that time.

Q. Where had you stayed the night before? A. The night before we stayed in the Hotel Roxy.

Q. You just stayed there that one night? A. That is all.

Q. Who stayed there with you, Bob? A. Hoffman.

Q. That is Martin Hoffman? A. Martin Hoffman, and the two girls.

Q. That is Ruth Oberempt? A. And Carolyn Twing.

Confession of Defendant, Deegan, Read into Record—for State

Q. How many rooms did you have? A. We had two rooms, sir.

Q. You and Carolyn— A. Yes, sir.

Q. —occupied one? A. That is right.

Q. And Martin and Ruth the other, is that right? A. That is right.

Q. How did you register? A. Man and wife.

Q. Your right names? A. I used my right name, yes.

Q. Did Martin use his, do you know? A. He did.

Q. Now, since you were discharged from the Army, have you been working? A. Yes; I was working.

Q. Whereabouts? A. I was working for the Continental Shipyard in Brooklyn as a short order cook over there.

Q. When did you get that job? A. Oh, I got that in—a couple of months ago.

Q. And how long did you work there? A. Well, I worked there for him about six weeks, and before that I was working for the New Cadillac Restaurant on Broadway between Forty-second and Forty-first Street.

Q. How much were you making as a short order cook? A. I was making $28.00 in both places.

Q. Now, how long have you known Martin Hoffman? A. I have known him for about a month or two.

Q. And where did you meet him? A. In New York.

Q. Whereabouts in New York? A. In Bickford's, Forty-second Street.

Confession of Defendant, Deegan, Read into Record—for State

Q. How did you happen to meet him, just picked up a conversation with him? A. Well, I was going in there quite often, and I saw him in there whenever I was there, and I just happened to strike up a conversation with him.

Q. Where was he living when you met him? A. I do not know.

Q. When did you meet Carolyn, this girl? A. I met her—it was a week ago, Monday.

Q. And that would be— A. It would be a week, yesterday.

Q. That would be the tenth of January? A. I guess so.

Q. Now, was she from Connecticut, too? A. As far as I know, yes; from what she says.

Q. How did you happen to meet her? A. Well, we were standing in the subway entrance.

Q. You mean,—"we," you and Hoffman? A. So myself and Martin Hoffman were standing in the subway entrance upstairs on Seventh Avenue on Forty-second Street, and two girls walked up, and they happened to know the fellow that was talking to us, and he left, and the girls stayed with us, and they have been with us ever since.

Q. Where were you living then? A. At home.

Q. Do you mean at— A. I was living at 101 West Forty-fifth Street.

Q. Was Hoffman staying with you? A. No, he wasn't.

Q. Where was he living? A. I do not know.

Q. Did you take this girl home with you the first night you met her? A. No.

Q. Where were they staying, do you know? A. I could not say.

Confession of Defendant, Deegan, Read into Record—for State

Q. Were you working that last week? A. Well, I had just quit my job.

Q. You had just quit your job? A. When I met him; met them, rather.

Q. On last Friday, the 14th, what time did you come out to Bergenfield? A. Well, I got into my house about ten o'clock Friday morning.

Q. And who was with you, Hoffman and the two girls? A. Hoffman and the two girls were with me.

Q. Now, how long did you stay in your house? A. Oh, I stayed in my house about two hours. I left there; Martin and I left there and went up to a person's house by the name of Susan Reynolds, and we stayed up there for a while, and then come back and got the two girls and went back up there, and the girls stayed there until about four o'clock in the afternoon.

Q. That is at Susan Reynolds' house? A. Yes.

Q. Was she a friend of yours? A. Yes, she is.

Q. What street does she live on? A. It is Railroad Avenue; but I believe they have changed the name of that street.

Q. How much money did you and Hoffman have when you got to Bergenfield, Bob? A. We had just enough money to get us up to where I live.

Q. And when you came out, was it with the idea of getting some money? A. That was the idea.

Q. From whom did you expect to get the money? A. I had the hopes of getting the money off of my father.

Q. Did you ask him for it? A. Well, I asked my mother; but—

Confession of Defendant, Deegan, Read into Record—for State

Q. Did you ask your father? A. No, I did not."

It is written in pencil, "Asked my father." And it is my understanding at the last trial he said that was wrong: "Did you ask your father? No, I did not." Deegan corrected that and said he did ask his father. He said that was wrong (continuing reading):

"Q. When did you decide to take the money from somebody? A. That wasn't until late at night.

Q. At about what time? A. I would say that was about six o'clock. Well, we had it in our minds that we were going to get the money all the time, and I didn't think it would go that far as to what happened.

Q. Now, you say you left the girls at your mother's house when you— A. And Martin went up the first time.

Q. —went up to this house, this friend of yours? A. Yes.

Q. Now, what did you take with you from your mother's house? A. I didn't take anything at that time.

Q. Well, did you take anything from your mother's house later? A. Yes, Martin and I came back alone after we had taken the girls up there.

Q. Yes. A. And we came down to my house and had coffee, and then I took the eggs and the knife.

Q. A dozen eggs? A. It was around that, some place.

Confession of Defendant, Deegan, Read into Record—for State

Q. And the kitchen paring knife, is that right? A. Yes.

Q. And why did you take the knife? A. Well, I had—I had it in my mind I guess I would use it if I had to.

Q. In connection with a robbery? A. Yes.

Q. Now, had you talked with Martin Hoffman about pulling a job? A. He knew about it.

Q. He did? A. Yes.

Q. When did you talk with him about it, Bob? A. Well, we were talking about it the night before it even happened.

Q. Over in the hotel in New York? A. Yes.

Q. And you and he had decided to come out here? A. That we would go and get the money one way or another.

Q. And come out here and get the money one way or another? A. Yes.

Q. What happened to this knife that you took from your mother's kitchen, Bob? A. As far as I know, Susan Reynolds still has it.

Q. She took it away from you? A. Yes.

Q. Now, about what time did you leave Susan Reynolds' house? A. We left the house at four o'clock with the both girls.

Q. And where did you go? A. Over to the railroad station.

Q. And how long did you stay at the railroad station? A. We stayed there until it was dark.

Q. And then what did you do? A. We walked out and went down to my house.

Q. Who, the four of you? A. No. Just Martin and myself. The two girls stayed in the sta-

tion. We got down to my house and went to the back, and I was looking under the porch for something, for a club, or something, and I just happened to see that baseball bat, and took that.

Q. That was about what time, would you say, Bob? A. I would say about 7 o'clock.

Q. And then what did you and Martin Hoffman do after that? A. I took that and stuck it under my coat, and we walked around the other side of the house down toward Bergenfield, and we waited around there for a while in the hopes of seeing somebody there; but we couldn't see anybody; so we decided to go back, and went up as far as the station again. And the girls were still there, even then. We talked to the girls and came out again and went down—down Madison Avenue again, along Johnson Avenue to Roosevelt, and we followed a woman there down Roosevelt Avenue to along New Milford Avenue to some street, I don't know what the name of it is, and she went into a house, and we forgot about that. We came back and walked along Prospect Avenue to New Milford Avenue and stood on the corner, and saw this woman coming along.

Q. Did you know this woman? A. No, I did not.

Q. You had never seen her before, as far as you know? A. I never saw the woman.

Q. Yes? A. She came along, and we followed her up as far as the high school in Dumont, and when she crossed the street, I guess she expected us being up to something, and she came back to the other side of the street, when she had to go up to Park Avenue; I asked her where some

street was; she said she did not know. And we still followed her up as far as Park Avenue; and then when she got halfway up Park Avenue and we hit her with it, I picked up the pocketbook and dropped the bat.

Q. Did you have any conversation with her? A. Only to ask her where the street was.

Q. And was her back to you when you hit her with the bat? A. Back, yes.

Q. And nothing was said at all? You just walked up behind her and hit her, is that correct? A. That is all.

Q. Did she drop— A. She turned around to see if he was still following, whether he was still following her. He was out in the street.

Q. Yes. A. I do not know whether she saw him or not.

Q. Did she fall down? A. Yes.

Q. As soon as you hit her? A. Yes.

Q. And dropped her pocketbook? A. Yes.

Q. And you picked up the pocketbook? A. I picked it up and ran.

Q. And you left the bat there? A. I left the bat there.

Q. And then where did you go, Bob? A. Oh, we ran down Park Avenue to a lot there, and out through the lot over to the railroad tracks, across the tracks, and went up as far as the station and got the two girls.

And, in the meantime—before we got to the station, he went through the pocketbook and took what there was in it and threw the bag away.

Q. Where was it thrown away, do you know? A. It was thrown away by the—alongside of the tracks some place.

Confession of Defendant, Deegan, Read into Record—for State

Q. Who went through the pocketbook? A. Hoffman.

Q. Hoffman? A. Yes, sir.

Q. Had you given the pocketbook to him? A. He took the bag, yes.

Q. He picked it up? A. I picked it up.

Q. Oh, you picked it up and then you gave it to him? A. That is right.

Q. And the girls had been waiting for you in the railroad station? A. They were waiting for us in the station when we got back.

Q. When you left the girls in the railroad station, while you and Hoffman went down to your house to get this bat, did they know where you were going and what you were going to do? A. They did not know where we were going and what we were going to get.

Q. They did not? A. They knew we were going to get money; but they did not know how we were going to get it.

Q. And had you discussed with them at all the possibility that you might commit a robbery to get this money? A. I believe it went that far.

Q. When, the night before? A. No. That night.

Q. Where? A. In the station.

Q. How much money was in the pocketbook, Bob? A. As far as I know, there was about four dollars and fifty cents.

Q. When you got back to the railroad station, did you tell the girls what had happened? A. Yes.

Q. What did they say? A. They asked me, the girl I was with, whether the woman was hurt bad,

and I said, 'I don't know.' I said, I told her, 'And I think I hit her a little too hard.'

Q. And then what did the four of you do? A. We left the station and walked along the Railroad Avenue to Madison Avenue, and down to Johnson and along Johnson up until we got to Bergenfield by the ice house, and got out on Washington Avenue, and walked down around maybe a block or so, and got the 54 Bus, and that took us down to the Forty-second Street Ferry.

Q. You went over to New York? A. That is right.

Q. And where did you intend to go? Did you intend to stay in New York? A. Well, we were all set on going up to Boston.

Q. Yes. Are either of these girls married, if you know? A. This one girl Ruth was married, and she has a child six years old.

Q. What did you do in New York, Bob, after you went over there? A. The first thing we done, when we got into New York was, the girls were hungry, and we stopped around the corner from Forty-second Street off Eighth Avenue in some spaghetti place there and had spaghetti. And Martin Hoffman left us for a while and went around the corner on Forty-third Street and got a hair cut.

Q. And you met him around there? A. We came out of there and we walked around for a while. I think we took in a show, if I am not mistaken, on Forty-second Street. And then we come out of there, and had something else to eat.

Q. Yes. When you got to Dumont, you had no money at all? A. None at all.

Q. Did the girls know, Bob, or had you talked it over in front of them, either in the hotel the night before or on the way out, that you were going to do a job over here in Jersey, or get some money by way of robbery? A. Well, as far as the girls knew, I told them I was pretty sure I would get the money off my mother.

Q. How much money did you figure you needed to get to Boston? A. We figured the four of us could get to Boston,—$20.00, anyway.

Q. You thought you would get that from your mother? A. I did.

Q. And did you tell the girls that if you did not get it from your mother, you intended to get it by robbing somebody? A. I did, sir.

Q. On the way out? A. Yes.

Mr. Mehler: All right, Bob; thanks very much."

The Court: What is that marking?

The Prosecutor: This is S-13.

Is Mr. Herrmann here?

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

Direct examination by the Prosecutor:

Q. Mr. Herrmann, where do you live? A. At the present time, I live in Ramsey, New Jersey.

Q. Where were you living in January, 1944? A. 5 Lawrence Avenue, Dumont.

Q. Were you related to Ethel Herrmann?? A. Her husband.

Q. In this Exhibit S-1, Mr. Herrmann, New Milford Avenue is shown as the street running from the railroad track— A. Yes.

Q. —to the street called Lawrence Avenue? A. That is right.

Q. And there is a black house here marked Number 5; is that— A. That is right.

Q. —your home? A. That is right.

Q. And to go from your home to the home of Mrs. Hansen, one would walk out Lawrence to New Milford and all the way down Prospect past the railroad track and then turn south on Park? A. That is right.

Q. Were you home on the night of January 14th? A. No. I was in Newburgh, working in a shipyard.

Q. Up there? A. I came home twice a week.

Q. You did not know anything about this happening until it was all over? A. Ten o'clock that night.

Q. Now, Mrs. Herrmann was taken to the Holy Name Hospital the same night, the 14th, is that correct? When did she die? A. A week later.

Q. Was it exactly a week later? A. Exactly a week later. Friday morning, the 21st, nine o'clock.

Q. Now, you have seen these exhibits before, Mr. Herrmann. I just ask you quickly if the pocketbook with the purse in it, if the films and photographs and envelope and if this other purse, were the property of Mrs. Herrmann on the 14th of January? A. Yes. I identified them once before.

Q. You identified them all once before. And you now identify them as your property? A. Yes.

Q. You have one child? A. Seven years old.

Q. How old was Mrs. Herrmann? A. She was just turned forty.

Q. Was she in good health? A. She was.

The Prosecutor: Your witness, sir.

Mr. Zabriskie: No questions.

The Prosecutor: Thank you very much, Mr. Herrmann.

The Court: Thank you, Mr. Herrmann.

(Witness excused.)

A convenient stopping place?

The Prosecutor: Yes, it is, your Honor please. We have no short witness now; we would have to put one of the State's witnesses on that would be quite a while if we put a witness on now.

The Court: It is agreeable to the Court to take an adjournment at this time.

I would like to say that the jury will leave the court room before anyone else leaves the court room in the custody of the four attendants. And, before you go, ladies and gentlemen of the jury, I think I ought to say something to you about your conduct over night. The Sheriff tells me that you have all been taken care of, as far as your personal wants are concerned, and you have had an opportunity to equip yourselves with your necessary night articles, and you will return tomorrow morning promptly at ten o'clock.

Of course, it is unfortunate that we all have to go through a process of this kind where we must be locked up, literally, over

night. And I think I ought to say that it is just a question of passing time between now and tomorrow morning at ten o'clock. In other words, you will simply busy yourselves with your own thoughts and your own reading activities, and whatever else you care to indulge in. You have not heard all of the evidence in this case by any means, either for the State and, certainly, not for this defendant; so that you must at the present time keep your minds as open as possible, and you should not indulge in conversation one with another about the merits of the case, by any means, conclusively.

Just a word about something to drink at dinner and in the evening. Sometimes some of us are accustomed to imbibe a bit of alcohol at the evening meal. I think that any person who is in that habit and custom is permitted to take it in this instance, and confining himself, of course to a salutary amount, one or two. And, with that admonition, have you any questions you want to ask the Court at all? If not, you may leave, and the rest of the court room will remain seated as you leave. Please return at 10:00 A. M. tomorrow.

(The jury retired at 4:24 P. M.)

The Court: The Court will stand adjourned then until tomorrow morning at ten sharp.

(An adjournment was taken at 4:25 P. M. until tomorrow, Tuesday, January 30, 1945, at 10:00 A. M.)

Hackensack, New Jersey,
Tuesday, January 30, 1945, 10:00 A. M.

TRIAL RESUMED.

Second Day.

The Court: Poll the jury.

(The Clerk polls the jury.)

The Court: Are you ready to proceed, gentlemen?

The Prosecutor: Yes, your Honor.

I have two or three physicians on call, Doctor Nicol, Doctor Sealey and Doctor Greenfield. I do not think any of them are here yet, so I will proceed a litle bit out of my intended order, and call Ruth Oberempt now.

The Court: Very well.

The Prosecutor: Ruth Oberempt.

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

Direct examination by the Prosecutor:

Q. Ruth, how old are you? A. 28.

Q. And where was your home before you came to New York last year? A. Southington, Connecticut.

Q. And were you in New York in January, 1944? A. I was.

Q. Did you make the acquaintance of the defendant Robert Deegan in New York City during the month of January? A. I did.

Q. And also of a man named Martin Hoffman? A. I did.

Q. And did you and a young woman named Carolyn Twing become friendly with those two boys? A. Yes.

Q. Did you accompany them to Dumont on the morning of January 14th, 1944? A. That is right.

Q. Now, before that, had you and Carolyn and these two young men been intimate? A. No; just friendly.

Q. The immediate night before you went to Dumont, had you been together, the four of you? A. That is right.

Q. And where had you spent that night? A. The night before we went to Dumont, we just went to the shows and hung around.

Q. You did not go to any place to sleep? A. No. That was the night before.

Q. The night before, that is the night of the 13th? A. That is right.

Q. And you spent the night in shows and having something to eat and just loafing around? A. Yes, sir.

Q. The section of New York known as Times Square, is that right? A. That is right.

Q. Now, the night prior to that, that would take you back to Wednesday night, the four of you stayed together in a hotel, did you not? A. That is right.

Q. And whose companion were you? A. Martin Hoffman.

Q. And who was the companion of the defendant Deegan? A. Carolyn Twing.

Q. You had just met casually some little time before that, a week or so before that, is that right, Ruth? A. Yes.

Q. And been introduced by some acquaintance of the boys. Now, did you have any money among the four of you, to speak of? A. No, not too much.

Q. At any time, did you have more than just a few dollars between the four of you? A. No.

Q. Did you have any money at all the morning of the 14th? A. No.

Q. Someone borrowed some money to give to Deegan, is that right? A. That is right.

Q. And how did you go from New York to Dumont? A. By subway, then ferry and then bus.

Q. When you got to Dumont, had you ever been there before? A. No, sir.

Q. So far as you know, had Carolyn or Martin ever been there before? A. They did not seem as though they had.

Q. So who took charge of the— A. Robert Deegan.

Q. Where did you go? A. To Dumont, to his home.

Q. To the home of Robert Deegan? A. That is right.

Q. And whom did you meet there? A. His parents; his father and mother.

Q. How were you introduced? A. "This is my mother, and this is my father."

Q. And how were you and Carolyn introduced? A. Just that way, by Ruth and Carolyn.

Q. I see. And how long did you stay at the home of the Deegan family on the 14th of January? A. After twelve, I guess it was eleven-thirty, quarter to twelve; somewheres around there.

Q. How did you put in the time while you were there? A. Just sat and talked, and then Martin and Robert Deegan went.

Q. Martin and Robert Deegan left, and you two girls stayed in the Deegan home for a while? A. Yes.

Q. Did the boys return? A. Just about a half an hour afterwards.

Q. And then what happened? A. They says, "Come on."

Q. Then the four of you left? A. The four of us left.

Q. Then where did you go? A. To Suzanne Reynolds.

Q. To the home of Suzanne Reynolds? A. That is right.

Q. That home, as I understand it, is on the street alongside of the railroad track, just a little distance from the station; is that right? A. Yes.

Q. Was Mrs. Reynolds there when you got there? A. No, she was not.

Q. Did she come there some little time later? A. That is right.

Q. What did you do at the Reynolds' home? A. We sat and talked, and the children were home. We sat and talked, and then Mrs. Reynolds came in.

Q. Now, while you and Carolyn stayed there, at any time, did the boys leave? A. No.

Q. They did not leave the Reynolds' home to

your recollection? You all stayed there until you all left? A. That is right.

Q. About what time would you say you left? A. Well, Mrs. Reynolds told us her husband was coming home, and we should leave; and we left about a little after four o'clock.

Q. Where did you go? A. We walked around the streets and looked in the store windows; then we went through one store and came out again, and then to the railroad station.

Q. About what time would you say you got to the Dumont railroad station? A. Oh, about five, or a little after.

Q. Was it dark at that time? A. Not quite.

Q. It was getting dark? A. That is right.

Q. Was there some reason why you were waiting until it should get dark? A. Well, Bob Deegan said he was going back to his home to get the money.

Q. Do you know whether he had tried to get money during the day at his home? A. He told us he had.

Q. He had tried to get money? A. That is right.

Q. And, as far as you know, he was unsuccessful? A. That is right.

Q. Now, was there any reason why you should wait until it was dark to go back to his home for money? A. No. I don't know, only he said perhaps his father would not be home then.

Q. I see. A. He could get it from his mother.

Q. His father had been home during the day? A. Yes.

Q. Now, you girls are inside the railroad station? A. That is right.

Q. I suppose it was warm and comfortable in the railroad station? A. Yes.

Q. The boys left? You better say yes, not shake your head, because the stenographer cannot hear you when you shake your head.

Q. The boys returned? A. They went. For about a half an hour they were gone, and Martin Hoffman come in and told me that Bob Deegan wanted the gloves.

Q. Now, I show you a pair of woolen gloves and ask you whose those were? A. Those belonged to me.

Q. And did you at that time give them to the boys? A. Well, I gave them to Martin Hoffman to give to Bob Deegan.

Q. And where did you get them back? A. Yes, on the way home.

Q. Who gave them back to you? A. Bob Deegan took them off his hands.

Q. And gave them to you? A. That is right.

The Prosecutor: I offer them in evidence.

Mr. Zabriskie: No objection.

The Court: They may be marked in evidence.

(Pair of woolen gloves marked Exhibit S-14 in evidence.)

Q. All right. You and Carolyn are in the Dumont railroad station, and the boys come back and get the gloves in the manner you have described. And then I assume they left you and you remained at the railroad station for a while? A. That is right.

Q. What time was that? A. What time did they leave the railroad station?

Q. Yes. A. About seven or a little after.

Q. Was it dark then? A. Yes, sir.

Q. How long were they gone? A. Oh, when they come back after the gloves, they were only gone about twenty minutes.

Q. Now, after they left with the gloves, it was some time around half past seven, is that right? A. That is right.

Q. And how long were they gone that time? A. Not longer than twenty minutes; and they knocked on the window.

Q. They did not come in that time? A. No, sir.

Q. Did you know what they were gone for, Ruth? A. Yes, they told me that. Bob Deegan told me that if he went home at night, he thought he could get the money from his mother.

Q. Now, when they returned and knocked on the window, what did they do, ask you to come out? A. Yes.

Q. And did you and Carolyn come out and join them? A. Yes.

Q. What, if anything, was said then? A. Oh, they just says, "Come on, come on, hurry up." And they went through back streets and over ice and everything else and got onto the bus.

Q. Was it the most direct way, so far as you know, to get to the bus? A. Well, that I couldn't say. I really don't know; but it seemed a roundabout way.

Q. At any rate, it seemed to you a roundabout way? A. Yes, sir.

Q. Was anything said at all about what had

happened while they were away from you? A. Not until we had gotten on the bus and the bus had started.

Q. What happened then? A. Then Bob says, "I wonder if I hit her too hard."

Q. Did you wonder what he meant when he said, "I wonder if I hit her too hard"? A. I didn't know what to think. And he kept repeating the same thing over and over again. And then Martin Hoffman said, "I don't know." And then Bob kept saying, "I think I hit her too hard, I think I hit her too hard."

Q. He told you what? A. That he hit a woman over the head.

Q. On the bus, on the way to New York? A. On the bus, on the way to New York.

Q. Was anything said about having obtained anything from the woman? A. Yes. Bob give Martin two dollars.

Q. Was that in your presence, was that said, how it had happened? A. I think that is what they said.

Q. You said Bob had given Martin two dollars. And were there some other items that were given to anyone? A. They handed me a wallet.

Q. Now, I show you—is this what was handed to you? A. Yes, sir.

Q. I show you a wallet which has been marked in evidence, and ask you if that is the wallet that was referred to by you? A. Yes. There was an identification card marked with the Red Cross, with Mrs. Ethel Herrmann's name on it.

Q. Who gave that to you? A. It was passed from Bob Deegan to Martin Hoffman, and put in my pocket.

Q. Did the bus take you right into New York, or did you have to— A. No. We got a ferry.

Q. You got off at the Forty-second Street Ferry and took the ferry to New York. Then where did you go? A. Then we went and ate after we got off the ferry.

The Court: Mr. Prosecutor, is that wallet in evidence, along with the bag? Was it marked yesterday?

The Prosecutor: I do not find that the wallet has an identification mark. I think that the bag and the wallet were marked as one Exhibit, S-10.

The Court: I see.

Q. Ruth, when there was some question about getting the money at the home of Robert Deegan's family, did he say something to the effect that he was going to get money one way or the other? A. I don't know whether he did; but he said he could get it.

Q. He said he would get money? A. Yes.

Q. So far as you know, Carolyn did not know the manner in which he was going to get the money when he left you at the station? A. No, sir; neither of us had any idea.

Q. Now, did you stay together in New York until the time of the arrest? A. No. Martin Hoffman went and got a shave and a hair cut, and he left us in the place where we were eating, and then we—I guess we went to a show. And then Robert Deegan said he was going to get a paper to see if anything came out in the paper.

Q. He continued to be worried— A. Yes, sir.

Q. —about the affair, what? A. Yes, sir.

The Prosecutor: You may take the witness, Mr. Zabriskie.

Cross examination by Mr. Zabriskie:

Q. So those gloves were asked for by Hoffman? A. Yes, sir; for Robert Deegan.

Q. And Deegan was outside, and Hoffman came in and got the gloves, and you gave them to Hoffman? A. Yes, sir.

Q. Now, you learned that Martin came from Boston, didn't you? A. Yes, sir.

Q. And, for some reason, he was anxious to get back to Boston, wasn't he? A. But Robert Deegan also, he wanted to go, too.

Q. I am not asking you about Robert Deegan. A. It was with the idea that the two of them go.

Q. That was where Hoffman came from, was Boston; is that right? A. Yes.

Q. And he came from Boston with about a hundred dollars; at least, he told you so, didn't he? A. He didn't tell me.

Q. Well, he had some money when he came? A. Yes, sir.

Q. Now, around the 14th of January, he was entirely out of money, wasn't he? A. Yes.

Q. He didn't have a penny with him, did he? A. No.

Q. Now, his people were up in Boston, weren't they? A. In Dorchester, Massachusetts.

Q. Just outside of Boston? A. I do not know. I have never been there.

Q. But he said he wanted to get back to Boston? A. He wanted to go to Massachusetts. That is all I know.

Q. Well now, you testified in this same case before, Miss Oberempt, didn't you? A. Yes.

Q. You remember that. And don't you remember being asked this question: "You recall the day before the tragedy? Answer: Yes."

The Prosecutor: Page, please?
Mr. Zabriskie: Page 247.

Q. "You and Martin had been out in the afternoon? That is right. And the two of you were contemplating leaving for Boston on that night?" A. I was.

Q. Do you remember being asked that question: "And the two of you"—that is, you and Martin,—"were contemplating leaving for Boston on that night?" And your answering, "That is right." Do you remember that? A. Yes. All four of us; not just Martin and I.

Q. Was this question put to you: "And the two of you were contemplating leaving for Boston on that night?" And you answering, "That is right." Do you remember that or not? A. Yes. But Martin—I mean Bob Deegan and Carolyn both were going, too.

Q. Now, isn't it a fact that Deegan was out of your company one whole day? A. Yes. But Carolyn was with us.

Q. You and Hoffman and Carolyn started out, intending to go to Boston, not knowing at all where he was? A. Oh, we started; but we didn't get very far. We came back again.

Q. But he was not with you then, was he? A. No.

Q. So that Bob did want to—I mean Hoffman did want to get to Boston, isn't that right? A. Yes.

Q. And he was anxious to get back there, wasn't he? A. More or less.

Q. Yes. Because he said he could get a job if he got back there, didn't he? A. He said he could get Bob one, too.

Mr. Zabriskie: I ask that be stricken out.

The Court: Strike it out. Answer the question. Just answer the question that is asked.

Q. Now, of course, you are under indictment for this same offense, and that case has not been tried yet, has it? A. Yes, sir.

Q. And you want to do whatever you think will make it as easy as possible for you, don't you, naturally? A. I am telling the truth; that is all.

Q. Please answer that question.

The Prosecutor: I think that is a very good answer.

The Court: That answer will stand.

Mr. Zabriskie: Yes.

Q. But you do not want to do anything that will jeopardize any more than possible your present position, isn't that so? A. As long as I tell the truth, I have nothing to fear.

Q. Now then, do you remember having some conference in the jail back in March of 1944 at which Mr. Wulster was present and at which Mr. Myers, who was your counsel, was present? A. Yes, sir.

Q. And do you remember telling us quite a good many things about this case? A. I answered questions that I thought were fit to answer.

Q. Well, were you asked any questions that you did not think were fit to answer? A. Repeat that, please.

Q. Were you asked any question that you did not think was fit to answer? A. Well, I would not say so.

Q. Well then, do you remember that you said—that you referred to Deegan as dopey? A. I referred to him as being dopey?

Q. Yes. A. I do not remember say that.

Q. You do not? A. No.

Q. Do you remember saying that you referred to him as "drip"? A. No.

Q. You do not remember that? A. No.

Q. Do you remember saying, "I did not think Deegan had all his buttons," the way he had been talking?

The Prosecutor: Is this in the record?

Mr. Zabriskie: No, although I think it may be in the record; but I am asking about this particular conversation.

Q. Do you remember that? A. No. All I remember is asking me what I thought of Robert Deegan.

Q. Do you remember what answer you made? A. I said he did not appeal to me.

Q. Don't you remember saying you did not think he had all his buttons? A. No, I do not think I did.

Q. Now, I call your attention to another state-

ment. Do you remember you were in the jail on March 6, 1944? A. A year has passed.

Q. Yes. And at that time you said that you knew Deegan about two weeks? A. Yes.

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

Q. And you said you met him on Forty-second Street and Seventh Avenue in the subway? A. That is right.

Q. That is so. And you said a man by the name of Frank introduced you to him? A. That is right.

Q. And to Hoffman also, that is true? A. That is true.

Q. And you said, "I saw Deegan practically every day during the time—during those two weeks?" A. That is right.

Q. "Preceding his arrest," that is true? A. That is true.

Q. And that "All four of us," meaning you and Carolyn and Bob and Hoffman, "were together, all four of us were together practically all the time during those two weeks?" A. That is right.

Q. Now, you said, "But he was nothing that I would want?" A. That is right.

Q. And you said he never seemed to be dressed right? A. That is right.

Q. You used the expression, "He was just hither and come?" A. Yes.

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

Q. You said he had dirty hands and did not shave much? A. No. You asked me about his hands. I said I never took any particular notice.

The Prosecutor: Your Honor please, I am going to object again, now. I do not

see the relevancy of this. It is certainly not cross examination.

Mr. Zabriskie: Well, I will call this witness as my witness later on.

The Court: In my opinion, that is what you should do. It is not cross examination.

Mr. Zabriskie: I will call her as my own witness later on, as my own witness, the same as I did in the last trial.

The Court: The objection is sustained. Anything further of Miss Oberempt?

The Prosecutor: I would just like to ask Miss Oberempt if in her conversations with me or any member of the Prosecutor's office any inducement had been held out to her to testify here, or any promise had been made to her of any kind?

The Witness: No, sir. I promised to tell the truth, and that is all.

(Witness excused.)

The Prosecutor: Is Dr. Nicol here?

LORENZ C. NICOL, called as a witness on behalf of the State, being first duly sworn, testifies as follows:

Direct examination by the Prosecutor:

Q. Doctor, you are a practicing physician of the State of New Jersey? A. Yes, sir.

Q. And in January of 1944, were in attendance at the Holy Name Hospital in Teaneck in this county? A. Yes, sir.

Q. Do you remember Ethel Herrmann being brought there as a patient? A. Yes, sir.

Q. Will you describe her condition? A. I saw her in the clinic room of the—rather, the emergency room in the evening. Do you want to know the time? It was around eight—

Q. Yes. A. —thirty or nine o'clock. She was lying on a table, unconscious. Her head and face were covered with blood. On the right side of her head, the right side of her scalp in the temporal region, there was a large swelling. The skin was cut or, rather, you might say it was broken. The skin edges were frayed out as if it was hit—as if it was done by a blunt instrument, and underneath the skin were large blood clots.

Q. Doctor, did you see her from time to time? A. Yes, sir.

Q. And what ultimately happened to Mrs. Herrman? A. She died.

Q. How long after her admission, would you say? A. About a week, I believe.

Q. Was she ever conscious after admission? A. No, sir.

Q. Now, from the nature of the injury as you observed it, would you say that it was reasonably probable that it was caused by a blow of some instrument? A. Yes, sir.

Q. And would you say, Doctor, that it was within the realm of reasonable probability that it could have been caused by a blow with such an instrument as Exhibit S-3? A. Yes, sir.

Q. Thank you.

The Prosecutor: That is all.

Mr. Zabriskie: I think that is all.

The Court: Thank you, Doctor.

(Witness excused.)

The Prosecutor: Is Dr. Greenfield here or Dr. Sealey?

(No response.)

Then I will call Carolyn Twing.

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

Direct examination by the Prosecutor:

Q. Carolyn, how old are you? A. Nineteen.

Q. Where was your home before you came to New York? A. Wallingford, Connecticut.

Q. And did you and Ruth Oberempt come to New York together sometime before January, 1944? A. Yes.

Q. And while you were in New York, you and Ruth became acquainted with Robert Deegan and Martin Hoffman? A. Yes.

Q. Do you remember coming to Dumont on the 14th of January, 1944? A. I remember going to Dumont.

Q. Do you remember the day that the four of you left New York and came to Dumont? Is that right? A. Yes.

Q. The night before the four of you left New York, had you been to bed at all that night, the four of you? A. I do not remember that.

Q. Do you remember one night just before you left New York to go to Dumont, the four of you stayed, I think, at the Roxy Hotel? A. Yes.

Q. And you were with Robert Deegan, and Ruth was with Martin Hoffman, is that right? A. Yes.

Q. You were registered there, the four of you, as man and wife? A. Yes.

Q. And you stayed there overnight? A. Yes.

Q. Had you ever been to Dumont before that day? A. No, I had not.

Q. And I understand you went directly to the home of Robert Deegan in Dumont? A. Yes, that is right.

Q. Did you have any money in the crowd at all? A. I do not know about that.

Q. Do you know why it was that you went to the home of Mr. Deegan's parents? A. I know that Bob wanted to get some money from his people.

Q. You know that from him, that he thought he could get money from his people, is that right? A. Yes.

Q. Do you know whether he tried to or not? A. I do not know.

Q. Do you know whether he got any money from his people or not? A. No.

Q. All right. When you left that home after a while, you went to the home of a Mrs. Reynolds? A. I think we went to a store first.

Q. You went to a store first and got some cigarettes, or something of that kind? A. I think that is where we went first.

Q. After spending a little time around the shopping center, you went to the home of Mrs. Reynolds, is that right? A. Yes.

Q. And stayed there for some little time? A. Yes.

Q. Do you remember about what time it was you left that home? A. Somewhere between four and five.

Q. And then where did the four of you go? A. Well, we went to a railroad station.

Q. And what happened there? A. Well, we just sat around the railroad station and talked.

Q. After a while, did the boys leave? A. Yes, they left.

Q. And two girls, you and Ruth, stayed at the railroad station, is that right? A. Yes.

Q. Do you know what they left for? A. Well, Bob said something about going over to his people's house.

Q. Now, did they come back one time after they left? A. They came back.

Q. And did something happen in egard to this pair of gloves? A. Well, they were asked for.

Q. And. And then did they go away again? A. Yes, they went out.

Q. With the gloves? A. I think they had the gloves with them. I am not sure about that.

Q. All right. And how long were they gone after they left that time? A. Not very long.

Q. What happened when they returned? A. Well, the last time that they returned, Bob knocked on the window and just said, "Come on."

Q. He did not come in the railroad station? A. No.

Q. Where it was light? A. No.

Q. He stayed outside and knocked on the window and beckoned to you, is that right? A. Yes.

Q. That was Deegan did that, Carolyn? A. Yes.

Q. And then what happened? A. And then we went on a bus.

Q. How did you go from the station to the bus, do you know? A. Down a lot of side streets.

Q. Down a lot of side streets? A. Yes.

Q. Was anything said about what had happened while the boys were away from you girls? A. Not for a while there wasn't anything said.

Q. Well, finally, something was said? A. Yes.

Q. What was that? A. Well, Bob come out with he wondered if he hit her too hard.

Q. Did you know what he had reference to? A. No, I did not.

Q. He said he wondered if he hit her too hard. And was there some more talk about that? A. That is about all he said at the time that I could remember.

Q. Was there some display of a purse or anything of that kind? A. Well, there was a wallet shown among him and Marty and Ruth, and a pen; that is about all.

Q. Did you know where they came from? A. No, not until after he had said where they came from.

Q. I did not quite understand. A. Not until after he said where they came from.

Q. What did he say? A. He just said that they got them off—out of the lady's pocketbook.

Q. They got them out of whose pocketbook? A. The lady's.

Q. Did you know what lady they had reference to? A. Not until after they said the name, her name.

Q. By that time, you knew something had happened to some lady. And what did you understand from the conversation had happened? A. Well, all I understood was that Bob had hit her.

Q. Did he say that? A. He said he had hit her. That is about all.

Q. And he was worried because he thought he hit her too hard? A. Yes.

Q. Where did this conversation take place? A. Well, he talked about it going on the bus to New York.

Q. Yes. And then you were arrested and you have been in jail ever since, is that right? A. Yes.

Q. Nobody told you what to say here this morning? A. Nobody has told me anything.

Q. Has anybody told you that you would get any consideration for testifying one way or the other? A. No. You just told me to tell the truth.

The Prosecutor: You may take the witness.

Cross examination by Mr. Zabriskie:

Q. I just want to ask you one question. Who had the money when you were in the bus, if you know? A. I do not remember. I know one of the boys had it.

Q. Do you remember testifying before and this question being put to you and you making this answer:—

The Prosecutor: Page?

Mr. Zabriskie: On page number 267.

Q. "Now then, when you got to Dumont, and after something had occurred and you were in the bus, who had the money?" Do you remember making this answer: "I think Monty had it?" A. I remember the question being asked; but I do not remember the answer.

Q. And then being followed up; "By Monty, you mean Martin Hoffman?" and you were answering that? Do you remember that? A. I remember that question.

Q. And, "The young man sitting here?" and that was Martin Hoffman. A. Yes, I remember that question.

Q. And do you remember being asked this question: "And what did he do with the money, if you know?" and answering: "I think they passed it over to Ruth." Do you remember that or don't you remember that answer? A. I do not remember that.

Q. Of course, that is a year ago. And then, do you remember being asked this question: "From whom did Ruth get that?" and the answer being, "The same person she got the wallet," got the money from the same person? A. No, I do not.

Q. And who got the fountain pen? A. Why, Ruth got the fountain pen.

Mr. Zabriskie: I think that is all. I might say I am going to call Miss Twing.

The Prosecutor: Well, they will be in the jail when you want them or right here. They cannot get away.

The Court: All right.

(Witness excused.)

The Prosecutor: Is Dr. Greenfield here yet? (No response.)

I will call Hoffman.

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

The Prosecutor: If your Honor please, I neglected yesterday to have marked in evidence the photograph of Washington Avenue, Bergenfield, where these four people boarded the bus for New York. I have plenty of people who can prove it, but Mr. Zabriskie has been good enough—

The Court: It is consented that it be marked.

(Photograph marked Exhibit S-15 in evidence.)

Direct examination by the Prosecutor:

Q. Hoffman, you are brought here from state's prison to testify today, aren't you? A. Yes, sir.
Q. Is that right? A. That is right, sir.

Q. And you are serving life imprisonment for participation in this offense that is being tried before this jury? A. Yes, sir.

Q. Did you ever see me before? A. Yes, sir.

Q. How long did I talk to you in state's prison in Trenton? A. About five minutes.

Q. Did I make you any inducement or promise to come here and testify? A. No, sir.

Q. I told you to tell the truth, didn't I? A. Yes, sir.

Q. Are you here to tell the truth? A. That is right, sir.

Q. Did you know a man named Robert Deegan on Janaury 14, 1944? A. Yes, sir.

Q. The defendant at this table here? A. Yes, sir.

Q. How did you meet him, just casually around New York? A. That is right, sir.

Q. How long had you known him before January 14th? A. Repeat that, please.

Q. How long had you known him before you went to Dumont with him on the 14th of January? A. About a week.

Q. Where is your home? A. Boston, Massachusetts.

Q. Did you also know Ruth Oberempt and Carolyn Twing? A. Yes, sir.

Q. Did the four of you leave New York together to go to Dumont on January 14th? A. Yes, sir.

Q. How much money was in the crowd when you left New York? A. I could hardly say, sir.

Q. Did you have any money? A. Yes, sir.

Q. How much? A. About two dollars.

Q. Did you know whether Deegan had any money? A. I could not say, sir.

Q. Why did you go to Dumont? A. Bob was going to return back to Boston with me. He was going to get some money from his people.

Q. Bob was going to return to Boston with you. And why did you go to Dumont? A. Bob was supposed to get some money from his people.

Q. Is that what he told you? A. Yes, sir.

Q. So you got to Dumont and went to his home, is that right? A. Yes, sir.

Q. Did he try to get money from his people? A. Yes, sir.

Q. Do you know whether he was able to get any money or not? A. I could not say. He said

his people said he was going to get it, that's all I know.

Q. Did he have any luck, so far as you know? A. No, sir.

The Court: What is the answer?

The Witness: No, sir.

The Court: Just keep your voice up, Hoffman, so we can all hear.

Q. Did you ever see this Exhibit S-12 before? A. Yes, sir.

Q. Tell us about that. A. It was about four o'clock when we come back from the Draft Board, at Bob's house.

Q. About four o'clock—what was it?

(Answer read.)

Q. What happened in reference to the exhibit? A. Bob had gone in the kitchen and got some eggs.

Q. Got some eggs? A. Yes. And then we went over to Mrs. Reynold's house.

Q. What has that got to do with the knife? A. After we left Bob's house and went to Mrs. Reynold's house, Bob's coat was open.

Q. And the knife was in the inside pocket of his coat? A. Yes.

Q. Did you have some talk with him about that? A. Yes.

Q. What was that? A. I asked him what he was going to do with the knife. He said it was to cut bread over at Mrs. Reynold's house.

Q. He said he was going to cut bread over at Mrs. Reynold's house? A. Yes.

Q. Did you say anything further about that? A. Nothing else, sir.

Q. How late did you stay at Mrs. Reynold's? A. Until about five-thirty.

Q. Did you have some reason for waiting until it got dark? A. Well, Bob said his mother couldn't get the money from the bank, that she had called one of her neighbors, and that the neighbor said she would give her the money that night when her husband came in.

Q. So the intention was to go back to Deegan's house and get some money later in the night? A. Yes, sir.

Q. Now, as I understand you, all four went to the railroad station and left the girls there? A. That is right, sir.

Q. About what time is it now? A. A little after six, I would say.

Q. Around six. Where did you and Deegan go when you left the girls? A. We went to Bob's house.

Q. Did you go into the house? A. No, sir.

Q. Could you see in the house? A. No, sir.

Q. Was the house lighted? A. I could not remember, sir.

Q. You do not remember? A. No, sir.

Q. What happened at Deegan's house around six o'clock that evening when you and Bob Deegan went there? A. Well, Bob had gone into the house, to the back way of the house.

Q. You will have to speak a little louder or people will have to stop coughing. I cannot hear the witness myself.

The Court: I have cautioned you to keep your voice up so we can all hear. There is

little use in your testifying if people do not hear what you say. So look toward the jury and keep your voice up.

Q. What happened at Deegan's house? A. We went to the—Bob went to the back of the house, leaving me in front. Bob had come back about five minutes later.

Q. Did he have something with him? A. Yes, sir.

Q. What did he have? A. A baseball bat.

Q. I show you a—this Exhibit S-3, and ask you, is that the bat Deegan had with him? A. I could not say, sir.

Q. Has it the appearance of the bat? A. Yes, sir.

Q. The same sort of a bat? Did you have any conversation with him about the bat? A. Yes, sir.

Q. What was that? A. I asked him what the baseball bat was for.

Q. What did he say? A. He said he had to return it to his brother's house.

Q. He had to return it to his brother's house? A. That is right.

Q. Is that all that was said about the bat at that time? A. At that time, yes, sir.

Q. What did he do with the bat? A. We walked on.

Q. What did he do with the bat? A. I cannot recall back what he did with the bat.

Q. Did he carry it openly, over his shoulder, in his hand, waving it around? A. I could not remember.

Q. You do not remember? A. No, sir.

Q. All right. Where did you go? A. We went back to the station.

Q. What happened there? A. Talked to the girls for a while. It was cold that night. Bob had asked Ruth for the gloves.

Q. And are those these gloves that are marked in evidence? A. That is right, sir.

Q. What happened to these gloves? A. Ruth had handed the gloves to me and I had handed them to Bob.

Q. What did he want the gloves for? A. He said his hands were cold.

Q. Is that what he said? A. Yes.

Q. Did he put the gloves on? A. Yes, sir.

Q. All right. Now, you have got the gloves and the bat. Where did you and Deegan go from there? A. We started to his brother's house.

Q. Did you know your way around Dumont? A. No, sir.

Q. Had you ever been to Dumont before? A. No, sir.

Q. What time of night would you say it was that you left with the gloves and the bat to go to the house of the brother? A. About six-thirty or a quarter to seven.

Q. Do you know where you went? A. No, sir. We were supposed to go to his brother's house, is all I know.

Q. And you accompanied him in the direction that he said was toward his brother's house? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. What was the next thing that transpired? A. While we were walking, he stopped a woman.

Q. I did not hear you. A. While we were walking, he finally stopped this woman.

Q. Is that Mrs. Herrmann, who ultimately was injured? A. Yes, sir.

Q. Now, before that, you ran across a couple of other people, didn't you? A. Yes, we did.

Q. Who is the first person after you got the bat who attracted your attention? A. I believe it was a man. I could not say for sure.

The Court: You believe it was a man?
The Witness: That is right, sir.

Q. And what, if anything, transpired in reference to that man? A. Nothing. We were walking, and the man turned in.

Q. And he got away? A. That is right.

Q. Now, was there any other woman before Mrs. Herrmann? A. Yes, sir.

Q. Tell us about that. A. Well, Bob was walking, and we were walking down, I believe, down his street, and this woman that was carrying packages from a drug store, I guess, that she was coming from, and finally she turned in, too. And that is when we started for his brother's house.

Q. Did you and Deegan have any agreement as to what you were walking around with that bat for? A. No, sir.

Q. At the time, did you have any idea he was going to use the bat in the manner that he did use it? A. No, sir.

Q. All right. Now, you then saw the lady who afterwards turned out to be Ethel Herrmann, who was killed in this crime for which we are trying Deegan today, is that right? A. That is right.

Q. Where was she when you first saw her? A. Some street, I do not know the street, sir.

Q. Was it on the far side of the street from where you were? A. (No audible response.)

Q. Well, tell me, if you can, whether you can understand this map. This is the intersection of New Milford Avenue and Prospect Avenue and, as I understand it, you were coming in this direction on Prospect Avenue, and Mrs. Herrmann was coming in this direction easterly on New Milford. You were going northerly on Prospect. Now, do you orient yourself, do you understand? A. I do not quite understand.

Q. Well, here is Prospect Avenue that you were walking along, and here is New Milford Avenue. Now, I will show you the same thing on a small insert. Here is Prospect here, and here is New Milford Avenue running along across the railroad track to Park to where the lady was struck, see? Here is Prospect and here is New Milford. Now, here it is again, here is Prospect and here is New Milford. I am trying to find out whether the lady was on the side toward you or on the far side. A. She was on our side.

Q. On your side. Now, was she on your side when Deegan spoke to you? A. That is right.

Q. And did she ever cross over to the far side? A. No, sir.

Q. When you spoke to her and had some conversation, she then continued right down until she crossed the railroad track and continued down Park Avenue? A. That is right.

Q. Your recollection is she was at all times on the southerly side of New Milford Avenue? A. Yes, sir.

Q. Do you know what it was that Deegan said to her? A. Well, as far as what I heard, he was asking for a street.

Q. Did you still think he was trying to find his brother's house? A. Yes, sir. When he come back to me, he said he had been away from Dumont almost a year, that he had just forgotten where the street was his brother lived on.

Q. And it is now your testimony that up until that point you still thought he was looking for his brother's house, and that is why he spoke to this lady? A. That is right.

Q. Did the lady walk along New Milford Avenue? A. No. She walked on the street. I don't know whether it was New Milford Avenue.

Q. She continued on this street on which she was for quite a distance, Hoffman? A. Yes, sir.

Q. And what did you and Deegan do? A. We were walking on up towards his brother's house.

Q. How far were you walking behind the lady? A. Quite a distance.

Q. What do you mean? Tell us in the courtroom. As far as the back wall? A. That is right.

Q. Did you cross the railroad track? A. That is right.

Q. Did you keep about the same distance? A. That is right.

Q. Now, she comes to a street called Park Avenue that makes a turn to her right, and she made that turn to the right? A. Yes, sir.

Q. Did you make the same turn to the right? A. Yes, sir.

Q. Did you still think you were looking for Deegan's brother's house? A. He said we were

going to his brother's house, and I took his word for it.

Q. All right. Now, at that time, or close to that time, did you get closer to the lady? A. No, sir.

Q. Did Deegan get closer to her? A. No, sir.

Q. When did he get closer to her? A. Just after we made the turn to the corner.

Q. After she turned the corner? A. We turned the same corner, too.

Q. And then what did you do, quicken your footsteps? A. No, sir. When we turned the corner, we walked on for about five or ten feet, and all of a sudden Bob just left me without saying a word.

Q. Which direction did he go, do you recall? A. Towards the woman.

Q. Did you stand there? A. Yes, sir.

Q. Did you move at all? A. No, sir.

Q. And did he close the entire distance between him and the woman? A. Repeat that again.

Q. Did he come up to the woman? A. Yes, sir.

Q. And what did he do? A. He raised the bat, and then I yelled, "For heaven's sake, don't," and turned and ran.

Q. And the last thing you saw is Deegan standing close to the woman with the bat raised, is that right? A. That is right.

Q. Did you know where to run to? A. No, sir. I just turned and ran.

Q. What happened after that? A. Well, after I was running, Bob had finally caught up to me, and he yelled, "Follow me."

Q. Did he have anything in his possession that he had not had before? A. Yes, sir.

Q. What was that? A. A pocketbook.

Q. Is this the pocketbook, Exhibit S-10? A. That is right.

Q. What had become of the bat? A. I do not know.

Q. Do you know where you went after you started to run? A. I ran down. When I got down as far as the corner, Bob had just about caught up to me, and he said, follow him, and we went up through some bushes.

Q. Now, here is Park Avenue (indicating); can you see it? A. Yes, sir.

Q. Here is the railroad station. A. Yes, sir.

Q. And here is the West Shore Railroad track. Here is New Milford Avenue. Here is 140, which is the house in which Mrs. Herrmann was taken. So you were somewhere between the corner and 140 when Deegan struck the woman, is that right? A. About that.

Q. And then you ran toward the corner, is that right? A. That is right.

Q. Did you go around the sidewalk or did you cut across lots? A. Bob had caught up to me when I got about to the corner.

Q. Did you take this path across lots? A. Yes.

Q. And then went across the railroad track on New Milford Avenue and then up toward the station, is that right? A. Yes.

Q. Where did you make a search of the pocketbook to find out what was in it? A. On the railroad track.

Q. On what? A. On the railroad track.

Q. Who had the pocketbook then? A. Bob.

Q. And then was a division made of what was

in the pocketbook between you and him? A. Repeat that again.

(Question read.)

A. I do not quite understand the question.

Q. Did he give you something that came out of the pocketbook? A. When he had opened the purse, he had thrown the wallet at me.

Q. By the wallet, do you mean this red leather— A. Yes, sir.

Q. —wallet? And did you take that? A. Yes, sir.

By the Court:

Q. When you say the purse, do you mean the bag? A. No. Just the wallet is what he threw at me from the bag.

Q. You said when he opened the purse he threw the wallet at you? A. That is right.

Q. Did you mean the bag, when he opened the bag? A. No.

By the Prosecutor:

Q. What was it that he opened which you call a purse, something else besides the pocketbook and the wallet? Is this what you have reference to, called a change purse that was in the bag? A. I do not even remember seeing that.

Q. When you say he opened the purse, you mean this handbag? A. That is right.

Q. I see. And he handed you the red wallet which was in the handbag? A. That is right.

Q. And was there money in that? A. One dollar.

Q. Did you know what was in the pocketbook besides the dollar that was in the purse? A. No, sir.

Q. Was there some money in it? A. Yes, sir.

Q. And did Deegan keep some of it, and you took the one dollar? A. I took the one dollar.

Q. Did you keep the red purse? A. No.

Q. What happened to that? A. Miss Ruth Oberempt got it.

Q. Oh, you kept it until you gave it to Ruth? A. That is right.

Q. All right. Now, having made the distribution as described by you, did you then proceed to the Dumont railroad station? A. Yes, sir.

Q. What happened? A. Bob had knocked at the window and called the girls.

Q. Did you know how to get out of town? A. No, sir.

Q. What did you do? A. Followed Bob.

Q. And did he take you from there to the bus? A. He took us through some side streets and then onto a bus to the ferry.

Q. Do you know if there was a more direct way to get the bus from the Dumont railroad station than the way you took? A. No, sir.

Q. You do not know? A. I do not know.

Q. You just went with him? A. Yes, sir.

Q. Do you know whether, in going from the Dumont railroad station to the bus, you went past his home? A. I could not say, sir.

Q. You do not know. At any rate, you went through some side streets? A. That is right.

Q. And took the bus from the big broad street that runs right through the heart of Dumont and Bergenfield? A. I do not know that.

Q. You do not know that either? A. No, sir.

Q. Something was said about near the ice house. Did you come out by an ice house when you took the bus? A. I do not recall it, sir.

Q. You do not remember? A. No, sir.

Q. Did Deegan show any indication of worry after you got on the bus? A. Well, at the time, on the bus, he did not seem to be himself.

Q. And what did he say, if anything? A. Well, I had asked Bob what did he do it for, and he just said, "Shut up." And we went to New York; that was all there was to it. And then, when we got to New York, then he said he didn't know what made him do it.

Q. Of course, you knew what he did, didn't you? A. Yes, sir.

Q. You know he struck a woman over the head with a blow from which she afterward died for the purpose of robbing her, don't you? A. Yes, sir.

Q. You knew the moment it happened it was the wrong thing? A. That is right.

Q. Did you argue with him on the bus about that? A. Yes, sir.

Q. Did he show any concern at all? A. The only thing, he just says was, "Shut up," that is all.

Q. It has been testified here that he said, "I wonder if I hit her too hard." A. I couldn't remember that.

Q. You do not remember that? A. No, sir.

Q. Do you remember his wanting to see newspapers? A. No, sir.

Q. You do not remember that? A. No, sir.

Q. Well, you got to New York. Who got the shave? Somebody got a shave? A. No, sir.

Q. You do not remember that? A. No, sir.

Q. You got something to eat? A. Yes, sir.

Q. The four of you went to some spaghetti place and got something to eat? A. Yes, sir.

Q. Did you have some apartment you tried to get into to be accommodated at some one's rooms? A. Yes, sir.

Q. What did you do between Friday night and the time you were arrested Sunday? A. Well, when we got back to New York, the girls were hungry. So we went into the spaghetti place to have something to eat. They had all eaten, but I hadn't. I wasn't hungry. I couldn't eat. And after the girls had finished eating, I had given Bob the dollar that I had taken from the wallet to pay for the meals. While they were still eating, I mean to say, I went out and got a hair cut and they met me in the barber shop after they got through eating.

Q. Well, you put in all day Saturday and Sunday morning before the cops grabbed you, didn't you? A. That is right.

Q. What did you do with the time? A. Took in movies.

Q. Now, on the former trial, you testified in your own behalf, did you not? A. That is right.

Q. And you are here today because I brought you here to tell the truth, isn't that right? A. That is right.

Q. All right.

The Prosecutor: You may take the witness, Mr. Zabriskie.

Cross examination by Mr. Zabriskie:

Q. You came originally from up in the neighborhood of Boston, isn't that so? A. That is right.

Q. And you wanted to go back to Boston, didn't you? A. That is right.

Q. And you knew that Bob was infatuated with this Carolyn Twing, didn't you? A. No, sir.

Q. Well, didn't he stay with her when there was any staying to be done? A. That is right.

The Court: Keep your voice up, Hoffman.

The Witness: Yes, sir.

Q. As a matter of fact, the night that you stayed all night with Ruth Oberempt in a room in the Hotel Roxy, he stayed in a room with Carolyn Twing, isn't that so? A. That is right.

Q. And you knew that he wanted to marry her? A. No, sir; I did not know that.

Q. You did not know that? A. No, sir.

Q. He had never been in Boston before, had he? A. No, sir; not that I know of.

Q. And what he knew about Boston and getting to Boston is what you told him, isn't that so? A. Well, yes.

Q. Yes.

Mr. Zabriskie: That is all.

The Prosecutor: That is all, Hoffman.

(Witness excused.)

The Prosecutor: I will call Doctor Greenfield.

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

Direct examination by the Prosecutor:

Q. Doctor, you are the Assistant County Physician of this County, and a licensed physician of New Jersey? A. I am.

Q. Now, do you recall making an autopsy on the person of Ethel Herrmann sometime after January 21, 1944? A. I do.

Q. Will you be good enough to tell us what your autopsy disclosed? A. The date of autopsy was January 21, 1944. Superficial examination showed multiple abrasions of both elbows and abrasions of the left side of her face, the forehead, and contusions of the left ilium. She had contusions over the left eye and cheek and chin. There was a laceration over the central left parietal area of the skull, about perpendicular. The —the laceration was three inches long, and extended through all the thicknesses of the tissue to the bone. There was a straight incision held together by four silk worm sutures. The scalp was reflected. It showed a tremendous subscalpular hemorrhage over the entire skull. On examination of the bone, there was a fracture line extending from the lower portion of the left temporal bone, perpendicular, through the entire left parietal bone to the point on top of the head. The skull was opened. There was a tremendous large, extradural hemorrhage three inches in diameter over the left temporal portion of the brain. And in this area there was a tremendous necrosis

of the brain tissue, which showed it had probably been there about several days. The thickness of the blood clot was about one and a half inches in diameter, one and a half inches thick. The—the necrosis was due to the pressure of the blood clot following the skull fracture.

Q. Well now, what was the cause of death in language that we can all understand? A. Skull fracture, with a hemorrhage from the brain.

Q. Was it such an injury as might reasonably be expected to follow a severe blow? A. It was.

Q. A blow such as could have been inflicted by a baseball bat? A. It could.

The Prosecutor: That is all. Your witness.

Mr. Zabriskie: No questions.

The Court: Thank you, Doctor.

(Witness excused.)

The Prosecutor: Is Doctor Sealey in court. (No response.) I will dispense with Doctor Sealey. He was the attending physician and gave first aid. I understand he cannot conveniently be here at this time; so the State will rest.

(The State rests.)

INDEX

	PAGE
Writ of Error	1
Return by Court of Oyer and Terminer to Writ of Error	3
Indictment	4
Endorsements on Indictment	5
Notice of Motion for Struck Jury	9
Order for Struck Jury	11
Endorsements on Order for Struck Jury	12
Notice of Striking Jury	13
Affidavit of Service of Michael Polioka as to Notice of Striking Jury	14
List of Names of Persons to Serve as Jurors	15
Challenge to Array	20
Demurrer of Challenge to the Array	21
Venire for Struck Jury	22
List of Names for Struck Jury	23
Indictment	26
Endorsements on List of Names and Venire for Struck Jury	28
Affidavit of Service of James Philip, as to List of Names and Venire for Struck Jury	29
Defendant's Challenge to Judge A. Demorest Del Mar, Sitting in This Cause	30
Opinion of Del Mar, *J.*, on Defendant's Foregoing Challenge	32
Stipulation as to Admitted Exhibit	37

PAGE

Order Permitting Defendant to Retain Medical or Mental Expert 38

Minutes of Hearing on State's Motion for a Struck Jury 39

Minutes of Hearing on Defendant's Challenge to Array and State's Demurrer to Challenge 44

Minutes of Hearing (1) on Defendant's Motion to Retain Medical or Mental Expert, and (2) on Defendant's Challenge to Hon. A. D. Del Mar, Sitting in This Cause 55

Emil M. Wulster—for Defendant—Direct 58

Emil M. Wulster—for Defendant—Cross 59

Emil M. Wulster—for Defendant—By the Court 60

Emil M. Wulster—for Defendant—Redirect 65

John B. Zabriskie—for Defendant—Direct 66

Statement by the Court 66

John B. Zabriskie—for Defendant—Cross 72

Testimony 73

Examination of Jurors on Their Voir Dire 74

State's Opening 156

Defendant's Opening 164

Defendant's Summation 412

PAGE

State's Summation 422

The Court's Charge 438

Exceptions 455

Verdict 459

Dismissal of Jury 460

Motion in Arrest of Judgment..... 461

Defendant's Requests to Charge..... 462

Certificate of Stenographer 469

Stipulation as to Exhibits 471

Request to Court Stenographer for Transcript of Testimony and Acknowledgment. 472

Order in re Printing of State of Case and Brief for Defendant 474

Authentication of Entire Record of Proceedings 475

Assignments of Error 476

Specification of Causes and Reasons for Reversal 507

TESTIMONY

State's Witnesses

PAGE

Eugene Leo Touhill:
Direct 172

Joseph E. Popick:
Direct 176

Anna Hansen:
Direct 178

Emma Pekarek:
Direct 181

Joseph Mansfield:
Direct 183

Herbert Allmers:
Direct 186
Cross 201

Suzanne Reynolds:
Direct 204
Cross 207
Redirect 209
Recross 210

Raymond Hamilton:
Direct 210
Cross 212

Nathan H. Allyn:
Direct 212
Cross 215

Confession of Defendant, Deegan, Read into Record 217

Frank Herrman:
Direct 227

PAGE

Ruth Oberempt:
Direct 231
Cross 240

Dr. Lorenz C. Nicol:
Direct 245

Carolyn Twing:
Direct 247
Cross 251

Martin Hoffman:
Direct 253
Cross 268

Dr. Arthur W. Greenfield:
Direct 269

Dr. Paul Barringer Means:
(Rebuttal)
Direct 391
Cross 394
Redirect 396

Dr. Christopher C. Beling:
(Rebuttal)
Direct 397
Cross 404

Dr. Laurence M. Collins:
(Rebuttal)
Direct 404
Cross 410
Redirect 411
Recross 411

DEFENDANT'S WITNESSES

PAGE

Morris Deegan:
Direct 271
Cross 280

Deposition of 2nd Lt. Henry R. Davis:
Direct 283
Cross 286

William Henry Holmes:
Direct 291
Cross 296

Ophelia Holmes:
Direct 297
Cross 299

Dorothy Frink:
Direct 300

Helen Louise Dickson:
Direct 301
Cross 304

Myrtle E. Cole:
Direct 307
Cross 310

Sarah Heller:
Direct 311
Cross 314

Antoinette Peterson:
Direct 315
Cross 319

Edgar Hunt Deegan:
Direct 321

Richard M. Deegan:
Direct 328
Cross 330

PAGE

Madeline Deegan:
Direct 331
Cross 332

Donald George Deegan:
Direct 333

Max Tell:
Direct 335
Cross 336

Edna Deegan:
Direct 337
Cross 348

Dr. Geoffrey C. Burns:
Direct 349
Cross 360
Redirect 371
Recross 372
Re-redirect 373

Dr. William Leavitt:
Direct 373
Cross 383

COURT'S EXHIBITS ON PRELIMINARY HEARING

1 and 2—(omitted pursuant to stipulation), marked in evidence at page 56, folio 10.

STATE'S EXHIBITS

S-1 to S-15, Inclusive (omitted pursuant to stipulation), marked in evidence at pages 172 to 253.

DEFENDANT'S EXHIBIT

D-1—(omitted pursuant to stipulation), marked in evidence at page 282, folio 20.

THE DEFENDANT'S CASE

Mr. Zabriskie: Mr. Morris Deegan.

MORRIS DEEGAN, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Wulster:

Q. Mr. Deegan, where do you reside? A. Johnson Avenue in Dumont.

Q. You live there with your family? A. I do.

Q. What does your family consist of? A. Five sons, a wife and myself.

Q. And is Bob the second oldest son? A. He is.

Q. Now, Mr. Deegan, do you remember—of course, you do—when Bob was born? A. I do, vaguely.

Q. Will you tell us, Mr. Deegan, his appearance at that time and gradual progress as he grew older?

The Prosecutor: Now, if your Honor please, I would like to state an objection to any testimony of this character, unless the defense now allege that they plead that the defendant Deegan was insane at the time this accident occurred. I believe under the law of New Jersey the background of a defendant may not be inquired into save where the defense of insanity is pleaded, and I would like the record to show whether the defendant through his counsel now pleads insanity at the time of the commission of the offense.

Mr. Wulster: I think, sir, that was stated in the opening, and that is so.

The Prosecutor: Then I have no objection to the question.

The Court: You may answer the question.

Q. Will you answer the question for us, Mr. Deegan? Tell us about Bob's early life from the time of his birth. A. Well, my first knowledge of Bob's life was that his life had become noticeable. He was only about two weeks before he could actually open his eyes, and when he did, they were slit openings for a long period. For over a year, until he was at least a year old, he could not set up unless he was propped with some form of pillow or brace, or some sort, and even then he would wiggle out and fall over.

He could not walk or, in fact, stand until he was, say two, and then he would fall over. At three he walked. And during that period up until he was five years of age he could not talk or you could not understand his words. It was always a mumble and a muddle of words, and only by signs we could recognize what he wanted when he wished something. At five he could talk well, and we could understand some of his words.

Q. Between that period and six, he was able, we thought, to go to school, and his mother and I discussed it, and we decided at that time, we would send him to school. He was about six. He then went in the primary—in the kindergarten class.

Q. Did he ever graduate from school, Mr. Deegan, from grammar school? A. Did he?

Q. Yes. A. No, sir; he did not.

Q. How far did he go? A. He went to the eighth grade.

Q. How old was he at that time? A. He was seventeen years of age.

Q. Did he ever return to the eighth grade to graduate? A. No, he did not; in fact, he never graduated from the eighth grade.

Q. If he had returned to the eighth grade then, how old would he have been? A. He would have been—his—I think the age would be eighteen, as it occurs to me.

Q. All right. You started him in school at six years of age. What else did you notice about him as he grew older? A. Well, as he grew older, he—he went to school this way: As he went to school, we noticed it for a long time, that he would never go with the boys or come from school with the boys. He preferred being alone. And we used to chide him about it and tell him he was making a mistake; but it seemed to have no effect on him.

As he got older, in his play, he would not play with boys. He more or less contented himself in sitting on the side, on the sidelines. As he got older, his then older brothers would attempt to take him in charge more or less and, well, he would play along with them, and they were satisfied, and boys of his age at that time, and his size, just would not play with him, though he tried to get their confidence or, in other words, seek their company. It was no use.

As he went along, we were concerned, but nothing serious, as we thought; just a backward boy. But, as he got older, we noticed some peculiar antics. He would—well, from an early age, he would never feed himself. He got to be quite old,

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and we physically had to bathe him. When we would tell him to take a bath, he would go to the bath room, and we thought taking a bath, and he would come down dressed in clean clothes, and we assumed he had washed, but he didn't. And we let it go along, and we discovered he was putting clean clothes on top of dirty clothes, soiled ones.

When he got in his early teens, when boys of his size and age would be playing, the older boys would not have anything to do with him at all. They liked him because he was good-hearted, free for all; but they would not tolerate him. He just could not concentrate and play their games. Then he would seek the company of smaller boys, for instance, the size of my fourth son, when he was just a mere youth, tell him stories, and so forth.

Bob started to smoke when he was very young, which we thought was a bad habit, and tried to break him of it, but he did not see any harm in it. He was always, from his very young days, say, six to eight,—he used to like to see—or, crazy pictures and never anything else. He continued that all his life. Bob would go in the house and perhaps have something that you had bought him new, and give it away from the sake of giving it away, seeking boys' company. Everything was so muddled up through all his life, that we could not tolerate him or reason what was the matter with him. Even his brothers would not take him in their confidence. They tried to do things for him, but he just wouldn't do it. He would give things away, as I say, and we got concerned about him, and I tried to get him working and doing odds and ends, which he did. He

wouldn't take a steady job, a position. I did succeed in getting positions through friends of mine. He didn't keep them, wouldn't keep them. The reason, he did not seem to have the mental ability or initiative to do the things that he was told to do.

I call to mind on many instances I had him do chores about the house for me while I was in the city, and I would come home and the things wasn't finished, and he didn't do what I had told him. He would be off somewhere, and when I come in, I would chide him about it and scold him.

And oftentimes he would dress and put two or three pairs of socks on, two or three shirts and trousers, all at one time; not necessarily three articles at one time, but maybe three skirts and two socks or three socks at one time. And then, at another time, the same amount of socks and then two trousers. And oftentimes he would put on clean clothes over soiled clothes, and maybe without his face washed, knowing that he must have been dirty, because we told him to take a bath. And he would say, "I am clean; I took a bath." And we found he never took a bath, and he had the dirty clothes under him.

Q. Did he complain of headaches? A. Yes, sir. I was going to come to that. From about twelve, he used to complain of about continuous headaches. He had a great habit of taking aspirin. He would take four and five all at one time, put them in his mouth and chew them down without even water. And my wife and I, his mother, were quite concerned. And we talked plenty of times and tried to teach him, when he was going to school, his lessons, which he couldn't seem to

retain anything we taught him. And at night, not only his mother but my older sons who could understand and know what it was all about, just what to do with him. And what could we do? We were much concerned.

He would go off at any time in the early day to the pictures. We would give him spending money now and then because he did chores about the house. He would come back and say he was late and missed the bus, and he would come home. I asked him where he slept. "Well, I slept in the subway, rode back and forth." And he oftentimes would knock at the door at four or five o'clock in the morning to get in. He hadn't been eating, and would go to the ice box and get something to eat. On several occasions, we found that while out.

One morning before going to business his mother came upstairs and she said, "Come down, Morris. I want to show you something. I am frightened." Walked down the cellar stairs together, and she says, "Look in there." And there was a form in there, not knowing who it was at the time she first saw it. And she asked me, "Who is that?"

The Prosecutor: No. Do not say that.

Q. Just what you saw. A. I saw Bob lying there with dirty, old discarded clothes that I threw in there from time to time. It was the section of the—where he was sleeping on the dirt floor that was formerly the under dirt section of an outside porch where the bottom of the porch —where the dirt had been levelled off in this sec-

tion up to the easterly side of the house, the northeast section of the house, and up to within four feet of the rafters, what was formerly the underflooring of the porch, and there was only a space of about four feet in there. He had these discarded clothes all wrapped up, using a cement bag as a pillow.

Well, I had to reach through a little hole from a stepladder to get in there to him. I woke him up; I didn't call him; I just woke him up. I asked him what he was doing in there and how long he had been there. And he said, "Oh, I have done that many times." I said, "Why are you doing that?" "Oh, I didn't want to wake you up and disturb you." He said, "I have been sleeping there all day yesterday and all last night," words to that effect. And I can recall, if I am permitted to say this, on previous occasions we have seen him when he had a light going in the same section, and when he said, "Oh, I slept there many times," I felt perhaps it was true what I had suspected he was doing.

Well, then, we knew that something must be wrong with Bob, and I thought I was to blame for some of it, that I couldn't seem to coincide altogether with my wife, because I thought of the other boys and they all had equal opportunity. We didn't treat one any different than the other, excepting we cared more for Bob because of his weakness.

The Prosecutor: Just confine your testimony—

The Court: Just tell us—

The Witness: I beg your pardon.

Q. Mr. Deegan, did you ever discuss Bob with Captain Allmers, who testified here yesterday? A. Oh, yes, sir, many times. Mr. Allmers and I were friends for many years.

Q. And what was that discussion?

The Prosecutor: Now, unless he is going to contradict something that the witness said, I object. If he is going to contradict something, there is a legal way of doing it. Ask if the question was asked and an answer given.

Q. Did Mr. Allmers give you any advice in connection with Bob?

The Prosecutor: I object.

The Court: I sustain the objection.

Mr. Wulster: Your Honor will allow me an exception?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Q. Did you or Mrs. Deegan take Bob to any doctor? A. I did.

Q. And can you tell us the name of the doctor you took him to? A. Doctor—I don't know. Doctor Wunderman, New York City.

Q. Now, can you tell us anything else about Bob and his habits, how he looked, or what he did ? A. Well, as—I thought I covered that by saying that he is always unkempt and dirty, and he never cleaned himself, and he never thought of getting a hair cut. We would give him money

to get a hair cut, and he would come back and say he did get a hair cut; but I couldn't see that. To me it had no appearance of being cut. He just didn't have any sense of decency; he just couldn't concentrate on what he had to do. It was just plain carelessness. It is regrettable.

The Court: Mr. Wulster, the questions are pretty general, aren't they? Can you not confine yourself to specific instances?

Mr. Wulster: Well, I do not want to lead the witness. I would prefer that he relate them as he has been doing.

The Court: You do not fix any time. It is very general.

Q. When did you take him to the doctor? A. That was shortly after he got out of school. Well, it was after—around eighteen, I would say, or maybe nineteen. I just cannot recall. It was prior—if I may continue—it was prior to him entering the C C Camp.

Q. Now, from your observation of Bob over the period of years and these things that you observed about him, was any impression made upon your mind as to his mentality? A. Definitely so.

Q. And what was that, sir? A. I beg pardon?

Q. What was that impression? A. Impression? Well, as parents will, they felt—I personally felt definitely that Bob's failure to react to orders or statements or some request that was made of him would indicate that his mentality was definitely low. And he would give you the impression sometimes from his actions that he was a boy maybe ten or fifteen years younger than he actu-

ally was; or that the boy, fourteen or fifteen at that time, he was a boy with a mentality of about eight or nine. That was definitely my reaction. We were quite concerned. We asked my oldest son on many occasions to take him in charge and see what he could do with him, get him around among his friends. Well, Jack did take him to the swimming pool, of which he was more or less concerned, in Dumont. He was refused admittance there on several occasions because they would not permit him in the pool on account of his body, and the men and boys that were running the pool told Jack that—

The Prosecutor: I object to that.

The Court: Yes. It will be stricken out.

The Witness: All right. I am sorry.

Mr. Wulster: Cross examine.

Cross examination by the Prosecutor:

Q. He was about eighteen or nineteen before you had a doctor look at him? A. I would say he was about eighteen.

Q. And that was— A. A real serious matter.

Q. —the only time in your recollection while he lived home you had medical attention? A. Oh, in his younger days, we have had doctors there.

Q. For children's disease? A. No disease at all, sir. We never had a doctor for any disease in our home.

Q. Now, the thing we are now discussing: When did you first have a doctor see your boy? A. Well, about, maybe six months old.

Q. What doctor was that? A. That was Doctor Grimes.

Q. Is he alive? A. Yes. I think Doctor Grimes is alive.

Q. And practicing medicine in this county now? A. Yes.

Q. How frequently did Doctor Grimes see your boy during his youth until he was eighteen? A. Do you mean professionally?

Q. Oh, yes. Yes, professionally? A. I do not recall he ever did unless it was during my absence from home.

Q. Did he ever see him professionally? A. He did. I told you when he was about six months old, or thereabouts.

Q. And only once? A, To my knowledge, unless my wife called him, to my knowledge.

Q. Only once to your knowledge. And then, for the thing we are now discussing, your boy's mental condition, he never had medical advice, so far as you know, until you took him to Doctor Wunderman in New York when he was eighteen or nineteen, is that right? A. That is right.

Q. So far as you know, those are the only two times that you or any member of the family consulted medical advice because of your son's mental condition? A. That is right.

The Prosecutor: That is all.

Mr. Wulster: That is all, Mr. Deegan.

The Court: That is all.

(Witness excused.)

Mr. Zabriskie: If your Honor please, by stipulation, this Exhibit DD-4 is to be read into the record. Otherwise, we would have had to go down to Fort Meade to take the testimony.

The Prosecutor: I consented that the stipulation that was admitted in the former trial should go in without formal proof. Now, if someone will tell me where it is in the record, I would like to follow it as you read it.

Mr. Zabriskie: That is at page 449.

The Prosecutor: Thank you very much.

The Court: This is the testimony of 2d Lieutenant Davis?

Mr. Zabriskie: That is right. And I will ask that it be marked.

(Original transcript of testimony marked Exhibit D-1 in evidence.)

The Court: The Court will take a short recess. We will return at 11:30.

(A short recess was taken.)

(The Clerk polls the jury.)

Mr. Zabriskie: As I started to say, members of the jury, this is testimony that was taken on March the 3rd, 1944, down at Fort Meade. I will read it slowly, although the stenographer won't have to take this all down because he will have it complete without.

(Reading Exhibit D-1):

"Bergen County Court of Oyer and Terminer.

The State of New Jersey, against Robert Deegan, et als. On Indictment for Murder.

Deposition of 2nd Lt. Henry R. Davis—for Defendant—Direct

Army Service Forces, Third Service Command, Fort George G. Meade, Maryland.

Friday, March 3, 1944.

Before:

ARTHUR L. ROBINSON,
Commissioner.

APPEARANCES:

For the State of New Jersey, Hon. JOHN J. BRESLIN, JR., Prosecutor of the Pleas.

For the Defendant Deegan, JOHN B. ZABRISKIE, Esq., and EMIL M. WULSTER, Esq.

Mr. Breslin: It is stipulated that this deposition about to be taken is taken pursuant to an Order signed by Judge A. Demorest Del Mar, on February 29, 1944, and that Arthur L. Robinson, Commissioner, shall have all power and privileges necessary to carry out the purposes of the Order signed by Judge Del Mar on February 29, 1944.

SECOND LIEUTENANT HENRY R. DAVIS, called as a witness, being first duly sworn by the Commissioner, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Lieutenant, where do you live? I mean, where is your home? A. Do you mean my army address?

Q. No. Your regular home. A. My home is in Oklahoma City.

Q. I see. And where are you now stationed? A. At Fort George G. Meade, Maryland.

Q. And what is your capacity there? A. Assistant Registrar, Station Hospital.

Q. And as such have you the custody of and the access to the records of the Army Service Forces for the Third Service Command at Fort George G. Meade? A. Of the hospital records pertaining to the Registrar's Office.

Q. I see. Now, have you the record of a Robert P. Deegan who was a private in the 417th Infantry? A. Yes, sir.

Q. And does your record disclose his address, his home address? A. Yes, sir.

Q. And what address does that disclose? A. 82 Johnson Avenue, Dumont, New Jersey.

Q. Yes.

Mr. Zabriskie: I suppose we will put on the record it is conceded that the Robert P. Deegan is the defendant in this case?

Mr. Breslin: That is right.

Q. Now, have you the clinical record, if that is the correct title, of the said Robert P. Deegan? A. Yes, sir.

Q. And I show you a paper, which I will first ask to have marked for Identification as Exhibit D-1 as of March 3, 1944.

(The paper in question is marked Exhibit D-1 for Identification, Mar. 3, 1944, A. L. R.)

Deposition of 2nd Lt. Henry R. Davis—for Defendant—Direct

Q. And can you state whether or not that is a true copy of your records of which you have custody as you have said as Registrar or Assistant Registrar? A. This copy is a true copy of the record.

Mr. Zabriskie: Do you want to look at it, Prosecutor?

Mr. Breslin: No. If you say it is a copy, that is good enough for me.

Mr. Gaudielle: Who made it? May I ask him who typewrote it?

Mr. Zabriskie: Well, I do not know that this is material.

The Witness: I could not tell you who typewrote it. It was done here. All I could tell you is it was done in our Registrar's Office.

Q. I will ask the witness again: Have you made a careful comparison of that paper with the original records here? A. Yes, sir.

Q. And it is an absolute true copy of your records? A. Yes, sir.

Q. Yes. Can you state whether or not that record was made up in part from the examination made by a Doctor Hymen, or does your record disclose that or not?

Mr. Zabriskie: I withdraw that question.

Q. And I will ask you if the doctor or doctors who actually made this clinical abstract are at the present time in the camp, if you know? A. I do not.

Deposition of 2nd Lt. Henry R. Davis—for Defendant—Cross

Q. Neither one of the doctors is at the present time? Neither Major Hymen nor Captain Turk are members of this command? Neither of those men is at the present time in this camp? A. That is correct.

Mr. Zabriskie: I will offer this in evidence. I guess there will be no objection to it.

Mr. Breslin: No objection.

Mr. Gaudielle: May I look at it, Judge, because I also must pass upon that?

Mr. Zabriskie: Yes.

Mr. Gaudielle: So far as the defendant Hoffman is concerned, I have no objection to letting this go in evidence.

Mr. Zabriskie: You have no objection?

Mr. Gaudielle: No objection.

(Paper heretofore marked Exhibit D-1 for Identification now marked Exhibit D-1 in evidence, Mar. 3, 1944, A. L. R.)

Mr. Breslin: Are you through?

Mr. Zabriskie: Yes.

Cross examination by Mr. Breslin:

Q. Lieutenant, I assume that you are a medical doctor? A. No, sir.

Q. What was your business or profession before you joined the army? A. Accountant.

Q. Pardon? A. Accountant.

Q. You have no personal knowledge of any of the facts as outlined in this clinical report, have you? A. No, sir.

Q. Did you know Deegan while he was stationed here? A. No, sir.

Q. You have no recollection of him whatsoever? A. No, sir.

Mr. Breslin: That is all.

Mr. Zabriskie: That is all. Thank you very much indeed.

(Witness excused.)

Mr. Breslin: It is hereby stipulated that the clinical record heretofore marked Exhibit D-1 in evidence shall become a part of and be copied into this record, and is as follows:

'8960

'ARMY SERVICE FORCES
THIRD SERVICE COMMAND
FORT GEORGE G. MEADE, MARYLAND

MMDHB 20 Feb 44

Brief Clinical Abstract of: *Deegan,* Robert P. Private, 32279652, Co C 417th Infantry.

Admitted: 10 April 1943. *Time*: 8:55 A. M.

Reg. No.: 108787

Chief Complaint: 'Headache' 3 days, 'I guess I go AWOL so much.'

Condition on Admission: Oriented, sober, not acutely ill, slow cooperative, dull, depressed.

Personal and Family History: *Occupation*: P. W. A. 6 months, Odd jobs one year, C.C.C.

6 months,—'over hill,' Gas station 10 months, longest and best $18 per week, odd jobs one year, Reformatory one year, no work, drafted. *Habits*: Alcohol, 'pint a night as long as I can get it' for six years, Tobacco, 40 a day, Drugs, none; *Family History*: Father and mother, five brothers, living and well. One brother missing in action.

Previous personal history: No operations, M & M, C.P., W.C., 8th grade went back several times stopped at 19, couldn't get along in school, trouble maker. Arrest: 1. Break and enter $25, one year reformatory. 2. Drinking. Single: intercourse normal. No nail biting, enuresis to seven, occasional dreams of getting in trouble.

Injuries: Right forearm, fractured OK now.

Disease: Syphilis, under treatment.

History of Present Illness: Patient admitted from stockade because of frequent AWOL's. States he went AWOL five days after induction for two and a half weeks, fined $68. Because he was not paid second month in service he went AWOL despite fact that his fine and previous AWOL would total two months pay. The second time he was AWOL was two and a half months, apprehended, told to return without guard, went AWOL again, instead of returning. In guardhouse since Sept 42. Complains of unqualified nervousness and headache. Explains his actions to statement that he wanted to be in the Navy, two brothers there, one missing, other recently entered. Also 'I like to be free to come and go as I please.' Served one year in reformatory for 'breaking and entering.'

Exhibit D-1, Read into Record

Physical Examination: *Skin.* Tattoos both forearms and left arm. *Head*: Pupils equal react to light. EOM Normal. Tonsils small. Teeth class three. *Neck, Thorax, Vascular System, Abdomen, Hernia, Genito-Urinary, Anus and Rectum Glandular System*: All negative.

Lungs: Percussion resonant, Vesicular breathing, no rales. *Blood pressure*: Systolic: 130, diastolic, 76 Rt. *Heart*: No murmurs, no disturbance of rate, rhythm or force. *Nervous system*: Reflexes equal and active, cranial nerves negative. Romberg 0, Babinski 0.

Consultation Request and Report Dermatology, 12 April 43. Opinion of consultant: Patient has been under anti-syphilitic therapy since Nov. 42 at which time he was diagnosed 'NEW' Syphilis, secondary. Will continue treament while in hospital. To report to M-26 every Tuesday and Friday at 9:00 A. M. 13 April 43 Marpharsen .06 grams.

Radiologic Report: 20 April 43; Routine views of the skull show no evidence of fracture. The tables of the skull are more dense and thicker than average. Skull otherwise does not appear remarkable.

Progress Notes: 4 April 43: A confirmed psychopath with a long history of inadequacy and numerous arrests. Most of his Army existence has been spent in the guard house. 1 year was spent in a penitentiary in Rahway, N. J. for breaking and entering, chronic alcoholism. Imp: Constitutional Psychopathic State, Inadequate Personality. 4/26/43 Spinal puncture done with-

out difficulty. 4/27/43 0.06 gms. Mapharsen. 4/30/43 0.06 gms Mapharsen, 0.2 Bismuth. 5/2/43 Patient continues to complain of headache. Relieved after spinal tap but returned more severely the next day. Appetite good until about 4 days ago. Since then has eaten very poorly despite insulin, now stopped. Attempts to eat, but claims nausea and vomiting. Friendly, cooperative. 5/4/43 0.06 I. V. Mapharsen. 5/7/43 0.041 I. V. Mapharsen. 5/20/43 Patient has been demonstrating his psychopathic behavior for some time. On rounds is pleasant but between times is hostile, argumentive, impulsive. His lack of discipline is infectious and he is poor for the morale of the ward. To be discharged to guard house tomorrow.

Final Diagnosis: Constitutional Psychopathic State, Inadequate Personality.

Line of Duty: No EPTI

Condition on Completion of Case: Unchanged.

Disposition: Duty, May 20, 1943.

s/William Robinson III
Captain, M. C.

A True Abstract:

(Sgd) W. J. Lawson, Jr.,
W. J. Lawson, Jr.,
1st Lt. M. A. C.
Registrar.' "

The rest of this is just written. Army Forces, Third Service Command, and a clinical abstract

of the hospitalization, and the Commissioner certificate.

Mr. Wulster: Is William Holmes in court?

WILLIAM HENRY HOLMES, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Wulster:

Q. Mr. Holmes, where do you live? A. 67 East 101st Street, New York City.

Q. Do you know Robert Deegan, sitting here to my left? A. I do.

Q. When did you first meet him, about? A. I met him at the Cadillac Bar and Grill where I was working in September, 1943.

Q. And can you tell us the circumstances under which you met him? A. Well,—

Q. Were you both employed in the same place? A. Yes. We were both there working.

Q. And what employment was he doing at the time? A. Dishwashing.

Q. And your job was what? A. Porter.

Q. Did you get to know him very well? A. I did.

Q. Did you associate with him a great deal after that? A. I did.

Q. Will you tell us what that association was, please? A. Well, Bob was dishwasher and I was porter and he used to come out where I would be mopping the floor and want to help, and I would say, "No, Bob; go back. You are needed at the dish machine."

So he would insist on helping me. So finally, I would get him to go back to the dish machine. And, later on, he and I became great friends. I saw there was something wrong with Bob, because the way he would act—and I asked Mr. Tell—

Q. Do not tell us. You cannot tell us any conversation you might have had with anybody. A. Anyhow, he was put with me as porter, and we would be mopping early in the morning around one o'clock, and Bob would stop mopping and walk up Broadway and leave me to do the rest of the mopping, which I thought it rather unusual. But I paid no mind to it. That he done several times, and I tumbled there must have been something wrong with him, because he acted very peculiar; but I liked him. And he wore dungaree overalls, and they were dirty. So I said, "Bob," —on payday, which was Wednesday, I says, "Come on up to my house. Go to my house with me." And he would go anywheres you would ask him, go into a fire or any place if you would ask him. He was just that easily led.

The Prosecutor: Well, I object to that.
The Court: It will be stricken out.
The Prosecutor: I ask it be stricken out.

A. (Continuing) So he came up to my house and we ate and drank. So I said, "Bob, how about buying a suit of clothes, now that you have some money?" I said, "You know, going through the dining room, you look awful with those dungarees."

"O. K., Bill. I guess I do look kind of bad."

So I took him to 104th Street and Madison Avenue and bought him, with his money, a suit of clothes, a pair of shoes, a shirt and some underwear. And—

Q. Will you describe what he had on before he put on these? A. He had on a blue working shirt and a pair of overalls, no hat.

Q. In what condition were his underclothes before you purchased these new? A. Well, they were awful dirty. So we went back to my house with these clothes and my wife fixed him a bath, and he took a bath, and he put on his clean clothes. And he was so elated over the suit, he would look at it just as though a child would look at a toy you just bought him.

The Prosecutor: I object to the characterization by the witness of the manner.

Mr. Wulster: I think that is permissible, sir, how he looked.

The Court: I will allow it to stand.

The Prosecutor: All right.

A. (Continuing) Then, after he got dressed, my wife fixed supper, and we went to a movie.

Q. Who went to the movie? A. Bob and myself. We came back and we ate some more, and then Bob went downtown. I did not see him any more until that night at one o'clock, when we went in on the job.

Q. Did he at any time stay or sleep at your home? A. Yes, one night.

Q. And would he visit your home frequently? A. He would come up often. Sometimes he would come up with me from the job, sometimes he would come up on his own.

Q. And did he stay in your rooms? A. Yes.

Q. And meet other members of your family? A. Yes, sir.

Q. Now, what else did you observe about him, Mr. Holmes, during your association with him? Did you pal around with him? A. Yes. He always complained of headaches and he used to get Bayer's Aspirin, St. Joseph's Aspirin, any kind of aspirin, to alleviate the pain. And I also thought that was strange, and I said, "Bob, why don't you go to a doctor?" He said, "The doctor can't do me no good. I always had them."

And then I noticed he would sometimes go into a mood where he would stare off into space and be just a log for twenty or twenty-five minutes, just staring into space. If somebody said something to him, he would snap out of it.

Q. How would his conversation be? A. His conversation would be at random. He would go off, start talking perfectly normal for a while, and then he would go off on a tangent about something else. He could never stay on a conversation long and talk about the same thing.

Q. Well, when did you lose track of him, Mr. Holmes? A. Bob come with some girls down at Longchamps.

Q. Well, do you know about that? Did you see him with the girls or anything? A. Yes, I saw that. He used to bring them into the Cadillac. And he said, "Bill, I am going to leave you."

I said, "Bob, you are getting along all right here. Now, what are you leaving for; what are you leaving for?"

"Well, I cannot tell you, but I am going to leave."

So he left, and when he left, I lost track of Bob.

Q. Do you remember when that was, Mr. Holmes? A. I am not sure, but it was in the late summer.

Q. And you have not seen him up until the present, have you? A. Until today.

Q. Now, Mr. Holmes, you say the late summer of what year was that? A. That was in 1944, 1945.

Q. No. We are in 1945 now. Was it prior to January, 1944? Can you fix that date? We are now in January of 1945. And the crime was committed in January, 1944. Now, when did you last see him prior to January, 1944? Can you fix that time? A. January, 1944. I saw him when he was working with me at the Cadillac.

Q. When was that, now? A. Well, that was in September, 1943, I think.

Q. All right. Now, Mr. Holmes, from your association with him or, let me ask you this, first: Outside of yourself, do you know of any other friend or pal that he had in and around New York? A. No, sir.

Q. As far as you know, you were his only pal? A. I was his only associate.

Q. And tell us, if you will, from your observation of him during the period of time that you associated with him, during the period of time that he was at your home, during the period of time that you went to the movies with him, during the period of time that you worked with him, during that fall of 1943, what impression did he make upon your mind as to his mentality? A. Well, I —I thought that he was kind of off mentally.

Mr. Wulster: You may cross examine.

Cross examination by the Prosecutor:

Q. You had him in your home frequently, Mr. Holmes? A. Yes.

Q. And he met your wife and the members of your family? A. Yes, sir.

Q. You thought he was well enough to make him an intimate associate of yours, did you not? A. That is right.

Q. And the only time you suggested that he should see a physician was because of his headaches? A. That is right.

Q. He had some peculiarities like not being able to remember whether it was 1943 or 1944, is that right? A. I do not know about that.

Q. Well, he had some peculiarities. And that is a peculiarity not to be able to tell within a year when you were with a man last, isn't it? A. I guess so.

Q. So, like you, he had peculiarities, is that right? A. That is right.

The Prosecutor: That is all.

Mr. Wulster: That is all, Mr. Holmes, thank you.

(Witness excused.)

Mr. Wulster: Is Mrs. Holmes in court?

A Voice: Yes.

Mr. Wulster: Would you come up, please?

Ophelia Holmes—for Defendant—Direct

OPHELIA HOLMES, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Wulster:

Q. Mrs. Holmes, where do you live? A. 57 East 101st Street.

Q. And you are the wife of William Holmes who just testified? A. I am.

Q. Have you ever seen Robert Deegan before, the man that sits to to my left? A. I certainly have.

Q. Can you tell us when you saw him, Mrs. Holmes? A. Well, I met him when my husband brought him up to the house one night. And they was off on a Wednesday night, and he came home Wednesday night, and he brought Bob. He said, "Bob is going to stay all night with us." So they sit there in the kitchen and they talked and talked, and I said to him, "I heard Bob talking so funny." So I told my husband. I said—

The Prosecutor: I object to what she told her husband.

The Court: You cannot tell what you said to your husband.

The Witness: No? Well, I cannot.

Q. No. You can just tell us what Bob said or what he did there that night. Can you tell us how he acted? A. Well, he didn't act so good. And, of course, I didn't think so much of it. Well, we had supper and we ate and I fixed a bed in the living room, and he went to sleep. So he said to me, he said, "Mrs. Holmes, I got a terrible headache."

"Well," I said, "Bob, I got some aspirin. I will give you a couple."

So he taken aspirin and went on in the bed. I got up the next morning. I said, "Bob, how is your head?"

He said, "My head ain't no better."

So I made some strong coffee and we sit out and ate breakfast. So my husband went out to dress him up, but Bob really say—he said he wasn't fit to come in the house the way he look. So my husband took him out and fixed him up. And I fixed a bath, and he looked like a different man after he come out from taking the bath. So they got dressed and Bob and he went on out. And I said to myself, and I said to my daughter—

The Prosecutor: No. I object to that.

Q. You cannot tell us what you said. A. I just thought like this, with Bob, I am a great, great grandmother. And things I hear Bob say, I just say my children could think better than he could, and I am a great, great grandmother. I am fifty-six years old, and I don't think Bob got all, something wrong about him, and I still say it.

Q. And did he associate with your husband a great deal? A. He certainly did.

Q. From your observation of him, what would you say about his mentality? You have told us already, but have you come to any opinion? A. I have come to this opinion: I just don't think Bob got all belongs to him. I think he loco.

Mr. Wulster: Cross examine.

Cross examination by the Prosecutor:

Q. Was he at your house just one night, Mrs. Holmes? A. No. He was there a couple of times.

Q. Does that mean twice? A. With my husband.

Q. Does that mean two times? A. Well, with my husband.

Q. Two times overnight? A. No, not overnight. He only slept one night overnight in the front room.

Q. And one other time you met him? A. He just came up with my husband, but he did not stay.

Q. And those are the only times you ever saw him? A. Yes, sir.

The Prosecutor: That is all, Mrs. Holmes.

Mr. Wulster: That is all, Mrs. Holmes.

(Witness excused.)

Mr. Wulster: Is Mrs. Heller in the courtroom?

(No response.)

Mr. Wulster: Miss Frink from the Middletown Hospital.

DOROTHY FRINK, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Miss Frink, you are from the Middletown Insane Asylum? A. Middletown State Hospital.

Q. The Middletown State Hospital. That is for the insane? A. Yes, sir.

Q. What position do you hold there? A. I am secretary to the director.

Q. And have you with you a record— A. Yes.

Q. Of Mr. William Harry McKim? A. Yes.

Q. And is that the exact—is that the record as it remains on file? A. That is the original record.

Q. That is the original record, that is kept in your custody? A. That is right.

Q. At the hospital? A. Yes, sir.

Mr. Zabriskie: I offer this in evidence.

The Prosecutor: That is objected to, if your Honor please. The hospital record is not evidential, not properly evidential.

The Court: Objection sustained.

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

The Court: You may have an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Prosecutor: No questions.

Mr. Zabriskie: That is all.

The Court: That is all, Miss Frink.

(Witness excused.)

Mr. Zabriskie: Mrs. Dickson.

HELEN LOUISE DICKSON, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Mrs. Dickson, where do you live? A. I live at 56 Niagara Street, Dumont, New Jersey.

Q. Do you know the Deegan family? A. Very well.

Q. Do they live in your neighborhood? A. Yes. We are close neighbors.

Q. Can you tell us how your house is situated with reference with theirs? A. Well, it is like an el. I live three doors up on Niagara, and they live two doors up on Johnson. It is just cat-a-corner. I can see their place from mine.

Q. Do you know Robert Deegan, one of their sons? A. Very well.

Q. When did you first have opportunity of observing Bob? A. Well, as a little boy he—he seemed to be different than the other children. He was backward. Well, he just did not seem to mingle. He used to play with them as a group, but—oh, he was just different.

Q. Well, can you tell us what you observed about him as he grew up and his association with you? A. Yes. He used to come in as a group. He

was—seemed to want to be there among the boys, but he never took any active part and, I noticed as he came from school with the different children and their report cards, he would produce his report card.

The Prosecutor: Now, I object to what the witness saw on some report card that is not in evidence.

The Court: Sustained.

The Witness: Oh, I am sorry.

Mr. Wulster: May I have an exception, if the Court please?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

By Mr. Wulster:

Q. You see the report card? A. I saw the report card and it was a total failure.

The Prosecutor: I object to that, the witness' statement what she saw.

The Court: Stricken out.

Mr. Wulster: Exception, please.

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: It will be stricken out and disregarded by the jury as to what was on the report card.

Mr. Wulster: May I note an exception to the striking, sir?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Q. Tell us just exactly what you observed about him, if you will? A. Well, I remember one time he came in my house. We were going to take the children's pictures. First of all, they were all small, and we could not get Bob to come in with the group. I had to go across the street and bring him over, and I have that picture of him, but I had to force him to get his picture taken with the other children.

And it was the same with the electric trains. It appeared to me that almost every child, or every boy, especially, liked electric trains. Bob would sit on the cellar-way stairs and watch, but he would not go down and try to operate them. He would just sit there and watch and be content to watch.

But then there was another time I was cleaning house, and he bolted into my house and across the living room, something he had never done. He has always knocked or called, and he said—he went through to the dining room and sat in the big chair and pushed the curtains aside. I asked Bob, "What is the big idea?" and he said, "I am tired." But I said, "You have never done this before." And the lady who was there with me, she was a neighbor, and she seemed quite surprised too. And he said, "Well, I am tired." And I said, "Well, are the boys chasing you?"

and he said, "No." "Well, then," I said, "I think you better go on out with the other boys." Now, he had never done that before.

Q. Did you notice how he acted, walked and dressed, and so on? A. Yes. He walked with his hands hanging, sort of hung. He held it this way, and he carried his head to one side. And in the play with the boys, he would stop right in the middle of a game and go to the curb and sit there. And they would say, "Now, Bob, come on, you are spoiling the game." But it did not seem— he was just tired. He was very—he was not a normal child. He always seemed backward in everything, not only one thing, his play, but no matter what he did, he just was—it was noticeable, because all the boys were so different. In school, younger boys started long after Bob, they passed him.

Q. Now, from your observation of him over the period of years and seeing him at play and in your home, was an impression made upon you as to his mentality? A. I never thought Bob was right.

Mr. Wulster: Cross examine.

Cross examination by the Prosecutor:

Q. Mrs. Dickson, these events you have related all transpired when Deegan was a little boy playing around the street, didn't they? A. Oh, no. It is right up until the time he went into the Army.

Q. Well, you have described some things about electric trains. That was when— A. Yes.

Q. —he was a little boy? A. He was smaller.

Q. And you have described his playing on the

street and going to school; that is when he was smaller? A. That is right.

Q. You have not described anything, unless I am incorrect, except the doings of children. A. No. Well, another time he came to my house. He told me he was stationed down at Mitchell Field, and it was between eleven o'clock and twelve noon. And he said that he was on a furlough, and he was stationed at Mitchell Field. And I said—I asked him if he had been over to see his mother, and he said no, "I have not; but I am going over there for lunch."

He said, "You know, Mrs. Dickson, I am married?"

And I said, "Oh, you are not, Bob?"

He said, "Yes. Would you like to see my wife's picture?" And he took out his wallet and produced a picture of a girl and also one of an older couple, and he said that was her mother and father. I asked him if he told his mother, and he said no; that he was going over to tell her when he had lunch with her. But later I found out he did not go to the house at all.

Q. You also found out that that was not true, did you not? A. Yes, I found that out.

Q. It was not surprising to have him lie to you, because he frequently lied to you? A. No. He did not frequently lie to me. I could not say that. He was a very willing boy.

Q. He only lied to you once? A. That is the only time, but I did not know it was a lie at the time.

Q. But it was a lie? A. It proved to be a lie.

Q. And it is the only time he ever lied to you? A. The only time I have any knowledge of.

Q. Now, did you tell us everything from which you came to the conclusion that you did about his mentality? A. He told me one time that his grandmother hated him, and I did not believe that. And I was passing the Deegan home one afternoon, and the grandmother was on the porch. Evidently Bob had done something which she disapproved of, and she said, "I cannot stand that boy." "Oh," I said, "you do not mean that?" and she said, "Yes, I do." She says, "He is impossible."

Q. This is what his grandmother said? A. His grandmother said.

Q. And he told you his grandmother needed him? A. Yes, he did.

Q. Now, is there anything else out of your long acquaintance with this boy extending all through his youth until his manhood that you can tell us which caused you to come to the conclusion that you have stated? A. Well, he just did not seem to fit in. He was different.

Q. You have said that. Is there any event, any transaction, any characteristic, you can tell us in addition to what you have already told us? A. Well, probably lots of things; but I just cannot think of them right now.

The Prosecutor: That is all.
Mr. Wulster: Thank you, that is all.
The Court: That is all.

(Witness excused.)

Mr. Wulster: Mrs. Cole.

MYRTLE E. COLE, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows.

Direct examination by Mr. Wulster:

Q. Mrs. Cole, where do you live? A. 61 Niagara Street.

Q. In Dumont? A. In Dumont, yes.

Q. You are a neighbor of the Deegans? A. Yes, directly opposite.

Q. For how long a period of time have you lived there. A. I have lived in Dumont twenty-seven years.

Q. Do you know approximately how long the Deegans have lived in your neighborhood? A. I think it must be about twenty-five or twenty-four, I am not sure.

Q. Did you over that period of time have an opportunity of observing particularly their son Bob who sits here at the counsel table? A. Yes, ever since Bob was two years old.

Q. Can you tell us what you observed about him over the period of years? A. When Bob was a youngster, he associated with other boys and my son. And although Bob was older, his mentality would never come up to the other boys. He would —they would play together, and Bob would sit at the side. We had open house at my place, and the boys are always welcome. They would play and asked Bob to play ping-pong, and he would say, "I cannot play that." And they would coax him and no, he would not play. And he would just sit there, and in a little while he would get up and go home. And they would try to attract

different things in games and thought they might interest him, but he was never interested in play.

Bob has always been very gentle. I have never seen him in any quarrel or lift a hand to any other boy. Other boys would have little arguments, but I have never seen Bob do that. He was always good to children and to animals, and was always very glad to do anything for anybody.

The Prosecutor: Now, I object to the testimony, if your Honor please, and ask to have it stricken. The questions should be confined to peculiarities, and not in praise of his conduct and relation to animals.

Mr. Wulster: I think it is proper. She states her observation.

The Court: That portion of the answer will be stricken which is a recital of any praise of his conduct, and only that testimony permitted which tells of those peculiarities upon which the jury may base some opinion as to the mentality of the defendant.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception on the record, sir?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Q. There was a vacant house in your neighborhood, wasn't there, Mrs. Cole? A. Yes, directly

opposite the side street of Johnson Avenue facing my kitchen, and I was in that part of the house very often. That was vacant for quite a while, and several times I noticed that Bob had been in the house. I—

Q. Do you remember approximately when that was, how many years ago? A. Well, that must be about six years ago, I imagine, because the people that live there are living there about five, I think, and—

Q. Suppose you tell us what you observed about Bob with reference to the house? A. Well, one morning when I was in the kitchen, I happened to glance over, knowing the house was vacant. I saw Bob upstairs at the window.

Q. Can you tell us what time of the year it was? A. It was cold. It was winter, and at night. I thought it best to send word to the owner of the house to see if the doors were open, or there was some way in which he could go in and out and have access to the place, And knowing Bob, smoking and that, I thought it was wise to let them know. I sent word, and the next day it was supposedly to be locked.

Q. Tell us what you observed about Bob. A. Well, Bob hid behind the window. And the next thing, later in the morning, he was out at the corner. He seemed to be watching his home which was directly in back of this house. There is a hedge all along the place and he crawled on his hands and knees to his own home and hid behind a bush. He seemed to be waiting for a chance to get into his house. He got to the back door and looked around, because I watched Bob, because I knew of his weakness, and he climbed over the

trellis on the back porch and went in home. That time, I did not know he was using the place for a lodging, sleeping, until I sent word up that the house was closed. And they said that he had been sleeping there.

Q. Now, from your observation of him over the period of years and from these things that you have seen him do, was an impression formed upon your mind as to his mentality? A. Bob's mentality is very low to me in comparison with others. His actions alone can tell anyone that.

Q. What is your opinion, your definite opinion, would you say as to his mentality? Have you formed any? A. I think Bob's mentality would equal—

The Prosecutor: Well, I object to her characterizing it. She has said it is low. I think that is the answer.

Q. Do you have any other opinion as to his mentality as a result of what you have observed? A. Well, I don't. Bob is—I think he is mentally deficient.

Mr. Wulster: Cross examine.

Cross examination by the Prosecutor:

Q. He was hiding out in this house opposite you, madam, wasn't he? A. I imagine—yes.

Q. And that is a proper characterization, isn't it? A. Yes.

Q. He was hiding there, and the owners did not know it, and his family did not know it, and you only know it because you observed him from the manner you have described? A. Yes, sir.

Q. At that time, he was committing burglary in the town of Dumont, wasn't he? A. I think that was after.

Q. Wasn't that in the winter of 1939, the period which during which he confessed to burglarizing of a number of houses in Dumont? A. I did not know about that time.

Q. Yes. But you testified in the last trial and you have refreshed your recollection and now you know he was using that hide-out while he was robbing his neighbors, don't you? A. No. I don't know that he robbed the neighbors.

Q. You know now that he did? A. Yes.

Q. And he robbed his own family, didn't he? A. That was in the last—I heard that.

Q. Yes. And he was crawling along under the hedge on his hands and knees so his family could not see him, so he could go in the house and rob his own family, wasn't he? A. I did not know that.

The Prosecutor: That is all.

Mr. Wulster: That is all.

(Witness excused.)

Mr. Wulster: Mrs. Heller.

SARAH HELLER, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Mrs. Heller, where do you live? A. I live at 100 West Forty-fifth Street, New York City.

Q. And what is your occupation there? A. I have a rooming house. It is called the Arnold House.

Q. Yes. And do you know Robert Deegan, this young man here? A. Yes. He lived there November of 1943, rather, December, because I remember I was on jury duty at that time.

The Court: December, 1943?

The Witness: 1943, that is right.

Q. Up until sometime in December, 1943? A. That is right.

Q. Yes. And how long had he been with you, approximately, before that? A. Well, he was with me, I think, about three weeks.

Q. About three weeks? A. During that time, I was on jury duty. I would come home about four or five o'clock, and Bob would come home from work, and he would come up into the kitchen. When he registered—nautrally we have that register where they are from—and learning that he was from Dumont, I asked him why he does not live home. So he had told me that he was discharged from the armed services. I asked him why. He said he did not know. I said, "Now, why don't you go home?" He said, "My folks don't even know that I am out of the Army."

So every time that he would come out, come upstairs to me, I would try to impress him it was necessary for him to go home and see his folks. I happen to have a son in the service myself, and I knew his folks would be pleased to hear about it. Well, Bob promised to go home for Christmas.

The Prosecutor: May I ask counsel to state what the purpose of this testimony is.

I do not see any relevancy, and I do not see any purpose, and I object to the entire line.

The Court: Perhaps counsel will tell us.

Q. Well, what opportunity did you have to observe him, Mrs. Heller?

The Prosecutor: Is this witness going to characterize his mentality?

Mr. Zabriskie: Yes.

A. We observed, my husband and I both observed that his mentality was very low. He would come up and sit—

The Prosecutor: I object to what her husband observed and ask that it be stricken out.

The Court: It will be stricken out. And you may only tell what you observed, Mrs. Heller.

The Witness: If I talked to him, he would answer me; if I did not talk to him, he would just sit in my kitchen and sit there. And at one time, he said, "Mrs. Heller, I brought some bacon." I said, "What do you need bacon for?" "Well," he said, "there is so much bacon where I am working." I said, "Where do you work?" He said, "In the lunch counter at the Brooklyn Navy Yard." I said, "I do not want any bacon, thank you."

Q. What was his appearance? A. His appearance, he kept himself very dirty. In fact, I had given him some clothes of my son's, so that he

would be able to change, and tried to awaken him up to cleanliness.

Q. Where did he spend most of his time nights when he was not working? A. Well, his conduct seemed to be—he did not run around. But the last week I noticed there was a room rented while I was out to a young man, and he used to like to play cards. Well, the first thing you know, he got Bob so he would not go to work, and they used to stay home and play cards. So I told him, this other lad, that they would have to get out. And they said he was getting out, I was downstairs counting out the laundry, and Bob happened to come along. I said, "Bob, are you gong too?" He said, "No, Mrs. Heller. I am staying here." But I never saw Bob after that.

Q. And what did he leave behind? A. Everything that—well, he didn't have very much.

Q. Everything that he had? A. Everything that he had, he left behind.

Q. Yes. A. Well then, his father came looking for him, that he had been home.

Q. Well, we needn't go into that. From what you say of him, what opinion did you form at the time of his mentality? A. Well, his mentality was very low.

Mr. Zabriskie: Cross examine.

Cross examination by the Prosecutor:

Q. You have told us all the important things that caused you to come to that conclusion, Mrs. Heller? A. Well, I think anybody that would know Bob would realize that his mentality was low.

Q. Pardon me. That is not the question.

The Prosecutor: Will you please strike that answer as not responsive?

The Court: It will be stricken out as not responsive. Just answer the question.

Q. Have you told us the things that you observed, the substantial things, which caused you to come to the conclusion that he is of low mentality? A. Yes, I have.

Q. And among those was the fact that you suspected he was stealing from the place where he was working? A. That is right.

The Prosecutor: That is all.

The Court: That is all.

(Witness excused.)

Mr. Zabriskie: Mrs. Peterson.

ANTOINETTE PETERSON, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Mrs. Peterson, where do you live? A. At present, I am living in Bergenfield.

Q. And formerly, you lived in— A. In Dumont.

Q. And do you know Robert Deegan? A. I did, I do.

Q. And how early in life did you know him? A. He must have been about three years old when

his mother brought him to Sunday School. I was the Sunday School teacher.

Q. Now then, what did you observe in his conduct or appearance at that time? A. Well, at first, naturally, with all the youngsters I had on my hands, I thought he was someone backward. And I felt that children of three and four, I could teach them Bible verses and could not instill anything in Bob. And when we would go up to assembly, as we did two or three times a year, Bob would be hesitant and would not move, and the children would laugh at him, and he felt hurt. He had that peculiarity of holding his hand and bobbing his head and, naturally, he would stay in the rear. Now, the children of three and four—

Q. And what do you mean, holding his hand? A. Yes. He had a very peculiar way of holding his head and his hand.

Q. Holding his hand in something of the position I am indicating now? A. Yes.

Q. Yes? A. And he was fearful, always fearful; in fact, the youngsters of three and four could memorize their verses, and Bob never could. So I went to his mother and spoke to her about it.

The Prosecutor: I object to the conversation.

The Court: Do not tell us what you said to his mother.

Q. What developed after that? A. Speaking to her about his peculiarities, and I asked her—

The Prosecutor: I object.

Q. You cannot tell us what you said. A. I tried to instill the Bible verses, and I had him up to seven years of age, and still he was not on a par with the children of three and four. So I reasoned his mentality was low, there was something radically wrong.

Q. Was there an incident about hand bandaging? A. That was later, yes. I was a friend of Mrs. Deegan, and I would call, and one day, it was a Saturday, and Bob had his hand bandaged, and I took the liberty of asking him why it was bandaged, and he wasn't working. Well, he said he could not work, and he had a sore hand. And Monday it was my day off, and I usually stopped in with Mrs. Deegan for tea, and Bob asked me if he could clean the car.

I said, "Why, yes, Bob. I have no objection to your cleaning the car."

So he started to clean the car, and I noticed his hand was not bandaged any more.

I said, "Bob, what has become of the bandage on your hand? Is it better and, if it is better, why aren't you working?"

"Oh," he said, "I am all right now, but I am going to clean your car."

And he cleaned half of the car and he let me go home with the rest of it dirty. It had been very dirty because I had come home through the Pines.

And on many instances when I had the offertory in Sunday School, very often I had a small purse with change, and if some of the youngsters did not have pennies, I would give them pennies, so they would not feel humiliated. And this day, it hap-

pened several times, that Bob did not have his penny. And I said, "Bob, I know your mother gave you a penny. What did you do with it?"

"Well," he said, "I spent it."

I said, "What did you do with the candy?"

"Well, I gave it to Bob," or "I gave it to Richard." He never kept it for himself.

So this one day, I said, "I will give you a penny, but it is going to be the last time."

And I usually have my change purse on the table, and this day, several Sundays after I had given him the offertory, and it was cold, and there weren't as many youngsters at Sunday School. And Bob happened to come up and looked at the plate and evidently found there wasn't quite sufficient money in it. So he took my purse and emptied my purse into the offertory plate. And I questioned him, and I said, "That was Aunty Nettie's. You should not take the money." Because he always called me Aunt Netty, as several hundreds do in Dumont, and I said, "What did you do? That is Aunt Nettie's purse. You should not take that money."

"Well," he said, "you said that was for God's work, and I did not think you would want it."

And that has been right along. I have always found Bob docile, quiet. I never, in all the times, the years—in fact, I had him two or three years longer.

The Prosecutor: That is objected to.

Q. Were there any other peculiarities you can think of that struck you as being unusual? A. He was unusual always backward.

Q. And from all these things you observed—what was his appearance, the same as it is now? A. Well, as he grew up, yes; but as he was a child he was always neat and clean while he was under his mother's care.

Q. Yes. A. But as he grew up he was always untidy.

Q. And from all these observations you made and things you saw, and his appearance, what conclusion did you reach at the time as to his mentality? A. That it was low, that it was not normal.

Mr. Zabriskie: Cross examine.

Cross examination by the Prosecutor:

Q. Mrs. Peterson, you taught in the old North Reformed Church? A. I did.

Q. In Dumont, is that right? A. Yes, sir.

Q. And you observed the boy as a very neat, clean boy while he was a little lad, growing up, is that right? A. Under his mother's protection, yes.

Q. While he was home as a little boy, you did not observe any characteristics of dirtiness or slovenliness on him? It was only after he was grown up and taking care of himself that you observed that, is that right? A. Yes.

Q. And one of the things you thought was peculiar, he took his Sunday School money and spent it for candy, is that right? A. I did.

Q. On the other hand, he took your money and gave it to the church? A. Yes. But that was customary. The other children did the same thing, spending their money for candy.

Q. Please, Madam, answer the question. Isn't

it a fact that you thought it was peculiar that he took his own money and bought candy with it when he was supposed to put it in the offering? Is that what you testified to? A. I did testify to that.

Q. All right. That is the answer. That is what you said was peculiar, did you not? A. I did.

Q. And you thought it was peculiar that he took your money that did not belong to him and put it in the offering? A. Put it in the offering.

Q. So he did not have much regard for the rights of other people, did he? A. He did not seem to know right from wrong.

The Prosecutor: May we have the answer stricken, and the witness instructed to answer the question?

The Court: Yes. Will you please answer the question, and if you do not understand the question, you may tell the Court. So he did not have much respect for the rights of other people, I think is the question?

The Witness: No, he did not.

Q. And you are very anxious to answer every question in a manner that will help this boy, aren't you? A. If I possibly can.

Q. Yes.

The Prosecutor: That is all.

The Court: That is all.

(Witness excused.)

Mr. Wulster: Edgar Deegan.

EDGAR HUNT DEEGAN, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Wulster:

Q. Edgar, you are are brother of Bob? A. I certainly am.

Q. And how old are you? A. I am twenty-six.

Q. And you are younger than Bob? A. I am.

Q. Did you grow up in the home with Bob? A. I did that.

Q. With your other brothers? A. Yes, sir.

Q. Tell us what you observed about him in your own way, will you please? A. My observations of Bob as a child,—well, I can recollect that—frankly, I—

Q. Speak to the jury, will you? A. Frankly, I—I—I just did not care to have Bob playing with me for the simple reason that whenever I did, the other children would say, "Well, gee whiz, we cannot play with Bob. He is not all there."

The Prosecutor: I object to that, if your Honor please. The witness is asked to characterize the brother, and he tells us what someone said. I ask to have it stricken.

The Court: It will be stricken out. I think, Edgar, you understand what counsel is asking you. He wants to know what you observed about your brother Bob which was in any sense a peculiarity. Now, tell the jury that, and confine yourself to that, and do not tell us what was said.

Q. Just if you will tell us how he looked and how he acted and what he did, that you observed, as you grew up with him as his brother. A. Well, one thing in particular I can recall, when I had been out playing and having a grand time with the other fellows, Bob would be inside, either sleeping—he slept an awful lot. He—he would just sleep for no apparent reason when he could be out with the other fellows playing and having a swell time like the rest of us, but sleep, that was utmost, it seemed.

And he would wear several—several suits of clothes—what I mean, always of clothes, mine, my brother's, and over his own which were all ready to fall off his body, if I might use that expression.

And, well, my own personal observation was, as I grew up, and as I am now, that Bob did not or he has not, rather, the mentality of a boy ten years old.

The Prosecutor: Now, I do not think that is proper. I object to that and ask it be stricken out.

The Witness: That is—

Mr. Wulster: I think that is permissible, sir, for him to gauge mentality from his observation under the cases.

The Court: He may tell us what he observed.

Mr. Wulster: That is right, and he may give us his opinion based on the observation.

The Prosecutor: He may give us his opinion as to the mentality of his brother.

He certainly cannot do it the way experts do by cataloging his age.

Mr. Wulster: I think the cases hold that testimony of lay witnesses is entitled to as much if not more respect than experts.

The Prosecutor: I challenge that statement and ask counsel to produce the citation.

Mr. Wulster: The Spencer case, by Justice Hornblower.

May we send for the case, if Mr. Winne would like to read it?

The Prosecutor: I know the case very well.

The Court: Yes. I think we all know that case.

I think at this time we will take a recess, until what time, Sheriff?

The Sheriff: 2:15, I think we can be back.

The Court: The jury will leave the room before the rest of the audience, and the Court will reconvene at 2:15 P. M.

(The jury retired at 12:45 P. M.)

Mr. Wulster: That is 21 Law, 197.

The Prosecutor: Your Honor might look at State v. Morehouse, 97 Law 285, which says, "Lay witnesses may give their opinion of a person's sanity, or insanity, provided such opinions are based on facts within the knowledge of the layman."

The Court: Yes.

All right, the Court will stand adjourned.

(A recess was taken at 12:47 P. M. until 2:15 P. M.)

After Recess. 2:15 P. M.

The Court: Judge Zabriskie? I think there is a question that was asked upon which the Court has not ruled. May we have the question?

(The prior record was read.)

The Prosecutor: The motion was made to strike, and I rest my argument on the case in the Court of Errors and Appeals, State v. Rodia, decided in 1944, in which the Court of Errors and Appeals affirmed the conviction of a defendant, in which the Court had said, "It is my observation that the so-called mental age theory of the experts, at least as applied to adults, is based upon so arbitrary and unnatural scale of ages as a standard, as to be utterly misleading to a layman and practically useless, in the administration of justice by trial by jury." Case in 132 New Jersey Law, 201.

Mr. Wulster: We rely, if it please your Honor, on the case of Genz v. State, a case by the Court of Errors and Appeals, wherein there was a reversal, and Justice Ludlow said: "Several of these are based on the refusal of the court to receive the opinions of non-professional witnesses as to the insanity of the prisoner. Without particularly specifying them, it is sufficient

to say that such opinions of such witnesses grounded on facts and circumstances within their personal knowledge, and stated, are held to be competent and should go to the jury who are to estimate their worth."

And then, in the Spencer case.

The Court: The Spencer case, Mr. Wulster, is simply a charge of Chief Justice Hornblower, which is an ideal charge—

Mr. Wulster: That is correct.

The Court: —very well conceived and written, but I do not suppose you would call it as law of the Court of Errors and Appeals.

Mr. Wulster: Except that they approve the language that he used.

The Court: Yes. Yes, but it is not the opinion of the court. You are reading from a charge of Justice Hornblower.

Mr. Wulster: That the Court of Errors decided was the law, but they decided that that charge was correct and had no error as to the—

The Court: Where do you get that?

Mr. Wulster: Well, the Justice in his—

The Court: Where do you get that?

Mr. Wulster: Which was attacked, as I understand this case, the charge was accepted by the upper court as containing the proper legal pronouncement on the subject.

The Court: Where do you get that from? Read the head note at the start of the charge and you will find that the Reporter

has cited a number of charges which he thinks are very well founded, and that is all.

Mr. Wulster: That is correct.

The Court: It is entitled in the Hudson Court of Oyer and Terminer.

Mr. Wulster: That is correct. As I understand the case, the language was accepted by the Court of Errors covering the question. Now, if your Honor cares to, I will read that portion of Justice Hornblower's charge.

The Court: I am familiar with it.

The Prosecutor: Your Honor, we are talking about two different things. Counsel is arguing that all witnesses may express their opinion as to the sanity in a case. With that, I have no quarrel. What I say is, a lay witness cannot characterize the mental age of a witness on trial.

Mr. Wulster: We submit that he can, sir.

The Prosecutor: Have you any authority for that?

Mr. Wulster: I think, sir, that the cases hold he may state his opinion as to the mentality, the rationability, the irrationability, whatever language, whatever word might be used, which goes to the mentality. Our position is that witnesses may state, lay witnesses, in this kind of a case.

The Prosecutor: That is correct, that is the law; but it has nothing to do with seting the mental age of the defendant.

The Court: I will direct that the answer will be stricken out in so far as the attempt to fix the mental age in the opinion of the witness.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception noted, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Mr. Wulster: Richard Deegan?

The Prosecutor: May I ask the Court, are we finished with the witness on the stand?

The Court: I did not think we had any more than direct examination, had we?

Mr. Wulster: Oh, did you want to cross examine the witness? I beg your pardon. In view of the ruling, we have nothing further with the last witness. Do you want to cross examine him?

The Prosecutor: Just a moment. I thought the witness was still on the stand. I have no cross examination.

The Court: No cross examination.

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RICHARD M. DEEGAN, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Richard, you are a brother of Robert Deegan? A. I am.

Q. And how does your age compare with his? How much older is he than you? A. He is eight years older than I, I believe.

Q. Where are you stationed now? A. I am stationed at Norfolk, Virginia.

Q. And you are home on a furlough for this case? A. Yes, sir.

Q. What do you recall and what did you observe of the conduct of Bob from the first that you can remember about him? A. Well, I can go back just about as far as I remember, sir.

Q. Yes. Just tell the Court and the jury just what stands out in your mind that you can remember about it that attracted your attention as being unusual. A. The earliest thing I remember about my brother was his—his decided uncleanliness, his slovenliness was such that on several occasions I refused to sleep with him. We had a double bed and one bedroom, and I refused to sleep with him on several occasions. I tried to get him to take a bath, my parents did. On one occasion, when he must have been a man, I don't recall the age, my father gave him a bath. He had to put him in the tub and he had to scrub him.

Q. He had to what? A. He had to put my brother in the bath tub, and he had to scrub him, bodily, himself. He was always tired. I do not know whether he meant to be, or what it was, but

he spent most of his time sleeping when my buddies and I, or my brother's buddies spent their time playing.

Q. The children that he played with, how did he compare in age with them? A. Well, this must have been around the time I was nine or ten years old.

Q. Yes. A. I can recall he—his mother chasing him out to play, really, just trying to get him out of the house, because he spent most of his time indoors. And when he would come out, he would seek the company of Edgar or somebody their age or older. They would not have anything to do with him, so he would be forced to accept or try to seek the company of the younger boys from age. We would accept him, but it was no voluntary acception.

Q. How did he make out in the games which you boys were playing? A. Well, we had—well, I can speak of one instance. Street baseball, everybody has played it, and a bunch of fellows nine or ten years old, come together and bring about a game.

Q. Yes. A. Well, he would come along and want a game, at least he wouldn't want a game. He would make his presence known, and he would be divided up among the sides.

Q. Yes. A. We would start playing and he wouldn't know what to do.

Q. Yes. A. We would have to explain the rules to him, and there he was, seventeen or eighteen years old.

Q. And he would be playing with boys how much younger than he, would you say? A. From eight, seven or eight years younger.

Q. And he could not hold his own with them at all? A. Certainly not.

Q. From all these observations,—have you seen much of him lately in late years or not? A. I saw him the week before my marriage.

Q. Yes. A. That was when he came from New York, I believe, and that night it was Christmas Eve this last year. He came in the house that evening, and he just walked right in and made himself at home as he is accustomed to do and naturally would do. And I was busy trimming our Christmas tree. I could luckily get home on furlough. And my wife was there, my intended wife at the time was there, and I was a combination of shock and ashamed at his condition. His physical condition was very sloppy, and just the air of him, a perfect one of disgust. I did not introduced him to my fiancee; in fact, that was the first time my wife had ever seen him or ever heard of him while we had been going together. It wasn't until quite some time or quite a few moments before I was given the nerve by my parents to introduce him.

Q. From these observations you have made from time to time, what opinion have you formed as to his being mentally normal or otherwise? A. Why, he is not all there. Everybody around him knows that he is not all there.

The Prosecutor: That is the answer. I object to any qualification of it.

Mr. Zabriskie: I think that is all.

Cross examination by the Prosecutor:

Q. Now, Richard, in this clinical history that was read by Mr. Zabriskie in evidence taken in

February, 1944, it states "One brother missing in action." That is not true, is it? A. No. I am the only brother in service now.

Q. And again in the same clinical history where it states, "Explains his actions to statement that he wanted to be in the Navy, two brothers there, one missing," that is not true, is it? A. Certainly. It is only a figment of his imagination.

Q. It is a lie, isn't it? A. Yes, sir.

Q. You prefer to call it something else; but it is a lie? A. Yes, sir.

Q. All right.

The Prosecutor: That is all.

(Witness excused.)

Mr. Wulster: Mrs. Madeline Deegan.

MADELINE DEEGAN, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Wulster:

Q. Madeline, you are the wife of Richard Deegan who just testified? A. Yes, sir.

Q. When did you first see Bob Deegan, his brother? A. Christmas Eve in 1943.

Q. What happened? What did you observe? A. We were at home, my husband was home on leave, and we were decorating the Christmas tree when I was home, and the door opened and Bob walked in. I had never seen him before; and Richard just looked at him, and didn't say any-

thing but, rather, Hello. And, of course, I didn't know what to make of it. I didn't know who he was. It was about fifteen or twenty minutes later, I guess, after a rather embarrassed silence, that we were introduced. And when I first saw him, he was—I was shocked, and he wasn't like the other boys. He was dressed shabbily, sloppily. He did not speak the way they did. He did not seem to have any personality at all. And that was all I saw of him that evening.

Then, on New Year's Eve, a week later, we were married; but it was just the family and, while we were there, Bob came down. And my folks didn't know him either. My parents objected to the marriage because they felt that—

The Prosecutor: Well, I object to that, your Honor please. That is not material. I ask to have it stricken.

The Court: You cannot tell—

Q. Just tell us what you observed? A. Well, from my observation, I thought Bob was insane.

Mr. Wulster: Cross examine.

The Witness: He—

Cross examination by the Prosecutor:

Q. You saw him twice in your life, is that right? A. That is right.

Q. Did you do anything about your opinion with the family? Did you urge them to have him committed? A. I do not understand what you mean, sir.

The Court: Do you know what that means, "committed"?

The Witness: Yes.

Q. What is the answer? A. No.

Q. You were satisfied to have him running around loose, regardless of how you considered him? A. Well, your Honor, I didn't know.

Q. You did not think it was your business? You thought that was not your business? A. No.

Q. All right.

The Prosecutor: That is all.

The Court: That is all.

(Witness excused.)

Mr. Zabriskie: Donald Deegan.

DONALD GEORGE DEEGAN, called as a witness on behalf of the Defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Donld, are you a brother of Robert Deegan? A. I am.

Q. How old are you? A. Fourteen.

Q. And what do you do? A. Well, I go to school.

Q. And have you had a chance to see much of your brother Bob around? A. Naturally.

Q. What do you say? A. Naturally.

Q. Yes. And just tell the Court and the jury what you have seen him do, will you? A. Well, I can remember several instances where Bob would ask me to button the cuff on his shirt. Well,

he couldn't seem to maneuver around to do it. So I would do it. And I would notice he would have maybe two white tie shirts on. I wouldn't say anything, naturally. I didn't realize at the time what he was doing.

Q. You mean he would have two shirts on at the same time? A. Yes.

Q. One over the other? A. Yes.

Q. All right. And what else did you notice? A. Well, another time when he was cleaning a friend's car—not a friend, but somebody's car up the street, I was playing around with a friend of mine, and he asked me to go home and get the whisk broom to brush out the car. Well, I went home and got it, and on my way back I noticed he was coming down the street. Well, I went back up—thought nothing of it—to play with my friend again. I gave him the whisk broom to take on his way home. I went up and I noticed the car was half cleaned. I didn't say anything.

Q. Just half cleaned? A. Yes.

Q. And do you remember any other things that come to your mind? A. Well, no, not off-hand.

Q. Yes. Do you know anything about his living in a house there? A. Oh, yes.

Q. Just tell the Court and the jury about that, will you? A. Well, at one time, he asked a friend of mine and myself to go to the store and get some things. I do not remember just what the articles were; but I had to go up to the store uptown and get something for him.

Q. And how long did he do that, that you know of? How long was he staying there? A. Well, I do not know how long; but I remember it was in cold weather when he asked me to do it.

Q. Did you go see where he had been sleeping? Did you look? A. Yes. I was in where he was sleeping.

Q. And what kind of a place was it? A. There was nothing at all in it except just a couple of old pieces of cloth he was lying on in a corner of the upstairs room.

Q. What kind of weather was that, cold weather, or— A. Very cold weather.

Q. Very cold weather? A. Yes.

Q. And from all that, what did you think about him, anyway? A. Well, at the time, I didn't realize, naturally. I thought it was quite queer for him to do it.

Q. You thought it was quite queer? A. Yes.

Mr. Zabriskie: I think that is all.

The Prosecutor: That is all, Donald.

(Witness excused.)

Mr. Zabriskie: Mr. Tell.

MAX TELL, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Mr. Tell, where do you live? A. 285 Fort Washington Avenue, New York City.

Q. And what is your business connection? A. I am the general manager of a chain of restaurants.

Q. And including, for example? A. The Cadillac Restaurant on Broadway and Forty-second;

the Oyster Bay at Forty-second and Eighth Avenue; the Cross Roads at Forty-second and Broadway, and Riggs, Thirty-third Street, Fifth and Sixth Avenue; and some others.

Q. Did you at any time have a chance to observe Robert Deegan? A. I did.

Q. How did that come about, Mr. Tell? A. He was employed for us. From time to time, he would come in and ask for a job, and one of the managers of a store, if they were short of a man, would put him on to work.

Q. And what observation or what chance did you have to observe his work? A. At certain times, I would be in the store, and I would call around to the different departments, the kitchens, and I would observe Bob there, doing whatever work he was asked to do.

Q. Yes. Was there anything about him that attracted your attention in his conduct? A. He was a queer sort of a chap. In my opinion, he was very simple minded.

Q. And what do you base that on, Mr. Tell? What did he— A. He had no capacity to think for himself. If he was able to do a certain thing, he would do it in a haphazard manner, and then just stop where he was without continuing.

Q. And did you see examples of that on different occasions? A. Yes.

Mr. Zabriskie: Cross examine.

Cross examination by the Prosecutor:

Q. Mr. Tell, you do not know the legal definition of insanity in this State, do you? A. I do not.

Q. And you do not know the circumstances under which the crime that is being tried here was committed, do you, sir? A. I do not.

Q. Therefore, you do not intend to convey to this jury the impression that you think at the time he committed this offense that he was legally insane? A. I have no such intention.

Q. Thank you, sir.

The Prosecutor: That is all.

The Court: That is all.

(Witness excused.)

Mr. Wulster: Edna Deegan.

EDNA DEEGAN, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Wulster:

Q. Mrs. Deegan, you are the mother of Bob? A. I am.

Q. How many children did you raise? A. Five.

Q. All boys? A. All boys.

Q. What are their ages? A. The oldest one is 30, 28, 26, 21 and 14.

Q. And Bob was the second oldest? A. Bob was the second.

Q. Will you tell us, Mrs. Deegan, please, what you observed about Bob after he was born? A. Well, I can only—I will say the same things that Mr. Deegan said.

Q. Well, you tell us. A. Excuse me.

Q. You tell us what you observed, please, Mrs. Deegan. A. Well, Bob was a very fat baby, to begin with. And the first thing I noticed, as all mothers notice—they want to see their babies perfect—I noticed his eyes were so tightly closed that all we could see were slits, and I immediately became worried about it. I asked the doctor about it, and he said, "Don't worry, Mrs. Deegan. They will open in time." Well, it was two weeks before his eyes opened. And he was always listless and inactive right from the beginning. He —he never had any—any ambition. It seemed everything that was—that happened was done for Bob. He—he was a problem right from the beginning.

Q. And can you tell us how or, rather, in what way he was different from the other boys that you raised, by explaining his actions and conduct? A. Yes. He—he never took an interest in anything and—well, shall I—shall I mention his walking and talking?

Q. Yes. Just tell us all that you observed about him. A. Well, until he was a year old, he couldn't even sit up by himself, which was a problem for me because I had another baby, another boy two years only old, and I—he finally sat up at a year.

Then I—and he would walk late because he was very heavy, and I had to carry him a lot; but when he was—he was two before he stood up alone. And, by that time, it was quite a relief to me to be able to see him stand up.

Then it took him from two to three to get to walking alone. Then I was really relieved. All

this time he had not talked at all. He mumbled, but he did not talk.

Q. When he was five, well, we became sort of worried about him; so we had a local doctor come in to look at him, and find out why he wasn't talking like other boys his age. And the doctor examined him, and he said, "I don't know, Mrs. Deegan, really, but"—

The Prosecutor: I object to that.

Q. No. You cannot, unfortunately, tell us what the doctor said. A. Well, he clipped his tongue. I will say that. And it seemed after that he did start to talk plainly.

And then at six years of age he started to school. Well, to Bob, going to school was just something to do. He never thought as a result of it from the beginning he—he would go and come alone. He was alone so much it hurt me. I worried. I realized the reason the other boys did not seem to want to bother with him, and I always felt so sorry for Bob. He would come home from school and instead of going out to play like the other boys did he would stay in the house most of the time. I would ask him to go out and play. He did not seem to want to. So he would—I did not urge him too much, being sorry for him, you know, as mothers are. So I let him alone. I would find him sitting in the corner and sort of listlessly, often asleep. He would sleep all afternoon, sometimes, after school; and then when bed time came he was ready to go to bed ahead of the other boys. And when he started to school, then my real problem started, our real problem started. Never from the beginning could Bob grasp a thing, not

one thing. We would sit hour after hour, the night, the whole evenings, trying to drum little examples and simple little spelling words into his head. I knew he couldn't. I was awfully sorry for him. But we tried, anyway. We hoped, as the years went on, he (the witness cries)—we thought he would improve; but he was a problem in school to the teachers, and I would get reports home Bob was not doing his work.

The Prosecutor: Well, do not tell us that, please.

The Court: You cannot tell us what the teachers told you.

The Witness: Thank you. But that is the way it went all through school. He never learned anything of any value.

When he was twelve, I think it was when he was about twelve, he started to have these headaches. I did not think too much of it at the time, because Bob was lazy; not lazy, but inactive, and he was—he—it seems the headaches would have been natural reaction in his moods, because he was a hearty eater, and I thought maybe the food was the—you know, eating so heartily, and then being inactive.

I brought him up the best I could, and the headaches would pass. They would come back. And that went on for quite a few years. When he got to be about seventeen, I think it was, and he had reached the eighth grade, and began through the eighth grade, I was getting terribly discouraged. And each year I hoped he would go ahead, because I knew leaving him back was not

going to do any good, because I knew it would be the same thing, and I think the teachers realized it too. So, when he was about seventeen, we decided to take him out of school. I thought he could do some work. Maybe his father could get him a job, and he did try. He asked his friends and acquaintances and he got job after job. Bob would take some of them; some of them he would not go to; but he never, never earned any salary. He never stayed, he never could concentrate, he could not do things, and nobody knows that better than I do. It was just one thing after another like that.

The Court: You better ask questions, Judge.

Q. Mrs. Deegan, do you know what your father died of?

The Prosecutor: Well, now, I know from the record that this lady does not know except from hearsay, and I object to it.

A. My father died in an insane asylum. I didn't like to say it, but he did.

The Prosecutor: The question is not—the answer is not an answer to the question. I think the question is what he died of, not where he died, and I know from the record that at the last trial this lady only knows from hearsay.

The Court: Yes.

The Prosecutor: I would like to know if she knows in any other way before she answers the question.

The Witness: I know my father died in an insane asylum. I was—

The Court: Just a minute. Have you any motion directed to that?

The Prosecutor: Yes. I have no objection to the record showing where he died, if she says she knows it, but what he died of, I think she does not know.

The Court: Do you want to take that up on cross examination?

The Prosecutor: No. I merely want to object to the question unless counsel states the lady knows it in some other way excepting by hearsay. He knows what happened at the last trial.

Mr. Wulster: Of course, the family history—

The Court: I will sustain the objection, and allow you to reframe the question if you want.

Mr. Wulster: May I have an exception to your Honor's ruling? It is my opinion that the family history is an exception to the hearsay rule. May I have an exception?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: Well, she has not answered the question.

The Witness: I would like to answer the question.

Mr. Wulster: May we have the question read?

The Court: Do not answer, Mrs. Deegan, please.

(Question read.)

By the Prosecutor:

Q. Now, Mrs. Deegan, you know from what you have heard or what you have seen of some records what your father died of; but you do not know of your own knowledge, do you? A. Oh, yes, I do.

Q. Were you present? A. I was not there.

Q. No. A. Nobody was there.

Q. Had you seen him in extremis, in his last moments? A. I saw him, but not in his last moments, no.

Q. Well, you really do not know what he died of? A. I could not say, no.

Q. How do you know, Madam? A. My mother told me that.

The Prosecutor: The question is objected to because it is obvious that the witness only knows from hearsay.

The Witness: May I say something, Judge?

The Court: Just a moment.

Mr. Wulster: It is our feeling that that is the exception to the hearsay rule, family history.

The Court: I will allow the question.

The Witness: I would like to say that I knew my father was put into an institution,

into an insane asylum, Middletown State Hospital. I knew he died there. He couldn't have died from anything else.

The Court: That is all. Any further questions?

By Mr. Wulster:

Q. Mrs. Deegan, do you know of the ailment of which your mother suffered? A. My mother was killed by a car.

Q. And your grandmother? A. My grandmother had epilepsy, her mother; my mother's mother.

Q. Do you know what your father's father died of? A. No. That I do not know. It seemed to me it was—

The Court: Never mind.

Q. No.

The Court: You cannot tell us what it seemed.

Q. Now, Mrs. Deegan, do you recall calling Mr. Deegan down to the cellar at one time to show Bob to him? A. Oh, yes.

Q. Will you tell us about that? A. That is so outstanding in my mind. Bob had been away a short while. I was terribly worried about what he was doing and where he was. We were both worried.

The Prosecutor: Well, I object, and ask to have it stricken, please.

The Court: It will be stricken out.

Mrs. Deegan, do not reflect your feelings in your testimony. I know it is difficult.

The Witness: I was just trying to lead up to the reason.

The Court: Well, try not to lead up. Just relate what happened.

The Witness: I went down cellar one morning, I think it was cold weather, and I was going down to look at the fire. I don't know why, but I opened a window at the foot of the cellar stairs. I cannot remember the reason. I don't think I had a reason, unless I always had that feeling that I should be looking for something. I looked; I was looking for something inside under this porch.

The Prosecutor: Now, if your Honor please, can not the witness be controlled a little bit so we get the questions answered?

The Court: Just relate what happened that morning.

The Witness: I looked in the window and I saw something lying on the ground close up to the house, up on the dirt ground.

My heart stood still.

The Prosecutor: Oh, I object to that, if your Honor please.

The Court: It will be stricken out.

The Witness: I looked at that, and I saw it was Bob. I called his father. We both looked, and it was Bob.

Q. Tell us the condition that he was in when you saw him. A. He was very dilapidated looking. He had hardly anything on, nothing that

would keep him warm. He was covered by some old things he found under the porch, I guess. His head was on an old—now,—I am not sure. I think it was a cement bag. Sound asleep, he was.

Q. Now, tell us, Mrs. Deegan, of some of his other habits that you observed throughout the years? A. I will try to. He had a very bad habit of—I won't say bad habits. He had peculiar habits. He would cut pictures out of newspapers and magazines, and fill bureau drawers with them. In his wallet he carried pictures of girls cut out of papers and magazines.

Q. How long did that continue, until what time? A. That was when he was older. That was really when he should have known better. He would—his clothing, the way he wore his clothing—he had clothes, but he was careless. He wouldn't—he would have two or three shirts on at one time, a couple of pair of pants, two or three pair of socks. I would go washing and, naturally, I would want to wash all the soiled clothes, and I looked for Bob's, and there wasn't any.

The Prosecutor: I object.

The Court: Do not make any remarks about yourself. Tell us and answer the questions as to any other peculiar things you saw about Bob.

The Witness: Almost everything Bob did was peculiar and different.

Q. Did you take him in later years to a doctor? A. Yes, we did. We took him to a doctor when he was about fifteen or sixteen. I just had to find out why he was so slow, why he did these things. We took him to New York to a doctor because I heard this doctor was very good.

The Court: Never mind what you heard, Mrs. Deegan.

A. No.

The Court: It will be stricken out.

A. The doctor said—

The Prosecutor: I object.

The Court: Do not tell us what the doctor said.

Q. You cannot tell us that. Is there anything else that you recall now of what you observed about him and his habits? Can you tell us about his dress, his cleanliness? A. Well, he was very untidy, very untidy always. He was very unclean. His hair, he didn't care whether it was ever cut and, in other words, I was always ashamed of Bob.

Q. Can you tell us something about his physical appearance, what he would do with his arms or his face? A. Oh, yes. He had, almost from the beginning,—he had a very bad habit of holding his arm up like this which, to me, indicated—

The Prosecutor: I object to that.

Q. No. You cannot tell us that. What about his face? A. He had a habit of twitching, I think it was his left eye; on the same side that he held his hand that way he twitched.

Q. Did you notice anything about his lips? A. Yes.

Q. What was that? A. He twitched his lips too. He would draw his mouth to one side. I cannot just say it.

Q. And his head, how would he carry his head?

A. Sort of off to the side, always; even in his pictures.

Mr. Wulster: Cross examine.

Cross examination by the Prosecutor:

Q. How old was he when Doctor Grimes performed this operation on his tongue? A. Five.

Q. And how old was he when the doctor in New York saw him? A. About fifteen or sixteen.

Q. Between those two dates, he had no medical attention, so far as you know? A. Well, no.

Q. And after he was fifteen, so far as you know, he had no further medical attention? A. No. He was healthy enough.

Q And these things that you now say were so peculiar never led you or your family to do anything about caring for his peculiarities, except as you have stated, by twice attending physicians, is that correct, Mrs. Deegan? A. We wanted to do things. We weren't in a financial position to do the things we would like to have done.

Q. And the only time he received institutional care was when he was sent away by the Court for his delinquency, isn't that correct? A. I beg your pardon? Please repeat that question.

(Question read.)

A. As far as I know, yes.

Q. And that was to Annandale for burglaries which he committed and confessed to? A. That is right.

The Prosecutor: That is all.

Mr. Wulster: That is all.

The Court: That is all, Mrs. Deegan.

(Witness excused.)

Mr. Zabriskie: Doctor Burns.

GEOFFREY C. BURNS, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Your profession is what? A. Physician.

Q. And in what States are you licensed to practice? A. New York, New Jersey and Pennsylvania.

Q. What has been your professional experience, Doctor? A. Graduated from Cornell University in 1903; put two years' internship in Bellevue and allied hospitals, the Harlem Hospital, and then went into the New York State Hospital Service. There I remained for twenty-two years, with the exception of three years that I was in the United States Army, and three months in which I was in a hospital in South Carolina, being loaned there for that purpose from New York.

Since leaving the State Hospital Service, I have been in private practice, and have been on the visiting staff of New York Medical—New York Post-Graduate Medical School and Hospital, and on the Harlem Hospital staff, and on the staff of Englewood Hospital, and at the present time I am Assistant Professor of Neurology and Psychi-

atry in the Columbia University Post-Graduate Hospital Division.

Q. And have you specialized, Doctor? A. In neurology and psychiatry.

Q. You say in neurology and psychiatry? A. Yes, sir.

Q. And have you made examinations recently for the Army? A. I was—I am at the present time neuro-psychiatrist for the Medical Advisory Board of Bergen County, for the Selective Service, and for the greater part of the first three years I worked down at Newark in the Induction Board.

Q. And your home is— A. At Demarest, New Jersey.

Q. Demarest, New Jersey. In this county, in the County of Bergen? A. Yes, sir.

Q. And you have been here how long, Doctor, approximately? A. Since nineteen twenty-seven.

Q. Nineteen twenty-seven. Now, have you made an examination or examinations of Deegan, the defendant in this case? A. I have.

Q. How many examinations have you made, Doctor? A. Four in all.

Q. And does that include your attendance when you were in court at the— A. No.

Q. Four examinations. I will put the question this way, then: On how many different occasions have you had an opportunity of seeing the conduct or seeing this young man? A. Oh, at least five times.

Q. Now then, you say you have made four examinations of him? A. Yes.

Q. Did you have a stenographer with you to take notes or not? A. No.

Q. Will you detail as accurately as you can the first examination that you made of this young man? A. The first examination I believe was on the 23rd of February, 1943. At that time,—

The Prosecutor: The doctor means 1944, doesn't he?

The Witness: 1944, I should say.

Q. 1944. A. Yes? A. At that time, I went over this young man physically, giving him a complete neurological examination, and then gave him a preliminary mental examination.

Q. And can you indicate in any more detail just what that examination consisted of? A. I would rather—if it is possible, I would rather put all the examinations together.

Q. I see. All right. Now, the second examination, what was the date of that? A. The second examination was, I think, on the 28th of February, 1944.

Q. And, at that time,— A. And at that time, I completed a mental examination.

Q. And then when did you examine him next? A. The next time was on the 13th day of March, 1944, at which time I went over the young man from the standpoint of intelligence, adaptability and aptitude.

Q. And then when was the next time that you saw him, Doctor? A. The next time I saw him was on the 25th day of January. Well, the next time I saw him was in court.

Q. Yes. A. But the next time I examined him was on the 25th day of January, 1945.

Q. Well, were you in attendance in court when something happened to him? A. I was.

Q. Yes. Just what did you observe at that time and—what did you observe at that time? A. This man went into a transitory state of unconsciousness.

Q. And that was in the court house? A. That was in the court house.

Q. And then that was at the time of his trial, do you mean? A. At the time of his trial.

Q. Where was he when he went off into unconsciousness, as you say? A. Sitting on the witness stand.

Q. Yes. And then when was the next time that you saw this young man, or examined this young man, I will say? A. That would be January the 25th, 1945.

Q. And what examination did you make at that time, Doctor? A. A neurological and mental examination.

Q. And did you get a history from him? A. He had a family history—

The Prosecutor: I object to the statement of the family history, your Honor please. I understand under the law of this State only an attending physician can state anything that he learned from a patient as a family history, and one who is hired as an expert to testify cannot state that which he learned from the patient.

The Court: Well, do I understand that anyone—who do you ask gave him the history? Are you speaking—

Mr. Zabriskie: From him. "Did you get it from him, the family history?"

The Court: Do you object to it, Mr. Winne?

The Prosecutor: Yes, sir.

The Court: I will hear you on that.

Mr. Zabriskie: Well, I think that, in fact, I think the very best testimony that this doctor could give, that he could give word for word everything that was said to him by this young man, because I think the jury is entitled to know what examination was made, what questions were asked and what the answers were.

The Court: I will sustain the objection.

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

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Q. I will ask you this question: Can you tell me what questions you asked and what answers were made in the course of your conversation when you were discussing the question of family history? A. I could not accurately.

Q. You say you had no stenographer with you? A. No.

Q. How long did these examinations last, Doctor? A. Oh, I would say approximately two hours each.

Q. Yes. Can you tell us what he said to you? Can you tell the Court and jury things that he said to you, what he told you? A. Yes. He recited the events that had led up to his present condition.

Q. Yes. A. And he was rather stiff and rigid in his attitude. It was not altogether a simple

thing, getting him to talk. He showed during that time a very marked lack of what we would consider a proper emotional reaction. He expressed a certain amount of contrition.

Q. A certain amount of what? A. Contrition and sorrow—

Q. Oh! A. —for what he had done, being apparently, quite cognizant of what he had done. But he told me that he was hearing the voice of his grandmother who was dead, and that this voice had been quite frequent. He also mentioned that at some time prior to this he had heard the voices of two men, that he was unable to distinguish what they said, and did not know to whom the voices belonged. He insisted that he had no intention of committing a crime, that he did not want to commit a crime; that he had tried to evade it by not coming over by himself; that he had tried to keep away from these associates of his and accidentally ran into them again, and that he came over here because they insisted on his coming over. That when he—and did come over, he expected to get money from his parents, and yet did not think he could get it, and that he later thought he might be able to get it from his brother, but didn't feel that he could do that. He claimed that—

The Prosecutor: Now, may I ask the Doctor, if your Honor please: These questions or these statements made by the defendant were part of your examination of the defendant in order to permit you to testify?

The Witness: Correct.

The Prosecutor: They were not made

for the purpose of having you come here and repeat self-serving declarations made by the defendant to help him on his trial?

The Witness: I stipulated when I started in on this case that I would make my examination independently. I think the lawyers will bear me out on that; and unless I felt I was justified in testifying, I would not do do so.

The Prosecutor: I assume so, Doctor. But I want you to state to me that these answers you are now saying he made to you were a necessary part of your examination in order to testify?

The Witness: Yes, sir; they were.

The Prosecutor: All right, sir. I have no objection.

Mr. Zabriskie: Will the stenographer just read the last part of what the Doctor said?

(Last answer read.)

A. —that he was reluctant to follow this thing through, and that when he went to lift the bat, which he freely admits he did, that he ceased to function mentally. Of course, he did not put it in those words. And that it seemed to him that two hands took hold of his arms and brought that bat down on the head. That he made no immediate effort to get away until he was egged on to do so, and that within a very short while afterwards, he was very sorry for what he had done, and he wanted to go back and see what had happened to this woman, and that he was persuaded not to do so by his companions. That when he was picked

up in New York by the police, he said that he was very glad they picked him up, and that he wanted to come back, and the first thing he asked the officer was how the woman was. He—on the last examination, he told me that.

The Court: That is the one this month?

The Witness: This month. That if he should go to the chair, he did not think he would feel too badly about it because he would then go and join the woman he had killed, and he could there apologize and tell her he was sorry.

Q. And do you recall anything else of importance that he said, Doctor, or have you covered the ground in your opinion pretty well? A. Oh, I think that was enough to form an opinion of him.

Q. Now, Doctor, I am going to ask you a question which calls upon you for an expert opinion concerning the mental status of the defendant Robert Deegan on the 14th day of January 1944, between seven and eight P. M., the time alleged as the time when he is charged with having struck Ethel Herrmann. I will state some facts of this defendant's life and give information as to his family and his home environment and certain circumstances of life, including his school days as a boy, and his growth and conduct during later years, all of which facts, for the present purpose, I will ask you to assume and regard as true, and as having actually happened. And I will try to go slowly so it will not be too hard upon the stenographer.

Now, assume that Deegan's grandfather on his mother's side died in an institution for the insane,

that it was two weeks after Deegan was born before he opened his eyes, and that when a baby he could only open like slits for eyes; that he could not stand until he was about two years old; that he was listless and inactive from the beginning of his life; that he could not talk until he was five years old, and that at five, after some little operation was performed, he could say only some words that could be understood; that as a child and a young man he never took an interest in anything; that he could not sit up until he was about a year old; that he went to school at the age of about six, but throughout his school life could never keep up with his classes; that as a child he developed squinting of the eyes and twisting of the lips and cocking of his head in a peculiar position and holding his hand in a peculiar position; that he was about seventeen years old when he reached the eighth grade and never went any farther in school; that he always as a young boy preferred being alone to playing with other boys, and that when he did play with other boys, they were boys who were much younger than he; that he would stay in the house instead of going out and playing like other boys; that he would come home from school and go to sleep during the afternoon and also sleep all night; that as a boy he would wear one suit of clothes over another suit, or one pair of pants over another, and two or three pairs of socks at the same time, or wear one shirt over another; that he was habitually dirty physically; that he never seemed to be learning anything of value in school; that from the time he was a young lad up until very recent times, he has complained of headache, in fact, prac-

tically up to the present time; that he began smoking when he was very young; that he could not concentrate or do things as a pupil; that up until recent times he would not only take aspirin, but eat it in large quantities; and when he was about seventeen, or thereabouts, he was taken over to New York to some doctor for a mental examination; that he would sleep on a board floor under a porch at home instead of going to bed, at times sleeping on dirty castaway clothes and using a cement bag for his pillow; that he falsely stated that he had a brother missing in action when interrogated down at Fort Meade; that the tables of his skull were denser and thicker than the average; that on April 4, 1943, his progress notes, the progress notes of his case at Fort Meade indicated that he was a confirmed psychopath with a long period of inadequacy; and I do not know just what "Imp." means, but that on said date, after the abbreviation "Imp.," it appears from the record that was offered in evidence that his case was that of a constitutional psychopathic state, inadequate personality. While at Fort Meade he complained repeatedly of headaches; that the headache was relieved by a spinal tap, but returned more severely the following day; that he left his boarding place in New York and left his personal belongings without notice and without giving any reason; that he would work on a job of cleaning up, and then suddenly disappear and go out on Broadway when employed in New York, and then come back and go to work as if nothing had happened; and that the final diagnosis at Fort Meade was, constitutional psychopathic state, inadequate personality.

Now, Doctor, from all of the facts that I have narrated and from your own examination and from what you have observed in court the last—at the time that you referred to when you said he passed out, are you able to form an opinion as to the mental condition of the defendant Robert Deegan at the time and place of the striking of Ethel Herrmann? A. Yes.

Q. And I ask you now, is it your opinion as an expert, and having in mind all of the things I have called to your attention and your own examinations and observations of Deegan, that this defendant was in that particular—at that particular time capable of distinguishing between right and wrong with respect to the striking of Ethel Herrmann; whether he was capable of distinguishing between right and wrong at that particular time? A. No.

Q. In your opinion,— A. He was not capable of distinguishing.

Q. And was he, in your opinion, conscious that the act which he was doing was morally wrong, and that he was responsible for the commission of that act? A. No.

Q. Doctor, I used that expression that was found in the report of Fort Meade of constitutional psychopathic state, and inadequate personality. May I ask you to explain to the Court and the jury just what that implies, what that means? A. Constitutional psychopathic state is a condition which occurs in some individuals and probably has an organic basis. I think we are not sure at the present time. It is probably rather closely allied to epilepsy in that respect. It is characterized by a lack of proper integration of the personality

due to the fact that the emotions are not properly developed, that they do not learn to think for themselves, and that they are entirely governed by impulses which are more or less primitive.

Mr. Zabriskie: I think that is all.

Cross examination by the Prosecutor:

Q. Doctor Burns, you know the legal definition of insanity as interpreted by the courts of New Jersey, do you not? A. I do.

Q. It is, is it not, that a person does not know the nature and quality of his act and, if his act is wrong, he does not know it is wrong? A. Yes.

Q. That is correct, is it not? A. That is correct, at the time of the—

Q. At the time of the commission of the offense? A. Yes.

Q. And Doctor, you are quite convinced that Deegan is not in that condition today, are you not? A. I am quite convinced he is not in that condition.

Q. He is today conscious of the enormity of his offense and he knows it is wrong and knows the nature and quality of the act today, does he not? A. Yes, he does.

Q. All right. A. But may I qualify that?

Q. You may say anything you please. A. I still think that under similar circumstances he would be apt to repeat it.

Q. Yes, sir. Now, the question that was asked you by Mr. Zabriskie embodied in it the supposition that the clinical report at Fort Meade correctly described the condition of Deegan, did it not? A. Yes, sir; I think so.

Q. And if the clinical report which is in evidence is not correct, it would possibly change your opinion? A. Well, as a matter of fact, one makes their own opinion.

Q. I beg your pardon? A. One makes your own opinion from your own examination.

Q. Well, did you make your opinion from your own examination, or did you make your opinion from the hypothetical question that was asked you by counsel? A. I made my opinion from my own examination and the hypothetical question.

Q. All right. Now, in the hypothetical question was embodied the assumption that the facts in the clinical report were correct, namely, that Deegan had a psychopathic personality or an ineffectual personality, or some such words. And I ask you now if the opinion you stated in court today did not presuppose the correctness of the clinical report at Fort Meade? A. Yes, certainly.

Q. And if the clinical report at Fort Meade was not correct, your opinion might be different? A. I do not quite follow that.

Q. Well, will you say that whether the clinical report was in the hypothetical question or not, your opinion would be the same? A. Yes.

Q. Then the clinical report had no effect upon your opinion? A. It influenced it, yes.

Q. Yes. But not sufficiently so that if we eliminated that, your opinion would be any different? A. No.

Q. Now, Doctor, in your opinion given in answer to the hypothetical question, you included the information that this Deegan heard the voice of the grandmother just before he raised the bat, did you not? A. No. I did not say that.

Q. That you learned from him when you interrogated him in the jail, did you not? A. No.

Q. Did you not tell us on direct examination that when you interrogated Deegan in the jail he told you that he heard the voice of his grandmother before he struck Mrs. Herrmann? A. I think I said that he heard the voice of his grandmother several times at various intervals, but I do not remember saying that he heard it just before he struck her.

Q. Well, I am asking you, sir, now, did he tell you at any time when you interrogated him that he had heard the voice of his grandmother just before he struck Mrs. Herrmann? A. He heard the voice of his grandmother, as I recall it now, the day before.

Q. Oh, the day before? A. Yes.

Q. And you do not now say that it is your recollection that he ever told you that he heard the voice of his grandmother the day, January 14, 1944, that this crime was committed? A. I would not go so far as to say he did not hear it that day, or he did not tell me that; but from my recollection of what he told me, he did not hear it at the time he was committing the crime.

Q. All right, sir. Now, may I ask you again if in your answer to the hypothetical question you did not take into consideration the fact that Deegan had told you that at certain times he had heard the voice of his dead grandmother? A. Yes.

Q. And did you not take into consideration the fact that he told you at certain times he had heard the voice of two other men? A. Not to any

great extent, because he was not able to elaborate that.

Q. But you took that into consideration? A. Took it into consideration.

Q. And did you take into consideration in stating this man did not know the nature and quality of his act, and did not know that it was wrong, the fact that Deegan told you that when he raised the bat, he tried not to bring it down, but some irresistible force compelled him to bring it down? A. Yes.

Q. And if those things are not true, then your answer is not a correct answer, Doctor Burns? A. Are you making that statement?

Q. I am asking you if it is not a fact?

The Court: That is a question, Doctor. Just answer the question.

A. I still say that this man has a certain mental condition.

Q. Doctor,—

The Court: The answer will be stricken out. Now, just answer the question.

Q. Do you understand the question? A. No, I do not understand the question.

Q. All right. I will try to make it simple. If Deegan lied when he said he heard the voice of his grandmother, if Deegan lied when he said he heard the voices of two other men, if Deegan lied when he said some irresistible force caused him to bring the bat down, then your answer is different? Is that simple? A. Yes, if he lied.

Q. So that your answer that Deegan was criminally insane under the laws of New Jersey is based upon his statement to you that he heard voices of two men, the voice of his grandmother, and that an irresistible force caused him to bring the bat down? A. And my own examination.

Q. Yes. But without the qualifications that I insert, your examination would not have brought you to that conclusion? A. Without the qualifications that you assert, the examinations would have brought me to the conclusion that this man is a psychopathic personality.

Q. That is not the question, Doctor. You know better than that. You know the question before this Court and jury is, was this man legally insane on January 14th, and not was he a psychopathic personality, don't you? A. The question is, as I understand it, is not whether this man was legally insane or not.

Q. Well, let me correct you. A. That he was capable of judging from right and wrong at the time he committed the act, and did he know the nature of it; not whether he was legally insane or not.

Q. That in my opinion is the same question. It is not whether the man was a psychopath or a neurotic or a psychosis or anything of that kind. The question, did he know the nature and quality of his act, and did he know that the thing he was doing was wrong, that is the question. And I ask you again if you can face this Court and jury and say this man did not know the nature and quality of his act and did not know the act he was doing was wrong unless you predicated it upon

what he told you? A. Certainly. You have to predicate on what he tells you.

Q. So any criminal who is accused of a crime can make up a cock and bull story and predicate it upon that, a hypothetical question can be asked, and a man gets an answer that he is insane? A. We have a certain amount of judgment in the matter as to whether we believe them or not, after all, you know.

Q. You believe him, is that right? A. I believe what he said.

Q. You believe that he heard the voice of his grandmother? A. I do.

Q. You believe that he heard the voices of two other people? A. I do.

Q. Why didn't you say he heard the voices of two other people when you testified last year in this trial? A. Maybe I did and maybe I didn't.

Q. Well, did you, sir? A. I do not know.

Q. I will ask you to look at the record and find where you ever said anything about the voices of two other people at the last trial. A. Well, if you cannot find it, I cannot.

The Prosecutor: Is counsel satisfied it is not in here?

Mr. Zabriskie: No. I think there was some reference to his grandfather.

The Prosecutor. We will find out where he says anything about two other people at the last trial. Will you agree, or shall I ask him to read it?

Mr. Zabriskie: I would not want to agree.

The Prosecutor: Somebody read it and

see where anybody says anything about Deegan saying anything about the voices of two other people any time before today.

The Court: Let the witness look at it.

The Witness: (Referring to printed book of first trial).

Mr. Zabriskie: I will be frank to say I do not recall as having seen it myself, but I do recall about the grandfather.

The Court: The witness will have plenty of opportunity to ascertain it himself unless you want to enter it into a stipulation.

Mr. Zabriskie: No. But I am just giving my best recollection, your Honor. I do not recall that myself at this time.

The Witness: May I read from this—

The Court: Yes. Cite—give the citation, the page.

The Witness: Page 481. Right in the question there.

Mr. Zabriskie: Oh, yes; that is there. I had forgotten that.

Read it, Doctor, will you?

The Witness: The question is asked (reading): "Now, Doctor, what do you base that conclusion on that the man Deegan did not know the difference between right and wrong," and then "on the night of January 14th? What do you base that on, Doctor? Answer: From the fact that he told me that he had been hearing voices for some time; that he heard his mother's —his grandmother's voice since that time that he left—since the time he left Annandale; that, even before that, he had heard

two men's voices that he could not identify; and also from the fact that he said that—while he realized that he lifted the bat, he does not know how the bat came down; he felt as though something had taken hold of his arms and brought it down."

Q. You are correct, Doctor. It is in there. I am wrong and you are right. Now Doctor, just to revert to that for a moment. It is based on his statements to you that you gave your answer to the question that was propounded to you by Judge Zabriskie? A. Yes.

Q. And, Doctor, do you practice in Demarest? A. Yes.

Q. You have an office there and practice there? A. Yes.

Q. This position of yours in connection with the Selective Service, do you examine the draftees— A. I do.

Q. —before they are taken into the— A. All those—before and after they are referred to me by the local board.

Q. What do they do, have a local doctor attached to the local board? A. Yes.

Q. And he makes a medical examination of the inductees? A. Yes.

Q. And if he comes across anything that he thinks requires a specialist, they send it to you as a specialist, is that right? A. Correct.

Q. Do you know whether or not that was the practice when Deegan was inducted? A. Well, they don't all come—it was the practice, but they don't all come up.

Q. Now, Doctor, I understand you to say that at the time this victim Ethel Herrmann was struck

by this bat, the defendant Deegan, based on the hypothetical question, did not know the nature and quality of his act, and did not know that what he was doing was wrong; that is correct? A. Yes.

Q. And I believe from your testimony as I have read it in the former trial, that you think that that state of his mental consciousness began after he raised the bat; that was the time at which it began; is that correct? A. Yes. I think so.

Q. And you say it continued from the time that he raised the bat until a very brief time after the woman was stricken? A. Yes.

Q. And that as soon as she was stricken and fell, almost immediately he became conscious of what he had done, and then he did know the nature and quality of his act? A. No. Not almost immediately. I think it was some little while afterwards; a few seconds or minutes.

Q. Yes. A time of not many minutes? A. Yes.

Q. By immediately, I mean within a few minutes. A. Yes.

Q. So that we understand each other, your testimony is that he knew the nature and quality of his act and knew it was wrong up until the point when he raised the bat, and within a few minutes after he struck Mrs. Herrmann, he knew the nature and quality of his act; but for that period between the two times you have described, he did not know the nature and quality of his act? A. Yes.

Q. And that is based on what he told you? A. Well, that is based on what he told me, yes.

Q. Yes. Without what he told you, you could not come to that conclusion, could you? A. No. I would not know a thing about him.

Q. Well, you would know a thing about it if the man had objective symptoms which indicated his condition, would you not? A. He did have some objective symptoms.

Q. Well, if he had adequate objective symptoms, you would not need any history, would you? A. If the man had a definite organic condition, I would still need the mental symptoms to determine his mental capacity.

Q. And if the man were insane and gave you his description of his mental symptoms, you have to accept them, whether he is sane or insane because that is the only place you can get his mental symptoms from, isn't it? A. Oh, no. You can get them from neighbors and other people. You know, we are not bound by laws of court in making a mental examination.

Q. All right, Doctor. Now, did Deegan tell you that he arrived in Dumont during the forenoon of January 14, 1944? A. I would not be able to say that.

Q. No? A. He said he arrived in Dumont that day.

Q. Did he tell you that he procured from under the porch of his home a bat? A. He did.

Q. Did he tell you that that was in the middle of the afternoon sometime around four or before? A. As I recall, it was somewhere around four o'clock.

Q. At a time when it was still daylight? A. Yes.

Q. Did he tell you that he concealed the bat under his coat? A. Yes. He told me he concealed the bat under his coat, at the instigation of the other man.

Q. Yes. He did everything he could to indicate that this crime was a crime which he committed at the instigation of the other man? A. No; because he told me that he was equally guilty with the other man.

Q. You say he, however, did say that he concealed the bat— A. Yes.

Q. —at the suggestion of Hoffman, is that right? A. Yes.

Q. And would it be the act of a reasoning person who intended to commit a crime to conceal the object with which he intended to commit the crime while it was daylight? A. Volitionally, I doubt—

Q. I beg pardon? A. I say, volitionally, I doubt it.

Q. You do not think that would be the act of a reasoning person to conceal the weapon? A. Well, yes, of course, it would be the act of a reasoning person; but I doubted it in his case.

Q. And to wait until darkness fell would be the act of a reasoning person, would it not, Doctor? A. It would.

Q. And to walk the streets until a victim was observed would be the act of a reasoning person? A. It would.

Q. And to strike that person and grab the purse and run away with it would be the act of a reasoning person? A. Yes; it would.

Q. Doctor, do you think Deegan would have hit Mrs. Herrmann with the bat if there had been a policeman around? A. No.

Q. You do not think he was that crazy, do you? A. I do not think the other man would have allowed him.

Q. No. But leaving the other man out of it. A. Can you?

Q. Well, you can. I ask you now if you think in your professional opinion that the mind of this man was of such a character that he would have committed this offense if a policeman had been around? You can answer that question. A. I can answer the question, yes; that I think it would not have made any difference who was around, once he got started on the job; I mean, the real job.

Q. You mean the real job of clubbing the woman to death? A. Yes.

Q. Yes. You mean after he got the bat up that the full irresistible impulse brought the bat down, and nothing could stop that irresistible impulse? A. Yes.

Q. And your answer has to be based on Deegan's telling you that the bat came down without any volition on his part, does it not? A. Yes. Plus all that led up to it.

Q. So it all adds up to the fact that just prior to the crime, Deegan was sane; just after the crime Deegan was sane; he is sane now; but he was insane for the purposes of the trial at the moment the act was performed? A. I object to the statement.

Q. All right. I will withdraw the suggestion that it was for the purpose of the trial. He was insane for the few moments just as the act was committed? A. Yes.

The Prosecutor: That is all.

Redirect examination by Mr. Zabriskie:

Q. Can you fix his mental age, Doctor? A. His mental age is approximately ten years. But that

does not mean very much in his case, because what he lacks besides mental age is personality integration.

Recross examination by the Prosecutor:

Q. Doctor, this mental age is a yardstick that psychiatrists and experts have adopted for their convenience as a method of describing patients; is that not so? A. No. I think it has a very definite scientific basis.

Q. Yes. But among scientists and among experts it does not mean what a layman understands by the mental age at ten years, does it? A. Yes.

Q. Well,— A. That is, you take a person of thirty and say they have a mental age of ten years, that is just what it means.

Q. I have read in literature that the average mental age of the inductee in the United States Army is some very low mental age like ten or twelve. Do you know what is said to be the average mental age of the inductees into the Army? A. Yes, I think—I do not know the accurate figures,—

Q. No. I do not mean that. A. —but I can tell you approximately.

Q. Yes. A. That the mental age is what we would call a Dutch column and that is, we will say a little over twelve years.

Q. So that that is your answer, a little over twelve years is the average age of the inductee? A. Yes, I would say so.

Q. And you still think that is a fair— A. Now, wait a minute. Don't get me wrong on that. I don't want any—you say inductees?

Q. Yes, sir. A. I mean those that are rejected, as well.

Q. Yes. Well, all persons, all drafts? A. All persons that are examined.

Q. Well then, stating that, would you say that you still say that we think that the average mental age means the same to the layman that it does to an expert? A. Well, no; I do not say that it means the same to the layman. But what I understood you was, did the mental age mean what it actually said, ten or twelve years.

Q. All right, Doctor.

The Prosecutor: That is all.

By Mr. Zabriskie:

Q. The average, that takes in some very low from different parts of the country, and averages up pretty high from other sections of the country; isn't that so? A. Yes, that is so.

Mr. Zabriskie: That is all, Doctor.
The Court: That is all, Doctor.

(Witness excused.)

WILLIAM LEAVITT, called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

Direct examination by Mr. Zabriskie:

Q. Doctor Leavitt, where do you live? A. I live at 282 New York Avenue, Brooklyn, New York.

Q. And what is your profession? A. Physician.

Q. And will you kindly give us in some detail what has been your professional training and experience? A. I graduated in 1908 at the University in Bellevue Hospital Medical College.

Q. Just take it a little bit slowly. A. During 1909 I was an intern at the Craig Colony for Epileptics in New York State. Between 1909 and 1913 I was Junior Physician and then Assistant Physician at the Utica State Hospital for the Insane. Between 1913 and 1919 I was assistant physician and most of that time senior assistant physician at the Central Islip State Hospital for the Insane. Since 1920 I have been connected with the Departments of Psychiatry and Neurology at the New York Post Graduate Hospital. Since 1923 I have been Psychiatrist in what was formerly the Children's Court, and now is the Domestic Relations Court of the City of New York, and I am a psychiatrist there at present.

Q. Ever since 1923? A. 1923. I have been a member of the American Psychiatric Association since 1912, and am now a Fellow. I am a member of the New York Society for Clinical Psychiatry. I am a member of the New York Neurological Society. I am a diplomate in psychiatry and neurology in a special board, the American Board of Psychiatry and Neurology. I am qualified as psychiatrist in the New York State Department of Mental Hygiene.

Q. And does that cover in a general way your— A. Yes, sir.

Q. —qualifications and experience? Now, can you tell the Court and jury approximately how many examinations you have made in your pro-

fession of—in mental cases of one kind or another? A. I should say roughly—I do not know exactly—I would say roughly about fifteen thousand or more.

Q. Yes. And can you state about how many you have made for the Court in Brooklyn? A. Well, I have been there almost twenty-one years and we examined—last year we examined some four hundred odd cases. I should say that for the court alone I probably examined about seven thousand cases approximately. I do not know exactly.

Q. And are you engaged in doing that every day right along right up to the present time? A. Yes, sir.

Q. Now, Doctor, did you make an examination of this man Deegan sitting at the table here? A. I did.

Q. And when was that, Doctor? A. Last Thursday, on January 25th, 1945.

Q. And where did you make that examination? A. In a nearby building, the jail here.

Q. The Bergen County Jail? A. Yes, sir.

Q. And can you tell us in as detailed a manner as your memory makes possible the nature of the examination that you made of Robert Deegan? A. I gave him a mental, neurological and general medical examination. Am I permitted to say whether I interviewed the relatives? No?

Q. Just can you give the details? Just tell what you did in making the examination.

The Court: That is right.

A. Well, apart from the purely physical aspects of the medical and neurological examinations, the

examination consisted of my personal observations of the patient, his attitude, his manner, how he spoke, what his mental trends and ideas consisted of, his emotional reactions, his type of volitional response, his general intelligence, his judgment, his insight into what constitutes life's problems, his degree of foresight, and so on.

The examination proceeded partly by question and answer. He impressed me at once as a very shallow, superficial juvenile and immature individual.

The Prosecutor: Of course, if your Honor please, I object to that characterization, and I think it should be stricken. The question for this witness certainly is not what he is today, but what was his mental condition on January 14, 1944?

The Court: I think that is the only thing we are concerned with at the present time, Judge Zabriskie, whether—or what his condition was at the time of the commission of this act.

Mr. Zabriskie: Yes. But I think, your Honor please, this is just a step toward it. In other words, the condition once shown to exist is then to continue to exist, is presumed to continue to exist. Now, I think the same rule works in reverse. There is some presumption, at least, we have a right to take into consideration the conditions today and relate them back to a date sometime back.

The Prosecutor: I will withdraw the objection. We will get along faster that way than by talking about it.

The Court: Suppose you question and answer the witness. I think that will solve the problem.

Q. Well then, what further examination did you make, Doctor? A. I questioned him regarding his general interests, and also regarding the particular act because of which he was brought to court. And in giving me the account of his act, he —I formed the opinion that, while he has gained a certain surface morality and that he has taken other people's views that certain situations are called by certain names right, wrong, and so on, that there was no deep inner sense of personal conviction, which made those characterizations of right and wrong personal, and right or wrong to him. He has a surface morality.

He will formally agree to a very fine type of life; it is fine to love your mother, not to hurt anybody. But in telling me of his own behavior, he told me of killing cats by throwing them on the sidewalk, of dropping cats from two stories high distance, and then he felt sorry. He is sorry in a movie and cries, and tells me he sits there time and time, over and over again, and see the same movie and get the same emotional reaction; but it is just a surface crying, and forget the whole thing the next moment. It makes no impression on him. It is a surface thing. He is a paper shell of ethics and morality, and does not know what it is all about. And his description and not only his description but his behavior as he gave the description of the act indicated that events leading up to the act scratched through that sur-

face morality with great ease, and the stimulation which he received from his companions broke through, where ordinarily, a normal individual, it would not break through, because there it is deep-seated and there is personal conviction that certain things are right and wrong. In his particular case, it just left a spindle scratch, and he was off on his primitive.

And, to judge by his own history of having been in Annandale, of having had difficulties, having been antisocial for years, plus his real personality, antisocial, and the covering of social morality which he has, it required just a little stimulation for him to show that inadequate person, the unreasoning, impulsive, abnormal person that he is.

The Court: I suggest that you question, and answer the question. We do not want to extend this record too much.

Q. Well now, Doctor, I am going to ask you a question which calls upon you for an expert opinion concerning the mental status of the defendant Robert Deegan. On the 14th day of January, 1944, between seven and eight P. M., the time alleged as the time when he is charged with having struck Ethel Herrmann,—I will state certain facts of this defendant's life, give data showing a portion of his family history, his home, environment and certain circumstances of his life, including his school days as a boy, and his growth and conduct during the later years, all of which facts for the present purpose we ask you to assume and regard as true and as having actually happened.

Now, assume that Deegan's grandfather on his mother's side died in an institution for the insane; that it was two weeks after Deegan was born before he opened his eyes. When a baby he could only make little slits for eyes, his eyes appeared like slits; that he could not stand until he was two years old; that he was listless and inactive from the beginning of his life; that he could not talk until he was five years old, and at five only some words could be understood; that as a youngster he never took an interest in anything; that he could not sit up until he was about a year old; that he went to school at about the age of six, but never could keep up with his classes; that at the age of—that it was from two to three before he could begin walking; that he was about seventeen years old when he reached the eighth grade in school, that is, the grammer school, only here he was just finishing grammar school, and never finished. He never finished school. He never graduated. That he always preferred being alone to playing with other boys when he was a youngster and going to school; that he would not play with other boys, but would sit on the sidelines, so to speak, instead of participating, and that he would stay in the house instead of going out to play as others did at his age; that after school he would sleep the rest of the afternoon, and then go to bed and sleep at night just the full night through; that as a boy he would wear one pair of trousers over another, one shirt over another, and sometimes put on as many as three pairs of socks; that as a young man he failed to keep himself clean. He wore ragged, dirty clothes. That he would go unshaven.

The Prosecutor: I do not remember that.

Mr. Zabriskie: If there is any question about it, I will strike it out.

The Court: Yes. I think you had better strike that out.

Mr. Zabriskie: Yes, I will strike it out.

Q. (Continuing) That he never seemed to learn anything of value at school; that he had headaches for several years during his childhood, and had them up to very recent times; that he smoked when very young; that he could not concentrate or do things when a youngster, a young man or a young boy; that he would use aspirin in large quantities and, instead of taking it in the ordinary manner, would chew up three or four pieces of aspirin at the same time; that when he was about seventeen, he was taken to a doctor in New York for a mental examination; that he would sometimes sleep on a dirty floor under a porch instead of going home to bed, using dirty rags and castaway clothes, and using a cement bag for his pillow; that he falsely stated that he had a brother missing in action when questioned at Fort Meade; that the tables of his skull were denser and thicker than the average; that according to his progress notes made on April 4, 1943, at Fort Meade, it was indicated that he was a confirmed psychopath, with a long history of inadequacy, and that on said date, the "imp.," whatever that means, is indicated as constitutional psychopathic state, inadequate personality. And while in camp at Fort Meade, he complained of headaches; that it was relieved by a spinal tap, but returned more severely the next day; that the final diagnosis at

Fort Meade was constitutional psychopathic state, inadequate personality; that he left his boarding place in New York and left his personal belongings behind without notice and without giving any reasons; that he would work on the job of cleaning up in the restaurant in New York where he worked at times, and he would suddenly disappear and go out on Broadway, New York, and then come back later as if nothing had happened; that when he became a young man he made a practice of cutting out dolls and saving large numbers of them, cutting them out from newspapers; that he sometimes would sleep in a vacant house in the winter time.

The Prosecutor: I do not think his mother said dolls. I think she said pictures.

Mr. Zabriskie: Pictures, yes.

Q. Now, from all the facts that I have narrated and from your own examination, are you able to form an opinion as to the mental condition of the defendant Robert Deegan at the time and place of the striking of Ethel Herrmann? A. I am.

Q. And I ask you now, is it your opinion as an expert, having in mind all of the things I have called to your attention, that this defendant was in that particular time capable of distinguishing between right and wrong with respect to the striking of Ethel Herrmann? A. He was not capable.

Q. Was he at the time conscious that the act which he was doing was morally wrong, and that he was responsible for the commission thereof? A. He was not.

Q. Yes. And Doctor, may I ask you to explain what is meant by—I have not asked you—I have not seen you before today, have I? A. No, sir.

Q. But do you know what it means by that "imp."? A. I think it is "impression."

Q. Oh, "impression"? A. The word "impression" is put down that way. That is what I think the diagnosis is.

Q. And can you tell the Court and the jury what that means, a constitutional psychopathic state, and inadequate personality?

The Prosecutor: Now, I object to that, if your Honor please. In the first place, because it is just repetition of what has already been testified to and, in the second place, it is not part of this inquiry at all. This inquiry is not whether a man has a psychopathic personality or inadequate personality; but whether he was conscious of right and wrong at the time he committed this offense. I do not think it is proper to have a definition of what is in a clinical report, particularly when it has been testified to by one expert.

The Court: This witness has not testified that he had that.

Mr. Zabriskie: I am just asking that for the enlightenment of the jury.

The Court: I will sustain the objection.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Mr. Zabriskie: Cross examine.

Cross examination by the Prosecutor:

Q. Doctor, you never saw this man Deegan until last week, the 25th of January, did you? A. No, sir.

Q. And, of course, you saw him in the jail for what length of time? A. Approximately two hours.

Q. And from that, and from what counsel has stated in his hypothetical question, you base your answer as you have given it? A. Yes, sir.

Q. Do you know the definition of insanity under the laws of the State of New Jersey, Doctor? A. I think I do.

Q. You know, of course, it has nothing to do with psychopathic personalities, or neuroses or psychoses; but is a definite rule established for a great many years, that a man to be legally insane must fail to know the nature and quality of his acts and that, if his acts are wrong, must fail to know that they are wrong; is that our understanding of the definition? A. Yes, sir.

Q. And you state that, according to your opinion based on the hypothetical question, that condition existed in Robert Deegan on January 14, 1944? A. Yes, sir.

Q. Did it exist during the day when he was planning this crime, Doctor? A. I think it was beginning to exist and that, prior to that, when the stimuli began coming in, it began to exist then.

Q. Some time during the course of that afternoon or evening? A. Yes, sir.

Q. It began to exist; is that right? A. Yes, sir.

Q. I suppose it is difficult for you to say exactly when his mental condition became— A. Well,

from what he told me, I think it was a very definite departure for the worst at a certain time.

Q. And what time was that? A. And that was the time when he saw the woman and was being egged on to strike her, and he told me that he felt as though two arms were lifting his arms up, and then he did not know. I think, at that time, there was a flight, and then his consciousness returned.

Q. And he failed to be in that mental condition when, Doctor? A. Well, when he began realizing that he had done something wrong, and when he told me that he heard his grandmother's voice saying—telling him that "You are getting yourself into trouble." And it grew stronger when he—as he—in the manner that he describes, when two policemen, he says, from, I think it was from Dumont, picked him up in New York. And he says that he was relieved and told them the story with a sense of relief.

Q. Doctor, when he grabbed the woman's purse and ran away, don't you think he was conscious that what he was doing was wrong? A. I do not think he was.

Q. When he said to his friends, "I wonder if I hit that woman too hard," don't you think he was conscious of right and wrong? A. I think he was beginning to be conscious.

Q. At some time that evening he began to return to a mental state which was not that which has been described as not knowing right from wrong? A. Yes, sir; I—

Q. I beg your pardon. A. May I say, to qualify something,—

Q. You may say anything you want to, Doctor.

A. I believe at other times his sense of right and wrong is not that of a normal individual.

Q. You think there are other times in his existence when you can testify to the same fact, namely, that he did not know right from wrong, as you have said about— A. I believe with him it is a purely relative feature. I do not believe he has the sense of right and wrong of a normal individual.

Q. Would you say that today he does not know the nature and quality of his act? A. A surface knowing. I believe, under the same circumstances, he would repeat the same thing over again.

Q. Doctor, your diagnosis and opinion is based upon the assumption that what the prisoner told you is true, namely, that he felt this irresistible force and he heard these voices, is that not so? A. That was part of it. Also from observation of—of the—of the man during the course of the examination.

Q. Yes. But, Doctor,— A. I placed that in its proper pigeon hole.

Q. Yes, that is right. I understand that. But, without the information from the prisoner that he had these hallucinations, namely, that he heard the voice of his grandmother and that he did this act as a result of an irrepressible impulse, and a physical force that caused him to bring his arms down, without that, you would not have the same opinion of his— A. I would have.

Q. You would have? A. Yes.

Q. You think, even if he had not told you that, just from your examination of him and the case history, you would classify him as a person who did not know right from wrong— A. Yes, sir.

Q. —on January 14th? A. Yes, sir.

Q. Doctor, it must be a little difficult to classify a prisoner as not knowing right from wrong twelve months before you saw him, isn't it? A. My opinion is based upon the entire personality of the individual.

Q. And do you know what his personality and individuality were twelve months ago? A. Certain things do not change, unfortunately; certain—

Q. How do you know that certain things do not change in a person you did not see until a few days ago? A. Well, having reached certain years, and having maintained a certain course of actions during all these years, and showing at the present time a mental reaction which is completely in accord with the entire past life, I have no reason to predict that he is going to do any better.

Q. And when you say in accord with his prior past life, all you know about his prior past life is what has been told to you? A. Yes, sir. And what he has told me; yes, sir.

Q. Well, that would be included, what you had heard. Now Doctor, let me ask you, had there been a policeman present at the time around eight o'clock on January 14, 1944, do you think Deegan would have struck this woman? A. That is an impression. My own impression is that if he had been loaded up by certain stimulations, I think he would have, even if a policeman had been present.

Q. Doctor, how can you say the man did not know right from wrong when it is perfectly obvious that he planned this thing deliberately by getting a weapon in advance, hiding it under his

coat, waiting until it was dark, and following a woman a half a mile, striking her, knocking her down, grabbing her purse and running away? In view of that, how can you say that the man who did that did not know what he was doing was wrong? A. He himself told me he had some clamorings of right from wrong before he struck her; but these individuals cannot take certain stimulations. He probably could outline right now a beautiful course of action for himself and for all of us. But, with certain stimulations, he would lose all reasonable control of himself and fall into the same situation.

Q. Well, he needed money, Doctor, didn't he? A. Yes, sir.

Q. He was dead broke, desperately in need of money? A. Yes, sir.

Q. And he accomplished a definite purpose of obtaining money in the manner he was familiar with? A. Yes, sir.

Q. Now, isn't that the act of a rational, reasoning person? A. Reasonable persons may plan certain acts and be able to execute—not be able to exercise certain judgment and foresight, look forward to what may happen to them, what the consequences may be, just what he was doing and he was going to do it, and what possibly might be the price he had to pay. I do not believe he had an adequate appreciation of all those things, and that is what constitutes right and wrong, the judgment and foresight and anticipation and weighing in the balance of moral values, and that I feel he did not have.

Q. You think that this man took chances that a more acute man, a more clever man, would not

take, and did not weigh the consequences with the same degree of care that a better educated, more prudent man would do? A. I think it was more—not merely the question of taking chances. I do not believe his appreciation of the entire problem of going out and getting money was that of a normal individual.

Q. You not only say it was not the normal action of a normal individual; you say it was the action of a person who did not know what he was doing? A. Yes, sir.

Q. And you say the man did not know what he was doing, although he did exactly what any other person would do under the same circumstances, namely, to obtain money by robbery, did it in the back with a deadly weapon; he ran after the affair; he did what he could to conceal himself and left the place of his crime hurriedly, all the things that a normal person would do; and you still say that he did not know what he was doing? A. In his particular case, no.

The Prosecutor: That is all.

Mr. Zabriskie: That is all. I wonder if we could take a recess at this time?

(Witness excused.)

The Court: We will take an adjournment at this time until ten o'clock tomorrow morning. You will all please remain seated until the Jury leaves the room.

The Sheriff has requested that you might get a bit of exercise before going to dinner or after dinner, and you can do that with the Court's consent in the custody of the

officers. Please be unusually sure that you do not converse with anybody, and the officers are strictly asked to see that that happens. We trust you all.

(The Jury retired at 4:28 P. M.)

The Court: Court stands adjourned until ten o'clock tomorrow morning.

(Recess taken at 4:20 P. M. until tomorrow, Wednesday, January 31, 1945, at 10:00 A. M.)

Hackensack, New Jersey,
Wednesday, January 31, 1945, 10:00 A. M.

TRIAL RESUMED

Third Day

(The Clerk polled the Jury.)

The Court: Are you gentlemen ready to proceed?

Mr. Zabriskie: The defense rests, your Honor.

The Court: The defense rests?

Mr. Zabriskie: The defense rests, yes.

(The defense rests.)

The Prosecutor: If your Honor please, I had anticipated the defense taking a brief time this morning. I was so informed, without any criticism of anybody. I was so informed, that they would take about an

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hour this morning. I have three witnesses in rebuttal, Doctor Beling, Doctor Collins and Doctor Means. Doctor Beling is in court, Doctor Means and Doctor Collins were instructed to be here at ten o'clock, and I have no doubt will be here within a very few moments. However, it would accommodate me if I could have a short recess, as I have not seen any of the doctors at all during this trial. I never talked with them at all, and I had expected to do that this morning. So, if we can have a fifteen-minute recess, I think I will then be ready to proceed.

The Court: Is that sufficient, Mr. Prosecutor?

The Prosecutor: Well, if the other doctors get here.

The Court: Suppose we tentatively make it ten-thirty?

The Prosecutor: Yes, your Honor. Thank you very much.

The Court: The court will stand recessed then until ten-thirty in order to take care of this situation.

(A recess was taken at 10:07 A. M.)

(After recess, 11:18 A. M.)

The Court: Poll the Jury.

(The Clerk polled the Jury.)

Dr. Paul Barringer Means—for State—Rebuttal —Direct

REBUTTAL

The Prosecutor: I will call Doctor Paul Means.

PAUL BARRINGER MEANS, called as a witness in rebuttal, being first duly sworn, testifies as follows:

Direct examination by the Prosecutor:

Q. What is your profession, sir? A. Physician.

Q. And what is your present occupation? A. Psychiatrist for the State of New Jersey.

Q. And does the institution for the insane at Trenton and the institution at Annandale come under your jurisdiction? A. I am connected with the State Hospital in Trenton, and from there, through the mental hygiene clinics, I examine the individuals in the different penal correctional institutions.

Q. And how long have you been specializing in this science? A. Since 1915.

Q. Now, did you have occasion to examine an inmate at the Annandale institution on April 9, 1940, named Robert Deegan? A. I did.

Q. Doctor, I understand that you do not recognize the defendant as being the same person that you examined there at that time, is that correct? A. Well, at the previous trial, I did not; but I confirmed it at that time.

Q. Yes. And so there is no question that the man you examined in 1940 was Robert Deegan,

the man who is on trial here today? A. No, no question.

Q. Now, he was confined there at the time, is that correct? A. Yes.

Q. And what was the purpose of your examination? A. Routine psychiatric examination to determine whether or not he was insane or epileptic or had some other form of mental or nervous disease that might require some treatment.

Q. Now, do I understand that by ordinary routine treatment, that occurred with all inmates of the institution? A. Yes.

Q. And you were the person who made that examination for the State? A. Yes.

Q. And the date is April 9, 1940? A. That is correct.

Q. Now, will you tell us what you observed and what you concluded concerning the man's mental condition at that time? A. Well, my conclusions at that time,—well, he had been there at that time since March the 8th.

The Court: What was the date of the examination?

The Witness: On April the 9th. That was March 8, 1940, the same year. And he gave me a history of sleeping well and having a good appetite, and not hysterical. And at the time I examined him, he had been placed in the belt class, which is a routine placement after they come out of quarantine in the institution, and he requested to be placed in the garage so he could learn automobile mechanics. If he could not get that, he would like electrical

or plumbing work. And he was considered suitable for any of those. And up to the time of my examination, he had had no reports against him for any behavior disorders in the institution or any violation of the rules.

And during my examination of him he was quiet and orderly, cooperative; he answered questions in a relevant and coherent manner, and he was amenable. He seemed fairly stable and, for purposes of classification in the institution, he seemed institutionally trustworthy. And it was noted that he would require moderate supervision on parole after his release from the institution.

The neurological examination was practically negative throughout.

Q. Doctor, did you specially inquire as to hallucinations of any sort? A. No hallucinations. I questioned him about hallucinations, and none could be elicited and no delusions.

Q. He said nothing to you about anything of that sort, hearing voices, or anything of that sort? A. No.

Q. There were no objective symptoms of mental irregularity or nothing that you learned from your questioning which indicated abnormal mentality? A. Nothing that I could learn would indicate any evidence of any abnormal mental condition at that time.

The Prosecutor: Your witness, sir.

Dr. Paul Barringer Means—for State—Rebuttal —Cross

Cross examination by Mr. Zabriskie:

Q. Well, what question did you ask him about having mental hallucinations, Doctor? What language did you use? A. Do you want me to give you the question as I usually give it to the—

Q. No. The question you asked him; the question and the answer. A. The question and the answer?

Q. Yes. What was the question? A. Well, I haven't got the question and the answer down here as the question and answer.

Q. Oh, you haven't got it there? Did you use the word "hallucinations" when you asked him whether he had hallucinations or not? A. I haven't got a definite set of questions I always ask, if you want to know what they are.

Q. No. You do not remember this particular case, Doctor, do you? A. No. I do not remember the form of my examination.

Q. In other words, if you had not seen him in court in March of 1944, you would not have been able to pick him out of a line of five, would you? A. No.

Q. So you are testifying entirely from— A. From my records.

Q. Yes. And the examination that you gave took about—well, you do not really know how long it took, excepting that it is your custom to make— A. Yes. It usually takes half to three-quarters of an hour.

Q. A half to three-quarters of an hour. And he had said something about he would like to be an automobile mechanic, or something of that

sort. But you never saw him do any mechanical work, did you? A. No.

Q. You never heard of his doing any actual mechanical work, did you? A. I never heard of his doing any?

Q. No. A. Well, I can tell you in just a minute.

Q. Well, that is answering the question.

The Prosecutor: He has not answered the question. May he answer the question?

The Court. The witness can answer just as to what he saw and whether he had done any other mechanical work in answer to counsel's question.

A. He told me himself that he worked as an automobile helper, a mechanic's helper. I did not see him.

Q. And you say he seemed fairly stable, you said, in your examination? A. He seemed fairly stable.

Q. Fairly stable. Not one hundred per cent. stable? A. I did not emphasize the fairly stable.

Q. You are going entirely from your written report made at the time, are you not? A. Yes.

Q. And that contains that analysis, that he was amenable and seemed fairly stable? A. That is right.

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

Q. And you say your examination consumed, perhaps, according to the best of your recollection of how long it took in those cases, about a half hour? A. A half to three-quarters of an hour, usually.

Q. And you testified before in this in connection with this same man in March, 1944? A. Yes, sir.

Q. And at the time that you were examining him, he may have been psychopathic, and you not know it? A. There is that possibility.

Mr. Zabriskie: I think that is all.

Redirect examination by the Prosecutor:

Q. Doctor, he could not have been insane so that he did not know the difference between right and wrong, and you not ascertain it through your examination? A. I hardly think so.

Q. No. And I suppose you made this examination like a great many other examinations at that period, Doctor? A. It was just one of a great many examinations during 1940, just routine.

Q. And you say it is your custom to use the same type of questions in all those examinations? A. Yes.

Q. And that is what you did in this case? A. Yes.

Q. And that included the question concerning hallucinations? A. Hallucinations.

The Prosecutor: That is all. Thank you very much.

The Court: Thank you, Doctor.

(Witness excused.)

The Prosecutor: I will call Doctor Beling.

Dr. Christopher C. Beling—for State—Rebuttal —Direct

CHRISTOPHER C. BELING, called as a witness in rebuttal, being first duly sworn, testifies as follows:

Direct examination by the Prosecutor:

Q. Doctor Beling, have you some specialty in which you have engaged for a number of years? A. I have.

Q. What is it? A. Nervous and mental diseases.

Q. And where do you practice? A. I practice in Newark, New Jersey.

Q. How long have you been specializing in mental and nervous diseases in the State of New Jersey? A. About forty-three years.

Q. Doctor, will you tell us something about your qualifications as an expert on mental diseases? A. I spent six and a half years at the New Jersey State Hospital at Morris Plains. It is now known as Greystone Park. That was from 1901 to 1907.

Since then I have been practicing in the City of Newark, specializing in nervous and mental diseases.

I was an assistant neurologist and psychiatrist from 1908 to 1916 at the Columbia University Vanderbilt Clinic in New York. And I have had charge of the neuropsychiatric service of the Newark City Hospital as chief of service since 1908 and, well,—

Q. Do you belong to any organizations, Doctor? A. Well, I am a life member of the American Psychiatric Association. I am a member of the American Neurological Association, a member of

the Neuropsychiatric Association in New Jersey, which I helped to found, and I am a member of the New York Neurological Society.

Q. Were you at one time President of any of these organizations? A. I was President for the first three years of the New Jersey Neuropsychiatric Association.

Q. Doctor, you have written articles on this subject and lectured on this subject? A. I have written a few articles, about twenty-eight or twenty-nine articles.

Q. And have you qualified and testified in this county, in the courts of this county, and in many other counties of this State, as an expert? A. I have.

Q. Now Doctor, at the request of the State of New Jersey, did you examine Robert Deegan sometime after January 14, 1944? A. Yes, sir.

Q. Will you tell us the date of the examination? A. On February the 10th, 1944.

Q. And I assume that took place in Hackensack Jail? A. Yes, sir.

Q. Now, will you tell us what you observed and what your conclusion was regarding the mental condition of this defendant Deegan? A. Well, I spent considerable time. It took me about two hours or so, questioning him and examining him with regard to his life, his early life, his family history, his personal history, and his occupations, and so forth.

Q. Doctor, may I ask you: Did you introduce yourself and tell him the purpose for which you were there? A. Yes. I told him that I had been sent there to make an examination of his mental condition.

Q. For the purpose of the trial? A. Yes, sir.

Q. In connection with the crime, is that right? A. Yes, sir.

Q. And then you learned the background of his life as he gave it to you. And may I ask you if he gave it to you freely and willingly? A. Yes, quite freely.

Q. And was he rational and coherent in his conversation? A. Yes, sir.

Q. Now, did he tell you about the crime for which he was accused? A. Yes, quite in detail.

Q. Will you tell us just briefly what he told you, Doctor? A. Well, he said he had come in contact with a young man in New York, I think his name was Martin Hoffman, and that they came —to make it brief, got together and came over here to New Jersey, and they went to visit his father's house, and asked his father for some help, for some money. And when he was there, they had decided to hold up somebody, and he looked around, and under the porch of the house he found a baseball bat that belonged to his brother, and he secreted that under his coat, his overcoat. And then he proceeded and told the whole story of how he had been with these two girls, and had brought these girls over from New York, and so forth.

Q. Did he tell you about the attack on Mrs. Herrmann? A. Yes, sir.

Q. And about running from the scene? A. Yes, sir. And he also said that he had—when she came, he made—he took the club or baseball bat and, after he had lifted it, he felt as if there was some force drawing it down on her head, you see.

Q. He told you that? A. Yes.

Q. And then did he tell you about leaving the scene and running away? A. Yes.

Q. And did he tell you anything about worrying? A. Yes. He said that when he was walking down the street in Bergenfield that he said to Carolyn, one of the girls, that he had hit this woman too hard, and he was worrying about it until the time that he was arrested, he said.

Q. Did he at that time say anything about that he heard any voices of persons not living, having any hallucinations of that sort? A. No. I questioned him with regard to what we call sense of perversions, that is, hallucinations and illusions; but I did not obtain any from him.

Q. Doctor, did he show any objective symptoms of mental irregularity at all? A. I do not know what objective symptoms you mean. A physical examination of him?

Q. Yes. Well, from your physical examination, did you determine anything that would indicate he was not rational mentally? A. No. He was nervous. There was a tremor of his lips and eyes when he stood with his eyes shut with his feet together. And, otherwise, there were no—he had some decayed teeth, one decayed tooth in his upper jaw, and there were no other signs.

Q. Doctor, you know there was a history of syphillis, didn't you? A. Yes.

Q. Did you learn that from him? A. I think I did, that he had been under treatment for it. He said that the Army doctor said that he had syphillis.

Q. Yes. Now,— A. And he was being treated.

He took a spinal tap to see if they could find out the cause of his headaches. And he said, "I don't know whether it was for that or to find out if I had syphillis."

Q. Now, Doctor, you also saw the defendant at the former trial? A. Yes, sir.

Q. And observed him for some period of time, did you not? A. Yes, sir.

Q. Now, Doctor, from all you know about this man, including your examination and the case history as you got it from him, will you tell us whether in your opinion he knew the nature and quality of the act on the 14th of January, 1944, and knew that it was wrong to do that which he did? A. Yes. I think I could answer that question yes.

Q. Do you feel that he did know right from wrong? A. Yes.

Q. And knew what he was doing? A. Yes.

Q. Now, Doctor, I suppose in the course of your profession, you have treated a great many persons who are known as psychopathic? A. I have.

Q. Will it run into a great many thousands of persons? A. Well, quite a large number.

Q. Yes, sir. Do you know the meaning of the word "psychopathic"? A. Something from a psychic disturbance there, more or less—

Q. Do you know what is meant by the term inadequate personality? A. Yes. A personality that does not meet the issues of life squarely and adequately like any other human being. And I think the term used was constitutional psychopathic—constitutional psychopathic inferiority, inadequate personality. That is the whole thing.

Q. Well now, is that the same thing as not knowing right from wrong? A. No.

Q. Quite a different thing, isn't it, Doctor? A. That is, people know right from wrong; but unless a man had some delusions or hallucinations or some disturbance of consciousness, he—you could not say that, whether he knew or did not know the difference between right and wrong. But if a man was delusional and those delusions touched upon the things that he was doing, why, then he would not know that he was doing right or wrong.

Q. Doctor, of these great numbers of persons that you have treated who are inadequate, of a psychopathic personality, they are not confined to institutions, sir? A. Well, not as a rule; not as a rule. They are walking the streets. You meet them on the streets.

Q. And they are all over, aren't they? A. That is right, unless they have come into conflict with the law and have become a public menace. They generally go around and get along the best they can.

Q. And I assume you would agree that Deegan, at the time you examined him, had something which could be termed an inadequate personality; do you agree with that? A. Well, taking his whole history as I learned it from my examination and also from hearing the testimony given at the previous trial by witnesses, if I may mention that, I would say that from his early life he has not been perfectly normal, in the sense that he is delayed in his development, and that he had been delinquent. That one word would would ex-

plain it, that he was more or less delinquent from time to time.

Q. But being familiar with the legal standard of insanity in New Jersey, you say he meets the test of knowing right from wrong, and know that what he did was wrong? A. Yes. As far as I was able to ascertain as a result of my examination and all other information that I was able to get together that came within my knowledge, I was of the opinion that he knew the difference between right and wrong, the nature and quality of his acts, and the consequences issuing therefrom.

Q. And so far as anything you observed, is it your professional opinion that he continued in that state down to the present time? A. I would say so.

Q. Certainly to the time that you testified at the last trial? A. Yes.

Q. When you had the opportunity to observe him? A. Yes.

Q. So that from the legal standpoint you consider he was sane in January 1944, and is sane today? A. Well, I give you the points upon which I base my opinion.

Q. That is right. A. I am not giving a legal opinion.

Q. No; but your professional opinion? A. Yes.

Q. Based on the legal definition of insanity, you think he is sane in a legal sense today? A. I would say so.

Q. Thank you, sir.

The Prosecutor: Your witness, Mr. Zabriskie.

Dr. Christopher C. Beling—for State—Rebuttal
—Cross
Dr. Laurence M. Collins—for State—Rebuttal—
Direct

Cross examination by Mr. Zabriskie:

Q. Doctor, I am just going to ask you one question, one of the questions I asked you the last time. Now, isn't a psychopath less able to resist doing wrong than a normal person? A. Well, that answer is obvious.

Q. Yes. As you said before: "Well, I think we should have to admit that, because relatively they do more foolish things than people who are well-balanced?" A. That is right.

Q. That is the correct answer, is it not? A. That is right.

(Witness excused.)

The Prosecutor: I will call Doctor Collins.

LAURENCE M. COLLINS, called as a witness on behalf of the State, in rebuttal, being first duly sworn, testifies as follows:

Direct examination by the Prosecutor:

Q. What is your profession, Doctor? A. I am a physician and surgeon.

Q. And are you connected with any institution of the State of New Jersey? A. I am. The New Jersey State Hospital at Greystone Park.

Q. How long have you been there? A. Twenty-eight years.

Dr. Laurence M. Collins—for State—Rebuttal—Direct

Q. Doctor, do you specialize in any special branch of medical science? A. I do. Mental and nervous diseases.

Q. How long have you specialized in mental and nervous diseases? A. Twenty-eight years.

Q. Will you tell something about your qualifications and experience? A. Well, I graduated in medicine in 1912, and I served as general internship for two years. Then I practiced for a short period of time, and entered the regular army of the United States, and served during the first World War. I am a Fellow of the American Medical Association, a Fellow of the American Psychiatric Society, a diplomate of the Board of Neurology and Psychiatry, a former president of the New Jersey Psychiatric Society; member of the New York Society for Clinical Psychiatry; former president of the Morris County Medical Society, and a member of the Military Surgeons, and a Fellow of the American College of Surgeons.

Q. Doctor, do you see all of the inmates of Greystone Park? A. Yes.

Q. And that runs into a great many thousands? A. Yes.

Q. You testified in this County in various cases as an expert on this subject, have you not? A. I have.

Q. Now, at the request of the State, some time after January 14, 1944, did you visit the defendant Deegan and make an examination for the purpose of testifying? A. I did.

Q. I assume that examination was made at the Hackensack Jail? A. It was.

Dr. Laurence M. Collins—for State—Rebuttal—Direct

Q. Did you give us the date, Doctor? A. January the 25th, 1944.

Q. Well, now, will you tell us briefly what you told the defendant and how he appeared to you and what he told you? A. Yes, sir. Mr. Allyn of your office was there, and Mr. Breslin, a former assistant prosecutor. And Mr. Allyn introduced me to Deegan and told him who I was, who I represented, and what his rights were; and he readily consented to the interview and to the examination.

I made the examination by question and answer. He was quiet, orderly, agreeable and cooperative throughout the interview. He answered the questions promptly, logically and relevantly. He gave me a good retrospect of his past life. He told me his age, of his early youth, and the number of people in his family. He stated that he went to school; I think it was the eighteenth year he left; he had failed three classes, and went to a CC Camp out in Oregon for a period of time. Then he came back and he roamed around, and he had a job in a gas station, and then he joined the Army on May the 1st, 1942. He was in the Army, and then he told me he was up on charges for being AWOL, absent without leave. And once they brought him from the guard house and they put him in the psychopathic ward for observation, and he said he didn't know for what, but he said he thought he had "syph." He was under treatment for syphillis at Fort Meade, Maryland. And he was discharged from the Army around July, 1943. He had $98.00. He came to New York and

got a few odd jobs, and he got around. He worked in the Brooklyn Navy Yard, and he worked as a handy man around restaurants.

Around New Year's, he came over home and he spent time with his people. So he returned to New York and he met this man Martin Hoffman on Forty-second Street in a restaurant. They palled around up until the thing that happened with what he is charged. Those were his words. And I asked him what he was charged for. And he went into detail, and he told me what he was charged with, that he struck a woman, he assaulted a woman. And then he said that he was very sorry. He worried considerably ever since the thing had happened. He presented his reaction, his emotional reaction, as a normal condition that he found himself in. He was very sorry for it.

I questioned him at length concerning hallucinations. And I asked him if he ever heard voices when he could not see people, and he denied it. He denied ideas of persecution, hypnotism, mind control and bodily influence and hallucinations in all spheres. He said he was sorry for the act, and he felt he would have to pay the penalty. He was well oriented. He knew the year, month, day and place. And I questioned him concerning his limited capacity, his educational advantages, and he answered questions fairly coherently.

Q. Doctor, did you direct your attention to whether he knew what he was doing on the 14th of January? A. I did. I questioned him concerning the act with which he stood charged, and he told me that the afternoon was a Friday afternoon, he

visited his parents and visited his family, and he had these two girls with him, Ruth Oberempt and the other girl. I don't remember her name.

Q. Carolyn. A. Twing. And they went over to visit a friend called Suzanne, and he had a knife, a paring knife, in his pocket, and Suzanne took it away from him. And he said he had denied that he had any drinks, but the only drink he had was early morning, he had a glass of beer. They had eggs at Suzanne's.

So then they went out and they were going to go back to his house, and he met—they didn't go in. Deegan went to the back and he got a baseball club. And I asked him if he knew what he was doing. And he said, oh, yes, he knew he was going out to get money but he didn't think it would come up the way it did.

Then I asked him what happened, and he told me he struck the woman on the back of the head from behind and killed her, and he had worried ever since the thing had happened.

Q. Did he tell you anything about a pair of gloves? A. Yes. I asked him about gloves, and he said they belonged to Ruth, but he didn't know whether he had them on or not. And I asked him why he had the gloves. So he said, if anything happened, he wouldn't leave a fingerprint.

Q. Did he tell you about running away, Doctor, from the scene? A. I went into some detail about that, and going to the station and getting the girls and going to New York.

Q. Now Doctor, then you had a chance to observe him at the trial— A. Yes.

Q. —in March? And you testified at that trial? A. I did.

Q. Now, will you state for the benefit of the Court and jury whether from your examination and your observation of the defendant it is your medical opinion that on January 14, 1944, he did or not, or did not know the nature and quality and consequences of his acts, and know that that that he was doing was wrong? A. On January 14, 1944, I felt the man knew the nature and quality of his act, and he knew the difference between right and wrong.

Q. And, so far as your opinion is concerned, do you change your opinion from that day? A. No, sir.

Q. You found that condition continued? A. I did.

Q. Doctor, I would like to ask you if in your profession you are familiar with the terms constitutional psychopathic character and inadequate personality? Are those synonymous with insanity under the definition in the State of New Jersey? A. Well, constitutional psychopathic inferiority is an old terminology. We cannot call it psychopathic personality. A person can be a psychopathic and not insane. It is only when they exhibit reactions that they are insane. The world in full of psychopaths.

Q. And psychopaths and people with inadequate personalities are walking the streets, and you pass them without knowing it, all the time, don't you? A. Oh, yes.

The Prosecutor: You may examine the witness.

Dr. Laurence M. Collins—for State—Rebuttal—Cross

Cross examination by Mr. Zabriskie:

Q. Doctor, you testified in this same case before, didn't you? A. Yes, sir.

Q. You did not have a stenographer when you took this examination? A. No. I took it by questions and answers.

Q. Have you got the questions and answers with you? A. The original, I have; yes, sir.

Q. Will you find anything about fingerprints and handwriting? A. Here it is, Judge (indicating).

Q. Did you mention it at the last trial? A. I do not think I was asked.

Q. Well, you were not asked? A. No, sir.

Q. Well, it was not mentioned at the last trial, was it? A. Not that I know of. I may have. I do not know. I did not read my testimony.

Q. Well now, then, he told you he had been running around with the bat in his hand for a long time before he got the gloves, didn't he? A. No. He didn't tell me that at all, Judge. He told me, "I had gloves, but don't know whether I had them on. Those gloves belonged to Ruth."

"Why did you take them"?

"I thought if anything happened, I didn't want to leave any fingerprints."

Q. Well, didn't you ask him, "When you were carrying the bat around before, wouldn't the fingerprints have been there?" A. No, I didn't ask him that. He volunteered it. I didn't ask him that.

Q. Now then, I asked you the question at the last trial: "Isn't a psychopathic personality a constitutional tendency to mental disorder and

a type of personality marked by lessened voluntary control and increased emotional response to stimuli''? And you answered yes? A. Yes.

Q. That still stands? A. That still stands.

Mr. Zabriskie: That is all.

Redirect examination by the Prosecutor:

Q. I would like to show you your letter of January 25, 1944, to Mr. Breslin. Is that the date you made the examination? A. That is right.

Q. And in that you wrote, the letter said, ''I had gloves, but don't recall whether I had them on. These gloves belong to Ruth.'' When questioned, ''Why did you have them?'' Stated, ''I figured if anything happened I wouldn't want to leave fingerprints.'' That is in your original letter. A. This is the original that I dictated to the stenographer.

Q. You wrote that letter, and on the same day sent it to Mr. Breslin? A. That is right.

Q. And if he did not ask you about it, that was not your doing? A. Yes, sir.

Recross examination by Mr. Zabriskie:

Q. He still said he did not recall whether he had them on at the time? A. Yes; he did not recall.

(Witness excused.)

The Prosecutor: We rest, your Honor.

Mr. Zabriskie: That is all. Mr. Wulster is going to sum up.

The Court: I suppose we are, therefore, ready for the summation, both sides having closed the presentation of the evidence. I think the doors should be closed during the summation, and counsel will sum up before adjournment for noon recess. If anyone has any intention or desire to leave the court room at this time, they may do so. The Court will not put any limit upon the time in this summation, gentlemen.

Mr. Wulster: Mr. Winne and I have agreed that we will divide the time left before lunch, and complete both summations by lunch time.

The Court: Whatever you do is satisfactory to the Court.

The Prosecutor: Well, I do not want to limit Mr. Wulster; but I think perhaps thirty minutes will probably be adequate.

The Court: You may proceed.

(Mr. Wulster summed up to the jury on behalf of the defendant as follows:)

Mr. Wulster: May it please your Honor, Mr. Winne and Ladies and Gentlemen of the Jury, may I first say to you that my senior counsel and I obviously appreciate the two and a half days that you have spent with us. If we have committed any act of omission or any act of commission, please do not let it militate against this boy. We are in court to defend him. We are in court to save his life. He is under indictment for murder.

No matter what I might say or no matter what might have transpired throughout this trial, we cannot take away the horror of the act nor can we remove the suffering of those that were left behind by the passing of Mrs. Herrmann. If the crime had happened any other way, if these four children, not thinking, had run her down with an automobile, killed her, the horror, of course, would be gone; but the grief left behind would remain.

Now, the indictment against Robert Deegan under the December Term of 1943 I will read very briefly: "Bergen County, To Wit: The Grand Inquest of the State of New Jersey in and for the County of Bergen upon their respective oaths present, that Robert Deegan, Martin Hoffman, Ruth Oberempt and Carolyn Twing" and, as you recall, there was a severance, so the trial is only against Robert Deegan, "late of the Borough of Dumont, in the said County of Bergen, on the 14th day of January, 1944, at the Borough aforesaid, and within the jurisdiction of this court, did wilfully, feloniously and of their malice aforethought, kill and murder one Ethel Herrmann."

And, of course, the State says that happened in this robbery. The killing of Ethel Herrmann is not denied. The fact that the pocketbook was taken from her is not denied. The defense in this case is no denial of the act itself. It is the denial of the capability of the mind of this boy of committing. They bring into the case, Ladies and Gentlemen, the elements of criminality, the elements of the gangster, of Murder, Inc., of the man who goes along the street at night with a "gat" in his pocket and some Moll as his girl

to hang out; they are thinking of going out and killing a person for no other reason than but to kill.

They bring a knife into the court room to try and point out that here was an intent to use that knife to stab somebody for the purpose of getting some money. And what is the State's testimony about that knife? Hoffman, their witness, says that he saw it stick out of his coat. You can see the size of it. You can say whether or not you could see it sticking out of your coat if you put it in your pocket. It was in the winter time. And was it a suit coat or an overcoat. And when they go to the Reynolds' house, the knife is still sticking out of the coat. I do not know whether it is a coat or an overcoat. And then Hoffman says that the knife was taken, with the eggs. What for? To cut bread. Oh, no. To bring a knife into the picture so you have got a real low type murderer. That knife has nothing to do with this situation at all, except to build up atmosphere. And then the gloves. The criminal who goes out to plan a murder, we all know, we all read in magazines, about leaving fingerprints behind.

Now, let us see, as we follow the logical sequence of the gloves and the fingerprints, whether or not this boy was capable and had the mind to be able to plan this thing and not leave fingerprints, on the State's testimony. The State's testimony is that he got the bat, that he handled the bat, that the bat was in his hands, that he went with the bat with the fingerprints on from the Deegan home to the railroad station and there, all of a sudden, he is supposed to get gloves so that when he now handles the bat, there will be no finger-

prints. Very, very clever criminal. And then this very, very clever criminal that they would point out to you, by the State's own witness, Captain Allmers, stops at the lighted street corner of Prospect and New Milford Avenue to talk to the woman. Hiding himself? Planning a crime? The clever criminal who has a knife, and who uses gloves to cover up fingerprints, under an arc light, speaks to his victim, a lady from Dumont who could have recognized him, who only lived a few blocks away from his home?

The Deegan family have lived in Dumont some twenty years, and they are the average family, the average family of the citizenry that makes up the County of Bergen. And Captain Allmers admits that he told the Deegan parents years ago to take this boy to a psychiatrist. That is the State's only lay witness, the only non-so-called-expert, who gives us anything on the mentality of this boy. The doctors come in and their testimony is somewhat conflicting, although you recall very clearly the statements of Doctor Beling concerning the normalcy and the psychopathic tendency, and what happens thereunder. But not a lay witness did they bring in to dispute his abnormal, insufficient, crippled, ruined mentality from babyhood; not a detective whose reputation is known throughout the State and throughout the east, not a neighbor did they bring in to testify that this boy had a normal youth, that this boy lived as we do, where children live normally without the backward tendencies, played, joined in, not hide in a cellar in dark corners to find a place to himself, not cut out pictures out of the paper, not live in houses down the street, not

find the companionship of a colored man when he is alone in New York to go to the movies with; crushed by society, who now says, "Send him to the electric chair."

Captain Allmers knew he needed a psychiatrist in his early youth. He is a police officer. What did society do? What did our great school system do with taxes by the thousands and by millions, when he was seventeen and eighteen years, in the eighth grade, and which knew he was backward? Did they give him any care, any attention? And the Army, they put him in the psychopathic ward. They found this technical mental difficulty concerning which there has been so much argument. Did they send him to an institution? Gave him his back pay and released him in July.

He goes to New York. The family is not notified. Six months, he is within eight or ten miles from home. Dumont is across the river practically from Forty-second Street. He does not go home for a period of six months. Normal?

The boy returns from the Army, does not go home for six months. The parents are not notified. Help the boy at school to straighten him out? Help the boy at Oradell to straighten him up? Doctor Means, the half-hour examination, and they let him go.

Did not society fail? Did not society fail this boy that they now ask you to electrocute? Pass him by throughout his entire life and then, because he does not think the way we all think, send him to the electric chair. Why don't they bring the chair in here? They ask you, the State of New Jersey, who has had the opportunity of helping

this boy, to bring in the death penalty. Why don't they ask you to throw the switch? Why must they ask you to electrocute him behind bars and grey stone walls, with a chaplain pleading for mercy, for mercy that they won't ask you to give for this boy? Normal? My Goodness! Look at him. Look at his brothers. Look at the members of his family. And was he normal?

I couldn't sleep if that boy died. Oh, society spends so much time on diseases of the flesh, hospitals by the thousands. Money and scientific application cure all the diseases of the flesh. So little for the mind. If your mind were to go through any circumstances at all, or mine, we would probably land at Greystone. When I was a youngster, they called it Morris Plains. You have heard about it, and so have I. Doctor Collins, one of the head men there. Doctor Collins deals all day long with what kind of people? People so insane that he has to keep them locked behind bars and stone, or in padded cells. That is not the kind of insanity we are dealing with here. Compare that with Doctor Leavitt, advisor to the Courts of New York, Brooklyn, and some twenty years; I think he testified some seven or eight thousand cases. Doctor Burns, with his background.

But let us take the doctors and eliminate them. May I repeat, why didn't they bring in one neighbor, one associate? Because they knew that there was not one available. Do not think for a moment that Nate Allyn and his men did not interview every possible person that the State could have used by way of a lay witness to rebut the

lay witnesses of those neighbors. Where are they? The State of New Jersey, who wants to send a boy to the chair; and if they say they did not interview their neighbors, then they have failed utterly in their job.

We had to go out, Judge Zabriskie and myself, to find out what restaurants he worked in. Who did he pal with? And they had the information. They took the statement from him. They knew where he worked. What did we find? That he is a dishwasher. This manager knows of his peculiarities. That he pals with this colored man, who has to wash and dress him and clothe him, whose wife prepares his bath for him to clean him up. Normal? Sane? God help us if your children reach that stage, where we here in New Jersey, in our warm homes, if one of our boys pals with a colored man, and living in the same house. Normal?

We help the physically weak, the physically diseased, the diseases of the flesh. We do not kill the blind for an act that they commit by reason of their blindness. We do not chop off the foot of a boy with a club foot because it gets in our way and we trip over it. We do not say to the cripple, to the hunchback, to the person who cannot walk, "You are as good as we are; get up and walk and, if not, suffer the consequences. Do as we do." Because we recognize physical ailments, diseases of the flesh.

What do we do for diseases of the mind? We say to a person with a disease of the mind, "Think the way we do; act the way we do. If you fail, the electric chair is waiting for you. Even though

we did not bother with you at school; even though a highly paid State psychiatrist spent a half hour with you, and even though you are released from the Army as a constitutional psychopath with an inadequate personality. Overlook all that. You have to do what we want you to do."

Oh, ladies and gentlemen, for nineteen hundred years, we, may I say, have pretended to be Christians, and I say pretended, because throughout all those years, nineteen hundred and forty-five, we yet do not reject our right to kill, to kill lawfully. "Thou shalt not kill" makes no distinction. "Thou shalt not kill" does not say lawfully or unlawfully. It says "Thou shalt not kill," and that applies to all mankind. We must either accept the greatest teachings,—the greatest teachings, the greatest law handed down by the greatest teacher and giver of all law, or we might just as well destroy every law book on our shelves. And that law, simple, sincere, it can be digested to cheer us quickly, "Forgive them, they know not what they do." When Christ was on Mount Olive and the pharisees and scribes brought the sinner before him,—

The Prosecutor: I do not like to interrupt, your Honor, but I think we are trying this case under the laws of New Jersey. I do not think counsel should invoke the Old Testament or the New Testament.

The Court: I will sustain that objection. But I do not want to interrupt counsel. Just confine yourself to the evidence, Counsellor.

Mr. Wulster (continuing): Hoffman testified that he wanted to go to Boston. You had an opportunity of looking over the four people in-

volved in this case. Is this boy here, with Carolyn Twing and his companions, the brains of the foursome; or was Hoffman and Oberempt the brains of the foursome? You had an opportunity of seeing them on the stand. Was Ruth Oberempt, Hoffman's pal, the pre-motivating force with Hoffman in this, or was he not? The question is important. Important, for when you weigh these facts, to see whether or not we are dealing with a mentality that could commit this awful crime.

There is not much more, Ladies and Gentlemen of the Jury, that can be said in a case like this. The responsibility is grave. You are being asked to put a man to death, a man that his family and neighbors know is not right, not right mentally.

I could never, never in all my life, have prosecuted this case. The boy was only in jail for a short period of time when they brought in a psychiatrist to examine him. Oh, I know what they will say. "We brought him in in anticipation of whoever counsel is assigned, that counsel will come in with such and such a defense. When a sane person is arrested and put in jail, there is no need of that anticipation. They knew, the State knew, that there was something the matter with that boy. So they bring in two doctors, Doctor Collins and Doctor Beling, to examine him. And you heard the results of their examination.

Ladies and Gentlemen of the Jury, you have before you a troublesome situation. I know, as you do, that the boy cannot walk the streets; but I know, as you do, I am sure, that the boy should not die. When he dies, if that is to be his punishment, his punishment is ended, and the punishment of others begins. The punishment of his

mother and his father, brothers, sisters, who knew throughout the years the condition of this boy. Mrs. Deegan, the mother, knew it. It was hard for her to bring out her family background. None of his like to say that our father or our mother had paresis or died in an insane asylum. It was a difficult thing for her to do.

Now, shall we, Ladies and Gentlemen of the Jury, in this case be merciful, or shall we, under the Mosaic law, demand an eye for an eye, and a tooth for a tooth. I plead with you. I plead with you for mercy for a boy who could not have known the consequences of his act. Let us say, as Jurors, by your verdict in this case,—important to the people of the State of New Jersey, sure, but important also to society,—let us by your verdict in this case say to society, "We will have to pay more attention to the youth. We will have to watch them in our schools. We will have to have them examined for longer than a half an hour to find out what is wrong with them mentally by our State doctors under a written examination. We will have to take care of our children in their growing stage so that these terrible things cannot happen."

Let us say by our verdict, "Deegan, you have killed, yes. We will not will you. Deegan, you have killed, but we will not kill you. We will not break your mother any more than what you have broken her. We will not attempt to define insanity or justice. We have listened to your neighbors, to your Sunday school teacher. We have listened to the members of your family and your associates." And we fell that, at least, Ladies and Gentlemen, there is a doubt, and if there is a

doubt, then Deegan should have the benefit of that doubt and should not be put to death. If putting him to death would bring Mrs. Herrmann back, it might be different. That cannot be done. We know that.

Juries by their verdicts have established law; they have established it in the State of New Jersey. And that is why in a case like this you have the right to say what the punishment shall be. For years the punishment of this kind has dwindled, dwindled under our law, and juries by their verdicts have made it open to you so that people like Deegan would not have to die. Oh, let us say by our verdict, "We will not—we will not permit your family, who are not responsible for this, and the members thereof, for generations to come to be burdened with the horror of your execution. They played that part in it. They are different from you. We can see it. Yes, Deegan, we will separate you from society. Definitely, you will never have the home that your brothers have made for themselves. You will never be free to roam the streets. You won't have your liberty. If there is any possible chance for you to make any peace, that will be your hope. Deegan, we do not think you should die."

(The Prosecutor then summed up the case to the Jury on behalf of the State.)

The Prosecutor: With your Honor's permission, Mr. Foreman and Ladies and Gentlemen of the Jury, I suppose it is very natural that counsel who has addressed you and I should feel quite differently about this case. I want to say at the

outset that I thank his Honor, you Ladies and Gentlemen of the Jury, and counsel, for the very orderly manner in which we have been able to conduct this trial. I do not suppose there is any country in the world where a man would be given that which has been given to this defendant in this trial except America, all of the protection with which he has been surrounded, the State assigning him good counsel, finding for him experts to testify in his behalf, and paying for all his expenses in this trial. And that is a fine thing. It is a fine thing to think the most humble person as well as the person with the greatest means in this country of ours should have the privilege of being tried by a jury of his peers, and only found guilty after a fair trial such as this has been. That is one of the great institutions of America, one of the things that our relatives, our boys, our friends, are this very moment fighting and dying for; one of the things that this defendant does not recognize and never has recognized.

I wondered if the school system was on trial. I wondered if the Army was on trial. I wondered if the laws of the State of New Jersey or the jury system was on trial, when I listened to counsel. Robert Deegan is on trial, and it is not for you or me or counsel or anyone to try to influence you by saying that the law should be different than the law is, or by referring to his personal feeling in the matter.

I am the Prosecutor of this State, of this County. It is my duty to prosecute such crimes as are committed in the County. I could resign and someone else would prosecute this case. I have no

apology to make. I am doing my duty, as is his Honor, and as is each one of you. Counsel assigned by the Court are doing the best they can with this case.

Now, it is the law of this State that everyone who commits this kind of a crime is guilty of murder in the first degree. The law is that any person taking a human life while in the commission of a robbery is guilty of murder in the first degree. Let me say his Honor will give you the law and you will take the law from his Honor as you have sworn to do on your oaths. Anything that counsel said about the law or anything I said about the law is secondary to what his Honor will tell you. And I will give you my word I will scrupulously try to say nothing except the exact truth about the facts and the law in this case. And I think perhaps in that, my objection is a little different from the obligation of counsel for the defendant. Of course, I concede that counsel for the defendant is compelled and is permitted to go further in an effort to save his client than I am permitted to go in an effort to represent the State. But I say, and I think we can all agree, that there is no dispute as to what happened. There is no dispute but that for the sake of money a robbery was perpetrated by this defendant, and in the commission of that robbery Ethel Herrmann lost her life and, therefore, this defendant is guilty of murder in the first degree unless he has a defense.

Now, I have tried to find since the case started what the defense was. To illustrate what I mean, we are chided for not bringing persons here to say this boy is a morally depraved burglar and chronic liar and a disgrace to society. That does

not prove anything. We admit that. We are under no obligation to bring neighbors to prove the man is a liar, to prove that he is a burglar, to prove that he is dirty, that he has no moral sense, that he is of a low mentality. Ridiculous to suggest that we should prove that or that we shouldn't. We do not dispute that. That is no defense to this crime. Counsel knows that.

I stated in my opening this was not an honest defense. If this man is insane he should not be on trial today. If this man is insane, he should be acquitted and turned loose, if he was insane on the 14th of January, 1944. They know he was not insane under the law, so they talk about an eye for an eye and a tooth for a tooth, and he who sheds blood shall die by bloodshed. That is not what we are doing, Ladies and Gentlemen of the Jury. There is only one thing I am concerned with in this case, and that is that the twelve persons who ultimately retire into the jury room try this case as they have sworn to try it, fairly on the evidence and on the law as given to you by the Court.

I am sorry that social conditions in America are not better. They are the best in the world. It is too bad that every policeman cannot give a signed check to every delinquent so that he may have doctors, and there is some little obligation on the part of parents in that regard, too; but that has nothing to do with this case. The social conditions in Bergen County and New Jersey and Dumont may be deplorable, the school system may be rotten. Was the man conscious that what he was doing was wrong on the 14th of January, 1944? That is the only question in this case.

There is some suggestion that he was led on by somebody. Somebody is paying the penalty, not the man that swung the club, not the man that knew the streets of Dumont, not the man that carried the gloves and wore them, not the man that showed contriteness, as his own doctor said, because of the crime he committed, the man who was in the company of the man now on trial is paying a penalty. Concerning that another jury brought in a verdict. With that we have nothing to do except, I say, that when you look around for a defense, there is some pretended defense because somebody else was in the case it makes a difference as to Deegan. It makes no difference as to Deegan. We are trying Deegan, and Deegan alone, this boy twenty-seven or twenty-eight years of age. When do you cease to be a boy in this country?

Now, Ladies and Gentlemen of the Jury, it is not an agreeable thing to picture the kind of a criminal this lad is. He has been a criminal from youth. Those things which are pictured here as evidences of abnormality are evidences of abnormality. Is every abnormal person today permitted to club people to death for money? Is every person who has a relative in the insane asylum permitted to take life for money? Is every bum that wears two pairs of pants or does not wash permitted to go out and kill for money? Of course not. I do not have to argue that. You know that.

The Court will tell you that the only kind of insanity that excuses this crime is such a disease of the mind as prevents the perpetrator from knowing what he is doing, a maniac, the kind of

a person who was described by counsel as being locked up behind bars and behind stone walls.

Now, then, the institutions have many, many people who are not locked up behind bars and behind stone walls. But if they are correct, any person in any institution in the world today can commit a deliberate, premeditated murder and plead as they have pleaded and be exonerated, it is an inducement to every person that is abnormal to go out and kill, because you remove from that person the penalty which the law invokes in cases where death occasioned in the manner in which this one was occasioned occurs.

Now, we do not have to prove that this lad, this Deegan, was brought up as your boy and my boy was, or as you and I were. We do not have to maintain the burden of showing that those things that happened in your home and my home happened in his home. They are trying to try the case by reverse, and they are doing it for just one reason, and that I stated in my opening, and I think now you are sure I am correct about it. They are trying to soften the punishment by pleading insanity, knowing that the man was not insane at the time the act was committed. And I think everyone of us believes that this man planned this crime for the purpose of obtaining money and, having obtained the money, he regretted it and expressed his regret, which indicates that he knew what he was doing and knew that which he was doing was wrong. Now, if that is so, you must find a verdict of murder in the first degree. And you are not concerned with punishment, and you are not concerned with what

goes on in the sentence by the Court, or in any action thereafter by anyone, whether in the nature of a pardon, or a releasing of the prisoner, or the pulling of the switch in the death house. Those are things with which you have no concern. It may be in this case a switch will be pulled in the death house, and it may be in this case the man will be on the street in ten or fifteen years. I deplore the one; they deplore the other. But that is something you have nothing to do with. You will find this man guilty under the evidence and under the law if it is as I believe it to be. And then you will have one further thing to do and only one further thing to do, and that has nothing to do with the ultimate punishing of this defendant. You will find whether from all of the evidence in the case you desire to bring in a recommendation that this man should be confined at hard labor for life. And it is true, unless you do that, he will suffer the penalty of death.

Now, I am not going to ask you to do a single thing except the thing that every one of us swears to do, when I took my oath of office, and when his Honor took his oath of office, and when you took your oath here on Monday, to honestly try this case on the evidence and bring in a proper verdict based on the evidence. And you may find circumstances which impel you to show something other than exact justice to this defendant. What will those circumstances be? A man who from his earliest boyhood led a depraved, immoral life. That is not insanity. See the danger, Ladies and Gentlemen of the Jury, of admitting for a moment that this man has a defense in this case. What kind of people are on trial? For

clubbing people to death in the night time with a bat and stealing their money. Are they members of the Rotary Club? Are they bank directors, and members of the fine society? Of course not. They are just such persons as the person on trial. Similarly, with our witnesses. What kind of witnesses do you have when you try a murder case? Do you have your social friends? Do you have the people that you meet at the club and that you play golf with? Not at all. You have the associates of the criminal. We do not produce them. Something was said about the persons we brought here in court to testify. We bring the people who know about the crime and they are, as you would imagine, the type of people the defendant is. And they too have been indicted, and will in return receive such punishment as the Court may see fit to mete out to them. Do not under any consideration give consideration to the defendant on account of the very things which prove him worthy of the punishment that he is entitled to. The fact that he is the kind of a person he is, is the reason he committed the crime he committed.

As I said before, crimes of slugging in the dark are not committed by persons well up in the social scale. Who are the persons who fill the death cells of the states where death is the penalty? Who in the history of this County have filled the death cells but just such persons as the defendant.

Now, in searching this defense, which is the only defense in the case, namely, insanity, you must, I said most emphatically, have in mind at all times what insanity in the law is, and it is not inadequate personality, it is not psychoneurosis,

it is not pathological, it is not psychopathic. It is exactly what has been said a number of times, and I am sure it has registered with you, Ladies and Gentlemen, the inability to know right from wrong, the inability to know the nature and the quality of the act that was being performed. And, in that respect, I am going to speak for just a few moments about the facts.

Their own doctors hired to come here and testify for the defense said that their conclusion was based on the fact that the defendant told them he heard voices, the voice of his grandmother, from time to time. Now, if you permit that, if you permit a medical man to say this man or any man on trial is not sane because he told me before he committed this crime he had hallucinations and heard voices, it is an invitation to crime. Is there any evidence at all in this case that the defendant ever told anybody he heard voices before it was told on the witness stand in March of 1944? Is it a fair inference that if he had hallucinations and heard voices that he would have told that to Captain Allmers when he was accosted in New York, and for the first time accused of this crime? Is it a fair inference to say he would have told it to Mr. Mehler, Detective Allyn, when his statement was taken in writing the Tuesday after the crime was committed, the crime having been committed on Friday, he having been arrested on Sunday and given a statement to Captain Allmers, and having given a written statement to Mr. Mehler on the following Tuesday? It is a fair inference he would have told about these hallucinations if they had existed. Now, he did not tell them to Doctor Beling on, I think, the 12th of February, or he did

not tell them to Doctor Collins on, I think, the 25th of January. I say it is a fair inference that that is a concocted statement not based on the truth, but only thought up for the purpose of this trial by this defendant.

Now, the irresistible impulse to pull the club down. Did he state that to Captain Allmers two days after the crime was committed? Did he state that to Mr. Mehler, Mr. Allyn, Tuesday after the crime was committed? No. That, too, is an afterthought and only comes into the case after he has been in the Hackensack Jail here, in the Sheriff's Jail, sometime after his apprehension. So those doctors for the defense, having predicated their opinion on the fact that he had hallucinations and felt this irresistible impulse, had to admit that if those things were not true, their testimony practically was negligible. And so this defense of insanity which, if it exists, is a perfectly proper defense. No insane person should be on trial. It also can be used as a means to fool and deceive people; but I do not think the jurors in this case are going to be so fooled and deceived. And, as I said before, the only reason anyone was permitted to tell about these subnormal characteristics of this man Deegan was because they pleaded this defense, and this defense was pleaded, which is not to prove the man insane, but to permit the type of testimony that they brought in here, and which does not prove him insane. And that is the reason naturally that we did not bring anyone in to correct it or to contradict it, because it does not prove a man insane to prove a man sleeps in the cellar or does not wash or does not shave or wears dirty clothes.

Those things are red herring across the trail to try to get you to bring in a lesser verdict than that which the facts in this case warrant.

Now, why do I say the facts in this case warrant a first degree conviction? The burden is on the defendant to prove insanity. What do the facts prove? A desperate need for money. Why? To continue a dissipated, dissolute life of crime. Now, was that a commendable thing? That this man living in second-rate boarding houses, sleeping in moving pictures, getting his meals where and as he can, borrowing from people, desiring to continue a life of indolence and criminality, consorting illicitly with cheap women, needing money to carry on his criminal and dissolute habits. Comes to Dumont. Who is the leader who knows Dumont? No one in the crowd had ever been to Dumont, probably never heard of Dumont, but Deegan. The night before, Ladies and Gentlemen of the Jury, according to his own confession which you will have in the jury room with you, the defendant said they had this matter in mind, but they did not think it would go this far, or words to that effect. And I quote the testimony I do my best to quote it literally.

"About six o'clock we had it in our minds that we were going to get the money all the time, and I didn't think it would go that far," as to what had happened, on page 216.

I think he says the night before, if they had to, they would get the money one way or the other, or something of that sort. Does that sound like premeditation? They failed to get the money from the Deegan family. I suppose they had milked that source so dry that nothing was forth-

coming. And then they stall until dark. Does that strike you as significant? It seems most significant to me that they wait around doing nothing except killing time until dark. No effort to get money while the sun is shining. No effort to get money by legitimate or illegitimate reasons until dark. And then the episode of the bat. Now, I do not know why Deegan got the gloves. He could have told us why he got the gloves. He chose not to tell us why he got the gloves. That is his privilege. We say that he got the gloves so that he could use the instrument and conceal his fingerprints. I am not a great criminologist. I guess if you put the gloves on and rub the gloves over the bat it takes away any fingerprints that are there. I do not know, but I would assume that was a reasonable suggestion. When they took the bat, they did not know what crime it was going to be. Maybe they would have broken in a house. Maybe the gloves to keep the fingerprints from being on the window-sill, but at any rate, did counsel suggest any better reason for taking a pair of woolen gloves from a girl than the reason Deegan himself gave Doctor Collins, namely, to prevent fingerprints? Does that sound like premeditation, put the club, the bat, under the overcoat? Does that sound like a reasonable person that has got a definite object in mind? He stalks one person, he stalks another person in the dark and, finally, the lady in question. Does that sound like a crazy man, or does that sound like a criminal? He walks up to the lady. He should worry about that lady recognizing him. What happened to the lady? He never would have accosted her in the daylight, in the bright

light of an arc light and run the risk that she could recognize him, as counsel has suggested, except in his heart he knew from that night on she never was going to recognize anyone. She was his victim. He had the weapon of death in his control when he spoke to her, and he spoke to her to see what she had on her person, to see whether she was worth robbing or not, and he saw this purse. And with avarice and murder in his heart he stalked that woman and lifted that club and brought it down upon her head with the blow that killed her, and for that he should die, and you know it, and I know it. And I do not like to ask it any more than you like to do it; but it is your duty, as it is my duty to tell you these things that are uncontradicted, and that cry out to heaven that the law that this State has upon its statute books just for that purpose should on this defendant be invoked, not to punish him, but so that your wife and my wife and the women of Bergen County need not have bodyguards, need not stay in behind barred doors at night, to save them from such as this.

Now, Ladies and Gentlemen of the Jury, have I said enough? What does he do when the woman lies there helpless before him? He grabs the pocketbook. He runs down Park Avenue and cuts across the lot. He runs up the railroad track, and as you will see in the photographs, divides the loot before he goes back to his paramour. And what is the first thing he does? He stays outside the station. He knocks on the door. Is that a consciousness of guilt? He goes to the bus by a round-about way, through the back streets, although as you all know the Dumont Station is

within a few hundred feet of Washington Avenue. What is the first thing he says? "I think I hit the woman too hard." What does that show? Does that show consciousness of guilt, or does that show inability to know right from wrong? And back to the haunt of their dissolute rendezvous. Spaghetti, haircuts. What mercy are people like that entitled to? The woman dying in the Holy Name Hospital while they take her money and buy cheap women, food and drink with it. And when Captain Allmers came over, what was the first thing Deegan said? "The jig is up." Is that the language of a person who does not know right from wrong? And then he says, "How is that woman?" And Captain Allmers said, "What woman?" He says, "The woman I struck on Park Avenue." Is that the consciousness of a guilty criminal, or are those the words of a man who does not know right from wrong?

Ladies and Gentlemen of the Jury, I am a normal person. I have no vindictiveness in my heart toward anyone. I would not be fit to be the Prosecutor of this County if I did not present this case to you fairly, honestly, as I see it, and ask you to do full justice to the State of New Jersey, do justice to this defendant. If you do not think this defendant did the things he is charged with doing, or if you think he did them without knowing they were wrong, acquit him. You have got nothing else to do, not another thing to do. If you find he was insane at the time he committed this offense, you have got to let him go. That is all the State asks for you to do, is to acquit him or convict him of first degree murder. And it does not make any difference to me. Tomorrow is the

first of the month. I get my check just the same. Mr. Allyn will get his check just the same. You will still have a Prosecutor. I am in for five years. What difference does it make to me? I have been practicing law since 1910. This is the first time I ever tried a first degree case for the State. I have defended men in this court who were convicted of murder in the first degree and are out on the street today. The last term of court, the Court of Pardons let a man out who was convicted of first degree murder for killing his wife with a shot gun. As long as I have been practicing law—

Mr. Zabriskie: Your Honor please, that is not in the evidence, and I object, and I ask an exception be noted.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: Let us just confine ourselves to the evidence, Mr. Prosecutor.

The Prosecutor: The Court will charge you, Ladies and Gentlemen of the Jury, there is a Court of Pardons, a constitutional court of this State, and I may say so because it is a matter of judicial notice, and that Court of Pardons can release a man who is in jail any time it wants to. There are times when it is better for the man and better for society that he be prevented forever from again doing the sort of thing this man did. Doctor Leavitt said it was his opinion that this thing could happen again.

Now, I am making no defense of the law. If you believe that there should be no capital punishment, there is a Legislature of New Jersey that should change the law. If you believe that a man should not be convicted of first degree murder because he is of low mentality, there is a way of changing the law. Ladies and Gentlemen of the Jury, I say again this case has been tried under the laws of the State of New Jersey, and under the laws of the State of New Jersey a person who knows right from wrong is not insane, and I do not believe you Ladies and Gentlemen will have any difficulty in determining whether or not this man knew right from wrong on the 14th of January, 1944. And I do not ask you to convict him because Mrs. Herrmann is dead. I do not ask you to convict him to punish him or to gratify me. I ask you to take this case and the evidence in this case as it has been presented to you, give it the consideration it is entitled to; take the charge of the Court as the Court gives it to you; believe that to be the law of the State of New Jersey, and then decide this issue between the State of New Jersey and this man Deegan honestly on your oaths as you swore you would before you were empanelled as jurors in this case. And again I thank you.

The Court: This concludes the morning session of the Court, and we will take a recess. How long, Sheriff?

The Sheriff: Until two-fifteen, your Honor.

The Court: Return at two-fifteen, and the Ladies and Gentlemen of the Jury will leave the court room while we all remain seated.

(The Jury retired at 12:56 P. M.)

Mr. Zabriskie: Just for the sake of the record, I want to ask an exception be noted to the Prosecutor's reference to the Court of Pardons and the power of the Court of Pardons, and the possibility this man might be out within fifteen years, or whatever that language was, and that in other cases that have been tried, there have been cases where they are walking the streets now.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: Unless there is something further, the Court will stand adjourned until two-fifteen.

(A recess was taken at 1:00 P. M. until 2:15 P. M.)

The Court's Charge

AFTER RECESS

2:30 P. M.

(The Clerk pools the Jury.)

(The Court then charged the Jury as follows:)

VANDERWART, *J.:* Ladies and Gentlemen of the Jury, the seriousness and tenseness of this trial have been considerably lessened, I am sure, by the manner in which it has been conducted, and I think counsel and the witnesses and all concerned,

including yourselves, have maintained a fine demeanor. It now becomes part of my job to charge you as to the law and evidence in this case, and the law as it applies to that evidence. I hope you will listen intently. It may seem at times unnecessarily said and slightly repetitious; but, nevertheless, it is all important in your consideration of this case, and each one of you is called upon to decide the case in accordance with the law as it is charged.

The prisoner at the bar, Robert Deegan, stands charged in this indictment with the murder of Ethel Herrmann at the Borough of Dumont in this County on January 14, 1944. In the words of the indictment, "that Robert Deegan, late of the Borough of Dumont, in the said County of Bergen, on the 14th day of January, in the year of our Lord one thousand nineteen hundred and forty-four, at the Borough aforesaid, in the County aforesaid, and within the jurisdiction of this court, did wilfully, feloniously and of malice aforethought, kill and murder one Ethel Herrmann, contrary to the form of the statute in such case made and provided, against the peace of the State, the government and dignity of the same."

While other persons are named in this indictment and charged with the same crime, Robert Deegan is the only defendant presently on trial before you.

The finding of this indictment against this defendant by the Grand Jury raises no presumption of his guilt. At the conclusion of the evidence and of this charge, it becomes your duty to render a verdict upon the question of the guilt or innocence of this defendant and upon the degree of

his guilt if guilty. In doing this you must be guided by the principles of law, as I have said, bearing upon the case which I will now proceed to lay before you.

Every murder is presumed in New Jersey to be murder in the second degree, and the burden of proof is upon the State to raise this degree to a first degree by evidence established to your satisfaction beyond a reasonable doubt. In the case before us, the State has confined itself to a single charge of murder committed while in the perpetration of a robbery which, under the law, is murder in the first degree.

Let me say, in the determination of all questions of fact, the sole responsibility is with you. You are the sole judges of the evidence, Ladies and Gentlemen of the Jury. You are the sole judges of the weight of the evidence and of the credibility of the witnesses who have been produced before you. Any comments that I may make in this charge upon the evidence are and will be made only to aid you in applying the principles of law to the facts as you may find them, and not for the purpose of controlling you in your views of the facts. You must not consider what I shall say concerning the evidence as being accurate, for you must depend completely upon your own recollection of the evidence and, moreover, you must not only consider any evidence to which I may refer in this charge, but you must consider all of the evidence which has been produced before you in the case. You see, Members of the Jury, you and I as the Court have distinct duties to perform. You, as I say, are the sole judges of the facts, and my simple function is to

declare to you the law, and it becomes very important that this distinction be kept clearly in your minds. While it is important that you use your own recollection of what the evidence is in the case and that you place your own interpretation upon it, it is equally important that you take the law from the Court as it is outlined to you, and not attempt to apply your own individual views as to what the law is in reference to the guilt or innocence of the defendant, or any other matter.

In every criminal case, which makes it true in this particular case, the defendant is presumed to be innocent, which presumption continues until he is proved to your satisfaction on consideration of all the evidence to be guilty beyond a reasonable doubt. This presumption of innocence, Members of the Jury, abides with the defendant throughout the trial and remains with him unless and until you of the Jury reach a verdict of conviction on consideration of all the evidence beyond a reasonable doubt. To support the indictment and to justify a conviction, the State must prove the facts sufficient for that purpose by evidence beyond a reasonable doubt. That burden never shifts from the State. If there be a reasonable doubt whether the defendant be guilty, he is to be declared not guilty.

Now, reasonable doubt is a term often used, probably pretty well understood, but not very easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. A reasonable doubt is that state of the case which, after the entire

comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. If, after carefully canvassing the evidence and giving the accused the benefit of reasonable doubt, you are led to the conclusion that the defendant is guilty, you should so declare by your verdict. The fact that this defendant has been indicted, as I have already said, does not establish his guilt. In order to make out a case of guilt against the defendant, the State must establish by evidence beyond a reasonable doubt that Ethel Herrmann met death as a result of the felonious stroke inflicted upon her on the 14th day of January, 1944, the date set forth in the indictment, and at the Borough of Dumont, as the indictment alleges.

To support this charge, the evidence produced before you discloses that Ethel Herrmann was struck on the head with a bat by the defendant Robert Deegan at the time, namely, January 14, 1944, and at the Borough of Dumont. I shall not attempt in this charge to cover all the evidence, and I again caution you that my statement of the evidence is simply my recollection of it, and that you must be guided solely by your recollection of the facts. From my recollection, there is evidence from which you may conclude, if you see fit, that the defendant Deegan was in need of money, and that, in company with Ruth Oberempt and

Carolyn Twing and Martin Hoffman, went to Dumont to obtain it; that Deegan, with the knowledge of Hoffman, armed himself with a baseball bat, which is in evidence, and then proceeded to look for someone to rob; that Mrs. Herrmann, while on her way, and walking to a friend's house to play cards, came within their view; that Deegen and Hoffman followed her for some distance for the purpose of robbing her; that then the defendant Deegan, in the presence of Hoffman, struck her on the head with the bat, inflicting an injury which subsequently caused her death; that then the defendant Deegan picked up Mrs. Herrmann's bag or pocketbook which contained some money in cash and some other personal property, and that he left Mrs. Herrmann mortally injured upon or near the sidewalk adjacent to the home of a Mr. Hansen on Park Avenue, Dumont; that the defendant Deegan and Hoffman then hurried away from the scene, rejoined Ruth Oberempt and Carolyn Twing at the railroad station in Dumont where they had left them, and all four made their way to Bergenfield, and thence to New York. Further, that the proceeds of the robbery were divided and, finally, there is a voluntary confession in writing of the defendant Robert Deegan confessing his part in this crime. That voluntary confession is in evidence and may be taken to the jury room with the other exhibits in the case. Furthermore, there is also for your consideration the testimony of Ruth Oberempt concerning the conversation between the defendant Deegan and Martin Hoffman after the striking of Mrs. Herrmann, in which Deegan, in fact, said, "I wonder if I hit her too hard." Now, my recital of

this evidence is my view. You are the sole judges and your recollection of what the actual evidence is in its completeness, and furthermore, you are to say whether it is sufficient or not to support the State's charge as to the death and cause of death of Ethel Herrmann. Again, and secondly, the State must prove, in order to justify a verdict of guilty against the defendant Deegan, by evidence beyond a reasonable doubt, that the death of Mrs. Ethel Herrmann was caused by the act of this defendant.

The defendant has not taken the stand. Under our law he cannot be compelled to take the witness stand in his own behalf. However, the defendant, while not compellable, is competent to be a witness in his own behalf. The defendant in a criminal case is entitled to have the jury consider all the facts in evidence, even if he does not deny by his own oath such facts as criminate or tend to criminate him, and he is entitled to the presumption of innocence unless and until the jury agree upon a verdict of guilty upon a consideration of all the evidence and beyond a reasonable doubt. When, however, facts have been testified to by the witnesses for the prosecution which, if true, prove or tend to prove his guilt, and he, by his oath, can deny them, his failure to testify in his own behalf raises a strong inference that he cannot truthfully deny those facts, and you may take that into consideration in arriving at your verdict.

The testimony of all witnesses in the case, both for the State and for the defendant, should be considered by you in view of its inherent probability or improbability, in the light of all of the facts and circumstances disclosed by the evidence.

And here let me say a word as to the testimony of accomplices which you may have under consideration. You have a right to consider the testimony of accomplices if in your judgment such testimony is entirely credible and worthy of belief. In determining whether or not the testimony of an accomplice is credible and worthy of belief. You may consider the witness's motive in testifying for the State; that the testimony may have been given under a strong hope of obtaining favor thereby; the interest of the witness in the outcome of the trial, and other elements regarding the testing of the credibility of a witness generally. You are the sole judges as to the credit of the testimony of each and every accomplice.

Robert Deegan, the defendant, maintains that he was insane at the time when this crime was alleged to have been committed. For that reason he says he should not be found guilty, and his defense brings before you one of the controversies at issue. I call to your attention at this point such witnesses as were produced by the defendant Robert Deegan during the course of the trial to show his conduct, his rearing, his manner of life from the time of his birth, down to and through and including his service in the Army and his discharge from it; the testimony of his parents and his brothers and members of his family; some testimony of friends, neighbors at Dumont, and those with whom he worked later on. I also call your attention to the opinions of the doctors who testified in his behalf, Doctor Burns, Doctor Leavitt; Doctor Collins, Doctor Beling and Doctor Means testifying, on the other hand, for the State,

as to his insanity at the time of the commission of this crime. I shall not review this testimony in detail because it would make this a very extended afternoon. You have heard it and as you peruse it in your minds, you should go over it very carefully and, as you talk about it, you should discuss it with a view to bringing in a true verdict in accordance with it as it bore upon this case. All of these opinions and this testimony are to be considered by you, together with all the other evidence in the case bearing upon this point in arriving at your determination as to whether Robert Deegan has established his defense of insanity by a preponderance of the evidence. He is not required to prove his defense of insanity beyond a reasonable doubt. You will have his confession, and you have heard the testimony of witnesses as to his actions, statements and conduct preceding the time the offense was allegedly committed, as well as at the time of the alleged offense and afterwards. So it is all of this testimony which you must weigh as you attempt to solve this phase of the case.

There is evidence, Ladies and Gentlemen, as I said before, from which you may find as a fact that the defendant Deegan committed the crime of robbery for the purpose of obtaining funds. And perhaps at this point we are brought to the requirement of the legal definition of robbery. It is defined by statute as follows:

> "Any person who shall forcibly take from the person of another money or personal goods or chattels of any value whatever by violence, by putting him or her in

fear, and his aiders, procurers and abettors, shall be guilty of a high misdemeanor."

That is the quotation. The taking by force, by putting in fear, is the characteristic which distinguishes robbery from the crime of larceny. The evidence, as I recall it, was that Ethel Herrmann was approached by the defendant from the rear, and was struck without warning. That was the use of force. If it is your belief from the evidence that she was struck by a baseball bat, then that was the use of force. If you believe that the contents of her purse were later on stolen by the defendant, these two actions together, the use of force and the taking of the personal goods following the use of force, constitute the crime of robbery.

As I recall the testimony, there is no evidence that there was a plan in the defendant's mind to rob any particular person and, under the law, it is not necessary that such a plan should be proved to exist. If you find from all the evidence before you and beyond a reasonable doubt that this defendant planned to rob any person who might by chance come within reach, and that in pursuance of such a plan the defendant armed himself with a bat and went in search of a victim, and having found such a victim in the person of Mrs. Herrmann, and having followed her through certain streets of Dumont in the execution of such a plan, the defendant Deegan struck Mrs. Herrmann with the bat, and that the blow resulted in her death, the defendant is guilty under the law, providing you, after a careful consideration of all the evidence, are satisfied that at the time

this act was committed, he was sane in accordance with the law of this State as I shall later charge you.

It is said in this case that the defendant has been previously convicted of crime. If you find this to be a fact, you have a right to take this fact into consideration in connection with all the other evidence in the case. It is for you, Members of the Jury, to determine to what degree, if any, Deegan's credibility or the credibility of any other witness who has been previously convicted of crime has been affected. And, in this connection, you as jurors should also consider the demeanor of the witnesses upon the stand and the manner in which they testified in determining their credibility.

The defendant's written confession, as I say, has been received in evidence. Such a confession, if you are convinced that it has been voluntarily made, is to be treated by you the same as the rest of the evidence in the case. Its weight and credibility, just as all of the evidence, is for you to determine. You may believe it in whole or reject it in whole or in part.

Now, if the State has not satisfied you beyond a reasonable doubt that the death of Ethel Herrmann was caused by the act of the defendant, he must be acquitted; but if, on the other hand, the State has satisfied you beyond a reasonable doubt that Ethel Herrmann's death was caused by the unlawful and criminal act of this defendant while in the act of robbing her, as I have already defined the term of robbery, it is murder and, if murder, then the degree of murder must be determined.

The State of New Jersey declared that murder which shall be committed in perpetrating or attempting to perpetrate robbery shall be murder in the first degree. It is the contention of the State that the murder in this case was committed in perpetrating robbery and, therefore, is murder in the first degree. It is my charge to you, Ladies and Gentlemen, that if murder was committed in the perpetration of a robbery, it is murder in the first degree, without reference to the question whether such killing was wilful or was unintentional.

In order to convict this defendant, you must be satisfied beyond a reasonable doubt that the death of Mrs. Herrmann resulted from committing or attempting to commit robbery at the time and place in question; and I, therefore, charge you that if the State has satisfied you beyond a reasonable doubt that this defendant conspired to rob Ethel Herrmann and, in perpetrating or attempting to perpetrate such a robbery, the defendant Deegan struck Ethel Herrmann a blow on the head with a baseball bat which blow resulted in her death, it is murder in the first degree, and the defendant is guilty unless he has satisfied you that he was insane at the time of the striking of the fatal blow, as I shall in my charge define insanity, under the law, in which event he must be acquitted.

Now, I think I have already said that if there is a reasonable doubt that the murder was committed in perpetrating a robbery, then the defendant must be acquitted, because that is the theory on which the case has been presented to you.

The Court's Charge

Before concluding this charge, I desire to revert to the defense of insanity which the defendant Deegan has interposed. You must determine whether, if guilty, he is criminally responsible for the act in question—whether he is criminally responsible for the act in question. It is true that if a defense of this character be sufficiently established, the law affords the defendant the benefit of it by acquittal; but the law, from considerations of public policy, exacts in the proof of such a defense compliance with the standard adopted by the law for determining where criminal responsibility ends and criminal irresponsibility begins. The burden of proving the insanity rests upon the accused, the defendant. Since the law presumes that every man is sane until the contrary is proved, when the accused person sets up a defense of insanity, the burden of proof is upon him. The law requires that, by a preponderance of the proof and by evidence satisfactory to you jurors, he must overcome the legal presumption of sanity and, further, the law adopts a standard of its own as a test of criminal responsibility. The law regards insanity as a disease of the mind. This standard is not always in harmony with the scientific view. The law in New Jersey rejects the doctrine of what is called emotional insanity which begins on the eve of a criminal act and ends when it is consummated. Temporary insanity, however, if it is of a character recognized by law, is a complete defense. To establish a defense on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was laboring under a defect of reason from disease of the mind as not to know the nature and quality

of the act he was doing or, if he did know it, that he did not know that what he was doing was wrong. If an accused person has sufficient mind to know the difference between right and wrong with respect to the act he is doing, he cannot discharge himself from responsibility by saying that he did the act under the influence of an irresistible impulse. The capacity and reason sufficient to enable the accused to distinguish between right and wrong has been adopted as the test of insanity by the courts of our State in criminal cases. It is accepted as the law that if the accused at the time of the committing of the act was capable of distinguishing between right and wrong, and was conscious that the act was one which he ought not to have done, he cannot be acquitted on the ground of insanity. The accused may be insane in mind, a fit subject for confinement in a hospital for the insane, or he may have the most absurd and irrational notions on certain subjects; but if upon being accused of a crime such as this, he has the mental capacity to distinguish right from wrong, and to understand the nature and quality of his act, he is amenable to the criminal law.

In order to subject a person to criminal responsibility, the law does not require that person to be in the full possession of his faculties or in the possession of all of his faculties. The law has adopted as the test of criminal responsibility the capacity to distinguish between right and wrong and to comprehend the nature and quality of the act done. The safety of society and the security of life in society are dependent upon the maintenance of this standard adopted by the law and its enforcement.

I must say to you further that the insanity of the accused cannot be inferred from the atrocity of the crime for, if such were the case, the more atrocious the crime, the greater the certainty of the defense being sustained and, in this way, the most atrocious crimes might go unpunished.

Let me also say that the testimony of those who saw the person accused some time before and immediately previous to the commission of the crime and those who were associated with him, those who were intimate with him and talked with him, is regarded as evidence of great importance upon the question of the mental capacity of the accused.

In the consideration of the testimony of any witness you, as triers of the fact, must apply, in determining whether the witnesses have spoken the truth or have not, your experience, your understanding, your common sense. You may reject the testimony of any witness in part or in whole. It is your duty as well as your obligation to arrive at the truth as a result of your deliberations. Let me say that each juror must reach his or her own judgment after a discussion of the facts with his or her fellow jurors.

If you find after a consideration of all the evidence that the defendant is guilty of murder in the first degree, you may by your verdict, if you see fit, and as part of it, recommend imprisonment at hard labor for life. If you should return a verdict of murder in the first degree and nothing else, the punishment that must be inflicted in the event of that verdict would be death. If you desire to return a verdict of murder in the first degree coupled with the recommendation of im-

prisonment for life, you must so state it in your verdict, in which case, the law reads that:

> "Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by their verdict and as a part thereof, upon and after consideration of all the evidence,"—

and that is the only thing that you are entitled to consider in this regard, the evidence before you—

> —"recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Counsel for the defendant has submitted to me a number of requests to charge. I must decline to charge any of these excepting as I have already charged them today, or as I may hereafter charge them to you.

The opinions of expert witnesses are to be considered by the jury in connection with all the other evidence in this case. Taking into consideration those expert opinions and giving them just weight, the jury are to determine for themselves from the entire evidence the guilt or innocence of the defendant Robert Deegan.

In conclusion, Ladies and Gentlemen, there is a statute upon our books concerning which I should instruct you. It is found in Revised Statutes 2:190-17.1.

> "If, upon the trial of any indictment, the defense of insanity is pleaded and it

shall be given in evidence that the person charged therein was insane at the time of the commission of the offense charged in such indictment and such persons shall be acquitted, the jury shall be required to find specially by their verdict whether or not such person was insane at the time of the commission of such offense and to declare whether or not such person was acquitted by them by reason of the insanity of such person at the time of the commission of such offense and to find specially by their verdict also whether or not such insanity continues and if the jury shall find by their verdict that such insanity does continue, the court shall order such person into safe custody and direct him to be sent to the New Jersey State Hospital at Trenton to be dealt with in the manner required by section 2:190-17 of the Revised Statutes."

I so charge you.

Let me say at this point, however, that in this trial it has not been the contention of counsel for the defendant that the defendant is presently insane, and to the best of my recollection there has been no evidence produced before you as to the defendant's present insanity; but you will be the judges as to the defendant's present insanity.

The sole defense presented by the defendant is that at the time of the commission of the crime in question he was insane, and you are to determine whether he has proved his insanity at that time by a preponderance of the evidence and in ac-

cordance with the law governing the definition of insanity which I have already outlined to you at length.

This concludes the Court's charge, and I think we are now prepared to follow the procedure outlined in the Statute as to the jury.

The Prosecutor: I wonder if exceptions should be taken, your Honor, before we do that, if there are exceptions?

The Court: I think they should be.

Mr. Zabriskie: Should we take exceptions in the presence of the jury?

The Prosecutor: I do not know why not.

The Court: Yes, I think that is all right.

Mr. Zabriskie : Of course, I would enter a general exception. Exception allowed and sealed.

The Court: Yes.

HERMAN VANDERWART,
Judge.

Mr. Zabriskie: And I also take an exception to all of what your Honor said on the subject as to the conviction of crime affecting credibility, because this witness did not take the stand; so, therefore, that is not applicable; and, furthermore, I do not think there is any evidence of conviction of crime on the part of this defendant. Some reference that there was nothing of the sort, and I would take an exception to all that part of your Honor's charge.

Then I would also take exception to that part of the charge which says there is no evidence of presence of insanity at this time. In view of

Doctor Leavitt's testimony, I think there is some. Exceptions allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: Yes, that is my view.

Mr. Zabriskie: Yes. A general exception for the sake of the record. Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Prosecutor: I think when the charge was prepared, your Honor had expected that the defendant would take the stand, because your Honor did say there was evidence of conviction, and that would affect the credibility of the defendant, and that evidence would only be admissible to affect his credibility if he took the stand. I think the charge should be corrected in that respect. There was some evidence, as I understand it, of a sentence in Annandale as a result of the conviction of some offense; but it does not affect the credibility of the defendant because the defendant did not take the stand.

The Court: What do you think of the fact that the confession of the defendant is before the jury?

The Prosecutor: I do not think it affects the credibility of the confession. I only think it affects the credibility of the defendant on the witness stand.

The Court: The charge will be corrected then in accordance with that suggestion.

Are we prepared, then, to proceed?

The law provides that in the event there shall be more than twelve jurors left on the jury empanelled as provided after the charge of the Court, the Clerk of the Court, in the presence of the Court, shall place the names of all such jurors on slips, folded so as to conceal the names thereon, in a suitable box provided for that purpose by the Clerk, and shall draw therefrom twelve names, the first drawn to act as foreman; the twelve members thus drawn shall then proceed to determine the issue presented in the manner provided by law.

You see, we originally drew thirteen members of this panel, of this jury, and under the law twelve serve, and I have just outlined the manner of acquiring the twelve. The first drawn is to act as foreman.

Have you the slips ready, Mr. Clerk?

The Clerk: I have, your Honor.

(The Clerk draws slips from box and announces the names in the following order):

The Clerk:

Henry Scheer, Juror Number 1.
Edmond J. Dumeny, Juror Number 2.
Clarence G. Kratz, Juror Number 3.
Joseph H. Schroeder, Juror Number 4.
William B. Heward, Juror Number 5.
George R. Muller, Juror Number 6.
Bessie P. Dickson, Juror Number 7.
Bernard H. Lueneberg, Juror Number 8.
Clayton L. King, Juror Number 9.
Frederick Pfizenmaier, Juror Number 10.
Grace Blackledge, Juror Number 11.
Herbert Rigby, Juror Number 12.

The Court: That leaves one who is Number 13. Let us be sure we have them all there.

The Clerk: William L. Baker.

The Court: Mr. Baker, just let me at this point thank you for your service and for the attention that you have given the case. Presumably I will not get another opportunity to do this, but we appreciate it. Thank you very much.

(Juror excused.)

The Court: Let an officer be sworn, the officers, I should say.

(Officers sworn to attend the Jury.)

The Court: Now, you may retire, Ladies and Gentlemen.

(The Jury retired at 3:15 P. M.)

Mr. Zabriskie: I would like to just enter a general exception to the charge.

The Court: The prisoner will be remanded to the jail, and the Court will stand adjourned until the jury returns its verdict.

The Prosecutor: You will be available?

The Court: I will be available in this case; yes, sir.

Mr. Zabriskie: I think the stenographer has entered a general exception which we always take.

The Court: I think Mr. Wulster is about to furnish him one.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Verdict

(The Jury returned at 5:00 P. M.)

(The Clerk polls the Jury.)

The Clerk: Members of the Jury, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: What do you find?

The Foreman: We find the defendant Robert Deegan guilty as charged.

The Clerk: Guilty as charged?

The Prosecutor: They should state the degree.

The Clerk: First degree?

The Court: Guilty as charged?

The Foreman: First degree.

The Court: First degree what?

The Foreman: Murder.

The Clerk: Harken to your verdict as it may be recorded at the Clerk's desk. You say you find the defendant guilty of first degree murder as charged in the manner and form in the indictment; and so say you all?

The Jurors: We do.

Mr. Zabriskie: I will ask that the jurors be polled.

The Court: I think, counsel, that request should come before the verdict is taken from the jury; but I do not make a point of it. Poll the jury. Just answer yes or no.

(The 12 jurors are polled by the Clerk, and all answer yes.)

Mr. Zabriskie: That is without a recommendation?

The Prosecutor: Judge Zabriskie says he is satisfied with the polling of the jury, your Honor.

The Court: Let that be noted.

Dismissal of Jury

I think at this time if there is no further business before the jurors, I can fittingly extend the thanks of the Court to you all. It has been a difficult task assigned and you have measured up unusually well, I think, and you have the thanks of the County expressed through me as the Court of Oyer and Terminer. I hope that you may enjoy health and prosperity.

Let me at this time also thank the court officers that did such a nice piece of work in accompanying the jury.

You are excused, then, with the thanks of the Court.

The Foreman: Thank you, sir.

The Court: You may go. No one will leave the room until the jury has passed out.

(The Jury retired.)

The Prosecutor: Your Honor please, would Monday be appropriate for sentence? I think, Monday morning, before we begin the trial of civil cases. I think that is agreeable to counsel.

The Court: Is that agreeable to you, Judge Zabriskie and Mr. Wulster?

Mr. Wulster: Yes, sir.

The Prosecutor: All right. That will be agreeable to me.

Hackensack, New Jersey,
Monday, Feb. 5, 1945, 10:00 A. M.

Parties present as before.

Mr. Zabriskie: I make a motion in arrest of judgment on the ground that the jurors that im-

posed the sentence in this case were drawn from a panel of jurors where there had been a challenge to the array and overruled without legal cause for the same being overruled.

The Court: The motion is denied.

The Prosecutor: I move the sentence of Robert Deegan, if your Honor please.

The Court: All right. You will produce the prisoner.

(The defendant stands before the Court.)

The Court: Robert Deegan, have you anything to say why sentence should not be pronounced against you?

Robert Deegan: No, sir.

The Court: The judgment and sentence of this Court is that you suffer the punishment of death at the place and in the manner provided by law on some day within the week beginning Sunday, the 18th day of March, 1945, and may God have mercy upon you.

Mr. Zabriskie: Of course, your Honor will allow me an exception to your Honor's ruling?

The Court: Oh, surely. You had better get it on the record.

Mr. Zabriskie: Yes, sir. Exception allowed.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

Defendant's Requests to Charge

The defendant's requests to charge as originally submitted to the Court are as follows:

It is respectfully requested that the Court charge the jury as follows:

As to Accomplices

1. You should not convict the defendant, Robert Deegan, solely on the testimony of accomplices.

(Simon, 71 L. 142, 58 A. 107; affirmed 59 A. 1118.)

2. Accomplices are tainted with confessed criminality and may have been influenced in their testimony by the strong hope of favor or pardon. (Hogan, 13 Misc. 117, 176 A. 709; affirmed 115 L. 531, 181 A. 169).

3. The credit to be given to the testimony of accomplices is a matter solely for the jury. If the jury find the testimony of the accomplices to be unworthy of belief they should disregard it. (Mohr, 127 A. 348.)

Effect of Indictment

4. That the indictment is no evidence against the defendant, Robert Deegan, and the fact that it was found by the grand jury raises no presumption of guilt. The defendant, Robert Deegan, is legally presumed to be innocent unless and until the state proves by the evidence, beyond a reasonable doubt, that he is guilty.

Defendant's Requests to Charge

PROVINCE OF JURY

5. The jury are the sole judges of the facts, the weight of the testimony and the credibility of the witnesses.

DOUBT OF INDIVIDUAL JUROR

6. It is the duty of each juror, while the jury is deliberating, to give careful attention and consideration to the views of his fellow jurors, and to discuss the facts with them. Each juror acts for himself and must reach his own judgment after discussion of the facts with his fellows. If, after such discussion and deliberation, a juror entertains a reasonable doubt of the guilt of the defendant he should not find him guilty. (Hauptmann, 115 L. 412, 180 A. 809; Blaine, 104 L. 325, 140 A. 566.)

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE WITH RESPECT TO THE CRIME

7. That the presumption of innocence continues in favor of the defendant, Robert Deegan, throughout the entire trial, step by step, and remains with him unless and until the jury have reached a verdict of conviction, on consideration of all the evidence, beyond a reasonable doubt. (Kisik, 99 L. 385, 125 A. 239.)

8. That the defendant, Robert Deegan, is entitled to have the jury consider all the facts in

evidence, even if he does not deny those which concern his own acts. The presumption of innocence continues unless and until the jury have agreed upon a verdict of conviction on consideration of all the evidence, and that beyond a reasonable doubt. (Kisik, 99 L. 385, 125 A. 239.)

9. That the defendant, Robert Deegan, is legally presumed to be innocent unless and until his guilt is proved beyond a reasonable doubt, after consideration by the jury of all the evidence. The benefit of the reasonable doubt always goes to the defendant, Robert Deegan, and is always applied in his favor on every fact necessary to prove his guilt. (Brown, 62 L. 666, 42 A. 811; Kisik, 99 L. 385, 125 A. 239.)

10. That the state must bear the burden of proving the guilt of the defendant, Robert Deegan, beyond a reasonable doubt. This burden never shifts. The burden extends to each and every element necessary to be proved to establish the guilt of the defendant, Robert Deegan, and the defendant, Robert Deegan, is entitled to the benefit of such reasonable doubt on the whole case. (Headley, 113 L. 335, 174 A. 572; Brown, 62 L. 666, 42 A. 811.)

11. That the burden of proof is upon the prosecution. If upon such proof there be a reasonable doubt remaining, the defendant, Robert Deegan, is entitled to the benefit of it by an acquittal. (Vliet, 120 L. 23, 197 A. 894.)

12. That reasonable doubt is not a mere possible doubt. It is that state of the case which,

after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the truth of the charge. (Linker, 94 L. 411, 111 A. 35.)

COMMISSION OF CRIME

13. I charge you that when the character and extent of a crime is made by law to depend upon the state and condition of the defendant's, Robert Deegan, mind at the time, and with reference to the act done, circumstances affecting such state and condition of the mind, is a proper subject for inquiry and consideration by the jury. If, by law, deliberation and premeditation are essential elements of the crime, and it appears that the prisoner's mental state is such that he is incapable of such deliberation and premeditation, then the crime has not been committed. (See State v. George, E. & A.)

INSANITY

14. The jury, in considering the question of the insanity of the defendant, Robert Deegan, are to decide whether the defendant, Robert Deegan, at the time of doing the act, was conscious that it was an act which he ought not to do, or, in other words, was incapable of distinguishing right from wrong in a moral point of view. (Spencer, 21 L. 196.)

THE EVIDENCE OF INSANITY

15. The evidence of insanity upon which a jury should rest, will vary with every case; but gener-

ally speaking, the evidence of those who saw the person accused every day immediately previous to the commission of the act, who were intimate with him, talked with him, ate and drank with him, and who testify to his acts, his words, his conversation, his looks, his whole deportment, is that on which a jury ought to place the greatest reliance. The evidence of competent medical men, who have had frequent opportunities of observing him about the time in question, especially if they have been in attendance upon, or have visited him with a view to probe the state of his mind, is entitled to very great consideration. It has always been held that medical men may give their opinions in evidence. These are always valuable, and more or less so according to their opportunities of observing the accused at, or about the time of the act complained of. But if they have not been in the habit of seeing him, if they were not familiar with his habits and symptoms, at or about the time in question, their opinions in relation to a particular individual, are of no more weight, and in my my judgment of not so much weight, as those of unprofessional persons of good sense, who have had ample opportunities for observation. (Spencer, 21 L. 208.)

VERDICT

16. Should you find the defendant, Robert Deegan, not guilty and acquit him on the grounds of insanity, then and in that event there are additional findings required. As to this the statute reads as follows:

"R.S. 2:190-17-1. If, upon the trial of any indictment, the defense of insanity is

pleaded and it shall be given in evidence that the person charged therein was insane at the time of the commission of the offense charged in such indictment and such persons shall be acquited, the jury shall be required to find specially by their verdict whether or not such person was insane at the time of the commission of such offense and to declare whether or not such person was acquitted by them by reason of the insanity of such person at the time of the Commission of such offense and to find specially by their verdict also whether or not such insanity continues and if the jury shall find by their verdict that such insanity does continue, the court shall order such person into safe custody and direct him to be sent to the New Jersey State Hospital at Trenton to be dealt with in the manner required by Section 2:190-17 of the Revised Statutes, L. 1943, c. 41, p. 81, 1."

So that should you find he was insane at the time of the commission of the crime you shall return a verdict of not guilty. Having so found, however, you must proceed one step further and determine whether or not the insanity continues and if you find that such insanity does continue, you shall so report your finding, in which event the court will order such person to be sent to the New Jersey State Hospital at Trenton.

17. In the event that your verdict will be that you find the defendant, Robert Deegan, guilty of murder in the first degree it will be necessary for you to have in mind a statute of this state which I shall read to you.

This statute gives you as the jury in this case, should you find the defendant, Robert Deegan, guilty of murder in the first degree, the power to make a recommendation to the court relative to the punishment which shall be inflicted upon the defendant, Robert Deegan. The statute reads as follows:

> "R.S. 2:138-4. Murder; punishment. Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

18. So that if upon rendering a verdict of murder in the first degree you make no recommendation the punishment meted out to this defendant, Robert Deegan, shall be death, and if in the event of your returning a verdict of murder in the first degree you shall determine that the penalty to be imposed shall be imprisonment at hard labor for life it will be necessary for you in your verdict and as part thereof to recommend imprisonment at hard labor for life, in which case that will be the punishment imposed; in other words, your verdict in such event shall be: "We find the defendant, Robert Deegan, guilty of murder in the first degree and recommend imprisonment at hard labor for life."

Certificate of Stenographer

BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	On Indictment for Murder Certificate of Stenographer

I, ARTHUR L. ROBINSON, Official Stenographic Reporter of the Bergen County Courts, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken at the trial of the case of the State of New Jersey vs. Robert Deegan, defendant, under indictment for murder, which trial was held before the Bergen County Oyer and Terminer in and for the County of Bergen and a jury on the dates of January 29, 30 and 31, 1945, at Hackensack, New Jersey.

Sworn and subscribed to before me this 23rd day of February, 1945.

ARTHUR L. ROBINSON.

MADELINE R. BRESCIA
A Notary Public of New Jersey.

Court's Exhibits 1 and 2 on Preliminary Hearing

(Marked in evidence at page 56, supra)

These exhibits are omitted pursuant to stipulation printed herein at page 471, infra.

Exhibits S-1 to S-15, Inclusive

These exhibits are omitted pursuant to stipulation printed herein at page 471, infra.

Exhibit D-1

This exhibit is omitted pursuant to stipulation printed herein at page 471, infra.

Stipulation as to Exhibits

(Filed—February 17, 1945)

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ROBERT DEEGAN, *Plaintiff-in-Error.*	On Error to Bergen County Court of Oyer and Terminer On Indictment, December Term, 1943 for Murder Stipulation

IT IS STIPULATED between Walter G. Winne, Prosecutor of the Pleas and attorney for the defendant-in-error, and John B. Zabriskie and Emil M. Wulster, attorneys for the plaintiff-in-error, that the return of the exhibits admitted in evidence at the trial in the above entitled cause be waived.

Dated: February 8, 1945.

WALTER G. WINNE
Attorney for Defendant-in-Error

JOHN B. ZABRISKIE
EMIL M. WULSTER
Attorneys for Plaintiff-in-Error

Request to Court Stenographer for Transcript of Testimony and Acknowledgment

(Filed—February 8, 1945)

BERGEN COUNTY COURT OF OYER AND TERMINER

DECEMBER TERM, 1943

STATE OF NEW JERSEY *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder Request to Court Stenographer for Transcript of Testimony and Acknowledgment

To:

ARTHUR L. ROBINSON,
Court Stenographer,
Court House,
Hackensack, New Jersey.

DEAR SIR:

The above named defendant, Robert Deegan, in whose case you took stenographically the testimony has been convicted of murder in the first degree and has been sentenced to die in the electric chair.

An appeal is being taken to the Court of Errors and Appeals and a writ of error was taken out of said court on February 6, 1945, returnable February 26, 1945.

Request to Court Stenographer for Transcript of Testimony and Acknowledgment

Will you kindly, therefore, immediately transcribe the testimony of the entire case, including such testimony or proceedings as were recorded by you, or your associates, in all matters preliminary to the trial.

With many thanks.

Very truly yours,

JOHN B. ZABRISKIE
EMIL M. WULSTER
Attorneys for the Defendant
Robert Deegan

Dated: February 7, 1945, at Hackensack, N. J.

To:

JOHN B. ZABRISKIE, Esquire
EMIL M. WULSTER, Esquire

DEAR SIRS:

I acknowledge hereby receipt of the foregoing request to transcribe the testimony in the above entitled matter.

I will furnish you with the said transcript of testimony at the earliest possible day.

I am the court stenographer who recorded the proceedings stenographically.

Very truly yours,

ARTHUR L. ROBINSON.

Dated: February 7, 1945, at Hackensack, N. J.

Order in re Printing of State of Case and Briefs for Defendant

(Filed—February 7, 1945)

BERGEN COUNTY COURT OF OYER AND TERMINER

DECEMBER TERM, 1943

STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder Order

It appearing to the Court that the defendant, Robert Deegan, was heretofore convicted of murder in the first degree and was on the fifth day of February, 1945 sentenced to death therefor, and is about to take a Writ of Error out of the Court of Errors and Appeals but is unable by reason of poverty to defray the expenses of procuring a transcript of the record, testimony and proceedings taken and had before and at the trial in the above entitled Court, and of printing the same, including the printing of briefs on error for presentation to the said Court of Errors and Appeals; and the Court being satisfied of said facts, does on this 5th day of February, 1945, authorize the procuring of such transcript, testimony and proceedings and of printing the same, including briefs on error for presentation to the Court of Errors and Appeals of this state, at the expense of the County of Bergen.

HERMAN VANDERWART
Judge

Authentication of Entire Record of Proceedings

BERGEN COUNTY COURT OF OYER AND TERMINER

DECEMBER TERM, 1945

STATE OF NEW JERSEY *v.* ROBERT DEEGAN, *Defendant.*	On Writ of Error Authentication of Entire Record of Proceedings Had Upon Trial

State of New Jersey, }
County of Bergen, } ss.:

I, HERMAN VANDERWART, Judge of the Bergen County Court of Oyer and Terminer and the Judge who presided over the trial of the aforesaid cause, do certify that the foregoing contains the entire record of the proceedings had upon the trial of the cause, and that the same is returned by the plaintiff in error therein with the Writ of Error, bringing up the bill of exceptions signed and sealed in this cause.

HERMAN VANDERWART,
Judge of the Bergen County Court
of Oyer and Terminer.

Dated February , 1945.

Assignments of Error

(Filed—March 27, 1945.)

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ROBERT DEEGAN, *Plaintiff-in-Error.*	On Writ of Error to Bergen County Court of Oyer and Terminer Assignments of Error

Afterwards, to wit, on the return day of said writ of error before our Judges of our Court of Errors and Appeals in the last resort at Trenton comes the said Robert Deegan, plaintiff-in-error, by John B. Zabriskie and Emil M. Wulster, his attorneys, and prays the reversal of the judgment of the court below and says that in the record and proceedings aforesaid and also in the giving of judgment as aforesaid, there is manifest error and herein assigns error in the record therein as follows:

1. Because the Court erroneously refused and denied to the defendant, Robert Deegan, the right to present evidence and proof in support of his challenge to the array (p. 50, ll. 22 to 31):

> "Mr. Zabriskie: The question the Prosecutor says we do not offer to take proof, that is just exactly what we do.

The Court: I am sorry, I don't understand you. Will the stenographer repeat the statement Mr. Zabriskie just made.

(Mr. Zabriskie's statement repeated.)

Mr. Zabriskie: That's what we ask for in our challenge, that evidence be taken."

and did erroneously sustain the demurrer of the State of New Jersey to said challenge to the array (p. 51, ll. 30 to 38):

"The Court: * * * I think my duty is clear, the demurrer is sustained, and in case there be any doubt about it, I know I, myself, have no malice toward this defendant, and I cannot conceive upon what alleged facts this challenge is based. The Court will proceed to strike a jury.

Mr. Zabriskie: Your Honor will allow me an exception to your Honor's ruling."

Said challenge to the array was in form as follows (p. 20, ll. 1 to 40):

"BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Challenge to Array

ROBERT DEEGAN, defendant, hereby challenges the array of jurors chosen by Honorable A. D. Del Mar, Judge of the Common Pleas Court, holding the Court of Oyer and Terminer in and for the County of Bergen in the absence of a Justice of the Supreme Court, being one charged with the duty of preparing the list from which the panel of jurors in the above entitled cause should be drawn after the striking of the number of jurors permitted by law, because the said Judge is biased and prejudiced against the defendant, Robert Deegan, and does not stand indifferent between The State of New Jersey and the said Robert Deegan. And this challenge to the array this defendant demands that the Court try.

JOHN B. ZABRISKIE
EMIL WULSTER
Attorneys for the defendant,
Robert Deegan."

The form of the demurrer is in language as follows (p. 21, ll. 1 to 40):

"BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	On Indictment for Murder Demurrer of Challenge to the Array

Now comes the State of New Jersey by Walter G. Winne, Prosecutor, and having read the challenge to the array says that said challenge in manner and form is not sufficient in law and this it is ready to verify.

Said challenge is insufficient in that it does not set forth the facts upon which said challenge is based; said challenge is insufficient in that it expresses only conclusions of law; said challenge is insufficient because it does not state in what manner the court is prejudiced and impartial and disqualified.

WHEREFORE, the Prosecutor of the Pleas of Bergen County says that the matters contained in said challenge are not sufficient in law to bar, disqualify and preclude the said A. Demorest Del Mar from sitting in judgment upon the trial of the indictment of the above named defendant.

WHEREFORE, the said Walter G. Winne, Prosecutor as aforesaid prays judgment.

WALTER G. WINNE
Prosecutor of the Pleas of
Bergen County"

2. Because the Court sustained the objection of the Prosecutor to the following question put to Evelyn G. Oliver, a juror, on her voir dire (p. 78, ll. 25 to 40 and p. 79, ll. 1 to 19):

"*By Mr. Zabriskie*:

Q. Now, in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death?

The Prosecutor: Now, that is objected to. I think that is no part of the facts. As to whether a juror could find a recommendation upon the facts is from all the evidence. I do not think that it is a fair question to pick out any one thing and ask the juror if that one thing would influence the juror, and particularly to ask the juror if a thing, which is not a defense but which is pleaded as a defense, would mitigate the punishment.

The Court: I will sustain the objection.

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

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge"

3. Because the Court sustained the objection of the Prosecutor to the following question put to John A. Digney, a juror, on his voir dire (p. 82, ll. 26 to 40):

"*By Mr. Wulster*:

Q. Do you find it objectionable, in the event that the state or society confines people to jail for life, that they should be fed and cared for? A. No.

The Prosecutor: That question is objected to, your Honor please. I think it is immaterial in the questioning between counsel and the juror as to whether he thinks people should be fed or they should not be fed.

The Court: I will sustain that objection.

Mr. Wulster: May I have an exception on the record?

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

4. Because the Court sustained the objection of the Prosecutor to the following question put to Joseph H. Schroeder, a juror, on his voir dire (p. 87, ll. 29 to 40 and p. 88, ll. 1 to 17):

"*By Mr. Wulster*:

Q. In the event that you and the jury should feel that this is a first degree murder case, and you should find accordingly, do you have any preconceived convictions that society or the State is better off by inflicting the death penalty rather than imposing imprisonment at hard labor for life?

The Prosecutor: That question is objected to. The juror has said he would decide the case on the evidence and the law. I think the question as to whether he has any feeling outside that question of whether he would decide the case on the evidence and the law is objectionable.

The Court: Objection sustained.

Mr. Wulster: May I have an exception, sir?

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

5. Because the Court overruled defendant, Robert Deegan's, challenge for cause of Abram M. Ottignon, a member of the panel of struck jurors drawn in said cause, notwithstanding the fact that the said juror so challenged for cause said he

believed that everyone convicted of murder in the first degree should suffer the death penalty (p. 91, ll. 9 to 40; p. 92, ll. 1 to 40; p. 93, ll. 1 to 40; p. 94, ll. 1 to 26):

"*By Mr. Zabriskie*:

Q. Mr. Ottignon, as is indicated in this paragraph of the law that I am going to read, so that when you arrive at a verdict, of course, if you arrive at a verdict of not guilty, why, then that would end the matter and you would not go any further; but, under the law, if you should decide the defendant was guilty of murder in the first degree, which is the only degree that you can find, if you find at all, in this case, after you have found that, as a part of your verdict, you have a right, and it is your duty to go further and determine whether or not from the evidence, life imprisonment should be recommended. Now, for the sake of accuracy, I will read that statute. You have heard it already, but for the sake of accuracy and for the sake of the record, the law says this:

'Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.'

Now, in the light of that Statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty? A. I do.

Q. You believe that everyone should suffer— A. Yes sir.

Mr. Zabriskie: I challenge for cause.

The Prosecutor: May I interrogate the juror further?

The Court: Certainly.

By the Prosecutor:

Q. It may be that you do not exactly understand the question Mr. Ottignon. In this case the State contends that the prisoner brought about the death of Mrs. Ethel Herrmann in perpetrating a robbery; that is to say, that as a result of robbing her, he struck her and she died. Now, it has been suggested that if the State proves that is murder in the first degree, the juror then must under the law consider, if he finds that the State has proved murder in the first degree, that from all the evidence in the case, the youth of the young man, his bringing up, everything that you hear in the case, shall he suffer the extreme penalty, or shall he suffer life imprisonment; and the Judge will charge you, I am sure, that you should consider all of the evidence and, after having considered the evidence, if you find first degree, and further find either a recommendation of life imprisonment or not find the recommendation, in which case death would be the result.

Now the question is if, no matter what the evidence was, if you found it was murder in the first degree, would you also find the extreme penalty, and under no circumstances, regardless of the evidence, bring in a recommendation of life imprisonment?

Mr. Zabriskie: He has already answered that question.

The Court: I will allow it.

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

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Juror: May I answer?

The Court: Yes.

A. My answer to that, if the evidence shows he is guilty of murder in the first degree, I believe in the death penalty.

By the Court:

Q. Do you believe in the death penalty to the exclusion of the law as it has been read to you, namely, that the jury, if they are satisfied from all of the evidence that it is wise, may bring in a verdict of life imprisonment at hard labor? A. You ask a specific question. What do you mean?

Q. I ask you whether you agree with that law? A. I agree with the law, sure.

Q. As it is expressed? A. I agree with the law. I have no objection to that.

The Court: Is there a challenge?

Mr. Zabriskie: Yes. I enter a preemptory challenge for cause, I should say.

The Prosecutor: Of course, I do not think the juror should be challenged for cause, your Honor please. I understand the juror said to your Honor he would decide the case according to the law as charged by the Judge.

The Court: Yes. If you should be chosen to sit as a juror in this case, knowing the law as you have heard it read by counsel, would you be willing and are you in a position to decide the case upon the evidence as it is adduced before you and the law as I may charge it, bearing in mind what has been said as to a recommendation for life imprisonment?

The Juror: I think so.

The Court: I will overrule the challenge.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

6. Because the Court overruled defendant, Robert Deegan's, challenge for cause of John Heck, a member of the panel of struck jurors, drawn in said cause notwithstanding the fact that said juror indicated that he had formed an opinion from what he has read (p. 129, ll. 20 to 40; p. 130, ll. 1 to 40; p. 131, ll. 1 to 40 and p. 132, ll. 1 to 30):

"*By Mr. Wulster*:

Q. Has what you have read or heard fixed any thought in your mind whereby it would be unable—whereby you would be unable to bring in a fair and just verdict according to the evidence and the law as charged? A. Well, from what I have read so far, I mean, in the papers, unless new evidence is brought out, whether this Court is going to bring new evidence, I think I have.

Q. You think you have formed an opinion? A. I have formed an opinion.

Q. You have formed an opinion? A. On the old evidence.

Q. Do you know the defendant, Robert Deegan, or any member of his family? A. I do not.

Q. Do you know the decedent, Ethel Herrmann, or do you know any member of her family? A. I do not.

Q. Do you know the Prosecutor, Mr. Winne? A. I know of him. I have played golf behind him, but I don't know him personally.

Q. You both belong to the same golf club? A. No. I played in the Grand Juror's tournament right behind him and spoke to him.

Q. Do you know Mr. Allyn? A. No. I never had the pleasure.

Q. Have you any fixed opinion in your mind which would prevent you from bringing in a fair and just verdict according to the evidence and the law as charged by the Judge? A. On new evidence as presented in court.

Mr. Wulster: May we have the question read?

(Question read.)

A. No, I think I could.

Q. You think that perhaps your mind is so open that you could decide it on the evidence adduced in court? A. If there was new evidence, as I said, presented, from what I have read and from what I have heard.

Q. You have an opinion, a fixed opinion now, on the case? A. I have a fixed opinion on the case unless I hear new evidence.

Q. And if you did not hear new evidence, that fixed opinion would prevail? A. It would stand.

Mr. Wulster: Excused for cause.

The Prosecutor: Well, I object to that.

Mr. Wulster: Challenged for cause.

The Prosecutor: I object to that. All the evidence is going to be new evidence. There is no old evidence in this case. The question is, Mr. Juror, on the evidence produced here beginning today and continuing until this case is over, would you try the case on that evidence and not on something you heard before you came to court? A. No, I would try the case on new evidence presented in court.

The Court: You have not heard any evidence yet.

The Juror: That is what I said.

The Court: Then what you are going to hear today, you would not describe as new

evidence, would you? You have not heard any yet.

The Juror: I have heard nothing yet.

The Court: Well, if you could say what you are about to hear is the evidence in the case,—

The Juror: That is right.

The Court: —through the sworn testimony of witnesses—

The Juror: That is right.

The Court: The question is, sitting as a juror in this case and hearing the testimony as sworn testimony from the witnesses, all of the evidence in the case, and having been charged by the Court, would any opinion which you had heretofore formed guide you in bringing in your verdict, or would that testimony and evidence and Court's charge direct your mind?

The Juror: I think new testimony would have a lot to do with my verdict.

The Court: What is the motion before the Court?

Mr. Wulster: The challenge is that the Juror be excused for cause.

The Court: Is that opposed by the Prosecutor?

The Prosecutor: Yes, sir. I think the juror has stated that he would try the case on the evidence, and I think the cases are uniform that, although a man may come into court with an opinion based on what he had heard outside of the courtroom, if his statement is that he will try the case on the evidence produced in court and the

New Jersey State Library

charge of the Court fairly, regardless of what he has previously heard, he is an acceptable juror. That is held in the most recent case of Jefferson, with which we are all familiar.

The Court: I will overrule the challenge and allow the juror to sit.

Mr. Wulster: May I have an exception to that ruling, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

7. Because the defendant, Robert Deegan, was denied his statutory right to a panel comprised of 76 jurors in that only 75 jurors were served thus limiting his right of rejection (p. 138, ll. 25 to 40 and p. 139, ll. 1 to 7):

"The Sheriff: Number 29, Julian L. Fish. She was not served, your Honor.

The Court: Was not served?

The Sheriff: Was not served.

The Court: Call your next.

The Sheriff: Number 59, Harold F. Noble.

Mr. Zabriskie: For the purpose of the record, I interpose or take an exception to the fact that the jury serving in this case, the names that were served did not constitute the panel required by law, which would be seventy-six names, only seventy-five having been served. Just for the purpose of the record."

8. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, over objections, allowed a prospective juror, Charles R. Walker, to answer an improper question (p. 145, ll. 15 to 40 and p. 146, ll. 1 to 4):

"*By the Prosecutor*:

Q. Well now, I understand, Mr. Walker, that under the law in this state in certain types of crimes, the punishment is death by electrocution. Is your feeling of such a character that it would be difficult, no matter what the evidence was, no matter what the Judge's charge was, to bring in a verdict that brought about the death by electrocution of the defendant?

Mr. Wulster: I object to that form of the question. I think the test is, religious scruples against the death penalty.

The Prosecutor: No. The Favorito case, and a number of other cases say, if he has any prejudice of any kind.

The Court: I will allow the question.

Mr. Wulster: Your Honor will allow me an exception?

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

A. Will you repeat that?

(Question read.)

A. I do not believe so."

9. Because the trial Court sustained the Prosecutor's challenge for cause of Charles R. Walker, a member of the panel of struck jurors drawn in said cause, even though said juror indicated that his prejudice was not entirely based upon religious scruples (p. 146, ll. 6 to 40 and p. 147, ll. 1 to 11):

"*By the Prosecutor*:

Q. You do not believe it will be difficult? A. It would be hard, yes. It would depend on the evidence as presented.

Q. Yes. So, Mr. Walker, you start right in laboring to overcome prejudice, don't you. A. Yes.

The Prosecutor: I challenge for cause your Honor, please.

Mr. Wulster: I object to the challenge.

By the Court:

Q. Upon what is that feeling of yours based? Would you tell the Court, Mr. Walker? A. Well, as I have said before, it has not been of a definite nature. I have felt a leaning towards that, though it really has not eliminated the question of murder, and it has been a question in my mind as to whether it was really the right thing.

Q. The question in your mind is as to whether punishment by death is really the right thing? A. Yes, sir.

Q. Now, is that based upon a religious—has that a religious basis in your mind? A. No, not entirely.

The Court: I will sustain the challenge.

Mr. Zabriskie: You will allow me an exception for the record?

The Court: I will allow you an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: You may be excused.

(Juror excused.)"

10. Because the trial Court committed error prejudicial to the defendant, Robert Deegan, in allowing in evidence certain photographs of the family of the decedant, Ethel Herrmann (p. 190, ll. 33 to 40 and p. 191, ll. 1 to 16):

"*By the Prosecutor*:

Q. And you say you recognize the family of the late Ethel Herrmann as being portrayed by these pictures? A. Yes, sir.

The Prosecutor: May they go in evidence without a separate number, if your Honor please?

Mr. Zabriskie: I do not see the materiality of this. There is no question of identity in this case.

The Court: I will allow that.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

11. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, on cross examination, sustained an objection made by the Prosecutor to a question put to the State's witness, Herbert Allmers (p. 202, ll. 36 to 40 and p. 203, ll. 1 to 5):

"*By Mr. Zabriskie*:

Q. You knew for a long time there was something wrong with his mind?

The Prosecutor: I object to that.

The Court: I will sustain the objection, that calls for a conclusion."

12. Because the defendant, Robert Deegan, suffered harmful and prejudicial error in that he was tried by a jury drawn from a panel of struck jurors the entire array of which, by reason of its very selection, was challenged. The said panel was selected by Hon. A. Demorest Del Mar, the Judge who was challenged to disqualify himself and who did withdraw after filing an opinion overruling the challenge. The challenge to the array was based on bias and prejudice allegedly had by the said selecting judge, A. Demorest Del Mar, and in that he did not stand indifferent between the State of New Jersey and the defendant. A new panel should have been drawn for the trial had before the Hon. Herman Vanderwart. It was not.

13. Because the Court overruled the question put to the witness, Morris Deegan, as follows (p. 278, ll. 15 to 29):

"*By Mr. Wulster*:

Q. Did Mr. Allmers give you any advice in connection with Bob?

The Prosecutor: I object.

The Court: I sustain the objection.

Mr. Wulster: Your Honor will allow me an exception?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

14. Because the Court overruled the admission in evidence of the original record of William Harry McKim, the grandfather of the defendant, who had died in the Middletown State Hospital for the Insane (p. 300, ll. 9 to 36):

"*By Mr. Zabriskie*:

Q. Miss Frink, you are from the Middletown Insane Asylum? A. Middletown State Hospital.

Q. The Middletown State Hospital. That is for the insane? A. Yes, sir.

Q. What position do you hold there? A. I am secretary to the director.

Q. And have you with you a record— A. Yes.

Q. Of Mr. William Harry McKim? A. Yes.

Q. And is that the exact—is that the record as it remains on file? A. That is the original record.

Q. That is the original record, that is kept in your custody? A. That is right.

Q. At the hospital? A. Yes, sir.

Mr. Zabriskie: I offer this in evidence.

The Prosecutor: That is objected to, if your Honor please. The hospital record is not evidential, not properly evidential.

The Court: Objection sustained.

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

The Court: You may have an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

15. Because the Court struck out and instructed the jury to disregard testimony of Helen Louise Dickson as follows (p. 302, ll. 26 to 40 and p. 303, ll. 1 to 9):

"*By Mr. Wulster*:

Q. You see the report card? A. I saw the report card and it was a total failure.

The Prosecutor: I object to that, the witness' statement what she saw.

The Court: Stricken out.

Mr. Wulster: Exception, please.

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: It will be stricken out and disregarded by the jury as to what was on the report card.

Mr. Wulster: May I note an exception to the striking, sir?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

16. Because the Court struck out part of the testimony of Myrtle E. Cole (p. 307, ll. 25 to 40 and p. 308, ll. 1 to 36):

"*By Mr. Wulster*:

Q. Can you tell us what you observed about him over the period of years? A. When Bob was a youngster, he associated with other boys and my son. And although Bob was older, his mentality would never come up to the other boys. He would—they would play together, and Bob would sit at the side. We had open house at my place, and the boys were always welcome. They would play and asked Bob to play ping-pong, and he would say, 'I cannot play that.' And they would coax him and no, he would not play. And he would just sit there, and in a little while he would get up and go home. And they would try to attract different things in games and thought they might interest him, but he was never interested in play.

Bob has always been very gentle. I have never seen him in any quarrel or lift a hand to any other boy. Other boys would have lit-

tle arguments, but I have never seen Bob do that. He was always good to children and to animals, and was always very glad to do anything for anybody.

The Prosecutor: Now, I object to the testimony, if your Honor please, and ask to have it stricken. The questions should be confined to peculiarities, and not in praise of his conduct and relation to animals.

Mr. Wulster: I think it is proper. She states her observation.

The Court: That portion of the answer will be stricken which is a recital of any praise of his conduct, and only that testimony permitted which tells of those peculiarities upon which the jury may base some opinion as to the mentality of the defendant.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception on the record, sir?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

17. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, struck a part of the testimony of the witness, Edgar Hunt Deegan, the pertinent part of said testimony being as follows (p. 322, ll. 22 to 40; p. 323, ll. 1 to 15; and p. 327, ll. 1 to 17):

"And well, my own personal observation was, as I grew up, and as I am now, that Bob did not or he has not, rather, the mentality of a boy ten years old.

The Prosecutor: Now, I do not think that is proper. I object to that and ask it be stricken out.

The Witness: That is—

Mr. Wulster: I think that is permissible, sir, for him to gauge mentality from his observation under the cases.

The Court: He may tell us what he observed.

Mr. Wulster: That is right, and he may give us his opinion based on the observation.

The Prosecutor: He may give us his opinion as to the mentality of his brother. He certainly cannot do it the way experts do by cataloging his age.

Mr. Wulster: I think the cases hold that testimony of lay witnesses is entitled to as much if not more respect than experts.

The Prosecutor: I challenge that statement and ask counsel to produce the citation.

Mr. Wulster: The Spencer case, by Justice Hornblower.

* * * * * *

The Court: I will direct that the answer will be stricken out in so far as the attempt to fix the mental age in the opinion of the witness.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception noted, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

18. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, overruled the question, "Mrs. Deegan, do you know what your father died of?" (p. 341, ll. 22 to 40 and p. 342, ll. 1 to 38):

"Q. Mrs. Deegan, do you know what your father died of?

The Prosecutor: Well, now, I know from the record that this lady does not know except from hearsay, and I object to it.

A. My father died in an insane asylum. I didn't like to say it, but he did.

The Prosecutor: The question is not—the answer is not an answer to the question. I think the question is what he died of, not where he died, and I know from the record that at the last trial this lady only knows from hearsay.

The Court: Yes.

The Prosecutor: I would like to know if she knows in any other way before she answers the question.

The Witness: I know my father died in an insane asylum. I was—

The Court: Just a minute. Have you any motion directed to that?

The Prosecutor: Yes. I have no objection to the record showing where he died, if she says she knows it, but what he died of, I think she does not know.

The Court: Do you want to take that up on cross examination?

The Prosecutor: No. I merely want to object to the question unless counsel states the lady knows it in some other way excepting by hearsay. He knows what happened at the last trial.

Mr. Wulster: Of course, the family history—

The Court: I will sustain the objection, and allow you to reframe the question if you want.

Mr. Wulster: May I have an exception to your Honor's ruling? It is my opinion that the family history is an exception to the hearsay rule. May I have an exception?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

19. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, erroneously overruled the following question (p. 382, ll. 10 to 40):

"Q. And can you tell the Court and the jury what that means, a constitutional psychopathic state, and inadequate personality?

The Prosecutor: Now, I object to that, if your Honor please. In the first place, because it is just repetition of what has already been testified to and, in the second place, it is not part of this inquiry at all. This inquiry is not whether a man has a psychopathic personality or inadequate personality; but whether he was conscious of right and wrong at the time he committed this offense. I do not think it is proper to have a definition of what is in a clinical report, particularly when it has been testified to by one expert.

The Court: This witness has not testified that he had that.

Mr. Zabriskie: I am just asking that for the enlightenment of the jury.

The Court: I will sustain the objection.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

20. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, permitted the Prosecutor of the Pleas in his summation to make and because the Prosecutor did make the following statement and because the said Court did not cause said remarks to be stricken and did not instruct the jury to disregard same (p. 436, ll. 1 to 40):

"* * * I get my check just the same. Mr. Allyn will get his check just the same. You will still have a Prosecutor. I am in for five years. What difference does it make to me? I have been practicing law since 1910. This is the first time I ever tried a first degree case for the State. I have defended men in this court who were convicted of murder in the first degree and are out on the street today. The last term of court, the Court of Pardons let a man out who was convicted of first degree murder for killing his wife with a shotgun. As long as I have been practicing law—

Mr. Zabriskie: Your Honor please, that is not in the evidence, and I object, and I ask an exception be noted.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: Let us just confine ourselves to the evidence, Mr. Prosecutor.

The Prosecutor: The Court will charge you, Ladies and Gentlemen of the Jury, there is a Court of Pardons, a constitutional court of this State, and I may say so because it is a matter of judicial notice, and that Court of Pardons can release a man who is in jail any time it wants to. There are times when it is better for the man and better for society that he be prevented forever from again doing the sort of thing this man did. Doctor Leavitt said it was his opinion that this thing could happen again."

21. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, permitted the foregoing remarks (see Paragraph 20) of the Prosecutor and his summation to stand (p. 438, ll. 2 to 18):

> "Mr. Zabriskie: Just for the sake of the record, I want to ask an exception be noted to the Prosecutor's reference to the Court of Pardons and the power of the Court of Pardons, and the possibility this man might be out within fifteen years, or whatever that language was, and that in other cases that have been tried, there have been cases where they are walking the streets now.
>
> Exception allowed and sealed.
>
> HERMAN VANDERWART,
> Judge."

22. Because the evidence adduced by the defendant on the issue of insanity was borne by the defendant's production of a strong preponderance of the evidence and the verdict of the jury was contrary to said evidence and was based on passion and prejudice.

23. Because the trial Court before whom said cause was tried, at and upon the trial of the said issue so joined between the State of New Jersey and the said Robert Deegan, charged the jury as follows (p. 448, ll. 8 to 20):

> "It is said in this case that the defendant has been previously convicted of crime. If you find this to be a fact, you have a right to take this fact into consideration in connection with all the other evidence in the case.

It is for you, Members of the Jury, to determine to what degree, if any, Deegan's credibility or the credibility of any other witness who has been previously convicted of crime has been affected. And, in this connection, you as jurors should also consider the demeanor of the witnesses upon the stand and the manner in which they testified in determining their credibility."

although the defendant, Robert Deegan, did not take the witness stand and was not sworn as a witness.

24. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, denied the motion for an arrest of judgment on the ground that the jurors in the case were drawn from a panel that had been challenged as to the array which challenge had been overruled without legal cause (p. 460, ll. 38 to 40 and p. 461, ll. 1 to 38):

"Mr. Zabriskie: I make a motion in arrest of judgment on the ground that the jurors that imposed the sentence in this case were drawn from a panel of jurors where there had been a challenge to the array and overruled without legal cause for the same being overruled.

The Court: The motion is denied.

The Prosecutor: I move the sentence of Robert Deegan, if your Honor please.

The Court: All right. You will produce the prisoner.

(The defendant stands before the Court.)

The Court: Robert Deegan, have you anything to say why sentence should not be pronounced against you?

Robert Deegan: No, sir.

The Court: The judgment and sentence of this Court is that you suffer the punishment of death at the place and in the manner provided by law on some day within the week beginning Sunday, the 18th day of March, 1945, and may God have mercy upon you.

Mr. Zabriskie: Of course, your Honor will allow me an exception to your Honor's ruling?

The Court: Oh, surely. You had better get it on the record.

Mr. Zabriskie: Yes, sir. Exception allowed.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

25. Because the verdict was against the weight of the evidence.

26. Because the proof could not satisfy a considerate mind beyond a reasonable doubt that the plaintiff-in-error was guilty of murder in the first degree.

27. Because the verdict was the result of mistake, passion, prejudice or partiality.

JOHN B. ZABRISKIE
EMIL M. WULSTER
Attorneys for Plaintiff-in-Error

Service acknowledged March 27th, 1945.

WALTER G. WINNE
Prosecutor of the Pleas

Specification of Causes and Reasons for Reversal

(Filed—March 27, 1945)

NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ROBERT DEEGAN, *Plaintiff-in-Error.*	Specification of Causes and Reasons for Reversal

New Jersey, ss.:

Afterwards, to wit, on the return of the said writ before the Court of Errors and Appeals of the State of New Jersey, comes the said Robert Deegan, by John B. Zabriskie and Emil M. Wulster, his attorneys, and says that in the record and proceedings, in the entire record and proceedings, and also in the testimony in the record aforesaid, and also in the charge of the Court and instructions of the Court and also in the opening and in the summing up of the Prosecutor of the Pleas in the said cause, and also in giving verdict and judgment in said cause, there is manifest error or reasons for reversal as follows:

1. Because the Court erroneously refused and denied to the defendant, Robert Deegan, the right to present evidence and proof in support of his challenge to the array (p. 50, ll. 22 to 31).

"Mr. Zabriskie: The question the Prosecutor says we do not offer to take proof, that is just exactly what we do.

The Court: I am sorry, I don't understand you. Will the stenographer repeat the statement Mr. Zabriskie just made.

(Mr. Zabriskie's statement repeated.)

Mr. Zabriskie: That's what we ask for in our challenge, that evidence be taken."

and did erroneously sustain the demurrer of the State of New Jersey to said challenge to the array (p. 51, ll. 30 to 38).

"The Court: * * * I think my duty is clear, the demurrer is sustained, and in case there be any doubt about it, I know I, myself, have no malice toward this defendant, and I cannot conceive upon what alleged facts this challenge is based. The Court will proceed to strike a jury.

Mr. Zabriskie: Your Honor will allow me an exception to your Honor's ruling."

Said challenge to the array was in form as follows (p. 20, ll. 1 to 40):

Specification of Causes and Reasons for Reversal

"BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder December Term, A. D. 1943 Challenge to Array

ROBERT DEEGAN, defendant, hereby challenges the array of jurors chosen by Honorable A. D. Del Mar, Judge of the Common Pleas Court, holding the Court of Oyer and Terminer in and for the County of Bergen in the absence of a Justice of the Supreme Court, being one charged with the duty of preparing the list from which the panel of jurors in the above entitled cause should be drawn after the striking of the number of jurors permitted by law, because the said Judge is biased and prejudiced against the defendant, Robert Deegan, and does not stand indifferent between The State of New Jersey and the said Robert Deegan. And this challenge to the array this defendant demands that the Court try.

JOHN B. ZABRISKIE
EMIL WULSTER
Attorneys for the defendant,
Robert Deegan."

The form of the demurrer is in language as follows (p. 21, ll. 1 to 40):

"BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	On Indictment for Murder Demurrer of Challenge to the Array

Now comes the State of New Jersey by Walter G. Winne, Prosecutor, and having read the challenge to the array says that said challenge in manner and form is not sufficient in law and this it is ready to verify.

Said challenge is insufficient in that it does not set forth the facts upon which said challenge is based; said challenge is insufficient in that it expresses only conclusions of law; said challenge is insufficient because it does not state in what manner the court is prejudiced and impartial and disqualified.

WHEREFORE, the Prosecutor of the Pleas of Bergen County says that the matters contained in said challenge are not sufficient in law to bar, disqualify and preclude the said A. Demorest Del Mar from sitting in judgment upon the trial of the indictment of the above named defendant.

WHEREFORE, the said Walter G. Winne, Prosecutor as aforesaid prays judgment.

WALTER G. WINNE
Prosecutor of the Pleas of
Bergen County"

2. Because the Court sustained the objection of the Prosecutor to the following question put to Evelyn G. Oliver, a juror, on her voir dire (p. 78, ll. 25 to 40 and p. 79, ll. 1 to 19):

"*By Mr. Zabriskie*:

Q. Now, in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death?

The Prosecutor: Now, that is objected to. I think that is no part of the facts. As to whether a juror could find a recommendation upon the facts is from all the evidence. I do not think that it is a fair question to pick out any one thing and ask the juror if that one thing would influence the juror, and particularly to ask the juror if a thing, which is not a defense but which is pleaded as a defense, would mitigate the punishment.

The Court: I will sustain the objection.

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

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge"

3. Because the Court sustained the objection of the Prosecutor to the following question put to John A. Digney, a juror, on his voir dire (p. 82, ll. 26 to 40):

"*By Mr. Wulster*:

Q. Do you find it objectionable, in the event that the State or society confines people to jail for life, that they should be fed and cared for? A. No.

The Prosecutor: That question is objected to, questioning between counsel and the juror as to whether he thinks people should be fed or they should not be fed.

The Court: I will sustain that objection.

Mr. Wulster: May I have an exception on the record.

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

4. Because the Court sustained the objection of the Prosecutor to the following question put to Joseph H. Schroeder, a juror, on his voir dire (p. 87, ll. 29 to 40 and p. 88, ll. 1 to 17):

"*By Mr. Wulster*:

Q. In the event that you and the jury should feel that this is a first degree murder case, and you should find accordingly, do you have any preconceived convictions that society or the State is better off by inflicting the death penalty rather than imposing imprisonment at hard labor for life?

The Prosecutor: That question is objected to. The juror has said he would decide the case on the evidence and the law. I think the question as to whether he has any feeling outside that question of whether he would decide the case on the evidence and the law is objectionable.

The Court: Objection sustained.

Mr. Wulster: May I have an exception, sir?

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

5. Because the Court overruled defendant, Robert Deegan's challenge for cause of Abram M. Ottignon, a member of the panel of struck jurors drawn in said cause, notwithstanding the

fact that the said juror so challenged for cause said he believed that everyone convicted of murder in the first degree should suffer the death penalty (p. 91, ll. 9 to 40; p. 92, ll. 1 to 40; p. 93, ll. 1 to 40; p. 94, ll. 1 to 26):

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"*By Mr. Zabriskie*:

Q. Mr. Ottignon, as is indicated in this paragraph of the law that I am going to read, so that when you arrive at a verdict, of course, if you arrive at a verdict of not guilty, why, then that would end the matter and you would not go any further; but, under the law, if you should decide the defendant was guilty of murder in the first degree, which is the only degree that you can find, if you find at all, in this case, after you have found that, as a part of your verdict, you have a right, and it is your duty to go further and determine whether or not from the evidence, life imprisonment should be recommended. Now, for the sake of accuracy, I will read that statute. You have heard it already, but for the sake of accuracy and for the sake of the record, the law says this:

20

30

'Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.'

40

Now, in the light of that statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty? A. I do.

Q. You believe that everyone should suffer— A. Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Prosecutor: May I interrogate the juror further?

The Court: Certainly.

By the Prosecutor:

Q. It may be that you do not exactly understand the question Mr. Ottignon. In this case the State contends that the prisoner brought about the death of Mrs. Ethel Herrmann in perpetrating a robbery; that is to say, that as a result of robbing her, he struck her and she died. Now, it has been suggested that if the State proves that is murder in the first degree, the juror then must under the law consider, if he finds that the State has proved murder in the first degree, that from all the evidence in the case, the youth of the young man, his bringing up, everything that you hear in the case, shall he suffer the extreme penalty, or shall he suffer life imprisonment; and the Judge will charge you, I am sure, that you should consider all of the evidence and, after having considered the evidence, if you find first degree, and further find either a recommendation of life imprisonment or not find the recommendation, in which case death would be the result.

Now the question is if, no matter what the evidence was, if you found it was murder in the first degree, would you also find the extreme penalty, and under no circumstances, regardless of the evidence, bring in a recommendation of life imprisonment?

Mr. Zabriskie: He has already answered that question.

The Court: I will allow it.

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

Exception allowed and sealed.

HERMAN VANDERWART,
Judge

The Juror: May I answer?

The Court: Yes.

A. My answer to that, if the evidence shows he is guilty of murder in the first degree, I believe in the death penalty.

By the Court:

Q. Do you believe in the death penalty to the exclusion of the law as it has been read to you, namely, that the jury, if they are satisfied from all of the evidence that it is wise, may bring in a verdict of life imprisonment at hard labor? A. You ask a specific question. What do you mean?

Q. I ask you whether you agree with that law? A. I agree with the law, sure.

Q. As it is expressed? A. I agree with the law. I have no objection to that.

The Court: Is there a challenge?

Mr. Zabriskie: Yes. I enter a preemptory challenge for cause, I should say.

The Prosecutor: Of course, I do not think the juror should be challenged for cause, your Honor please. I understand the juror said to your Honor he would decide the case according to the law as charged by the Judge.

The Court: Yes. If you should be chosen to sit as a juror in this case, knowing the law as you have heard it read by counsel, would you be willing and are you in a position to decide the case upon the evidence as it is adduced before you and the law as I may charge it, bearing in mind what has been said as to a recommendation for life imprisonment?

The Juror: I think so.

The Court: I will overrule the challenge.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge''

6. Because the Court overruled defendant, Robert Deegan's, challenge for cause of John Heck, a member of the panel of struck jurors, drawn in

said cause notwithstanding the fact that the said juror indicated that he had formed an opinion from what he has read (p. 129, ll. 20 to 40; p. 130, ll. 1 to 40; p. 131, ll. 1 to 40 and p. 132, ll. 1 to 30):

"*By Mr. Wulster*:

Q. Has what you have read or heard fixed any thought in your mind whereby it would be unable—whereby you would be unable to bring in a fair and just verdict according to the evidence and the law as charged? A. Well, from what I have read so far, I mean, in the papers, unless new evidence is brought out, whether this Court is going to bring new evidence, I think I have.

Q. You think you have formed an opinion? A. I have formed an opinion.

Q. You have formed an opinion? A. On the old evidence.

Q. Do you know the defendant, Robert Deegan, or any member of his family? A. I do not.

Q. Do you know the decedent, Ethel Herrmann, or do you know any member of her family? A. I do not.

Q. Do you know the Prosecutor, Mr. Winne? A. I know of him. I have played golf behind him, but I don't know him personally.

Q. You both belong to the same golf club? A. No. I played in the Grand Juror's tournament right behind him and spoke to him.

Q. Do you know Mr. Allyn? A. No. I never had the pleasure.

Q. Have you any fixed opinion in your mind which would prevent you from bringing in a fair and just verdict according to the evidence and the law as charged by the Judge? A. On new evidence as presented in court.

Mr. Wulster: May we have the question read?

(Question read.)

A. No, I think I could.

Q. You think that perhaps your mind is so open that you could decide it on the evidence adduced in court? A. If there was new evidence, as I said, presented, from what I have read and from what I have heard.

Q. You have an opinion, a fixed opinion now, on the case? A. I have a fixed opinion on the case unless I hear new evidence.

Q. And if you did not hear new evidence, that fixed opinion would prevail? A. It would stand.

Mr. Wulster: Excused for cause.

The Prosecutor: Well, I object to that.

Mr. Wulster: Challenged for cause.

The Prosecutor: I object to that. All the evidence is going to be new evidence. There is no old evidence in this case. The question is, Mr. Juror, on the evidence produced here beginning today and continuing until this case is over, would you try the case on that evidence and not on something you heard before you came to court? A.

No, I would try the case on new evidence presented in court.

The Court: You have not heard any evidence yet.

The Juror: That is what I said.

The Court: Then what you are going to hear today, you would not describe as new evidence, would you? You have not heard any yet.

The Juror: I have heard nothing yet.

The Court: Well, if you could say what you are about to hear is the evidence in the case—

The Juror: That is right.

The Court: —through the sworn testimony of witnesses—

The Juror: That is right.

The Court: The question is, sitting as a juror in this case and hearing the testimony as sworn testimony from the witnesses, all of the evidence in the case, and having been charged by the Court, would any opinion which you had heretofore formed guide you in bringing in your verdict, or would that testimony and evidence and Court's charge direct your mind?

The Juror: I think new testimony would have a lot to do with my verdict.

The Court: What is the motion before the Court?

Mr. Wulster: The challenge is that the juror be excused for cause.

The Court: Is that opposed by the Prosecutor?

The Prosecutor: Yes, sir. I think the juror has stated that he would try the case on the evidence, and I think the cases are uniform that, although a man may come into court with an opinion based on what he has heard outside of the courtroom, if his statement is that he will try the case on the evidence produced in court and the charge of the Court fairly, regardless of what he has previously heard, he is an acceptable juror. That is held in the most recent case of Jefferson, with which we are all familiar.

The Court: I will overrule the challenge and allow the juror to sit.

Mr. Wulster: May I have an exception to that ruling, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

7. Because the defendant, Robert Deegan, was denied his statutory right to a panel comprised of 76 jurors in that only 75 jurors were served thus limiting his right of rejection (p. 138, ll. 25 to 40 and p. 139, ll. 1 to 7):

"The Sheriff: Number 29, Julian L. Fish. She was not served, your Honor.

The Court: Was not served?

The Sheriff: Was not served.

The Court: Call your next.

The Sheriff: Number 59, Harold F. Noble.

Mr. Zabriskie: For the purpose of the record, I interpose or take an exception to the fact that the jury serving in this case, the names that were served did not constitute the panel required by law, which would be seventy-six names, only seventy-five having been served. Just for the purpose of the record."

8. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, over objections, allowed a prospective juror, Charles R. Walker, to answer an improper question (p. 145, ll. 15 to 40 and p. 146, ll. 1 to 4):

"*By the Prosecutor*:

Q. Well now, I understand, Mr. Walker, that under the law in this state in certain types of crimes, the punishment is death by electrocution. Is your feeling of such a character that it would be difficult, no matter what the evidence was, no matter what the Judge's charge was, to bring in a verdict that brought about the death by electrocution of the defendant?

Mr. Wulster: I object to that form of the question. I think the test is, religious scruples against the death penalty.

The Prosecutor: No. The Favorito case, and a number of other cases say, if he has any prejudice of any kind.

The Court: I will allow the question.

Mr. Wulster: Your Honor will allow me an exception?

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

A. Will you repeat that?

(Question read.)

A. I do not believe so."

9. Because the trial Court sustained the Prosecutor's challenge for cause of Charles R. Walker, a member of the panel of struck jurors drawn in said cause, even though said juror indicated that his prejudice was not entirely based upon religious scruples (p. 146, ll. 6 to 40 and p. 147, ll. 1 to 11):

"*By the Prosecutor*:

Q. You do not believe it will be difficult? A. It would be hard, yes. It would depend on the evidence as presented.

Q. Yes. So, Mr. Walker, you start right in laboring to overcome prejudice, don't you. A. Yes.

The Prosecutor: I challenge for cause, your Honor, please.

Mr. Wulster: I object to the challenge.

By the Court:

Q. Upon what is that feeling of yours based? Would you tell the Court, Mr. Walk-

er? A. Well, as I said before, it has not been of a definite nature. I have felt a leaning towards that, though it really has not eliminated the question of murder, and it has been a question in my mind as to whether it was really the right thing.

Q. The question in your mind is as to whether punishment by death is really the right thing? A. Yes, sir.

Q. Now, is that based upon a religious—has that a religious basis in your mind? A. No, not entirely.

The Court: I will sustain the challenge.

Mr. Zabriskie: You will allow me an exception for the record?

The Court: I will allow you an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: You may be excused.

(Juror excused)"

10. Because the trial Court committed error prejudicial to the defendant, Robert Deegan, in allowing in evidence certain photographs of the family of the decedent, Ethel Herrmann (p. 190, ll. 33 to 40 and p. 191, ll. 1 to 16):

"*By the Prosecutor*:

Q. And you say you recognize the family of the late Ethel Herrmann as being portrayed by these pictures? A. Yes, sir.

The Prosecutor: May they go in evidence without a separate number, if your Honor please?

Mr. Zabriskie: I do not see the materiality of this. There is no question of identity in this case.

The Court: I will allow that.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge"

11. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, on cross examination, sustained an objection made by the Prosecutor to a question put to the State's witness, Herbert Allmers (p. 202, ll. 36 to 40 and p. 203, ll. 1 to 5):

"*By Mr. Zabriskie*:

Q. You knew for a long time there was something wrong with his mind?

The Prosecutor: I object to that.

The Court: I will sustain the objection, that calls for a conclusion."

12. Because the defendant, Robert Deegan, suffered harmful and prejudicial error in that he was tried by a jury drawn from a panel of struck jurors the entire array of which, by reason of its very selection, was challenged. The said panel

was selected by Hon. A. Demorest Del Mar, the Judge who was challenged to disqualify himself and who did withdraw after filing an opinion overruling the challenge. The challenge to the array was based on bias and prejudice allegedly had by the said selecting judge, A. Demorest Del Mar, and in that he did not stand indifferent between the State of New Jersey and the defendant. A new panel should have been drawn for the trial had before the Hon. Herman Vanderwart. It was not.

13. Because the Court overruled the question put to the witness, Morris Deegan, as follows (p. 278, ll. 15 to 29):

"*By Mr. Wulster*:

Q. Did Mr. Allmers give you any advice in connection with Bob?

The Prosecutor: I object.

The Court: I sustain the objection.

Mr. Wulster: Your Honor will allow me an exception?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge"

14. Because the Court overruled the admission in evidence of the original record of William Harry McKim, the grandfather of the defendant, who had died in the Middletown State Hospital for the Insane (p. 300, ll. 9 to 36):

"By Mr. Zabriskie:

Q. Miss Frink, you are from the Middletown Insane Asylum? A. Middletown State Hospital.

Q. The Middletown State Hospital. That is for the insane? A. Yes, sir.

Q. What position do you hold there? A. I am secretary to the director.

Q. And have you with you a record— A. Yes.

Q. Of Mr. William Harry McKim? A. Yes.

Q. And is that the exact—is that the record as it remains on file? A. That is the original record.

Q. That is the original record, that is kept in your custody? A. That is right.

Q. At the hospital? A. Yes, sir.

Mr. Zabriskie: I offer this in evidence.

The Prosecutor: That is objected to, if your Honor please. The hospital record is not evidential, not properly evidential.

The Court: Objection sustained.

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

The Court: You may have an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

15. Because the Court struck out and instructed the jury to disregard testimony of Helen Louise

Dickson as follows (p. 302, ll. 26 to 40 and p. 303, ll. 1 to 9):

"By Mr. Wulster:

Q. You see the report card? A. I saw the report card and it was a total failure.

The Prosecutor: I object to that, the witness' statement what she saw.

The Court: Stricken out.

Mr. Wulster: Exception, please.

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: It will be stricken out and disregarded by the jury as to what was on the report card.

Mr. Wulster: May I note an exception to the striking, sir?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

16. Because the Court struck out part of the testimony of Myrtle E. Cole (p. 307, ll. 25 to 40 and p. 308, ll. 1 to 36):

"By Mr. Wulster:

Q. Can you tell us what you observed about him over the period of years? A. When Bob was a youngster, he associated with other

boys and my son. And although Bob was older, his mentality would never come up to the other boys. He would—they would play together, and Bob would sit at the side. We had open house at my place, and the boys were always welcome. They would play and asked Bob to play ping-pong, and he would say, "I cannot play that." And they would coax him and no, he would not play. And he would just sit there, and in a little while he would get up and go home. And they would try to attract different things in games and thought they might interest him, but he was never interested in play.

Bob has always been very gentle. I have never seen him in any quarrel or lift a hand to any other boy. Other boys would have little arguments, but I have never seen Bob do that. He was always good to children and to animals, and was always very glad to do anything for anybody.

The Prosecutor: Now, I object to the testimony, if your Honor please, and ask to have it stricken. The questions should be confined to peculiarities, and not in praise of his conduct and relation to animals.

Mr. Wulster: I think it is proper. She states her observation.

The Court: That portion of the answer will be stricken which is a recital of any praise of his conduct, and only that testimony permitted which tells of those peculiarities upon which the jury may base some

opinion as to the mentality of the defendant.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception on the record, sir?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

17. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, struck a part of the testimony of the witness, Edgar Hunt Deegan, the pertinent part of said testimony being as follows (p. 322, ll. 22 to 40; p. 323, ll. 1 to 15; and p. 327, ll. 1 to 17):

"And, well, my own personal observation was, as I grew up, and as I am now, that Bob did not or he has not, rather, the mentality of a boy ten years old.

The Prosecutor: Now, I do not think that is proper. I object to that and ask it be stricken out.

The Witness: That is—

Mr. Wulster: I think that is permissible, sir, for him to gauge mentality from his observation under the cases.

The Court: He may tell us what he observed.

Mr. Wulster: That is right, and he may give us his opinion based on the observation.

The Prosecutor: He may give us his opinion as to the mentality of his brother. He certainly cannot do it the way experts do by cataloging his age.

Mr. Wulster: I think the cases hold that testimony of lay witnesses is entitled to as much if not more respect than experts.

The Prosecutor: I challenge that statement and ask counsel to produce the citation.

Mr. Wulster: The Spencer case, by Justice Hornblower.

* * * * * *

The Court: I will direct that the answer will be stricken out in so far as the attempt to fix the mental age in the opinion of the witness.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception noted, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

18. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, overruled the question, "Mrs. Deegan, do you know what your father died of?" (p. 341, ll. 22 to 40 and p. 342, ll. 1 to 38):

"Q. Mrs. Deegan, do you know what your father died of?

The Prosecutor: Well, now, I know from the record that this lady does not know except from hearsay, and I object to it.

A. My father died in an insane asylum. I didn't like to say it, but he did.

The Prosecutor: The question is not—the answer is not an answer to the question. I think the question is what he died of, not where he died, and I know from the record that at the last trial this lady only knows from hearsay.

The Court: Yes.

The Prosecutor: I would like to know if she knows in any other way before she answers the question.

The Witness: I know my father died in an insane asylum. I was—

The Court: Just a minute. Have you any motion directed to that?

The Prosecutor: Yes. I have no objection to the record showing where he died, if she says she knows it, but what he died of, I think she does not know.

The Court: Do you want to take that up on cross examination?

The Prosecutor: No. I merely want to object to the question unless counsel states the lady knows it in some other way excepting by hearsay. He knows what happened at the last trial.

Mr. Wulster: Of course, the family history—

The Court: I will sustain the objection,

and allow you to reframe the question if you want.

Mr. Wulster: May I have an exception to your Honor's ruling? It is my opinion that the family history is an exception to the hearsay rule. May I have an exception?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

19. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, erroneously overruled the following question (p. 382, ll. 10 to 40):

"Q. And can you tell the Court and the jury what that means, a constitutional psychopathic state, and inadequate personality?

The Prosecutor: Now, I object to that, if your Honor please. In the first place, because it is just repetition of what has already been testified to and, in the second place, it is not part of this inquiry at all. This inquiry is not whether a man has a psychopathic personality or inadequate personality; but whether he was conscious of right and wrong at the time he committed this offense. I do not think it is proper to have a definition of what is in a clinical report, particularly when it has been testified to by one expert.

The Court: This witness has not testified that he had that.

Mr. Zabriskie: I am just asking that for the enlightenment of the jury.

The Court: I will sustain the objection.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

20. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, permitted the Prosecutor of the Pleas in his summation to make and because the Prosecutor did make the following statement (p. 436, ll. 1 to 40); and because the said Court did not cause said remarks to be stricken and did not instruct the jury to disregard same:

"* * * I get my check just the same. Mr. Allyn will get his check just the same. You will still have a Prosecutor. I am in for five years. What difference does it make to me? I have been practicing law since 1910. This is the first time I ever tried a first degree case for the State. I have defended men in this court who were convicted of murder in the first degree and are out on the street today. The last term of court, the Court of Pardons let a man out who was convicted of first degree murder for killing his wife with a shotgun. As long as I have been practicing law—

Mr. Zabriskie: Your Honor please, that is not in the evidence, and I object, and I ask an exception be noted.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge.

The Court: Let us just confine ourselves to the evidence, Mr. Prosecutor.

The Prosecutor: The Court will charge you, Ladies and Gentlemen of the Jury, there is a Court of Pardons, a constitutional court of this State, and I may say so because it is a matter of judicial notice, and that Court of Pardons can release a man who is in jail any time it wants to. There are times when it is better for the man and better for society that he be prevented forever from again doing the sort of thing this man did. Doctor Leavitt said it was his opinion that this thing could happen again."

21. Because the trial Court erroneously and to the prejudice of the defendant, Robert Deegan, permitted the foregoing remarks (see Paragraph 20) of the Prosecutor and his summation to stand (p. 438, ll. 2 to 18):

"Mr. Zabriskie: Just for the sake of the record, I want to ask an exception be noted to the Prosecutor's reference to the Court of Pardons and the power of the

Court of Pardons, and the possibility this man might be out within fifteen years, or whatever that language was, and that in other cases that have been tried, there have been cases where they are walking the streets now.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

22. Because the evidence adduced by the defendant on the issue of insanity was borne by the defendant's production of a strong preponderance of the evidence and the verdict of the jury was contrary to said evidence and was based on passion and prejudice.

23. Because the trial Court before whom said cause was tried, at and upon the trial of the said issue so joined between the State of New Jersey and the said Robert Deegan, charged the jury as follows (p. 448, ll. 8 to 20):

"It is said in this case that the defendant has been previously convicted of crime. If you find this to be a fact, you have a right to take this fact into consideration in connection with all the other evidence in the case. It is for you, Members of the Jury, to determine to what degree, if any, Deegan's credibility or the credibility of any other witness who has been previously convicted of crime has been affected. And, in this connection, you as jurors should also consider the demeanor of

the witnesses upon the stand and the manner in which they testified in determining their credibility.''

although the defendant, Robert Deegan, did not take the witness stand and was not sworn as a witness.

24. Because the trial Court erroneously and with prejudice to the defendant, Robert Deegan, denied the motion for an arrest of judgment on the ground that the jurors in the case were drawn from a panel that had been challenged as to the array which challenge had been overruled without legal cause (p. 460, ll. 38 to 40 and p. 461, ll. 1 to 38):

''Mr. Zabriskie: I make a motion in arrest of judgment on the ground that the jurors that imposed the sentence in this case were drawn from a panel of jurors where there had been a challenge to the array and overruled without legal cause for the same being overruled.

The Court: The motion is denied.

The Prosecutor: I move the sentence of Robert Deegan, if your Honor please.

The Court: All right. You will produce the prisoner.

(The defendant stands before the Court.)

The Court: Robert Deegan, have you anything to say why sentence should not be pronounced against you?

Robert Deegan: No, sir.

The Court: The judgment and sentence

of this Court is that you suffer the punishment of death at the place and in the manner provided by law on some day within the week beginning Sunday, the 18th day of March, 1945, and may God have mercy upon you.

Mr. Zabriskie: Of course, your Honor will allow me an exception to your Honor's ruling?

The Court: Oh, surely. You had better get it on the record.

Mr. Zabriskie: Yes, sir. Exception allowed.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

25. Because the verdict was against the weight of the evidence.

26. Because the proof could not satisfy a considerate mind beyond a reasonable doubt that the plaintiff-in-error was guilty of murder in the first degree.

27. Because the verdict was the result of mistake, passion, prejudice or partiality.

JOHN B. ZABRISKIE,
EMIL M. WULSTER
Attorneys for Plaintiff-in-Error

Service acknowledged March 27th, 1945.

WALTER G. WINNE
Prosecutor of the Pleas

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Plaintiff-Defendant in Error,*	On Indictment for Murder.
VS.	On Writ of Error to Bergen Oyer and Terminer.
ROBERT DEEGAN, *Defendant-Plaintiff in Error.*	

BRIEF FOR DEFENDANT-PLAINTIFF IN ERROR.

The plaintiff in error, Robert Deegan, together with Martin Hoffman, Ruth Oberempt and Carolyn Twing, were indicted by the Grand Jury of Bergen County charged with the murder of one Ethel Hermann. The proof indicated that Ethel Hermann was struck with a baseball bat by Robert Deegan while he and Martin Hoffman were engaged in a robbery of the said Ethel Hermann.

There was a severance as to the female defendants, Ruth Oberempt and Carolyn Twing.

Robert Deegan and co-defendant, Martin Hoffman, were tried in the Bergen County Court of Oyer and Terminer before Hon. A. Demorest Del Mar and a jury and convicted of murder in the first degree on March 23rd, 1944.

As to Martin Hoffman, there was a recommendation of life imprisonment. No recommendation was made by the jury as to Robert Deegan.

On appeal to the New Jersey Court of Errors and Appeals, the judgment of conviction of Robert Deegan was reversed. The case is reported in 132 New Jersey Law, Page 261.

On January 29th, 30th, and 31st, 1945, retrial of Deegan was had before Hon. Herman Vanderwart and a jury.

The jury returned a verdict of murder in the first degree. No recommendation of life imprisonment was made by the jury.

There was no controversy at the trial as to the manner in which the injuries were inflicted on the deceased, Ethel Hermann, which injuries caused her death.

The defense interposed was that of insanity at the time of the commission of the act which resulted in Ethel Hermann's death.

The case is before the Court on Assignments of Error, Specifications of Causes for Reversal, and on the entire record and proceedings had at and before trial and at and before the time of imposition of sentence.

The Assignments of Error and Specifications for Causes of Reversal and other error may be classified generally as follows:

First: Error in sustaining the demurrer to the challenge to the array of jurors and the denial to plaintiff in error of his right to present evidence in support of such challenge.

Second: Prejudicial error in connection with the selection of the jury before whom the case was tried.

Third: Prejudicial and harmful error in certain parts of the charge of the Trial Court.

Fourth: Prejudicial error in the remarks of the Prosecutor of the Pleas.

FIFTH: Error in the admission and rejection of evidence.

SIXTH: Error growing out of the fact that the verdict was against the weight of evidence, the result of mistake, passion, prejudice or partiality, the defendant having borne the burden of introducing a strong preponderance of the evidence in support of the defense of insanity.

SEVENTH: Miscellaneous.

Assignment No. 1.

Specification No. 1.

1. Because the Court erroneously refused and denied to the defendant, Robert Deegan, the right to present evidence and proof in support of his challenge to the array (p. 50, ll. 22 to 31):

> "Mr. Zabriskie: The question the Prosecutor says we do not offer to take proof, that is just exactly what we do.
>
> The Court: I am sorry, I don't understand you. Will the stenographer repeat the statement Mr. Zabriskie just made?
> (Mr. Zabriskie's statement repeated.)
> Mr. Zabriskie: That's what we ask for in our challenge, that evidence be taken."

and did erroneously sustain the demurrer of the State of New Jersey to said challenge to the array (p. 51, ll. 30 to 38):

> "The Court: * * * I think my duty is clear, the demurrer is sustained, and in

case there be any doubt about it, I know I, myself, have no malice toward this defendant, and I cannot conceive upon what alleged facts this challenge is based. The Court will proceed to strike a jury.
Mr. Zabriskie: Your Honor will allow me an exception to your Honor's ruling."

Said challenge to the array was in form as follows (p. 20, ll. 1 to 40):

"BERGEN COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	Sur Indictment for Murder. December Term, A.D. 1943. Challenge to Array.

ROBERT DEEGAN, defendant, hereby challenges the array of jurors chosen by Honorable A. D. Del Mar, Judge of the Common Pleas Court, holding the Court of Oyer and Terminer in and for the County of Bergen in the absence of a Justice of the Supreme Court, being one charged with the duty of preparing the list from which the panel of jurors in the above entitled cause should be drawn after the striking of the number of jurors permitted by law, because the said Judge is biased and prejudiced against the defendant, Robert Deegan, and does not

stand indifferent between The State of New Jersey and the said Robert Deegan. And this challenge to the array this defendant demands that the Court try.

JOHN B. ZABRISKIE
EMIL WULSTER
Attorneys for the defendant,
Robert Deegan."

The form of the demurrer is in language as follows (p. 21, ll. 1 to 40):

"BERGEN COUNTY COURT OF OYER AND TERMINER

STATE OF NEW JERSEY, *vs.* ROBERT DEEGAN, *Defendant.*	On Indictment for Murder. Demurrer of Challenge to the Array.

Now comes the State of New Jersey by Walter G. Winne, Prosecutor, and having read the challenge to the array says that said challenge in manner and form is not sufficient in law and this it is ready to verify.

Said challenge is insufficient in that it does not set forth the facts upon which said challenge is based; said challenge is insufficient in that it expresses only conclusions of law; said challenge is insufficient because it does

not state in what manner the court is prejudiced and impartial and disqualified.

WHEREFORE, the Prosecutor of the Pleas of Bergen County says that the matters contained in said challenge are not sufficient in law to bar, disqualify and preclude the said A. Demorest Del Mar from sitting in judgment upon the trial of the indictment of the above named defendant.

WHEREFORE, the said Walter G. Winne, Prosecutor as aforesaid, prays judgment.

WALTER G. WINNE,
Prosecutor of the Pleas of
Bergen County"

It is submitted that notwithstanding the generality of the language used in the challenge to the array, evidence should have been taken.

Assignment No. 2.

Specification No. 2.

2. Because the Court sustained the objection of the Prosecutor to the following question put to Evelyn G. Oliver, a juror, on her *voir dire* (p. 78, ll. 25 to 40 and p. 79, ll. 1 to 19):

"*By Mr. Zabriskie*:

Q. Now, in the light of that statute, if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into

consideration the fact that he was mentally weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death?

The Prosecutor: Now, that is objected to. I think that is no part of the facts. As to whether a juror could find a recommendation upon the facts is from all the evidence. I do not think that it is a fair question to pick out any one thing and ask the juror if that one thing would influence the juror, and particularly to ask the juror if a thing, which is not a defense but which is pleaded as a defense, would mitigate the punishment.

The Court: I will sustain the objection.

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

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge"

The statute referred to by counsel, above indicated, was:

"Revised Statutes 2:138-4. Murder; punishment. Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death unless the jury, shall by its verdict, and as a part thereof, upon and after the consideration of all the evidence, recommend imprisonment at hard labor for life, in which case

this and no greater punishment shall be imposed."

It is strongly urged that the defendant was entitled to know what attitude the juror would be expected to take when the case developed, as it was expected it would develop, into a situation where the mental deficiency of the defendant would become an outstanding feature of the case.

A reading of the testimony in this case discloses that from the outset, in view of the confession made by the defendant Deegan, and in view of the nature of the crime that Deegan was alleged to have committed, there was a probability of his being found guilty of murder in the first degree. He had confessed to the commission of the act of robbery which resulted in the death of Mrs. Hermann. He interposed the defense of insanity. With the high caliber of experts who had testified in the prior trial, and who were to testify in this trial, he might easily realize that he was at a disadvantage in attempting to maintain his defense successfully. To him, possibility of a recommendation of life imprisonment was of the greatest importance. It was a matter that would likely come up when the jury deliberated on a final determination of the case. He was entitled to know, it is contended, what the frame of mind of prospective jurors might be on the question of making a recommendation of life imprisonment, if they found the defendant guilty of the crime charged in the indictment. It is contended that he was entitled to know whether a juror would send him to the chair if he was found guilty, or whether or not the juror would take into consideration the fact, if proved to be a fact, that he was mentally weak or mentally

deficient at the time of the commission of the act that resulted in death.

Until the present time counsel have not been able to find a decision of the precise question involved, but it is contended that on sound legal principles, the defendant was entitled to know from a prospective juror whether or not in determining to make a recommendation or not make a recommendation of life imprisonent, he would take into consideration the fact which the defense knew would be conclusively proven, namely, that the defendant was mentally weak and mentally deficient at and before the time of the commission of the act alleged, although there was a question as to whether or not the mental condition existed at the time of the commission of the act which would exonerate him from the crime of murder.

In objecting to the question the Prosecutor of the Pleas states that whether a juror could find a recommendation upon the facts is from all the evidence. However, it is contended that if there was but one fact which, if proved, would conclusively affect the mind of the juror, the defendant was entitled to know of that condition of the juror's mind in order that he might protect himself against the penalty of death. It it contended that it makes no difference whether or not the alleged matter was or was not a matter of defense to the crime of murder. In the defense of insanity, it is obviously necessary to prove or at least permissible to introduce evidence of the mentally weak or mentally deficient character of the accused, and it is that evidence which either alone or in conjunction with other evidence might result in the making of a recommendation.

Defense counsel insist that there was a grievous harmful error to the defendant in the overruling of the said question to the prospective juror, Evelyn T. Oliver.

The defendant could not gamble with a prospective juror whose attitude in the above respect was unknown; he was, therefore, obliged to make a peremptory challenge of the witness, thereby suffering. It will be noted in this case that defendant exhausted all of his peremptory challenges and became obliged to accept jurors whether or not they were objectionable to him.

Assignment No. 3.

Specification No. 3.

3. Because the Court sustained the objection of the Prosecutor to the following question put to John A. Digney, a juror, on his *voir dire* (p. 82, ll. 26 to 40):

"*By Mr. Wulster*:

Q. Do you find it objectionable, in the event that the state or society confines people to jail for life, that they should be fed and cared for? A. No.

The Prosecutor: That question is objected to, your Honor please. I think it is immaterial in the questioning between counsel and the juror as to whether he thinks people should be fed or they should not be fed.

The Court: I will sustain that objection.

Mr. Wulster: May I have an exception on the record?

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The reasoning under this assignment and exception is analogous to that contained under No. 2, *supra.* In connection with the possibility of the jury as to whether or not to recommend life imprisonment, some jurors might be governed to some extent by their attitude that criminals should not be fed and cared for as public charges. It is therefore contended that the defendant Deegan was entitled to find out the attitude of the jurors in the foregoing regard in order to intelligently exercise his right of challenge if he believed from answers given by the prospective juror, the juror should be excluded from sitting in his cause.

In order to determine whether a person called as a juror possesses necessary qualifications, whether he has pre-judged the case, whether his mind is free from prejudice or bias, the suitor has the right to ask him questions, the answers to which may tend to show he may be challenged for cause or disclose state of facts whereby he may be challenged peremptorily. It is often indispensable to the selection of an impartial jury that the occupation, habits, associations and predisposition of the juror should be known. *Donovan* v. *State,* 139 Ill. 412, 28 N. E. 964; *Lavin* v. *State,* 69 Ill. 303. The defendant should be allowed great latitude in examining jurors, so as to be in a position intelligently to exercise his challenges, and whenever there is a fair doubt as to the propriety of a question it is better to allow it. *Connors* v. *United States,* 158 U. S. 408, 39 L. ed. 1033, 15 Sup. Ct. Rep. 951, citing *State* v. *Dooley,* 89 Iowa, 584, 57 N. W. 414; *Hale* v. *State,* 72 Miss. 140, 16 So. 387; *State* v. *Tighe,* 27 Mont. 327, 71 Pac. 3; *State* v. *Godfrey, Brayton* (Vt.) 170; *People* v. *Car Soy,* 57 Cal. 102;

State v. *Bresland,* 59 Minn. 281, 61 N. W. 450; *Towl* v. *Bradley,* 108 Mich. 409, 66 N. W. 347; *State* v. *King,* 174 Mo. 647, 74 S. W. 627, 15 Am. Crim. Rep. 616.

The object of examination of jurors on their *voir dire* is to determine whether they are qualified to sit in the trial, and for this purpose a rigid examination is allowed before their acceptance by the parties to the cause, and the courts have been liberal in permitting investigation to be made in order to ascertain whether grounds for challenge exist. *State* v. *Huffman,* 86 Ohio St. 229, 99 N. E. 295, Ann. Cas. 1913D, 677.

Assignment No. 4.

Specification No. 4.

4. Because the Court sustained the objection of the Prosecutor to the following question put to Joseph H. Schroeder, a juror, on his *voir dire* (p. 87, ll. 29 to 40 and p. 88, ll. 1 to 17):

> "*By Mr. Wulster*:
>
> Q. In the event that you and the jury should feel that this is a first degree murder case, and you should find accordingly, do you have any preconceived convictions that society or the State is better off by inflicting the death penalty rather than imposing imprisonment at hard labor for life?
>
> The Prosecutor: That question is objected to. The juror has said he would decide the case on the evidence and the law. I think the question as to whether he has any feeling outside that question of

whether he would decide the case on the evidence and the law is objectionable.

The Court: Objection sustained.

Mr. Wulster: May I have an exception, sir?

The Court: You may.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The reasoning of this assignment is analogous to that applicable to the preceding two assignments, numbers 2 and 3.

Assignment No. 5.

Specification No. 5.

5. Because the Court overruled defendant, Robert Deegan's, challenge for cause of Abram M. Ottignon, a member of the panel of struck jurors drawn in said cause, notwithstanding the fact that the said juror so challenged for cause said he believed that everyone convicted of murder in the first degree should suffer the death penalty (p. 91, ll. 9 to 40; p. 92, ll. 1 to 40; p. 93, ll. 1 to 40; p. 94, ll. 1 to 26):

"*By Mr. Zabriskie*:

Q. Mr. Ottignon, as is indicated in this paragraph of the law that I am going to read, so that when you arrive at a verdict, of course, if you arrive at a verdict of not guilty, why, then that would end the matter and you would not go any further; but, under the law, if you should decide the defendant

was guilty of murder in the first degree, which is the only degree that you can find, if you find at all, in this case, after you have found that, as a part of your verdict, you have a right and it is your duty to go further and determine whether or not from the evidence, life imprisonment should be recommended. Now, for the sake of accuracy, I will read that statute. You have heard it already, but for the sake of accuracy and for the sake of the record, the law says this:

'Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.'

Now, in the light of that Statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty? A. I do.

Q. You believe that everyone should suffer—— A. Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Prosecutor: May I interrogate the juror further?

The Court: Certainly.

By the Prosecutor:

Q. It may be that you do not exactly understand the question Mr. Ottignon. In this case the State contends that the prisoner

brought about the death of Mrs. Ethel Herrmann in perpetrating a robbery; that is to say, that as a result of robbing her, he struck her and she died. Now, it has been suggested that if the State proves that is murder in the first degree, the juror then must under the law consider, if he finds that the State has proved murder in the first degree, that from all the evidence in the case, the youth of the young man, his bringing up, everything that you hear in the case, shall he suffer the extreme penalty, or shall he suffer life imprisonment; and the Judge will charge you, I am sure, that you should consider all of the evidence and, after having considered the evidence, if you find first degree, and further find either a recommendation of life imprisonment or not find the recommendation, in which case death would be the result.

Now the question is if, no matter what the evidence was, if you found it was murder in the first degree, would you also find the extreme penalty, and under no circumstances, regardless of the evidence, bring in a recommendation of life imprisonment?

Mr. Zabriskie: He has already answered that question.

The Court: I will allow it.

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

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The Juror: May I answer?

The Court: Yes.

A. My answer to that, if the evidence shows he is guilty of murder in the first degree, I believe in the death penalty.

By the Court:

Q. Do you believe in the death penalty to the exclusion of the law as it has been read to you, namely, that the jury, if they are satisfied from all of the evidence that it is wise, may bring in a verdict of life imprisonment at hard labor? A. You ask a specific question. What do you mean?

Q. I ask you whether you agree with that law? A. I agree with the law, sure.

Q. As it is expressed? A. I agree with the law. I have no objection to that.

The Court: Is there a challenge?

Mr. Zabriskie: Yes. I enter a peremptory challenge for cause, I should say.

The Prosecutor: Of course, I do not think the juror should be challenged for cause, your Honor please. I understand the juror said to your Honor he would decide the case according to the law as charged by the Judge.

The Court: Yes. If you should be chosen to sit as a juror in this case, knowing the law as you have heard it read by counsel, would you be willing and are you in a position to decide the case upon the evidence as it is adduced before you and the law as I may charge it, bearing in mind what has been said as to a recommendation for life imprisonment?

The Juror: I think so.

The Court: I will overrule the challenge.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

From the foregoing it will be noted that the prospective juror, Abram M. Ottignon, maintained that every one convicted of murder in the first degree should suffer the death penalty. Inferentially, he would not be influenced to make a recommendation of life imprisonment by any evidence that might be adduced and it is therefore contended that his frame of mind, elicited by examination, was such that a challenge for cause as to him should have been sustained.

Assignment No. 6.

Specification No. 6.

6. Because the Court overruled defendant, Robert Deegan's, challenge for cause of John Heck, a member of the panel of struck jurors, drawn in said cause notwithstanding the fact that said juror indicated that he had formed an opinion from what he has read (p. 129, ll. 20 to 40; p. 130, ll. 1 to 40; p. 131, ll. 1 to 40 and p. 132, ll. 1 to 30):

"*By Mr. Wulster*:

Q. Has what you have read or heard fixed any thought in your mind whereby it would be unable—whereby you would be unable to

bring in a fair and just verdict according to the evidence and the law as charged? A. Well, from what I have read so far, I mean, in the papers, unless new evidence is brought out, whether this Court is going to bring new evidence, I think I have.

Q. You think you have formed an opinion? A. I have formed an opinion.

Q. You have formed an opinion? A. On the old evidence.

Q. Do you know the defendant, Robert Deegan, or any member of his family? A. I do not.

Q. Do you know the decedent, Ethel Herrmann, or do you know any member of her family? A. I do not.

Q. Do you know the Prosecutor, Mr. Winne? A. I know of him. I have played golf behind him, but I don't know him personally.

Q. You both belong to the same golf club? A. No. I played in the Grand Juror's tournament right behind him and spoke to him.

Q. Do you know Mr. Allyn? A. No. I never had the pleasure.

Q. Have you any fixed opinion in your mind which would prevent you from bringing in a fair and just verdict according to the evidence and the law as charged by the Judge? A. On new evidence as presented in court.

Mr. Wulster: May we have the question read?

(Question read.)

A. No, I think I could.

Q. You think that perhaps your mind is so open that you could decide it on the evidence adduced in court? A. If there was new evidence, as I said, presented, from what I have read and from what I have heard.

Q. You have an opinion, a fixed opinion now, on the case? A. I have a fixed opinion on the case unless I hear new evidence.

Q. And if you did not hear new evidence, that fixed opinion would prevail? A. It would stand.

Mr. Wulster: Excused for cause.

The Prosecutor: Well, I object to that.

Mr. Wulster: Challenged for cause.

The Prosecutor: I object to that. All the evidence is going to be new evidence. There is no old evidence in this case. The question is, Mr. Juror, on the evidence produced here beginning today and continuing until this case is over, would you try the case on that evidence and not on something you heard before you came to court? A. No, I would try the case on new evidence presented in court.

The Court: You have not heard any evidence yet.

The Juror: That is what I said.

The Court: Then what you are going to hear today, you would not describe as new evidence, would you? You have not heard any yet.

The Juror: I have heard nothing yet.

The Court: Well, if you could say what you are about to hear is the evidence in the case,—

The Juror: That is right.

The Court: —through the sworn testimony of witnesses—

The Juror: That is right.

The Court: The question is, sitting as a juror in this case and hearing the testimony as sworn testimony from the witnesses, all of the evidence in the case, and having been charged by the Court, would any opinion which you had heretofore formed guide you in bringing in your verdict, or would that testimony and evidence and Court's charge direct your mind?

The Juror: I think new testimony would have a lot to do with my verdict.

The Court: What is the motion before the Court?

Mr. Wulster: The challenge is that the Juror be excused for cause.

The Court: Is that opposed by the Prosecutor?

The Prosecutor: Yes, sir. I think the juror has stated that he would try the case on the evidence, and I think the cases are uniform that, although a man may come into court with an opinion based on what he had heard outside of the courtroom, if his statement is that he will try the case on the evidence produced in court and the charge of the Court fairly, regardless of what he has previously heard, he is an acceptable juror. That is held in the most recent case of Jefferson, with which we are all familiar.

The Court: I will overrule the challenge and allow the juror to sit.

Mr. Wulster: May I have an exception to that ruling, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

This juror, John Heck, apparently had a fixed conviction of guilt. He stated that, "I think new testimony would *have a lot to do with my verdict.*" That is as far as he would go. We submit that the challenge for cause should have been allowed.

Assignment No. 7.

Specification No. 7.

7. Because the defendant, Robert Deegan, was denied his statutory right to a panel comprised of 76 jurors in that only 75 jurors were served thus limiting his right of rejection (p. 138, ll. 25 to 40 and p. 139, ll. 1 to 7):

"The Sheriff: Number 29, Julian L. Fish. She was not served, your Honor.

The Court: Was not served?

The Sheriff: Was not served.

The Court: Call your next.

The Sheriff: Number 59, Harold F. Noble.

Mr. Zabriskie: For the purpose of the record, I interpose or take an exception to the fact that the jury serving in this case, the names that were served did not constitute the panel required by law, which would be seventy-six names, only seventy-five having

been served. Just for the purpose of the record."

N. J. S. A. 2:93-18 outlines the practice as to struck juries in murder cases.

Inter alia, it provides:

"and the remaining seventy-six names shall be placed by the sheriff in the box in the presence of the Court, and, from the names so placed in the box, a jury shall be drawn in the usual way."

Assignment No. 8.

Specification No. 8.

8. Because the Trial Court erroneously and with prejudice to the defendant, Robert Deegan, over objections, allowed a prospective juror, Charles R. Walker, to answer an improper question (p. 145, ll. 15 to 40 and p. 146, ll. 1 to 4):

"*By the Prosecutor*:

Q. Well now, I understand, Mr. Walker, that under the law in this State in certain types of crimes, the punishment is death by electrocution. Is your feeling of such a character that it would be difficult, no matter what the evidence was, no matter what the Judge's charge was, to bring in a verdict that brought about the death by electrocution of the defendant?

Mr. Wulster: I object to that form of the question. I think the test is, religious scruples against the death penalty.

The Prosecutor: No. The Favorito case, and a number of other cases say, if he has any prejudice of any kind.

The Court: I will allow the question.

Mr. Wulster: Your Honor will allow me an exception?

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

A. Will you repeat that?

(Question read.)

A. I do not believe so."

In the case of *State* v. *Favorito,* 115 N. J. L. 198 at page 199, the following appears:

"The question put to two of the persons summoned as jurors, on their *voir dire,* of which complaint is made, was 'have you any religious or conscientious scruples against capital punishment'?"

Assignment No. 9.

Specification No. 9.

9. Because the Trial Court sustained the Prosecutor's challenge for cause of Charles R. Walker, a member of the panel of struck jurors drawn in said cause, even though said juror indicated that his prejudice was not entirely based upon religious scruples (p. 146, ll. 6 to 40 and p. 147, ll. 1 to 11):

"*By the Prosecutor*:

Q. You do not believe it will be difficult? A. It would be hard, yes. It would depend on the evidence as presented.

Q. Yes. So, Mr. Walker, you start right in laboring to overcome prejudice, don't you. A. Yes.

The Prosecutor: I challenge for cause your Honor, please.

Mr. Wulster: I object to the challenge.

"*By the Court*:

Q. Upon what is that feeling of yours based? Would you tell the Court, Mr. Walker? A. Well, as I have said before, it has not been of a definite nature. I have felt a leaning towards that, though it really has not eliminated the question of murder, and it has been a question in my mind as to whether it was really the right thing.

Q. The question in your mind is as to whether punishment by death is really the right thing? A. Yes, sir.

Q. Now, is that based upon a religious—has that a religious basis in your mind? A. No, not entirely.

The Court: I will sustain the challenge.

Mr. Zabriskie: You will allow me an exception for the record?

The Court: I will allow you an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The Court: You may be excused.

(Juror excused.)"

It is submitted that the examination of this juror did not elicit facts that were a good reason for sustaining a challenge for cause. The questions propounded to the juror do not come within the language justified in *State* v. *Favorito, supra.*

Assignment No. 10.

Specification No. 10.

10. Because the Trial Court committed error prejudicial to the defendant, Robert Deegan, in allowing in evidence certain photographs of the family of the decedent, Ethel Herrmann (p. 190, ll. 33 to 40 and p. 191, ll. 1 to 16):

"*By the Prosecutor*:

Q. And you say you recognize the family of the late Ethel Herrmann as being portrayed by these pictures? A. Yes, sir.

The Prosecutor: May they go in evidence without a separate number, if you Honor please?

Mr. Zabriskie: I do not see the materiality of this. There is no question of identity in this case.

The Court: I will allow that.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

It is submitted that the admission in evidence of the picture of the family of the decedent was harmful error. There was no question as to the identity of the decedent. It was not material to the issue. It could only serve to arouse sympathy for the decedent and animosity toward the accused. It may have been the bit of evidence that resulted in the refusal of the jury to recommend life imprisonment.

Assignment No. 11.

Specification No. 11.

11. Because the Trial Court erroneously and to the prejudice of the defendant, Robert Deegan, on cross examination, sustained an objection made by the Prosecutor to a question put to the State's witness, Herbert Allmers (p. 202, ll. 36 to 40 and p. 203, ll. 1 to 5):

> "*By Mr. Zabriskie*:
>
> Q. You knew for a long time there was something wrong with his mind?
>
> The Prosecutor: I object to that.
> The Court: I will sustain the objection, that calls for a conclusion.

The witness, Herbert Allmers, had been a police officer in Dumont, Deegan's home town for 22 years (p. 201, l. 33). He had recommended that he be taken to a psychiatrist (p. 201, l. 35 to l. 38, and p. 202, l. 11).

It is submitted that he was qualified to give an opinion as to whether or not there was something wrong with the boy's mind.

Assignment No. 12.

Specification No. 12.

12. Because the defendant, Robert Deegan, suffered harmful and prejudicial error in that he was tried by a jury drawn from a panel of struck jurors the entire array of which, by reason of its very selection, was challenged. The said panel was selected by Hon. A. Demorest Del Mar, the Judge who was challenged to disqualify himself and who did withdraw after filing an opinion overruling the challenge. The challenge to the array was based on bias and prejudice allegedly had by the said selecting judge, A. Demorest Del Mar, and in that he did not stand indifferent between the State of New Jersey and the defendant. A new panel should have been drawn for the trial had before the Hon. Herman Vanderwart. It was not.

The merit, if any, under this assignment and specification is adverted to under Assignment No. 1, Specification No. 1.

Assignment No. 13.

Specification No. 13.

13. Because the Court overruled the question put to the witness, Morris Deegan, as follows (p. 278, ll. 15 to 29):

"*By Mr. Wulster*:

Q. Did Mr. Allmers give you any advice in connection with Bob?

The Prosecutor: I object.
The Court: I sustain the objection.

Mr. Wulster: Your Honor will allow me an exception?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

It is submitted that it would have been proper for Deegan, the father of Robert Deegan, to have given at least a yes or no answer to the foregoing question.

Assignment No. 14.

Specification No. 14.

14. Because the Court overruled the admission in evidence of the original record of William Harry McKim, the grandfather of the defendant, who had died in the Middletown State Hospital for the Insane (p. 300, ll. 9 to 36):

"*By Mr. Zabriskie*:

Q. Miss Frink, you are from the Middletown Insane Asylum? A. Middletown State Hospital.

Q. The Middletown State Hospital. That is for the insane? A. Yes, sir.

Q. What position do you hold there? A. I am secretary to the director.

Q. And have you with you a record— A. Yes.

Q. Of Mr. William Harry McKim? A. Yes.

Q. And is that the exact—is that the rec-

ord as it remains on file? A. That is the original record.

Q. That is the original record, that is kept in your custody? A. That is right.

Q. At the hospital? A. Yes, sir.

Mr. Zabriskie: I offer this is evidence.

The Prosecutor: That is objected to, if your Honor please. The hospital record is not evidential, not properly evidential.

The Court: Objection sustained.

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

The Court: You may have an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

It is submitted that a hospital record would be evidential for the purpose for which it was offered in this cause. The intended use of the records in this case was not analogous to the circumstances of *State* vs. *Shapiro,* 89 N. J. L. 319.

Assignment No. 15.

Specification No. 15.

15. Because the Court struck out and instructed the jury to disregard testimony of Helen Louise Dickson as follows (p. 302, ll. 26 to 40 and p. 303, ll. 1 to 9):

"*By Mr. Wulster*:

Q. You see the report card? A. I saw the report card and it was a total failure.

The Prosecutor: I object to that, the witness' statement what she saw.

The Court: Stricken out.

Mr. Wulster: Exception, please.

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The Court: It will stricken out and disregarded by the jury as to what was on the report card.

Mr. Wulster: May I note an exception to the striking, sir?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

It is submitted that the report cards of the defendant made in the ordinary course of school attendance contained matter that was properly admissible for the purpose of throwing light on the mental condition of the defendant Deegan and that the testimony above stricken should not have been stricken.

Assignment No. 16.

Specification No. 16.

16. Because the Court struck out part of the testimony of Myrtle E. Cole (p. 307, ll. 25 to 40 and p. 308, ll. 1 to 36):

"*By Mr. Wulster*:

Q. Can you tell us what you observed about him over the period of years? A. When Bob

was a youngster, he associated with other boys and my son. And although Bob was older, his mentality would never come up to the other boys. He would—they would play together, and Bob would sit at the side. We had open house at my place, and the boys were always welcome. They would play and asked Bob to play ping-pong, and he would say, 'I cannot play that.' And they would coax him and no, he would not play. And he would just sit there, and in a little while he would get up and go home. And they would try to attract different things in games and thought they might interest him, but he was never interested in play.

Bob has always been very gentle. I have never seen him in any quarrel or lift a hand to any other boy. Other boys would have little arguments, but I have never seen Bob do that. He was always good to children and to animals, and was always very glad to do anything for anybody.

The Prosecutor: Now, I object to the testimony, if your Honor please, and ask to have it stricken. The questions should be confined to peculiarities, and not in praise of his conduct and relation to animals.

Mr. Wulster: I think it is proper. She states her observation.

The Court: That portion of the answer will be stricken which is a recital of any praise of his conduct, and only that testimony permitted which tells of those peculiarities upon which the jury may base some opinion as to the mentality of the defendant.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception on the record, sir?

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

It is submitted that the striking by the Court of the answer of Myrtle E. Cole was not in language sufficiently specific to make it probable that the jury would be able to determine what testimony should be considered by it and what testimony should be disregarded.

Assignment No. 17.

Specification No. 17.

17. Because the Trial Court erroneously and to the prejudice of the defendant, Robert Deegan, struck a part of the testimony of the witness, Edgar Hunt Deegan, the pertinent part of said testimony being as follows (p. 322, ll. 22 to 40; p. 323, ll. 1 to 15; and p. 327, ll. 1 to 17):

"And well, my own personal observation was, as I grew up, and as I am now, that Bob did not or he has not, rather, the mentality of a boy ten years old.

The Prosecutor: Now, I do not think that is proper. I object to that and ask it be stricken out.

The Witness: That is—

Mr. Wulster: I think that is permissible, sir, for him to gauge mentality from his observation under the cases.

The Court: He may tell us what he observed.

Mr. Wulster: That is right, and he may give us his opinion based on the observation.

The Prosecutor: He may give us his opinion as to the mentality of his brother. He certainly cannot do it the way experts do by cataloging his age.

Mr. Wulster: I think the cases hold that testimony of lay witnesses is entitled to as much if not more respect than experts.

The Prosecutor: I challenge that statement and ask counsel to produce the citation.

Mr. Wulster: The Spencer case, by Justice Hornblower.

* * * * * *

The Court: I will direct that the answer will be stricken out in so far as the attempt to fix the mental age in the opinion of the witness.

The Prosecutor: Thank you.

Mr. Wulster: May we have an exception noted, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The following cases constitute authority for the proposition that lay witnesses may give an opinion as to mentality:

State v. *Aesbach,* 107 N. J. L. 433;
State v. *Morehouse,* 97 N. J. L. 285;
State v. *Spencer,* 21 N. J. L. 197;
Genz v. *State,* 58 N. J. L. 482.

Assignment No. 18.

Specification No. 18.

18. Because the Trial Court erroneously and to the prejudice of the defendant, Robert Deegan, overruled the question, "Mrs. Deegan, do you know what your father died of?" (p. 341, ll. 22 to 40 and p. 342, ll. 1 to 38):

"Q. Mrs. Deegan, do you know what your father died of?

The Prosecutor: Well, now, I know from the record that this lady does not know except from hearsay, and I object to it.

A. My father died in an insane asylum. I didn't like to say it, but he did.

The Prosecutor: The question is not—the answer is not an answer to the question. I think the question is what he died of, not where he died, and I know from the record that at the last trial this lady only knows from hearsay.

The Court: Yes.

The Prosecutor: I would like to know if she knows in any other way before she answers the question.

The Witness: I know my father died in an insane asylum. I was—

The Court: Just a minute. Have you any motion directed to that?

The Prosecutor: Yes. I have no objection to the record showing where he died, if she says she knows, but what he died of, I think she does not know.

The Court: Do you want to take that up on cross examination?

The Prosecutor: No. I merely want to object to the question unless counsel states the lady knows it in some other way excepting by hearsay. He knows what happened at the last trial.

Mr. Wulster: Of course, the family history—

The Court: I will sustain the objection, and allow you to reframe the question if you want.

Mr. Wulster: May I have an exception to your Honor's ruling? It is my opinion that the family history is an exception to the hearsay rule. May I have an exception?

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

It is contended that testimony as to family history may be given by members of a family, whether or not it is obtained from members of the family or elsewhere.

Assignment No. 19.

Specification No. 19.

19. Because the Trial Court erroneously and with prejudice to the defendant, Robert Deegan, erroneously overruled the following question (p. 382, ll. 10 to 40):

> "Q. And can you tell the Court and the jury what that means, a constitutional psychopathic state, and inadequate personality?
>
> The Prosecutor: Now, I object to that, if your Honor please. In the first place, because it is just repetition of what has already been testified to and, in the second place, it is not part of this inquiry at all. This inquiry is not whether a man has a psychopathic personality or inadequate personality; but whether he was conscious of right and wrong at the time he committed this offense. I do not think it is proper to have a definition of what is in a clinical report, particularly when it has been testified to by one expert.
>
> The Court: This witness has not testified that he had that.
>
> Mr. Zabriskie: I am just asking that for the enlightenment of the jury.
>
> The Court: I will sustain the objection.
>
> Mr. Zabriskie: Your Honor will allow me an exception?
>
> The Court: Certainly.
>
> Exception allowed and sealed.
>
> HERMAN VANDERWART,
> Judge."

It is contended that this question was admissible under the conditions that prevailed at the time the question was asked in view of the mental record of Deegan while in the armed forces at Fort Meade. The evidence had disclosed that his final diagnosis there was "Final Diagnosis—Constitutional Psycophathic State—Inadequate Personality (p. 290, ll. 21 to 23).

Assignment No. 20.

Specification No. 20.

20. Because the Trial Court erroneously and with prejudice to the defendant, Robert Deegan, permitted the Prosecutor of the Pleas in his summation to make and because the Prosecutor did make the following statement and because the said Court did not cause said remarks to be stricken and did not instruct the jury to disregard same (p. 436, ll. 1 to 40):

> " * * * I get my check just the same. Mr. Allyn will get his check just the same. You will still have a Prosecutor. I am in for five years. What difference does it make to me? I have been practicing law since 1910. This is the first time I ever tried a first degree case for the State. I have defended men in this court who were convicted of murder in the first degree and are out on the street today. The last term of court, the Court of Pardons, let a man out who was convicted of first degree murder for killing his wife with a shotgun. As long as I have been practicing law—
>
> Mr. Zabriskie: Your Honor please, that is

not in the evidence, and I object, and I ask an exception be noted.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The Court: Let us just confine ourselves to the evidence, Mr. Prosecutor.

The Prosecutor: The Court will charge you, Ladies and Gentlemen of the Jury, there is a Court of Pardons, a constitutional court of this State, and I may say so because it is a matter of judicial notice, and that Court of Pardons can release a man who is in jail any time it wants to. There are times when it is better for the man and better for society that he be prevented forever from again doing the sort of thing this man did. Doctor Leavitt said it was his opinion that this thing could happen again."

It is submitted that this reference to another case, with other rulings and other circumstances, was prejudicial to Deegan. The reference to some action of the Board of Pardons in a case that undoubtedly justified its action but under circumstances not divulged to the jury, undoubtedly had the effect on jurors' minds that they should see to it that Deegan didn't get out of jail by convicting him without recommendation. They considered the entire case in one hour and forty-five minutes. They retired to consider their verdict at 3:15 (p. 458, l. 2) and returned at 5:00 P. M. (p. 459, l. 1).

Assignment No. 21.

Specification No. 21.

21. Because the Trial Court erroneously and to the prejudice of the defendant, Robert Deegan, permitted the foregoing remarks (see Paragraph 20) of the Prosecutor and his summation to stand (p. 438, ll. 2 to 18):

> "Mr. Zabriskie: Just for the sake of the record, I want to ask an exception be noted to the Prosecutor's reference to the Court of Pardons and the power of the Court of Pardons, and the possibility this man might be out within fifteen years, or whatever that language was, and that in other cases that have been tried, there have been cases where they are walking the streets now.
>
> Exception allowed and sealed.
>
> HERMAN VANDERWART,
> Judge."

The same comment as to preceding assignment, No. 20, is applicable.

Assignment No. 22.

Specification No. 22.

22. Because the evidence adduced by the defendant on the issue of insanity was borne by the defendant's production of a strong preponderance of the evidence and the verdict of the jury was contrary to said evidence and was based on passion and prejudice.

The evidence as a whole indicates that Deegan did not have a normal mind.

It is submitted that the jury at most should have found a verdict that would carry life imprisonment.

Passion and prejudice produced a verdict without recommendation. The jury failed to consider that Deegan's case was without contradiction as "Constitutional Psycopathic State. Inadequate Personality.

Assignment No. 23.

Specification No. 23.

23. Because the Trial Court before whom said cause was tried, at and upon the trial of the said issue so joined between the State of New Jersey and the said Robert Deegan, charged the jury as follows (p. 448, ll. 8 to 20):

> "It is said in this case that the defendant has been previously convicted of crime. If you find this to be a fact, you have a right to take this fact into consideration in connection with all the other evidence in the case. It is for you, Members of the Jury, to determine to what degree, if any, Deegan's credibility or the credibility of any other witness who has been previously convicted of crime has been affected. And, in this connection, you as jurors should also consider the demeanor of the witnesses upon the stand and the manner in which they testified in determining their credibility."

although the defendant, Robert Deegan, did not

take the witness stand and was not sworn as a witness.

It is submitted that the foregoing instruction in all probability created some confusion in the minds of the jurors.

It appeared in Exhibit D-1, p. 288, ll. 15 and 16 that Deegan had been arrested and fined $25 for breaking and entering, "one year in reformatory."

Captain Allmers used this language (p. 196, ll. 13 to 17): "I informed him that he was being arrested for something different than what he had been arrested for previously."

The jury were instructed that they had a right to take into consideration facts which as a matter of law they had no right to take into consideration.

Assignment No. 24

Specification No. 24.

24. Because the Trial Court erroneously and with prejudice to the defendant, Robert Deegan, denied the motion for an arrest of judgment on the ground that the jurors in the case were drawn from a panel that had been challenged as to the array which challenge had been overruled without legal cause (p. 460, ll. 38 to 40 and p. 461, ll. 1 to 38):

> "Mr. Zabriskie: I make a motion in arrest of judgment on the ground that the jurors that imposed the sentence in this case were drawn from a panel of jurors where there had been a challenge to the array and overruled without legal cause for the same being overruled.

The Court: The motion is denied.

The Prosecutor: I move the sentence of Robert Deegan, if your Honor please.

The Court: All right. You will produce the prisoner.

(The defendant stands before the Court.)

The Court: Robert Deegan, have you anything to say why sentence should not be pronounced against you?

Robert Deegan, No, sir.

The Court: The judgment and sentence of this Court is that you suffer the punishment of death at the place and in the manner provided by law on some day within the week beginning Sunday, the 18th day of March, 1945, and may God have mercy upon you.

Mr. Zabriskie: Of course, your Honor will allow me an exception to your Honor's ruling?

The Court: Oh, surely. You had better get it on the record.

Mr. Zabriskie: Yes, sir. Exception allowed.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The disposition of this specification and assignment will depend, no doubt, upon the disposition of Assignment No. 1, Specification No. 1, *supra.*

Assignment No. 25.

Specification No. 25.

25. Because the verdict was against the weight of the evidence.

This was argued *supra* under Assignment No. 22, Specification No. 22.

Assignment No. 27.

Specification No. 27.

27. Because the verdict was the result of mistake, passion, prejudice or partiality.

This was argued *supra* under Assignment No. 22, Specification No. 22.

JOHN B. ZABRISKIE,
EMIL M. WULSTER,
Attorneys for and of Counsel with Plaintiff in Error.

Oral argument by

JOHN B. ZABRISKIE, *Counselor at Law.*

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* vs. ROBERT DEEGAN, *Plaintiff-in-Error.*	On Indictment for Murder. On Writ of Error to the Bergen County Court of Oyer and Terminer.

BRIEF OF DEFENDANT-IN-ERROR.

Statement.

The plaintiff-in-error, Robert Deegan, together with Martin Hoffman, Ruth Oberempt and Carolyn Twing, were indicted by the Bergen County Grand Jury for the murder of one Ethel Herrmann. There was a severance as to the two female defendants, Ruth Oberempt and Carolyn Twing.

The plaintiff-in-error, Robert Deegan, and his co-defendant, Martin Hoffman, were tried in the Bergen County Court of Oyer and Terminer, the Honorable A. Demorest Del Mar presiding, with a jury, on March 20, 21, 22 and 23, 1944.

The jury returned a verdict of guilty of murder in the first degree against the plaintiff-in-error, Robert Deegan, and a verdict of murder in the first degree with a recommendation of life imprisonment against the co-defendant, Martin Hoffman. Subsequently the conviction of the plaintiff-in-error, Robert Deegan, was reversed, and he was returned to the County of Bergen for a new trial. *State* vs. *Deegan,* 132 N. J. L. 261.

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The plaintiff-in-error, Robert Deegan, was tried in the Bergen County Court of Oyer and Terminer, the Honorable Herman Vanderwart presiding, with a jury, on January 29, 30 and 31, 1945, and the jury returned a verdict of guilty of murder in the first degree (Case, p. 495). On the 5th day of February, 1945, Judge Herman Vanderwart imposed the sentence of death upon the plaintiff-in-error, Robert Deegan.

He sues out a writ of error in this Court.

Statement of Facts.

On the night of January 14, 1944, Mrs. Ethel Herrmann, aged 40, the wife of Frank Herrmann and the mother of a five-year-old daughter (Case, p. 229), shortly before eight o'clock was walking from her home in Dumont to the house of some friends in the same community to spend an evening with them playing bridge (Case, p. 179). In the vicinity of the Dumont High School, defendant Deegan who, with one Martin Hoffman, had been following Mrs. Herrmann, accosted her and inquired of her the location of a street in Dumont. Mrs. Herrmann responded that she did not know, and proceeded walking in the direction of her destination. Deegan and Hoffman followed her. Deegan carried, concealed under his coat, a large baseball bat. After following Mrs. Herrmann for about half a mile, Deegan, without warning, advanced upon Mrs. Herrmann from the rear and viciously struck her over the head with the bat. Mrs. Herrmann immediately fell to the sidewalk. Deegan dropped the bat and stole from the prostrate body of Mrs. Herrmann her pocketbook. Deegan and Hoffman fled from the scene towards the Dumont railroad station. On the way they stopped in a secluded spot to

examine the contents of the pocketbook. They found a wallet, some papers, a little change purse, a fountain pen and a nail file. In the change purse and wallet approximately $4 was found. This money was subsequently spent by Deegan and Hoffman in New York (Case, pp. 223 and 226). Shortly after Deegan's attack upon Mrs. Herrmann, a motorist proceeding along Park Avenue observed the body of Mrs. Herrmann lying on the sidewalk. He immediately went to her aid and found that she was bleeding from the nose, mouth, and the side of her face was bruised and bleeding. With the assistance of a nearby resident, Mrs. Herrmann was carried into an adjacent house. An ambulance was summoned and Mrs. Herrmann was taken to the Holy Name Hospital in Teaneck (Case, pp. 174-176), where she died on January the 21st, 1944. The primary and proximate cause of death was skull fracture with intracranial hemorrhage. It was found that the fracture of her skull bone extended from the left temporal area to the top of the head; in other words, the fracture extended through all of the areas of the skull, and beneath this fractured area right over the left hemisphere of the brain there was a blood clot about an inch and a half in diameter. According to the medical testimony, the pressure of this clot had caused a necrosis of the brain (Case, pp. 269-270).

The motive for the diabolical act perpetrated by Deegan was established by the testimony relating to his activities preceding the wanton killing of Mrs. Herrmann. About a month or two prior to January 14, 1944, Deegan and Hoffman had become acquainted in New York City. About one week before January 14, 1944, the date of the crime, they met Ruth Esther Oberempt and Carolyn Twing, and spent most of the time with these

two girls until their arrest for assault upon Mrs. Herrmann. Deegan was 27 years old; Hoffman 18; Ruth Oberempt 26 (Case, p. 231), and Carolyn Twing 19 (Case, p. 247). These four spent most of the time together "taking in shows, eating together and loafing around together (Case, p. 232). On Thursday night, January 13th, all four stayed at the Roxy Hotel in New York City —Hoffman and Ruth Oberempt in one room; Deegan and Carolyn Twing in another. The following morning, January 14th, Deegan informed his companions that he was going to Dumont to ask his father for money, and invited the others to go along and visit his folks. The group of four arrived at the home of Deegan's parents in Dumont at about ten o'clock. They remained there for about two hours (Case, p. 216). Whether or not Deegan asked his father for money was not definitely established by the evidence—the fact that he received none was. Leaving the Deegan residence, the party went to the home of Susan Reynolds, an acquaintance of Deegan, where they remained until about four o'clock in the afternoon (Case, p. 220). While at Mrs. Reynolds' house Deegan had concealed under his coat a bread knife, which at the request of Mrs. Reynolds he surrendered to her (Case, pp. 206 and 255). From the Reynolds' home Deegan and his companions went to the Dumont railroad station and remained there "until it was dark" when Deegan and Hoffman left the girls to return later. They went back to the Deegan residence and from under the back porch, the defendant, Deegan, took the baseball bat—this was about seven o'clock. Deegan "stuck" the bat under his coat, and with Hoffman, walked along the streets of Dumont looking for someone to rob. Without success they returned to

the railroad station and talked to the girls, who had remained there, and then left to resume their search for a victim. They followed one woman but abandoned her when "she went into a house." At the corner of Prospect and New Milford Avenues they "stood" on the corner and saw Mrs. Herrmann come along (Case, pp. 222-223). The subsequent vicious attack upon Mrs. Herrmann —the robbery—and their flight—have been previously described.

In the course of their flight Deegan and Hoffman reached the Dumont railroad station and joined the girls. The party then walked to Bergenfield, an adjoining community, boarding a bus for Forty-second Street Ferry and went over to New Yotrk (Case, p. 226). During the journey to New York Deegan remarked to his three companions, "I wonder if I hit her too hard." Hoffman responded, "I don't think so. I don't know." Deegan further said, "I think I hit her too hard. I think I hit her too hard" (Case, p. 238). The wallet stolen from Mrs. Herrmann was exhibited to the girls by Hoffman during the bus trip from Bergenfield (Case, p. 238).

Arriving in New York City Deegan and his companions went to a restaurant where they had spaghetti and beer. Deegan paid the bill with some of the money robbed from Mrs. Herrmann (Case, p. 226).

On Sunday morning, January 16th, at about 1 A. M., Deegan and Hoffman were taken into custody at a restaurant at No. 229 West 42nd Street, New York City. Immediately after Deegan was brought to the 18th Precinct Police Headquarters he admitted assaulting and robbing Mrs. Herrmann (Case, pp. 195-196). Subsequently, at the Prosecutor's Office in Hackensack, in a voluntary confession which he signed and

acknowledged, Deegan related in detail the facts hereinbefore recited (Case, p. 214).

The evidence failed to establish that the State's witnesses, Ruth Oberempt and Carolyn Twing, directly or indirectly participated in the murder of Mrs. Herrmann, consequently they were not "accomplices."

The defense of insanity was interposed by the defendant Deegan. Relatives and friends testified to certain peculiarities of conduct from early childhood. The clinical records of Fort George G. Meade, Maryland, indicated as of May 20th, 1943, the following diagnosis of Deegan: "constitional psychopathic state inadequate personality." Deegan was discharged from the Army on July 3rd, 1943, being A.W.O.L. on several occasions (Case, pp. 287 to 290).

Three alienists testified for the State in rebuttal.

Dr. Paul B. Means of the New Jersey State Hospital in Trenton testified that on or about April 9, 1940, he examined the defendant, Deegan (who had been sent to Annandale from Bergen County for the commission of a long series of burglaries and larcenies) and found "no hallucinations elicited and no delusions elicited at that time, and his mental organization seemed fairly good throughout" (Case, p. 393).

The State's alienists, Drs. Lawrence M. Collins and Christopher C. Beling, testified that Deegan was sane at the time of the commission of the act; he appreciated the act he committed and knew the difference between right and wrong (Case, pp. 397 to 411).

The assignments of error as set forth in the brief of Plaintiff-in-Error are stated to be:

1. Error in sustaining the demurrer to the challenge to the array.

2. Error in selecting the jury.

3. Error in the charge of the Court.

4. Error in the remarks of the Prosecutor of the Pleas.

5. Error in the admission and rejection of evidence.

6. That the verdict was against the weight of evidence.

7. Miscellaneous.

This defendant was twice convicted of murder in the first degree without a recommendation of mercy. The first conviction was before the Honorable A. Demorest Del Mar, and the attorney for the State was Mr. John J. Breslin, Jr. The second conviction was before the Honorable Herman Vanderwart, and the attorney for the State was Walter G. Winne. Two different juries instructed by two different judges found the same verdict. It should not be disturbed a second time unless the error complained of is substantial, and it is submitted that no substantial error appears.

REPLY TO BRIEF OF PLAINTIFF-IN-ERROR.

FIRST.

Assignments Nos. 1, 7, 12, 24.

Specifications Nos. 1, 7, 12, 24.

The trial court did not erroneously refuse and deny to the defendant, Robert Deegan, the right

to present evidence and proof in support of his challenge to the array.

On the 26th day of December, 1944, the return day of the motion to strike a jury in this case, counsel for the plaintiff-in-error served upon the Court and the Prosecutor a document purporting to be a challenge to the array. This challenge to the array is as follows:

> "Robert Deegan, defendant, hereby challenges the array of jurors chosen by Honorable A. D. Del Mar, Judge of the Common Pleas Court, holding the Court of Oyer and Terminer in and for the County of Bergen in the absence of a Justice of the Supreme Court, being one charged with the duty of preparing the list from which the panel of jurors in the above entitled cause should be drawn after the striking of the number of jurors permitted by law, because the said Judge is biased and prejudiced against the defendant, Robert Deegan, and does not stand indifferent between The State of New Jersey and the said Robert Deegan. And this challenge to the array this defendant demands that the Court try."

To which the State of New Jersey, by Walter G. Winne, Prosecutor, filed a written demurrer, which is as follows:

> "Now comes the State of New Jersey by Walter G. Winne, Prosecutor, and having read the challenge to the array, says that said challenge in manner and form is not sufficient in law and this it is ready to verify.

Said challenge is insufficient in that it does not set forth the facts upon which said challenge is based; said challenge is insufficient in that it expresses only conclusions of law; said challenge is insufficient because it does not state in what manner the court is prejudiced and impartial and disqualified.

WHEREFORE, the Prosecutor of the Pleas of Bergen County says that the matters contained in said challenge are not sufficient in law to bar, disqualify and preclude the said A Demorest Del Mar from sitting in judgment upon the trial of the indictment of the above named defendant.

WHEREFORE, the said Walter G. Winne, Prosecutor as aforesaid, prays judgment."

It will be noted by a reading of the so-called challenge to the array that it contains a statement as a cause for challenge the following:

"Because the said Judge is biased and prejudiced against the defendant, Robert Deegan, and does not stand indifferent between the State of New Jersey and the said Robert Deegan."

These statements were merely conclusions and did not set forth any facts upon which the Court could determine the sufficiency of the challenge made. In the case of *State* vs. *Barker,* 68 N. J. L. p. 20, Chief Justice Gummere, quoting *Mann* vs. *Glover,* and the statement of Chief Justice Hornblower therein, sets forth:

"A challenge must be in such terms that the court can determine whether the facts, if

true, are sufficient to support such challenge. The defendant says he challenges the juror because 'he does not stand indifferent between the parties.' But these words do not constitute a challenge; they express only the reason for making the challenge or the judgment or conclusion of law consequent upon finding the ground of challenge to be true. He must go further and state *why* the juror does not stand indifferent; he must state some facts or circumstances which, if true, will show that the juror is positively and legally disqualified."

Chief Justice Gummere continues:

> "A demurrer only admits *the facts* set out in a pleading, and not then unless they are sufficiently pleaded."

In the case of *State* vs. *Bolitho,* 103 N. J. L. 246, Justice Kalisch states:

> "To this challenge the state filed a demurrer. It is to be observed that the challenge is radically defective, in that it fails to set out any facts disclosing the sheriff to have been improperly interested in the outcome of the trial of the case against the defendant."

Then, continuing:

> "The characterization of the jury as 'prejudiced and biased' does not within its general sense embrace the controlling essential fact that it is prejudiced and biased against the defendant. Against which party such prejudice and bias is entertained, whether against

> the state or against the defendant, the challenge does not disclose."

Continuing, Justice Kalisch says:

> "Moreover, the challenge under consideration, like the challenge to the judge, has the same radical defect, in that it contains solely a statement of the reasons for making the challenge. This has been held to be insufficient in law. Mann vs. Glover, 14 N. J. L. 195, 203; in State vs. Barker, 68 N. J. L. 19, wherein the Supreme Court held that 'a demurrer only admits the facts set out in the pleading, and not then unless they are sufficiently pleaded.' The challenge was properly overruled'."

The plaintiff-in-error contends that the Court excluded him from presenting evidence and proof to support his challenge. There was nothing before the Court except the challenge to the array submitted by counsel for plaintiff-in-error and the State's demurrer. Since the challenge to the array did not set up facts and circumstances to substantiate it, the Court properly sustained the demurrer of the State. It cannot be said that the plaintiff-in-error can be excused because he was not in possession of facts necessary to cause the challenge to the array to be tried. As the subsequent action of counsel for plaintiff-in-error indicates in a challenge to the Court on January 19, 1945, the basis for the challenge to the array and the challenge to the Court were the same, that is, certain statements and remarks made by the Honorable A. Demorest Del Mar in the presence of Emil Wulster, Esq., and John B. Zabriskie, Esq., counsel for plaintiff-in-error. They were in possession of all of these alleged statements

and facts at the time of the argument upon the challenge to the array. Even assuming they had presented these facts at the time of the challenge to the array, it cannot be said that they would have been facts sufficient to sustain such challenge. There is no proof that any of the alleged remarks were transmitted to any member of the panel which tried the defendant Deegan. In the *Matter of State* vs. *Gallo,* 128 N. J. L. at page 176, Chief Justice Brogan stated:

> "It is not said that the assistant prosecutor's statement was untrue and we find nothing that persuades us that what was said could have unquestionably prejudiced the jury against the defendant or just how the defendant was injuriously affected; *Cf.* State v. Shupe, 86 N. J. L. 410, affirmed 88 *Id.* 610; nor is there proof that the panel of jurors heard the remark."

The argument upon the demurrer to the challenge to the array took place on December 26, 1944. Counsel for the plaintiff-in-error not only was unprepared to produce testimony but was unwilling to argue the law of the case which, as will appear in the State of the Case, pp. 46 to 54, was argued at length by counsel for the State. Certainly the demurrer was properly sustained, and this is substantiated by the reported cases referred to above.

On January 19, 1945, a motion was returnable before the Court to permit the employment of a second alienist, and at that time the challenge to the Presiding Judge A. Demorest Del Mar (Case, p. 30) was filed by counsel for the plaintiff-in-error. The testimony of the witnesses in support of the challenge was taken and appears in the

State of the Case, pages 57 to 72. The only witnesses were John B. Zabriskie and Emil Wulster, and the substance of their testimony is that Judge Del Mar expressed his belief that the defendant was guilty and stated he concurred in the verdict of the first jury and that the defendant ought to be hung, drawn and quartered.

It is submitted that this suggestion of bias on the part of the presiding judge is frivolous; that even if true, the statements did not indicate bias; but the entire answer to the argument is that Judge Del Mar did not sit on the retrial but, on the contrary, the retrial was had before Judge Herman Vanderwart. It is significant that counsel for the plaintiff-in-error cites no case in support of Assignment Number 1, no case in support of Assignment Number 7, no case under Assignment No. 12, and no case under Assignment No. 24.

SECOND.

Assignments Nos. 2, 3, 4, 5, 6, 8, 9.

Specifications Nos. 2, 3, 4, 5, 6, 8, 9.

The Court did not err in sustaining the objection of the Prosecutor to the following question put to Evelyn G. Oliver, a juror, on her *voir dire,* as follows:

"By. Mr. Zabriskie:

> Q. Now, in the light of that statute if you find that the defendant is guilty of murder in the first degree, in determining whether or not you should recommend imprisonment at hard labor for life, would you take into consideration the fact that he was mentally

weak or mentally deficient, if it is proved to you that he was mentally weak or mentally deficient at the time of committing the act that resulted in death?

The Prosecutor: Now, that is objected to. I think that is no part of the facts. As to whether a juror could find a recommendation upon the facts is from all the evidence. I do not think that it is a fair question to pick out any one thing and ask the juror if that one thing would influence the juror, and particularly to ask the juror if a thing, which is not a defense but which is pleaded as a defense, would mitigate the punishment.

The Court: I will sustain the objection.

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

The Court: You may have it.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The question was improper in that it sought to elicit information from the prospective juror concerning her possible verdict should the defendant show evidence that he was mentally weak or mentally deficient. Since this was not a defense to the charge against the defendant, it could not be properly asked of the prospective juror. In *Graves* vs. *State,* 45 N. J. L. 347, Justice Bodine stated:

"If he sets up in his defense the plea of insanity, it is incumbent upon him to establish it, and if he fails to do so, the presump-

> tion or assumption of sanity still stands. If the burden of proving the defense of insanity is on the accused, as it undoubtedly is, it follows that he is not entitled to the benefit of the plea until he established it."

And, continuing, in *State* v. *Spencer,* 21 N. J. L. 196:

> "Mental responsibility because proper judgment was not exercised is not only not the test of legal insanity approved by our courts, but seems to us to include immunity for nearly all criminal acts of omission and commission."

The Court properly sustained the objection of the Prosecutor to the following question put to John A. Digney, a juror, on his *voir dire:*

> "*By Mr. Wulster*:
>
> Q. Do you find it objectionable, in the event that the State or society confines people to jail for life, that they should be fed and cared for? A. No.
>
> The Prosecutor: That question is objected to, questioning between counsel and the juror as to whether he thinks people should be fed or they should not be fed.
>
> The Court: I will sustain that objection.
>
> Mr. Wulster: May I have an exception on the record?
>
> The Court: You may.
>
> Exception allowed and sealed.
>
> HERMAN VANDERWART,
> Judge."

Because the question obviously would not elicit information concerning the qualifications of the juror.

The Court did not err in sustaining the objection of the Prosecutor as to Joseph H. Schroeder, a juror, on his *voir dire:*

> "*By Mr. Wulster*:
>
> Q. In the event that you and the jury should feel that this is a first degree murder case, and you should find accordingly, do you have any preconceived convictions that society or the State is better off by inflicting the death penalty rather than imposing imprisonment at hard labor for life?
>
> The Prosecutor: That question is objected to. The juror has said he would decide the case on the evidence and the law. I think the question as to whether he has any feeling outside that question of whether he would decide the case on the evidence and the law is objectionable.
>
> The Court: Objection sustained.
>
> Mr. Wulster: May I have an exception, sir?
>
> The Court: You may.
>
> Exception allowed and sealed.
>
> HERMAN VANDERWART,
> Judge."

The form of this question was highly improper because every person convicted of murder in the first degree shall suffer death unless the jury shall by their verdict and as a part thereof, upon and after consideration of all the evidence, rec-

ommend imprisonment at hard labor for life. Nothing in this question either in its form or its context tended to elicit any information that would show bias and render him incompetent and challengeable for cause. *State* v. *Favorito,* 115 N. J. L. 201.

The Court did not erroneously overrule defendant's challenge for cause of Abram M. Ottignon. The answers of this prospective juror indicated that he would recommend the death penalty should the evidence so indicate to him, as follows:

"*By Mr. Zabriskie:*

Q. Mr. Ottignon, as is indicated in this paragraph of the law that I am going to read, so that when you arrive at a verdict, of course, if you arrive at a verdict of not guilty, why, then that would end the matter and you would not go any further; that, under the law, if you should decide the defendant was guilty of murder in the first degree, which is the only degree that you can find, if you find at all in this case, after you have found that, as a part of your verdict, you have a right, and it is your duty to go further and determine whether or not from the evidence, life imprisonment should be recommended. Now, for the sake of accuracy, I will read that statute. You have heard it already, but for the sake of accuracy and for the sake of the record, the law says this:

'Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by its verdict, and as a part thereof, upon and after a consideration of all the

evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.'

Now, in the light of that statute, do you believe that everyone convicted of murder in the first degree should suffer the death penalty? A. I do.

Q. You believe that everyone should suffer—— A. Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Prosecutor: May I interrogate the juror further?

The Court: Certainly.

By the Prosecutor:

Q. It may be that you do not exactly understand the question, Mr. Ottignon. In this case the State contends that the prisoner brought about the death of Mrs. Ethel Herrmann in perpetrating a robbery; that is to say, that as a result of robbing her, he struck her and she died. Now, it has been suggested that if the State proves that is murder in the first degree, the juror then must under the law consider, if he finds that the State has proved murder in the first degree, and from all the evidence in the case, the youth of the young man, his bringing up, everything that you hear in the case, shall he suffer the extreme penalty, or shall he suffer life imprisonment; and the Judge will charge you, I am sure, that you should consider all of the evidence and, after having considered the evidence, if you find first degree, and further find either a recommendation of life impris-

onment or not find the recommendation, in which case death would be the result.

Now the question is if, no matter what the evidence was, if you found it was murder in the first degree, would you also find the extreme penalty, and under no circumstances, regardless of the evidence, bring in a recommendation of life imprisonment?

Mr. Zabriskie: He has already answered that question.

The Court: I will allow it.

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

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

"The Juror: May I answer?
The Court: Yes.

A. My answer to that, if the evidence shows he is guilty of murder in the first degree, I believe in the death penalty.

By the Court:

Q. Do you believe in the death penalty to the exclusion of the law as it has been read to you, namely, that the jury, if they are satisfied from all of the evidence that it is wise, may bring in a verdict of life imprisonment at hard labor? A. You ask a specific question. What do you mean?

Q. I ask you whether you agree with that law? A. I agree with the law, sure.

Q. As it is expressed? A. I agree with the law. I have no objection to that.

The Court: Is there a challenge?

Mr. Zabriskie: Yes. I enter a peremptory challenge for cause, I should say.

The Prosecutor: Of course, I do not think the juror should be challenged for cause, your Honor please. I understand the juror said to your Honor he would decide the case according to the law as charged by the Judge.

The Court: Yes. If you should be chosen to sit as a juror in this case, knowing the law as you have heard it read by counsel, would you be willing and are you in a position to decide the case upon the evidence as it is adduced before you and the law as I may charge it, bearing in mind what has been said as to a recommendation for life imprisonment?

The Juror: I think so.

The Court: I will overrule the challenge.

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

The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The challenge for cause entered by counsel for the defendant was properly overruled. The testimony shows no malice or ill will on the juror's part. His testimony indicates a firm intention to be guided by the evidence. There is nothing in the testimony of the juror that would indicate that he would not stand indifferent between the State and the accused. *State* vs. *Turco*, 90 N. J. L. 96.

The Court did not err in overruling the challenge of the defendant of John Heck for cause, as follows:

"*By Mr. Wulster*:

Q. Has what you have read or heard fixed any thought in your mind whereby it would be unable—whereby you would be unable to bring in a fair and just verdict according to the evidence and the law as charged? A. Well, from what I have read so far, I mean, in the papers, unless new evidence is brought out, whether this Court is going to bring new evidence, I think I have.

Q. You think you have formed an opinion? A. I have formed an opinion.

Q. You have formed an opinion? A. On the old evidence.

Q. Do you know the defendant, Robert Deegan, or any member of his family? A. I do not.

Q. Do you know the decedent, Ethel Herrmann, or do you know any member of her family? A. I do not.

Q. Do you know the Prosecutor, Mr. Winne? A. I know of him. I have played golf behind him, but I don't know him personally.

Q. You both belong to the same golf club? A. No. I played in the Grand Juror's tournament right behind him and spoke to him.

Q. Do you know Mr. Allyn? A. No. I never had the pleasure.

Q. Have you any fixed opinion in your mind which would prevent you from bringing a fair and just verdict according to the evidence and the law as charged by the

Judge? A. On new evidence as presented in court.

Mr. Wulster: May we have the question read?

(Question read.)

A. No, I think I could.

Q. You think that perhaps your mind is so open that you could decide it on the evidence adduced in court? A. If there was new evidence, as I said, presented, from which I have read and from what I have heard.

Q. You have an opinion, a fixed opinion now, on the case? A. I have a fixed opinion on the case unless I hear new evidence.

Q. And if you did not hear new evidence, that fixed opinion would prevail? A. It would stand.

Mr. Wulster: Excused for cause.

Prosecutor: Well, I object to that.

Mr. Wulster: Challenged for cause.

The Prosecutor: I object to that. All the evidence is going to be new evidence. There is no old evidence in this case. The question is, Mr. Juror, on the evidence produced here beginning today and continuing until this case is over, would you try the case on that evidence and not on something you heard before you came to court? A. No, I would try the case on new evidence presented in court.

The Court: You have not heard any evidence yet.

The Juror: That is what I said.

The Court: Then what you are going to

hear today, you would not describe as new evidence, would you? You have not heard any yet.

The Juror: I have heard nothing yet.

The Court: Well, if you could say what you are about to hear is the evidence in the case——

The Juror: That is right.

The Court: ——through the sworn testimony of witnesses——

The Juror: That is right.

The Court: The question is, sitting as a juror in this case and hearing the testimony as sworn testimony from the witnesses, all of the evidence in the case, and having been charged by the Court, would any opinion which you had heretofore formed guide you in bringing in your verdict, or would that testimony and evidence and Court's charge direct your mind?

The Juror: I think new testimony would have a lot to do with my verdict.

The Court: What is the motion before the Court?

Mr. Wulster: The challenge is that the juror be excused for cause.

The Court: Is that opposed by the Prosecutor?

The Prosecutor: Yes, sir. I think the juror has stated that he would try the case on the evidence, and I think the cases are uniform that, although a man may come into court with an opinion based on what he has heard outside of the courtroom, if his statement is that he will try the case on the evidence produced in court and the charge of the Court fairly, regardless of what he has previously heard, he

is an acceptable juror. That is held in the most recent case of Jefferson, with which we are all familiar.

The Court: I will overrule the challenge and allow the juror to sit.

Mr. Wulster: May I have an exception to that ruling, sir?

The Court: Yes.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The testimony of this witness indicates that he has formed an opinion on this case by reading the newspapers, but he indicates that he will be guided solely by the evidence adduced at the trial. It has been said in *State* vs. *Jefferson*, 131 N. J. L. at p. 72:

> "A juror may have formed an opinion as to the guilt of the accused, but as long as he has a firm intention to be guided by the evidence and the law as charged by the court, and has displayed no malice or ill will to the accused, there is no reason whatever why he should not serve as a juror."

There was, therefore, no cause for challenge.

The challenge of the Prosecutor for cause of Charles R. Walker was properly sustained by the Court, because he testified that he had religious scruples concerning capital punishment, as follows:

"*By the Prosecutor*:

Q. You do not believe it will be difficult?

A. It would be hard, yes. It would depend on the evidence as presented.

Q. Yes. So, Mr. Walker, you start right in laboring to overcome prejudice, don't you? A. Yes.

The Prosecutor: I challenge for cause, your Honor, please.

Mr. Wulster: I object to the challenge.

By the Court:

Q. Upon what is that feeling of yours based? Would you tell the Court, Mr. Walker? A. Well, as I said before, it has not been of a definite nature. I have felt a leaning towards that, though it really has not eliminated the question of murder, and it has been a question in my mind as to whether it was really the right thing.

Q. The question in your mind is as to whether punishment by death is really the right thing? A. Yes, sir.

Q. Now, is that based upon a religious —has that a religious basis in your mind? A. No, not entirely.

The Court: I will sustain the challenge.

Mr. Zabriskie: You will allow me an exception for the record?

The Court: I will allow you an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The Legislature in its wisdom has seen fit to enact a statute as follows:

> "Every person convicted of murder in the first degree shall suffer death unless the jury shall by their verdict and as a part thereof, upon and after considering all of the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

In *State* vs. *Favorito,* 115 N. J. L. at p. 200, it is said, quoting Justice Lloyd:

> "It was the privilege of the State to contend before the jury under this statute that upon the evidence the crime was of such atrocity that the jury's verdict should be without recommendation."

And quoting further:

> "If sworn as jurors their scruples would shut out this proof and be in defiance of the law which submitted to them the proper punishment to impose on the defendants based upon the evidence solely. To hold otherwise might be to, in effect, work the practical abolition of capital punishment in this state; a function and right of the legislature only."

Irregularities in the impaneling of a jury cannot defeat a fair trial in a criminal proceeding. The right of challenge is one of exclusion and not one of selection. The opinion of this Court in *State* vs. *Calabrese,* 107 N. J. L. 115 is in point. In that case the Court excluded a question directed to a prospective juror which embraced inquiry into his acquaintance with the Prosecutor or any parties in the case. The Appellate Court said:

> "Since Counsel were not hampered in permitting inquiry as to whether the juror could render a proper verdict" the complainant was without substance.

This case is authority for the frequently stated maxim, that the right of challenge is one of exclusion and not one of selection.

In *State* vs. *Lynch,* 103 N. J. L. 64, the appeal of a conviction was based in part upon the overruling of certain challenges to the jury. The Court of Errors said:

> "The right of the defendant so far as the impaneling of the jury was concerned was to have twelve impartial members of that body selected and that right was accorded to him. In this situation it cannot be successfully contended that he was prejudiced in maintaining his defense upon the merits, either by the fact that three members of the special panel were wrongly named, or by the fact that certain challenges for cause, as he contends, were improperly overruled."

In *State* vs. *Simmons,* 120 N. J. L. 85, the Court of Errors considered an assignment of error overruling a challenge to a juror upon the ground of bias and prejudice in that the juror had formed an opinion. This juror had formed an opinion but on the other hand he said he knew of no reason why he could not render a proper verdict on the evidence and since the testimony failed to disclose any partiality or bias, the Court of Errors affirmed the conviction.

The rule that a declaration of an opinion must imply malice or ill will was stated to follow the reported cases of *State* vs. *Spence,* 21 N. J. L.

196; *Wilson* vs. *State*, 60 N. J. L. 171; *State* vs. *Fox*, 25 N. J. L. 566, in which malice was defined as

> "That state of mind favorable or unfavorable which resists the influence of truth and prevents the decision of the cause according to the weight of the evidence without bias."

The same case says:

> "It is also well settled that the finding of the trial court upon the competency of a juror ought not to be set aside by a reviewing court unless the alleged error is manifest. Michell vs. State, 53 N. J. L. 498; Reynolds vs. U. S., 98 U. S. 145."

A reading of the record will show that a careful effort was made by counsel for the State and by the Court to inquire of each juror if he would try the case upon the evidence and take the law from the Court and give the defendant the benefit of the statute providing that a recommendation of life imprisonment could be made after a consideration of all of the evidence. From the beginning of the trial, it was obvious that the plea of insanity was merely for the purpose of reducing the punishment to be meted out to the defendant. There is no doubt that a juror might have properly been asked if he would acquit the defendant if he believed the defendant was insane at the time of the commission of the crime. The counsel for the defendant never asked. As the State contended, the plea of insanity was not an honest plea, but was tendered only so that evidence of the early life and conduct of the defendant could be shown the

jury in the hope that it might mitigate punishment. This evidence would have been incompetent, as stated in *State* vs. *Favorito,* 115 N. J. L. 197, and cases cited therein, and was admitted in the instant case because of the pretended defense of insanity. It was, therefore, entirely proper that the line of questioning to the jurors be limited to whether they would consider all of the evidence in the case rather than to permit a juror to be asked if he would give consideration to some particular evidence in the case.

Since it is stated in *State* vs. *Spencer,* 21 N. J. L. 196,

> "Mental irresponsibility because proper judgment was not exercised is not only not the test of legal insanity approved by our courts, but seems to us to include immunity for nearly all criminal acts of omission and commission,"

it would have been highly prejudicial to the State to permit the defendant to emphasize in his examination of prospective jurors' peculiarities and habits of the defendant falling far short of legal insanity.

Again, may it be said that two separate panels found this defendant guilty of murder in the first degree, and it is urged that this second verdict should not be disturbed for any highly technical reason not supported by any authority. That the defendant was not entitled to a full panel and that there was no error because certain jurors were not served, see *State* vs. *Bectsa,* 71 N. J. L. 322; *State* vs. *Patterson,* 48 N. J. L. 381.

Assignment No. 10.

Specification No. 10.

The trial court did not err in permitting certain photographs of the family of decedent Ethel Herrmann into evidence. The photograph in question was one carried by the deceased at the time of the defendant's assault upon her. It was in the pocketbook taken by the defendant after the assault. It was one of the articles searched through and disposed of by the defendant near the scene of the crime as stated by him in his confession. It was, in fact, a part of the proceeds of the robbery. It was sufficiently connected with the defendant as to be admissible in evidence. *State* vs. *Laster,* 71 N. J. L. 586.

Assignment No. 11.

Specification No. 11.

The trial court properly sustained the objection of the Prosecutor to the following question:

> "Q. You knew for a long time there was something wrong with his mind?
>
> The Prosecutor: I object to that.
> The Court: I will sustain the objection, that calls for a conclusion."

There was no foundation previously laid for the question and it was not based upon the facts within the knowledge of the witness. *Genz* vs. *State,* 58 N. J. L. 482.

Specification 12 has been previously answered in the argument concerning the challenge to the array.

Assignment No. 13.

Specification No. 13.

The Court properly overruled the following question, because it would have elicited information based upon hearsay:

"Q. Did Mr. Allmers give you any advice in connection with Bob?

The Prosecutor: I object.
The Court: I sustain the objection.
Mr. Wulster: Your Honor will allow me an exception?
The Court: Certainly.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

Assignment No. 14.

Specification No. 14.

Because the Court overruled the admission in evidence of the original record of William Harry McKim, the grandfather of the defendant, who had died in the Middletown State Hospital for the Insane.

"*By Mr. Zabriskie*:

Q. Miss Frink, you are from the Middletown Insane Asylum? A. Middletown State Hospital.

Q. The Middletown State Hospital. That is for the insane? A. Yes, sir.

Q. What position do you hold there? A. I am secretary to the director.

Q. And have you with you a record—— A. Yes.

Q. Of Mr. William Harry McKim? A. Yes.

Q. And is that the exact—is that the record as it remains on file? A. That is the original record.

Q. That is the original record, that is kept in your custody? A. That is right.

Q. At the hospital? A. Yes, sir.

Mr. Zabriskie: I offer that in evidence.

The Prosecutor: That is objected to, if your Honor please. The hospital record is not evidential, not properly evidential.

The Court: Objection sustained.

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

The Court: You may have an exception.

Exception allowed and sealed.

HERMAN VANDERWART,
Judge."

The hospital records which consist of temperature charts as well as the record of the patient's physical condition and treatment were not admissible. The records themselves were not evidential and were, therefore, properly excluded. *State* vs. *Shapiro,* 89 N. J. L. 319.

Assignments Nos. 15, 16, 17, 18, 19.

Specifications Nos. 15, 16, 17, 18, 19.

The testimony therein was properly excluded because there was no previous foundation of testimony of facts and circumstances concerning the conduct of the defendant of which the witness had knowledge which would warrant the reception of his opinion.

> "Lay witnesses on insanity may give their opinion of a person's sanity or insanity provided such opinions are based on facts within the knowledge of the witness and stated. Where, however, it is disclosed that the witness knows no facts upon which to base an opinion, it is perfectly within the discretion of the trial judge to overrule a question which seeks to obtain an opinion from a lay witness which is not based upon stated facts."
>
> *State* vs. *Morehous,* 97 N. J. L., pp. 294-295.

The established rule of law is that if a murderer is sufficiently sane and conscious at the time he committed the deed to know the nature and quality of his act, or that it was wrong, his reason or motive for committing the act is immaterial. If he was not sufficiently sane or conscious, then that is a matter of defense and the burden is upon him to prove it. This rule was laid down as early as *Graves* vs. *State,* 45 N. J. L. p. 347, and innumerable cases since.

In *State* vs. *Rodia,* 132 N. J. L., at p. 201, Mr. Justice Bodine said:

> "The purpose of injecting into the case all the testimony as to the mental age, was to show that the defendant was incapable of planning, premeditating or designing or intent to kill."

Continuing, Mr. Justice Bodine said:

> "There was proof in the case as to the defendant's mental age. Complaint is made that the trial court said in its charge: 'It is my observation that the so-called mental age theory of the experts, at least as applied to adults, is based upon so arbitrary and unnatural a scale of ages as a standard, as to be utterly misleading to a layman and practically useless, in the administration of justice by trial by jury'."

The language finds support in *State* vs. *Schilling,* 95 N. J. L. 145, and *State* vs. *Ehlers,* 98 *Id.* 236. The test of insanity in this state is the rule laid down in *McNaughton's* case (10 Clark & Finnelly 200, 8 Eng. Reprint 718), and reaffirmed many times by this Court. *State* vs. *Noel,* 102 N. J. L. 659; *State* vs. *Carrigan,* 93 *Id.* 268."

Assignment No. 19.

Specification No. 19.

The defendant had the advantage of two alienists paid for by the State to assist him in his defense. The testimony of Dr. Geoffrey C. Burns appears on page 349 of the record and following, and the testimony of Dr. William Leavitt appears on page 373 and following. In the hypothetical question on page 359, Doctor Burns

described constitutional psychopathic state at length. In the hypothetical question addressed to Dr. Leavitt, the term "constitutional psychopathic state inadequate personality" was referred to. The experts all testified that these words as applied to a defendant on trial for a crime fall far short of describing a mental condition which is recognized as insanity by the laws of New Jersey. It is submitted that the question was answered in substance and, furthermore, that it was highly immaterial as it did not matter at all in the defense of Deegan whether he was a constitutional psychopathic inadequate personality, since that did not constitute a legal defense and was not pleaded as a defense.

Assignments Nos. 20 and 21.

Specifications Nos. 20 and 21.

These assignments refer to the comments of the Prosecutor to which exceptions were taken. However, counsel for the defendant failed to make any motion to have the remarks stricken or to have the jury disregard the remarks.

When counsel is summing up to the jury and he makes remarks concerning extraneous matter, it is the duty of opposing counsel to make immediate objections and motion to have the remarks stricken from the record. It is not the duty of the presiding judge to strike out the offending matter on his own motion. This rule has been laid down in the case of *State* vs. *Hauptmann,* 115 N. J. L. 416, citing the remarks of Chancellor Walker in the case of *State* vs. *Terry,* 91 N. J. L. 539, 543, where he said:

> "The rule in this state, undoubtedly, is, that where counsel in summing up to the jury, goes outside of the testimony and makes appeals based upon facts which have not been proved, but rest upon his unsupported assertions, the party injuriously affected must, in order to be relieved, move the trial judge to order the remarks stricken out and to charge the jury that they should be disregarded; an objection only to the illegal remarks does not require the trial judge to strike them out of his own motion, and unless counsel requests their elimination no ground for review is laid."

In *State* vs. *Barth,* 113 N. J. L. 112, a charge of the Court was approved in which the trial Judge said:

> "The Court charges you gentlemen in respect to that. There is the Court of Pardons, a court constitutionally constituted; I mean by that, provided for by our constitution. That Court of Pardons has power to modify, change, reduce, abolish or set aside whatever result the jury may arrive at, whether they fix the penalty of death or life imprisonment. It is a power resident in them to do that regardless of the penalty, and that Court is constitutionally established."

To the same effect is *State* vs. *Dworecki,* 124 N. J. L. 219.

Assignment No. 23.

Specification No. 23.

Complaint is made because the trial court said the defendant had previously been convicted of a crime, and it was argued that this was not proper because the defendant did not take the stand. It is true that the defendant did not take the stand in his own behalf. However, he had testified in his own behalf in the prior trial and undoubtedly the charge of the Court was prepared with the former record before it on the assumption that the defendant would so testify. However, it appeared in evidence by various witnesses, as well as Exhibit D-1 (Case, p. 287), that the defendant had been convicted and served a year in reformatory for breaking and entering, and this appears from the testimony of several witnesses. However, if there were any error in the statement by the Court, it was certainly cured. The exception by counsel appears on page 455, and on page 456, it appears that the Prosecutor said the following:

> "I think when the charge was prepared your Honor had expected that the defendant would take the stand because your Honor did say there was evidence of conviction, and that would affect the credibility of the defendant, and that evidence would only be admissible to affect his credibility if he took the stand. I think the charge should be corrected in that respect. There was some evidence, as I understand it, of a sentence in Annandale as a result of the conviction of some offense. But it does not affect the credibility of the defendant because the defendant did not take the stand."

> The Court: What do you think of the fact that the confession of the defendant is before the jury?
>
> The Prosecutor: I do not think it affects the credibility of the confession. I only think it affects the credibility of the defendant on the witness stand.
>
> The Court: The charge will be corrected then in accordance with that suggestion."

Counsel for the defendant let the record stand in that manner. He did not suggest that the mistake, if it was a mistake, had not been properly corrected, so there is no proper exception before this Court.

It is not necessary to argue Assignments Nos. 22, 25 and 27 that the verdict was against the weight of the evidence, or the result of mistake, passion, prejudice or partiality.

There was ample evidence to support the verdict, and the judgment of the court below should be affirmed.

Respectfully submitted,

WALTER G. WINNE,
Attorney for and of Counsel with the Defendant-in-Error.

To be argued orally by
WALTER G. WINNE

30 MAY T 1945

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Plaintiff-Defendant in Error,* vs. ROBERT DEEGAN, *Defendant-Plaintiff in Error.*	On Indictment for Murder. On Writ of Error to Bergen Oyer and Terminer.

SUPPLEMENTAL BRIEF FOR DEFENDANT-PLAINTIFF IN ERROR.

Points Supplemental to Assignment No. 2. Specification No. 2.

New Jersey Statutes Annotated 2:92-10 is as follows:

> "2:92-10 Examination of jurors without challenge in murder causes.
>
> Upon the trial of any indictment for murder every person summoned as a juror may be examined under oath, in open court, before being sworn as a juror, without the interposition of any challenge, upon such matters as relate to his competency to serve as a juror in such trial. The examination shall be conducted under the supervision and control of the trial court."

Under that provision of the statute, it is contended, the defendant had a right to determine from the juror whether or not he would take into consideration a certain type of evidence. A juror who would refuse even to take into consideration such evidence, it is contended, would not be a competent juror to sit in this class of cases where not only guilt or innocence was to be determined but also whether or not a recommendation of life imprisonment should be made.

As was stated by Justice Bodine in *State* v. *Jefferson,* 131 N. J. L. 70, at page 72, "A juror, who determined a question so important alike to the state and the accused without considering all the evidence adduced, would not be an impartial juror."

In the case of *State* v. *Flint,* 60 Vt. 304, 14 At. Rep. 178, at pages 183 and 184, the following appears:

> "Veazy, J. 1. Respondent's counsel insist that it was error for the court to allow the counsel for the state to ask the jurors whether the fact that a witness produced by the state participated in the commission of the crime for which the respondent was on trial would cause them to disregard such witness' testimony. It is plain that, if a juror had such a settled view of his duty that he would wholly disregard such a witness' testimony on that account he would not be a suitable man for a juror. It being legal evidence in the case, the trier is bound to regard it. He is not bound to believe any witness. An accomplice's testimony is to be weighed for what it is worth, like that of other witnesses. It may not be believed, but it cannot be wholly disregarded. The pro-

priety of such inquiry must rest largely in the discretion of the trial court. This case illustrates such necessity. It had been twice tried without an agreement. It was known that the state's case depended on the testimony of an accomplice to such an extent that, without his testimony, a conviction would not be warranted. It is not uncommon to hear men say they would not believe an accomplice in any case. Should a court, under such circumstances, be powerless to find out whether the jurors were so mentally constituted that they would not try the case according to their oath? We think the ruling was clearly correct."

In the case of *Monaghan and others* v. *Agricultural Fire Insurance Co.*, 53 Mich. 238, 18 Northwestern Rep. 797, at pages 800 and 801, the following appears:

"Another juror being examined on oath as to his competency, was asked by defendant's counsel: 'Suppose, in this case, after the evidence is all introduced, you should believe that it was evenly balanced, so that there was as much for the plaintiff as for the defendant, which way would you be inclined to lean,—against or in favor of the company?' This was objected to by the plaintiff's counsel, for the reason that he would probably be guided by the court. Whereupon the court said: 'Of course, the party that has affirmation of an issue must produce a preponderance of evidence, and if the evidence was evenly balanced they would be obliged to find against the party that had the affirmative of the issue. I do not think that the

question is proper. I do not permit the juror to answer it.' The same question was put to another juror, and the court told the juror that he need not answer it. These questions were put to the jurors by counsel for defendant for the purpose of determining what peremptory challenges he would avail himself of. The question was well calculated to call from the juror the bias of his mind towards the party, and to detect whether he entertained any prejudice respecting him.

Wherever there is an existing bias or prejudice it should disqualify, for prejudice is a state of mind which, in the eye of the law, has no degrees. People v. Reyes, 5 Cal. 347. It is evident intent of the law to secure a jury that shall come to the consideration of the case unaffected by any previous judgment, opinion, or bias with respect either to the parties or subject-matter in controversy, and it is important to the rights of parties that they may be permitted inquiries which may be the means of discovering facts which will justify the exclusion of a juror. The success of a challenge depends upon eliciting such information from the juror himself, as well as from other sources, as to his state or condition of mind, as will enable a judgment to be formed by the court as to his competency. for this purpose the law subjects the juror to an examination on oath, when questions are put to test his competency. If the juror had been permitted to answer the question, and he had replied that he would, in the case put, lean in favor of the plaintiff or against the defendant, can it be doubted that he could have been challenged for cause? He would have shown himself to have been

disqualified, and no statement from him that he could render an impartial verdict would have removed the disqualification. 'Nor can it be said that instructions from the court would correct the bias of jurors who swear that they incline in favor of one of the litigants.' Chicago & A. R. Co. v. Adler, 56 Ill. 344. A party has a right to a certain number of peremptory challenges, and in order to exercise this right understandingly it is proper for him to ascertain as nearly as practicable the disposition of the juror towards him, and towards the subject-matter in controversy; and any inquiry within reasonable limits which tends to bring to light any bias or prejudice entertained by a juror is proper. The questions propounded were proper, and the court erred in not permitting the juror to answer. Chicago & A. R. Co. v. Buttolf, 66 Ill. 347."

In the case of *Towl* v. *Bradley,* 108 Mich. 409, 66 N. W. Rep. 347, the following appears:

"Towl v. Bradley.

(Supreme Court of Michigan. Feb. 26, 1896)

CHALLENGE TO JUROR—LIMITATIONS.

Defendant has a right to question jurors upon the subject of their prejudices against the defense of limitations, as a means to determine whether or not to exercise the right of peremptory challenge.

Error to circuit court, Muskegon county; Fred J. Russell, Judge.

New Jersey State Library

Action by Albert Towl against James M. Bradley. There was a judgment for plaintiff, and defendant brings error. Reversed.

F. W. Cook, for appellant. Bunker & Carpenter, for appellee.

HOOKER, J. This case is within the rule laid down in Monaghan v. Insurance Co., 53 Mich. 245, 18 N. W. 797. The defendant had a right to question the jurors upon the subject of their prejudices against the defense of the statute of limitations, as a means of determining whether or not to exercise the right of peremptory challenge. As the other assignments of error are not discussed in the brief, we do not pass upon them. The judgment is reversed, and a new trial ordered. The other justices concurred."

Respectfully submitted,

JOHN B. ZABRISKIE,
EMIL M. WULSTER,
Attorneys and of Counsel with Defendant - Plaintiff in Error.

30 MAY T 1945

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Plaintiff-Defendant in Error,* vs. ROBERT DEEGAN, *Defendant-Plaintiff in Error.*	On Indictment for Murder. On Writ of Error to Bergen Oyer and Terminer.

REPLY TO SUPPLEMENTAL BRIEF OF DEFENDANT-PLAINTIFF IN ERROR.

The defendant, Plaintiff in Error, has filed a Supplemental Brief amplifying Assignment No. 2 and Specification No. 2 in reference to the examination of jurors on their *voir dire.*

Cited in his Supplemental Brief is a case from Vermont in 14 At. Reporter, which indicates its antiquity. The other cases in the Supplemental Brief are civil cases from Michigan.

It is urged, on behalf of the State, that the jurors sworn in this case all indicated their ability to try the case on the facts as submitted and the law as charged by the Court, and it is urged the extent of questioning permitted under the Laws of the State of New Jersey is discretionary with the trial court.

In addition, the language of the Court of Errors and Appeals in *State* vs. *Calabrese,* 107 N. J. L. 115, seems in point. That was a case of a conviction of murder in the first degree, without recommendation, and certain arguments were made that error had been committed in empanelling the trial jury. The Court said,

"There was afforded every opportunity to secure impartial triers, and no reason is suggested to indicate that these were not obtained." Again the Court said, "Harmless irregularities, even errors, cannot be availed of to defeat the results of a fair trial * * * and this court will be appealed to in vain to defeat the ends of justice by such means. As was said by Mr. Justice Van Syckel nearly half a century ago in Patterson v. State, 48 N. J. L. 381, 383, " 'the reason for resorting to mere technicality to enable the criminal to evade the sanction of the law" (viz., extreme penalties in disproportion to the offenses) "no longer exists, and the practice to which that reason led should therefore cease. Men who make their lives a scourge to society must answer its violated laws, and can justly demand, in a judicial tribunal, nothing except a fair trial according to the laws of the land, in which no substantial right is denied them.' " "Our conclusion is that the defendants at the trial were not prejudiced by the manner of selecting the jury."

This case also considered the limitation of questioning by defense counsel and affirmed the action of the Trial Judge, saying, "Such a course limits the ensuing examination within the narrow bounds of the challenge and excludes inquiries which too frequently result in interminable delay in the selection of jurors and the scandalizing of judicial proceedings."

Again in discussing the rulings of the trial court, the Court of Errors and Appeals said, "Substantially all of these challenges were sustained on adequate grounds, but even though they were not this would not justify reversal, the defendants having unused peremptory challenges which they might exercise in the empanelling of

subsequent jurors, and the law being settled that the right of challenge is one of exclusion and not one of selection."

It is respectfully submitted that the defendant had a fair trial and that the conviction should be affirmed.

Respectfully submitted,

WALTER G. WINNE,
Attorney for Plaintiff-Defendant in Error.

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