

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, Defendant in Error,	} <i>Sur Indictment for Abortion.</i>
vs.	
NATHANIEL J. SHAPIRO, Plaintiff in Error.	} <i>On Writ of Error.</i>

Brief for Plaintiff in Error.

The writ of error in this case brings up for review, the conviction of the plaintiff in error in the Essex County Quarter Sessions Court, of the April Term A. D. 1913, had, before the Honorable William P. Martin, Judge of the said Court, on an indictment containing four counts, charging the plaintiff in error with procuring an abortion on one Rose Lebowitz.

The second and third counts of the indictment were not supported by the evidence introduced on the part of the State and were therefore withdrawn from the jury. The first and fourth count, upon which the plaintiff in error was convicted were, in substance as follows:

(A) That Nathaniel J. Shapiro of the City of Newark, did, on the fifteenth day of January, 1913, unlawfully, maliciously, and without lawful justification, in and upon one Rose Lebowitz, a woman then pregnant with child, used divers instruments to the grand jurors aforesaid unknown, with intent to cause and procure the miscarriage of the said Rose Lebowitz.

(B) That Nathaniel J. Shapiro, on the fifteenth day of January, 1913, did maliciously and without

lawful justification, with intent to cause and procure the miscarriage of one Rose Lebowitz, a woman then pregnant with child, use in and upon said Rose Lebowitz, divers instruments, to the grand jury aforesaid unknown, in consequence whereof the said Rose Lebowitz died.

Having been found guilty, the plaintiff in error thereupon sued out a writ of error from the Supreme Court directed to the said Court of Quarter Sessions. Upon this writ of error the judgment of the Court of Quarter Sessions was affirmed, and the present writ brings up for review the entire record and proceedings in the trial court and in the Supreme Court, and comes within purview of section 136 of the Criminal Procedure Act of 1898 (P. L. 1898, page 915).

The State, claimed at the time of the trial, it had showed by the evidence, that the defendant had made an arrangement with the deceased, Rose Lebowitz, and her mother, together with other members of her family, whereby he would perform an abortion for the purpose of getting rid of the child, and that the defendant inserted an instrument into the neck of the uterus for the purpose of destroying the foetus.

The defendant denied all of this and testified that he had made no arrangements with the deceased or with any member of her family, and that he had never met the State's witness Abraham Goldstein or Rose Lebowitz, the deceased, except on one occasion in October, 1912, when he treated the said Abraham Goldstein for gonorrhoea.

The defendant further testified, and is corroborated by the State's witnesses, that on January 27, 1913, he was telephoned for by Dr. Schutzman at the request of Mrs. Lebowitz, the mother of the deceased, to come at once to her house because her daughter was in a bad physical state, as she was

bleeding; defendant thereupon picked up his valise which contained the instruments necessary for the purpose and went to the home of the deceased and found her bleeding profusely from the neck of the uterus, and that under those circumstances, after a careful examination, he concluded that some foreign substance was there, and concluded that it was necessary to operate; with this in view he sent for Dr. Silverstein, and thereupon operated, performing the operation of curetting, which was the scraping of the womb.

Therefore the defense was that the operation which the defendant performed on January 27, 1913, was a proper one and that he had nothing to do with the deceased in her illness prior to that date, and that if as a result of this operation the deceased died because of septicemia he is not responsible, because he did not perform or had anything to do with prior abortion.

The proof on the part of the State relating to the date of January 15, 1913, as the one on which the defendant is alleged to have inserted instruments in the womb of the deceased, is conflicting and at variance;—the proof centers more towards the date of January 27, 1913, than any other one.

Points.

I.

Dr. William H. McKenzie was a witness sworn in behalf of the State, and in the course of his examination in chief, he was asked the following question by the prosecutor: "Doctor, what is the ordinary method of performing an instrumental abortion with a foetus three months developed?" (Assignment No. 1 and Cause No. 5.)

To which question the court allowed the witness to answer against the objection of counsel for the defense. (See page 92, printed case.)

The failure on the part of the trial court to sustain the objection of defendant's counsel to this question was prejudicial error.

Because this was calculated to show that inasmuch as an instrumental abortion can be performed in a certain way by a physician, that the defendant, who is also a physician and now on trial for such an offense, was so seeking to perform an instrumental and criminal abortion and therefore was likely on the occasion in question to act in a similar manner;—

In other words to show guilty knowledge of intent.

On the second day of the trial, the trial judge, then stated, that upon reflection he had reached the conclusion that his ruling on the day before, in regards to this question was erroneous, and under those circumstances the court would sustain the objection of counsel for the defense to the aforesaid question, and stated that the jury was to disregard the answer to the same as given by the witness (page 90, printed case).

This ruling on the part of the court after having allowed the question and answer and a con-

tinued direct examination on the same together with cross examination, was erroneous.

Marshall vs. State, 5 Tex. App., 273, 291.

Furst vs. Second Ave. R. Co., 72 N. Y., 542.

So far as the jury might be influenced by the incompetent evidence, the mischief had already been done, and was not repaired by the subsequent action of the trial judge, a day after his ruling, being on the second day of the trial.

It has been held by our courts that where evidence which is illegal is received by the court in the progress of the trial, it is competent for the court subsequently to exclude such illegal testimony. But the admission of the evidence being error, it must clearly appear that the testimony illegally admitted was so eradicated from the case that its admission could not have injuriously affected the accused.

Mackay & Newman's New Jersey Digest, p. 266.

State vs. Bullock, 36 Vroom, 557.

The trial judge did not so eradicate the illegal testimony from the case, so as to not injuriously affect the defendant, all that the court did was to strike out the question and answer objected to, but not the additional direct examination based upon the question and answer (see page 84, printed case).

II.

The court erred in allowing to go in evidence, Exhibit S. 1—an alleged dying declaration. (Assignment No. 4 and Cause No. 8.)

When the State attempted to offer this exhibit in evidence the prosecutor placed Dr. William H. McKenzie on the stand who testified that he told the deceased that she would die soon and asked her to make a statement.

Sarah Van Gilder, another witness for the State, gave conflicting testimony as to what Dr. McKenzie told the deceased, and further testified that the deceased was so feeble that she could not write her name, but made a mark.

Becky Gross, another witness, testified that the doctor told deceased she was going to die.

On cross examination this witness testified, that "she wasn't saying anything for the reason she was too sick," and that on the morning the deceased had a hemorrhage, and that during that day she had been unconscious two or three times, and that at the time of the taking of the alleged declaration, the deceased was in a poor state and weak, and that deceased had a high temperature as high as 104—and that "the temperature of the patient would always be higher in the afternoon," and on page 145 printed case this witness further testifies:

"Not she was talking, that she didn't know what she was talking, she was quiet at times," and that she made only one intelligent statement, "I want to see Hymie."

Witness on being asked "if that was all," said, "Well, she was sick, she never would do any talk of any kind, she always used to keep things to herself."

Then the prosecutor recalled Dr. McKenzie, and asked him if the deceased had made a certain statement contained at the bottom of the exhibit, and answered, yes, against counsel's objections. The paper had not as yet been offered; whatever the declaration contained was not as yet before the court. The statement is the doctor's own conception of what the declaration was, because the State called Jacob Tuckman in rebuttal and he testified that Dr. McKenzie read over the statement to the deceased and asked her if she understood what

he was reading to her, and that to this she nodded her head, and that she was asked if whether she could sign it, "she took the pen in her hand she couldn't sign her name; kind of weak; and he asked her to make a cross;" page 312, printed case.

On cross examination the witness testified that the deceased had her eyes closed when she nodded her head and that he could not say for sure if her eyes were closed at the time she was made to place her mark on the declaration.

On page 314, printed case, this witness on being examined, testified as follows:

Q Did Dr. McKenzie feel her pulse? A I can't remember.

Q Did he make an examination at all of her outside of asking those questions? A I don't remember.

Q Did he tell her she was going to die right away? A No.

Q Did he tell her she would die very soon? A No, sir.

Q Did anyone make the remark there that she would die very soon? A No, sir, I haven't heard that.

So the court can see by way of his latter testimony that at no time was anything ever said about "dying soon"—or "making the statement in the presence of death, knowing" "I cannot get well."

This latter statement was a conception of Dr. McKenzie himself and not what the deceased told him, as the witness Tuckman testified that no one made any statement about dying soon or anything of that character.

The question therefore arises if whether or not the deceased made the statement in the sense of impending death with no hope of recovery.

It was held in *Peak v. State*, 50 N. J. L., 179, where a woman had been shot in the head, and the surgeon attending her had told her that she was

liable to die at any moment, that an operation which he would perform would be the only chance of her recovery, he asked her if she expected to get well, and she said, "No, I do not expect to get well, but I would like to get well," she then said that A was the person who shot her. On the trial of A for murder this statement was held inadmissible.

And, where B at the time of making the statement which was written down, says something which was taken down thus: "'I make the above statement with the fear of death before me, and with no hope of recovery,' B on the statement being read over corrects this to 'with no hope at present of my recovery'."

The statement was deemed to be irrelevant.

R. v. Jenkins, L. R. 1, C. C. R., 187.

The evidence does not show that this statement was made under the sense of impending death with no hope of recovery.

The defense showed by the testimony of Dr. Louis Reich, Dr. Morice B. Pearlstein and Dr. Theodore Adlerman, that the statement could not have been made by the deceased, because of the course of the deceased in the hospital, her pulse and respiration, and other symptoms, plainly indicated that she was in that mental state on February 11, 1913, when she is alleged to have made this statement, that she was unable to make a coherent and correct statement, and this is supported by the testimony of these doctors.

It has been held that a person who would be incompetent as a witness from mental debility, a dying declaration made by him would be incompetent.

Mitchel v. State, 71 Ga., 128, 146.

And our courts have gone as far as holding that, inasmuch as the sense of impending death is

deemed equivalent to the sanction of an oath, a dying declaration, made by a person who is an atheist, is incompetent.

Donnelly v. State, 26 N. J. L., 463 and 601.

III.

The court's ruling in not allowing to go in evidence a certain hospital record was erroneous. (Assignment No. 6 and Cause No. 10.)

Sometime after the defendant had performed the operation, on January 27, 1913—upon the deceased, she had been taken to the Beth Israel Hospital, a *quasi* public institution in the City of Newark, while there doctors and nurses constantly attended her, as did the defendant once or twice.

It is the rule as well as the custom of all hospitals, to keep a temperature chart, as well as a record of the patient's physical condition and treatment.

These records of the hospital at the time of the trial, counsel sought to have them go in as evidence of their contents. It was proved by Sarah Van Gilder, Becky Gross, and Dorothy Felderstein, the nurses who attended the deceased, the handwriting on each sheet marked separately, as exhibits D 1, 2, 3, 4, 5, 6, 7, 8 respectively, for identification, together with other matters.

It was testified by these witnesses that the different hand writings were their own, and that these exhibits are kept as records of the patient, and are open for public inspection.

These exhibits were material and relevant to the issue; inasmuch as the State offered a dying declaration of the deceased in evidence, what better proof could be had than that of the nurses and the hospital records as identified by them, in regards to the condition of the deceased, if whether

or not she could make coherent statements at the time she is alleged to have made the dying declaration.

We respectfully submit that this record should have been allowed to go in evidence.

It has been held in our State, that entries made daily by physicians in the ward of an asylum are competent evidence of the health of the patients.

State v. Hinkley, 9 N. J. Law J., 118, and to the same effect, *Inhabitants of Townsend v. Inhabitants of Papperell*, 99 Mass., 40.

Kennedy v. Doyle, 10 Allen, 161.

The courts of our State have even gone as far as to admit in evidence the register of parishes and different churches.

67 N. J. L., 164.

79 N. J. L., 248.

And it has been held that an entry of a pupil's age as shown by a common school register, while inadmissible to prove his age, is competent as independent circumstance to corroborate the testimony of a witness in relation thereto.

Falls v. Gamble, 66 N. C., 455.

IV.

The trial judge in the course of his instructions to the jury, erroneously charged them the facts in the case as follows:

“Kass said that this defendant stated to him on the evening of February 11, that he had seen this girl and some young fellow three weeks before, who came to ask him if he could help them, in substance to get rid of the child” (Assignment No. 11 and Cause No. 15).

These are not the facts, what Kass said was as follows:

“This young fellow and girl came to him about three weeks previous and she told him

she was pregnant and wanted to be helped out of her troubles and he said no he wouldn't help her and the next he heard of the matter was on January 27" (page 270, printed case).

In accordance with this testimony there is a material difference from the facts as charged by the court to the jury.

V.

The trial judge also stated to the jury:

"If it has been suggested that some of the witnesses or all of them were members of the family and principally concerned in the matter, were accomplices in this act you have a right to scrutinize very carefully their stories. But, if you believe the testimony of these witnesses is entirely creditable and trustworthy, you have a right, under the law, to rely absolutely upon those stories." (Assignment No. 12 and Cause No. 16.)

The latter part of this charge inferentially allows the jury to understand, that if the testimony of the accomplices is entirely credible and worthy of belief, they would have a right under the law to rely absolutely upon those stories, regardless if whether or not the jury has a reasonable doubt concerning their testimony as well as upon the whole of the testimony in the case.

VI.

The trial court also charged the jury as follows:

"It has been suggested that possibly the date in the indictment has not been shown to be the correct date of the first introduction of an instrument by the defendant into the person of Rose Lebowitz, if the jury finds that the fifteenth day of January is not the correct date but some other date at or about that time is

the correct date, the jury have a right under the indictment, and it is their duty to find the defendant guilty'' (Assignment No. 13 and Cause No. 1, 2, 3, 4 and 17).

This charge is erroneous, because it prejudices the merits of the defendant's defense. This court must bear in mind that the defense was that the defendant had nothing to do with the abortion nor did he have anything to do with the illness of the deceased, prior to the 27th day of January, when the defendant was called by telephone from a drug store by the mother of the deceased, that her daughter was bleeding from the uterus, and wanted him to hurry and attend her, and that defendant went to the home of the deceased, and after a careful digital examination came to the conclusion that an operation was necessary, and thereupon called another physician in for consultation and curetted the deceased, which was by scraping the interior of the womb. That whatever brought about the resulting necessity of performing the operation, must have been an act performed by someone else or brought about through grief or some unforeseen occurrence. That the operation performed by the defendant on January 27th, was perfectly proper, the State does not deny it. The trial judge's charge, as shown above, does not eliminate this date. Surely instruments were used to scrape the womb on January 27th, and the jury naturally took it for granted that if they found that date as the one which instruments were first used by the defendant upon Rose Lebowitz then they were to find the defendant guilty under the indictment.

If the court had charged the jury, that any date they found prior to January 27th, as the first time instruments had been used by the defendant upon Rose Lebowitz, for the purpose of procur-

ing an abortion, then there could be no complaint, but the charge does not so read.

It tells them in effect that if they found some other date other than January 15th, then the jury have a right under the indictment and it is their duty to find the defendant guilty; in other words, regardless of the date of January 27th, when the defendant performed the operation and used instruments which to do so was legal, the defendant is to be found guilty.

VII.

The trial judge erred in charging and instructing the jury in answer to a written communication sent by them to the court; if whether or not it was possible to convict and recommend to the mercy of the court, as follows:

“The recommendation, within the province, I suppose, means is it proper within the proprieties to make a recommendation as to mercy? As to that there is no objection to the jury making such recommendation to mercy as it deems proper under the circumstances. As you have not agreed you may now retire.”
(Assignment No. 14; Specification of Cause No. 18.)

There is no law in our State which gives the jury power to assess punishment for crime. Recommendations to leniency by juries are of no value and are mere surplusage; and our courts do not recognize such recommendations nor are they bound by them.

State v. Overton, 88 Atl. (N. J.), 689.

Where the statutes give the jury power to assess punishment for a crime, it is necessary for the judge to instruct the jury as to the possible punishment which the law prescribes.

People v. Sainz, (1912) 162 Cal., 242.

But where the Court imposes the penalty, which is the usual situation no such necessity appears.

People v. Ryan, (N. Y. 1898) 55 Hun., 214.

Caudill v. Comm., (1913) 155 Ky., 578.

It may be intimated in the present case, that such instructions may be desirable in order to induce the jury in considering the evidence, to exercise care commensurate with the severity of the consequences of conviction. If this is done, however, the jury may use its knowledge of the penalty to adapt its verdict to what it deems adequate punishment for the defendant, thereby perverting its duty to determine merely the fact of guilt or innocence and to that extent making the penalty for crime dependent upon the will of the jury instead of the legislature.

Bliss v. State, 117 Wis., 596;

State v. Garrison, 59 Ore., 440.

And the jury should not convict or acquit on the basis of the lightness or severity of the authorized punishment.

State v. Peffers, 80 Ia., 580.

Ford v. State, 46 Neb., 390.

And the possibility of compromise verdicts have led courts to declare instructions as to punishment reversible error.

Comm. v. Switzer, 134 Pa., 383.

Ellerbe v. State, 79 Miss., 10.

The court in the case at bar, gave the jury to understand that the sentence would be a light one if the jury added a recommendation to mercy with their verdict of guilt, and upon that basis the jury brought in their verdict; it was in effect inducing the jury to bring in a verdict of guilty against the defendant.

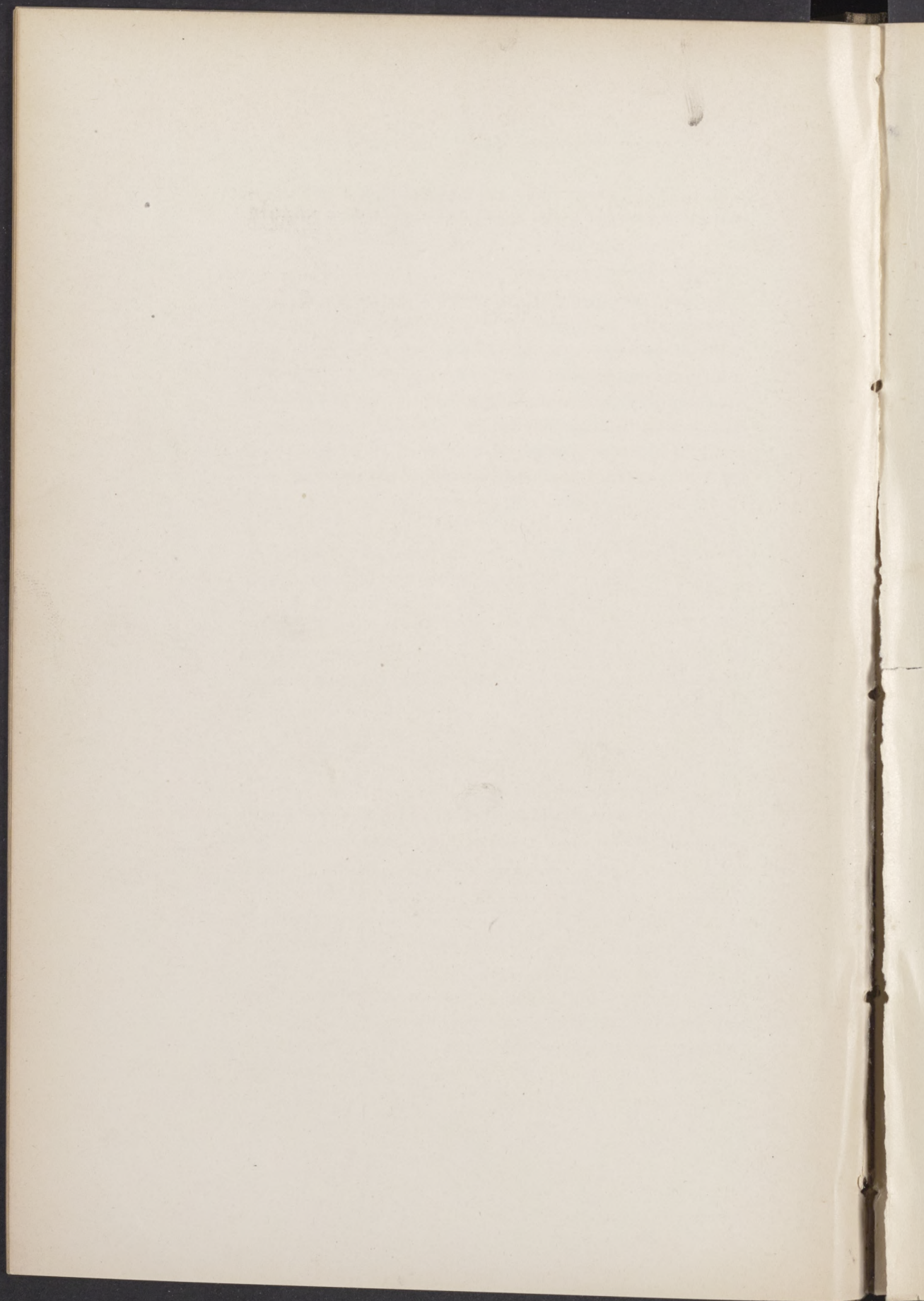
If the trial judge had answered the jury that a recommendation to mercy in no way impairs the

verdict, and that such recommendations are mere surplusage, the jury would have probably brought in a different verdict.

The law regarding such recommendations by the jury was declared by our Court of Errors and Appeals in the case of *State v. Overton*, 88 Atl., 689, where the defendant who was charged with murder, was found guilty of murder in the first degree, with a recommendation to the leniency of the court, that such words are mere surplusage, and in no way impaired the verdict of guilty of murder in the first degree. In the present case the recommendation can be nothing else than mere surplusage, as the plaintiff in error received a sentence from the trial judge in accordance with the law at the time, a minimum and a maximum, being a term of imprisonment of from five to fifteen years and payment of costs. It therefore follows that the plaintiff in error received no mercy from the court in accordance with the instructions as the trial judge would have the jury believe, which beyond any question of a doubt was the controlling question in the juror's minds in the arriving at their verdict and in the rendition of the same.

We respectfully submit that a *veniri de nuove* should issue.

FRANK M. McDERMIT and
ROBERT CAREY,
Of Counsel with Plaintiff in Error.



New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,

Defendant in Error,

vs.

NATHANIEL SHAPIRO,

Plaintiff in Error.

*On Error to
Supreme
Court.*

Brief for Defendant in Error.

The plaintiff in error was convicted in the Essex Quarter Sessions of performing a criminal abortion by the use of instruments upon Rose Lebowitz, in consequence whereof she died.

The plaintiff in error was a doctor who had practiced in Brooklyn five or six years, and came to Newark about nine months previous to the commission of this offense. He claimed to be a graduate of the Eclectic Medical College, located in Fourteenth street, New York City (page 162).

While the entire record of the proceedings had at the trial is returned (page 330), no reasons for reversal pursuant to the statute were served or returned in the record in the Supreme Court.

The record in the case at bar shows that assignments of error were filed in the Supreme Court (page 331), but no specifications of causes for reversal pursuant to the statute are returned as having been filed in the Supreme Court.

Objections not assigned for error in the Supreme Court can not be assigned for that purpose in the Court of Errors and Appeals.

Battschinger vs. Robinson, 54 Vr., 739.

Marten vs. Brown, 52 Vr., 599.

Among the Assignments of Error in this Court, there are two assignments which were not contained in the Assignments of Error in the Supreme Court; to wit, Assignment No. 10 and Assignment No. 14.

The matters referred to in these two assignments were in no way brought to the attention of the Supreme Court, consequently were not considered or passed upon by that Court. They cannot be presented in this Court for the first time.

Assignment No. 10 relates to the charge of the Court. The principle of law stated by the Court is entirely sound.

Powe vs. State, 19 Vr., at p. 36.

Assignment No. 14 relates to the form of the verdict which was accompanied by a recommendation to mercy.

Such verdicts have frequently been upheld.

State vs. Overton, 56 Vr., at p. 295.

ASSIGNMENT NO. 1.

The question and answer on which this assignment is based will be found on page 89, line 40, and page 92, line 32, *et sec.*

It will be seen (page 99) that the Court subsequently came to the conclusion that its ruling admitting this question was erroneous, and sustained the objection of the defendant to the question and struck out the answer, and instructed the jury to disregard the answer and the question "and treat the matter absolutely in their minds and upon the trial as if the question had not been asked and the answer not given" (page 100, line 30).

In the charge the Court says:

"If it has been suggested or stated during the course of the trial that some facts had or may have occurred, or evidence has been offered and excluded, or evidence has been presented and sub-

sequently stricken out, the jury should disregard all such statements, offers and excluded matter. The mere asking of a question conveying an inference, which is not supported by the answer, is not evidence. The verdict can therefore, lawfully and properly, be based only upon the evidence remaining in the case" (page 317, line 15).

It is not necessary to discuss the question, whether there was error in the overruling of the objection to this question, for the error, if such there was, was removed by the subsequent ruling of the Court, striking out the question and answer, and the instructions of the Court relative to that matter.

ASSIGNMENT NO. 2.

This assignment is based upon a question asked Dr. Martland (page 128, line 15).

Lillie Lebowitz, the mother of Rose, testified (page 50 and 51) that she was present when Dr. Shapiro used instruments on Rose, and says, "He did something inside with instruments," and on page 55, line 2, she says he used instruments in "the place where you give birth to a child."

Abraham Goldstein testified that Dr. Shapiro asked him "How far she was gone," and he replied, "About three months" (page 16, line 28).

Dr. Martland, who was present at the autopsy on the body of Rose (page 96) testifies (page 116, line 31) "That she was at least at the end of her third month."

Ethel Summer, sister of Rose, referring to her, says (page 75, line 13): "She was never sick she was well at the time."

The question asked Dr. Martland was based on this testimony.

The question assumes no fact that was not supported by the proofs. The evidence showed that Dr.

Shapiro had inserted an instrument into the privates of Rose, and it would seem to be entirely clear that it was not only proper, but essential, to show what the effect of this act would be.

The State claimed that Dr. Shapiro did this act for the purpose of producing an abortion; therefore, it was essential to show that the effect of this act would be to produce an expulsion of the foetus from the womb. Without this evidence, there would have been no proof that his act had produced the abortion.

ASSIGNMENTS NOS. 3 & 4.

These assignments relate to the same matter and will be considered together.

The Court admitted in evidence a dying declaration made by Rose Lebowitz a short time before her death. This document was marked "Exhibit No. 1 for the State," and will be found on page 160.

Dr. McKenzie testifies that he had a conversation with Rose a little after seven o'clock on the afternoon of February eleventh, in the presence of Officer Truckman, Miss Van Gelder, Miss Gross and Miss Potash, the latter being nurses at the hospital (page 131). Rose died between eight and eight-thirty (page 155, line 30).

He says on page 132, that at that time her mental condition was good; her physical condition was bad. He says (page 134, line 16), "I told her she was going to die and asked her if she realized it, and she said yes; and I asked her if she would make a statement of the facts in her case in the presence of death, and she did—she said she would." This statement he reduced to writing and it was signed by Rose Lebowitz making her cross, and by Sarah Van Gilder, Becky Gross, Margaret Potash, William H. McKenzie, as witnesses.

He says on page 135, line 15, "Exhibit S. 1 is a correct record of what she said to me at that time."

Miss Van Gilder says (page 138), "I heard him tell her that she was going to die, and soon, and that he wanted her to tell him what happened; as she was going to die soon, he wanted her to tell him the truth and nothing but the truth. He asked her if she understood that, and she said yes, she did."

Becky Gross says (page 143, line 5), that she heard Dr. McKenzie say, "She is going—she is before her death. She is going to die," and that she said, "She knows that."

Margaret Potash says (page 155), "I came in after the statement was taken up; when Dr. McKenzie read the statement before Rose Lebowitz and asked her if everything was just so, and she said yes—she agreed that everything was true that this paper said."

The last sentence of the dying declaration is as follows: "I say this, knowing I cannot get well and in the presence of death."

On page 156, line 15, Dr. McKenzie was asked this question:

"Q Doctor, I show you S. 1 for identification and ask you whether Miss Lebowitz made to you the statement contained in the last sentence of that paper at the time that you wrote it there?"

"A She did."

We respectfully submit that the evidence shows that the statement was made under apprehension of impending death. She did, in fact, die about an hour or an hour and a half after she made the statement (page 155). Her appearance foreshadowed the fatal result, and she said she knew she was going to die, saying, "I say this knowing I cannot get well and in the presence of death."

State vs. Monich, 45 Vr., page 522, at p. 527.

ASSIGNMENT NO. 5.

This assignment is based on certain questions asked the plaintiff in error on cross examination. At the bottom of page 196 a paper was marked Exhibit S. 7 for identification, which was shown to the defendant and he said the signature was his, and that it was a statement he had made at the police station in the presence of Captain Vogel and others, and he says that in this statement he tells of his relations with the girl, and how he treated her (page 191, line 27).

The questions asked the plaintiff in error regarding the inconsistencies between the statement he made on the witness stand, and what he said in the statement which he admitted making and signing at the police station, will be found on pages 198 and 199.

We respectfully submit that it was entirely proper to ask him on cross examination about these inconsistencies, and we further submit that his answers did not, and could not, possibly have harmed him.

ASSIGNMENT NO. 6.

From the testimony of Miss Van Gilder, the directing nurse of the hospital where Miss Lebowitz was taken, it appears that certain hospital records, relating to the case of Miss Lebowitz while she was in the hospital, were marked for identification, and were, by consent, used by the witness to refresh her memory, when testifying as to what the temperature, respiration and pulse of the patient were at various times (page 220). After Miss Van Gilder had fully testified as to this subject, counsel for the plaintiff in error offered these sheets or records in evidence, which offer the court overruled.

The court says on page 225, line 8:

"The temperature, pulse and respiration has gone in by consent. Now, you are asking that remarks of some interne or physician in the hos-

pital, entered on some record kept in the hospital, shall go in evidence. It is hearsay and totally incompetent."

On page 225, line 23, the court says:

"The record has not gone in evidence. It was allowed to be used by this witness to testify, just as if you and Mr. Mott had stipulated that the temperature was such and such. Mr. Mott allowed it to come in for what it was worth. You accepted that consent."

The documents offered were not a public record, but were only memoranda made at the time, and could be used by the person making the memoranda for the purpose of refreshing memory. They were not, however, in themselves, evidential, and were properly excluded. The documents are not returned with the writ of error, and are, therefore, not before the court.

State vs. MacRae, 54 Vr., 796, at 798.

ASSIGNMENT NO. 7.

This assignment states correctly what the court allowed.

While the State was putting in its rebuttal testimony, Dr. Shapiro was recalled for further cross examination, and was asked one question (page 267).

This was a matter entirely within the discretion of the court.

ASSIGNMENT NO. 8.

The testimony on which this assignment is based will be found on pages 276 and 277.

As a matter of fact, Cort did not contradict any statement made by Kaas, but if he had, his evidence would have been competent.

ASSIGNMENT NO. 9.

This assignment is based on the ruling of the court (page 306), allowing the State to recall Abraham Goldstein in rebuttal, to contradict certain statements made by the plaintiff in error relating to his having treated Goldstein and Rose Lebowitz for a certain disease.

The right of the State to rebut this testimony of Dr. Shapiro by the testimony of Goldstein, would seem to be perfectly apparent.

ASSIGNMENT NO. 11.

This assignment alleges a misstatement in the charge of the court of the testimony of the State's witness, George Kaas.

The testimony of Kaas to which the court here refers will be found on page 270, line 26.

The foundation for asking this question of Kaas was laid on the cross examination of the defendant (page 267, line 21).

ASSIGNMENT NO. 12.

This assignment is based on what the court said in its charge, to the effect that members of the family of the girl, Rose Lebowitz, were accomplices, and therefore their testimony should be carefully scrutinized.

The court is here referring to the testimony of Harry Sommer, who was a brother-in-law of Rose (page 38); Lillie Lebowitz, who was the mother of Rose (page 50), and Ethel Sommer, who was a sister of Rose (page 74).

Each one of these witnesses testified to an interview had with Dr. Shapiro, before the operation was performed, in which the question of having the operation performed was discussed. Harry Sommer (page 38),

Ethel Sommer (page 74), Lillie Lebowitz (page 50). Lillie Lebowitz was actually present when the operation was performed, and paid the doctor forty dollars.

The charge of the court respecting the testimony of these witnesses was favorable to the defendant.

State vs. Lieberman, 51 Vr., 507; 52 Vr., 748.

State vs. Fiore, 88 Atl., 1039, at 1043.

ASSIGNMENT NO. 13.

“Where time is not an essential ingredient of the crime charged, the date stated in the indictment is not an essential element of a constitutional indictment.”

Ketline vs. State, 30 Vr., 468.

The date named in the indictment, to wit, January fifteenth, is however, substantially correct.

Dr. Shapiro testified (page 169) that on January 27th he treated Rose at her home; that he called in Dr. Silverstein to administer an anæsthetic and that he then curetted her. The plaintiff in error attended her at her home from January 27th to February 7th, when Dr. Fischer was called in (page 84). Dr. Fischer examined her, and on page 85 he tells what her condition then was, and he immediately sent her to the hospital.

Lillie Lebowitz, Rose's mother, who was present when the operation was performed, and the instruments used (page 51) says that when she and Rose left the doctor's office he told them to go home and that he would come on the following Monday to see her; that at two o'clock on that day he came and ordered her to go to bed; that Rose's condition was worse. And she says on page 53, line 18, that Dr. Shapiro came to her house to see Rose every day for two weeks, that is, two weeks prior to the 27th of January, when Dr. Fischer was called in and sent Rose to the hospital. This fixes the time when Rose and

her mother visited the doctor's office and the instruments were used, as about the 15th of January.

The State therefore insists that the date named in the indictment is substantially correct.

We respectfully submit that there is no error in the record and that the judgment below should be affirmed.

Respectfully submitted,
Frederick F. Guild
Prosecutor of the Pleas. WILBUR A. MOTT,
Assistant Prosecutor.

INDEX.

	PAGE
Writ of Error to Supreme Court.....	1
Return	2
Writ of Error to Essex Oyer and Terminer..	3
Return	4
Indictment	5
Plea	8
Judgment	8
Charge to Jury.....	316
Exceptions to Charge.....	329
Certificate of Judge Martin.....	330
Assignments of Error.....	331
Joinder in Error.....	335
Opinion	336
Remittitur	338
Assignments of Error.....	340
Joinder in Error.....	340

TESTIMONY FOR THE STATE.

Abram Goldstein,	
direct examination.....	11
cross “	19
re-direct “	35
re-cross “	37
Harry Sommer,	
direct examination.....	38
cross “	40
Lillie Lebowitz,	
direct examination.....	50
cross “	55
re-direct “	71
re-cross “	71
Ethel Sommer,	
direct examination.....	74
cross “	76

	PAGE
Dr. Benjamin Silverstein,	
direct examination.....	78
cross “	80
Dr. Armin Fischer,	
direct examination.....	84
cross “	86
Dr. Bernard H. Greenfield,	
direct examination.....	86
cross “	87
Dr. William H. McKenzie,	
direct examination.....	88, 131, 156
cross “	94
re-direct “	95
re-cross “	95
Dr. Harrison S. Martland,	
direct examination.....	96
cross “	99
re-direct “	128
re-cross “	131
Sarah Van Gilder,	
direct examination.....	136
cross “	139
Becky Gross,	
direct examination.....	142
cross “	143
Margaret Potash,	
direct examination.....	154

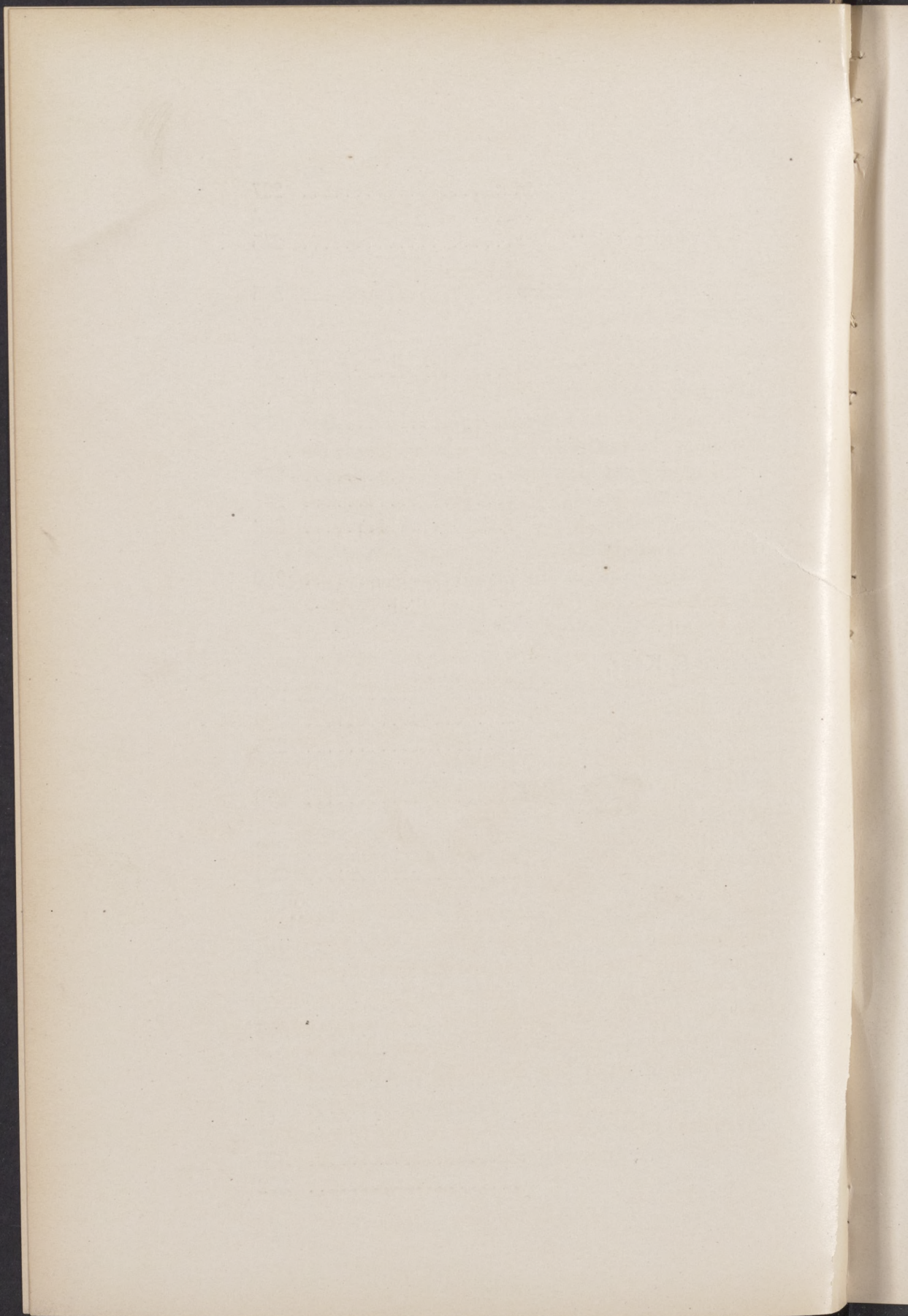
TESTIMONY FOR DEFENDANT.

Nathaniel J. Shapiro,	
direct examination.....	161
cross “	185, 267
re-direct “	201, 204, 268
re-cross “	203, 204
Dr. Louis Reich,	
direct examination.....	206
Sarah Van Gilder,	
direct examination.....	205, 261, 290
cross “	264

	PAGE
Becky Gross,	
direct examination.....	227
cross “	244
re-direct “	245
Silvia Shapiro,	
direct examination.....	245
Morice B. Pearlstin,	
direct examination.....	246, 260
cross “	249
Morris J. Schutzman,	
direct examination.....	249, 278
Theodore Adlerman,	
direct examination.....	251
cross “	257
re-direct “	258
Dorothy Felderstein,	
direct examination.....	280

REBUTTAL FOR THE STATE.

George E. Kaas,	
direct examination.....	265, 269
cross “	270
re-direct “	275
Alfred J. Cort,	
direct examination.....	276
Dr. Benjamin J. Silverman,	
direct examination.....	292
cross “	293
re-direct “	295
Walter S. Washington,	
direct examination.....	295
cross “	296
re-direct “	305
re-cross “	305
Abraham Goldstein,	
direct examination.....	306
cross “	307
Jacob B. Tuckman,	
direct examination.....	308
cross “	312



Writ of Error.

Filed July 9, 1915.

The State of New Jersey to our
[L. s.] Justices of our Supreme Court, 10
GREETING:

Because in the record and proceedings and also
in the giving of the judgment upon a certain in-
dictment, which was in our said Supreme Court,
before you between the State, defendant in error,
and Nathaniel J. Shapiro, plaintiff in error, on a
writ of error issued out of our Supreme Court to
the Judges of the Court of Oyer and Terminer of
the County of Essex, constituting the Court of 20
General Quarter Sessions in and for said county,
as is said, manifest error hath intervened to the
great damage of the said Nathaniel J. Shapiro, 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 Nathaniel
J. Shapiro, do command you that if judgment be
thereupon given, then you send distinctly and 30
openly under your seal the entire record, proceed-
ings and indictment aforesaid, with all things
touching and concerning the same to our Court of
Errors and Appeals before the Judges thereof on
the twelfth day of July next, and this writ, and
that the records and proceedings aforesaid being
inspected, we may cause to be further done there-
upon what of right and according to law ought to
be done.

Witness, EDWIN ROBERT WALKER, our Chancellor 40
and President Judge of our said Court of Errors

Return.

and Appeals, at Trenton aforesaid, the 23rd day of
June, A. D. Nineteen Hundred and Fifteen.

THOMAS F. MARTIN,
Clerk.

10 McDERMIT & McDERMIT,
Attorneys.

FRANK M. McDERMIT,
of Counsel.

Return.

20 The answer of the Justices of the Supreme
Court of the State of New Jersey within named.
The record and proceedings whereof mention is
within made, with all things touching and concern-
ing the same, we do certify to the Court of Errors
and Appeals of said State, in a certain schedule
to this writ annexed, as within we are commanded.

WM. S. GUMMERE, [L. S.]
C. J.

30

40

Writ of Error.

Writ of Error.

New Jersey Supreme Court.

NEW JERSEY, ss.

10

The State of New Jersey, to our
Judges of our Court of Oyer and Ter-
(L. s.) miner, of the County of Essex, constitut-
ing the Court of General Quarter Ses-
sions, in and for the said county,
GREETING:

Because in the record and proceedings and also
in the giving of judgment upon a certain indict- 20
ment in the name of the State of New Jersey
against one, Nathaniel Shapiro, for abortion, in
the City of Newark, in the said County of Essex,
found in our Court of Oyer and Terminer and in
and for said county heard and determined, mani-
fest error hath intervened to the great damage of
him the said Nathaniel Shapiro, as from his com-
plaint we have received information, we being will-
ing in that behalf to correct the error in due man-
ner, if any there shall be, and that speedy justice
be done to him, the said Nathaniel Shapiro, do com- 30
mand you that if judgment be thereupon given that
then you do send the record and proceedings afore-
said together with all things touching and concern-
ing the same, to us under your seal, distinctly and
openly, and this writ, so that we may have them be-
fore our Supreme Court of Judicature, at Trenton,
on the twenty-fourth day of February next, that in-
specting the records and proceedings aforesaid, we
may further do thereupon for correcting the error
that which of right and according to law, shall be 40
fit to be done.

Return.

Witness, William S. Gummere, Chief Justice of our said Supreme Court, at Trenton, the fourth day of February, in the year of Our Lord, one thousand nine hundred and fourteen.

WM. C. GEBHARDT,
Clerk.

10

McDERMIT & McDERMIT,
Attorneys.

Presented in open court this 5th day of February, A. D., 1914.

WM. P. MARTIN,
President Judge.

Bail fixed at \$10,000.

20

Return.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

I, William P. Martin, Judge of the Court of Common Pleas and Court of Quarter Sessions in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the judgment, record and proceedings, together with all things touching and concerning the same and the entire record as by the within writ to me directed I am commanded.

In witness whereof, I have hereunto set my hand and the seal of said Court and County at Newark, New Jersey, this 19th day of February, A. D. 1914.

40

(SEAL.)

WM. P. MARTIN,
Judge.

Indictment.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss.

Be it remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the second Tuesday of December, in the year of our Lord one thousand nine hundred and twelve, by the Honorable William S. Gum- 10
 mere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Matthias Stratton, Harry C. Larter, J. Warren Alford, Joseph J. Mullin, William P. Short, Frederick J. Hull, George J. Gates, Sylvester Connelly, David Slayback, Sidney C. Keller, M. D., Charles Bier- 20
 man, Morris B. Van Valen, Jacob C. Reiss, Julius Ehmann, Peter J. Sutton, George W. Gerlich, Joseph Regan, Frederico Luongo, Harris Gash, Philip Krimke, John J. Gillick, John K. Scott, John J. Slattery, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to inquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

ESSEX OYER AND TERMINER. 30

December Term, A. D. 1912.

Essex County, to wit: The Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath present, that Nathaniel Shapiro, amended Nathaniel J. Shapiro, late of the City of Newark, in the County of Essex, aforesaid, on the fifteen day of January, in the 40
 year of our Lord one thousand nine hundred and

Indictment.

thirteen, with force and arms at the city aforesaid, in the county aforesaid and within the jurisdiction of this court, unlawfully, maliciously and without lawful justification, in and upon one Rose Lebowitz, a woman then pregnant with child, did use divers instruments to the Grand Jurors aforesaid
 10 unknown, with intent to cause and procure the miscarriage of the said Rose Lebowitz, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex upon their oath aforesaid, do further present that the said Nathaniel J. Shapiro, late of the City of Newark, in the County of Essex aforesaid, on the
 20 fifteenth day of January, in the year of our Lord one thousand nine hundred and thirteen, with force and arms at the city aforesaid, in the county aforesaid and within the jurisdiction of this court, did maliciously and without lawful justification, with intent to cause and procure the miscarriage of one Rose Lebowitz, a woman then pregnant with child, administer to and prescribe for the said Rose Lebowitz, and advise and direct her, the said Rose Lebowitz, to take and swallow a certain poison,
 30 drug, medicine and noxious thing, to the Grand Jurors aforesaid unknown—contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex upon their oath aforesaid, do further present that the said Nathaniel J. Shapiro, late of the City of Newark, in the County of Essex, aforesaid, on the
 40 fifteenth day of January, in the year of our Lord

Indictment.

one thousand nine hundred and thirteen, with force and arms at the city aforesaid, in the county aforesaid, and within the jurisdiction of this court, unlawfully, maliciously and without lawful justification, in and upon one Rose Lebowitz, a woman then pregnant with child, did use divers means, to the Grand Jurors aforesaid unknown, with intent to cause and procure the miscarriage of the said Rose Lebowitz—contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 10

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex upon their oath aforesaid, do further present that the said Nathaniel J. Shapiro, late of the City of Newark, in the County of Essex aforesaid, on the fifteenth day of January, in the year of our Lord, one thousand nine hundred and thirteen, with force and arms at the city aforesaid, in the county aforesaid and within the jurisdiction of this court, maliciously and without lawful justification with intent to cause and procure the miscarriage of one Rose Lebowitz, a woman then pregnant with child, did use in and upon the said Rose Lebowitz, divers instruments to the Grand Jurors aforesaid unknown, in consequence whereof the said Rose Lebowitz died—contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 20 30

WILBUR A. MOTT,
Prosecutor of the Pleas.

On the twenty-second day of March, A. D. nineteen hundred and thirteen, on which day the said indictment was presented by the Grand Jurors aforesaid, to the said Court of Oyer and Terminer, 40

Plea.

and the said justice did then and there order the said indictment to be handed down to the Court of General Quarter Sessions, and to be delivered to the Clerk of the Court of General Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and
10 duly filed by the Clerk of said Court and an entry of such order and delivery and filing was there and then made in the minutes of said court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the third day of April, A. D. nineteen hundred and thirteen, at a Court of General Quarter Sessions, holden at Newark, in and for the County of Essex, before the
20 Honorable William P. Martin, Presiding Judge of the Court of Common Pleas, Nathaniel J. Shapiro, in the custody of John F. Monahan, Sheriff of the County of Essex aforesaid, and the said Nathaniel J. Shapiro being brought before the bar in his own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, say that he is not guilty thereof, and therefore for good and evil he puts
30 himself upon the country, &c., and Wilbur A. Mott, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like.

Therefore, let a jury thereupon come before the Court of General Quarter Sessions to be holden at Newark, in and for the County of Essex, on the twenty-fourth day of April, A. D. nineteen hundred and thirteen, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this
40 State, and resident within the County of Essex

Judgment.

aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Nathaniel J. Shapiro, to recognize upon their oath whether the said Nathaniel J. Shapiro is guilty of the premises in the said indictment specified or not guilty because the said Louis Hood, Esquire, Prosecutor, &c., as the said Nathaniel J. Shapiro puts himself upon the jury and the same time is given to the parties aforesaid at the same time. 10

And afterwards, that is to say, the twenty-sixth day of January, nineteen hundred and fourteen, to which day the trial of aforesaid indictment was postponed, at the same Court of General Quarter Sessions, holden before the Honorable William P. Martin, Judge of the Court of Common Pleas, comes the said Louis Hood, who prosecutes as aforesaid, and the said Nathaniel J. Shapiro, and the jury of whom mention is before made, and by John F. Monahan, Sheriff of the County of Essex, for this purpose empanelled and returned to wit: (After the following challenges were exhausted: By the State 2; by the defendant, 2.) Cornelius Cort, P. J. Corr, Frederick Nothnagel, Walter B. Tombs, Wm. M. Kaas, George F. Belles, Jacob A. Osborne, Wm. A. Fanning, George A. Vail, Wm. T. Aierstock, Charles Bradley, and William J. Nolte being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until January twenty-ninth, nineteen hundred and fourteen, when the jury returned into court in charge of the officer sworn to attend them, and then and there in the presence of the prosecutor, defendant and court do say upon their oath, they find the defendant, Nathaniel J. 20 30 40

Judgment.

Shapiro, guilty, under the first and fourth count, with recommendation to mercy under the fourth count, and so they say all.

10 Whereupon all and singular, the premises being seen and by the court now here fully understood, it is, on this second day of February, nineteen hundred and fourteen, ordered and adjudged that the said Nathaniel J. Shapiro be committed to the state prison for a term of from five to fifteen years, and to stand committed until the costs are paid, which said costs are taxed by the clerk at the sum of two hundred and seventy-two dollars and fifty-nine cents.

Judgment signed February 2, 1914.

20

WM. P. MARTIN,
Judge.

30

40

Abram Goldstein, direct.

ESSEX COUNTY QUARTER SESSIONS COURT.

December Term, 1913.

January 26, 1914.

STATE,

vs.

NATHANIEL SHAPIRO.

Indictment 10

No. 87.

Abortion.

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, William P. Martin, judge, and a jury, at the Court House, in the City of Newark, New Jersey, in the presence of Wilbur A. Mott, Esq., Assistant Prosecutor of the Pleas, for the State, and Frank M. McDermit, Esq., for the defendant. 20

Mr. Mott opened for the State.

ABRAM GOLDSTEIN, sworn for the State.

Direct examination by Mr. Mott.

Q Mr. Goldstein, where do you live? A 179 Spruce street.

Q In this city? A Yes, sir. 30

Q How old are you? A Twenty-one.

Q When were you twenty-one? A May 14th.

Q Last year? A Yes, sir.

Q Did you know Rose Lebowitz? A Yes, sir.

Q How long had you known her? A I knowed her for about five years.

Q Where did she live? A 240 Prince street.

Q How far was that from your home? A Why, it was the same house. 40

Abram Goldstein, direct.

Q You lived there with your parents? A Yes, sir; I lived 179 Spruce street but it is the same house, three story house.

Q With whom did she live? A With her parents.

10 Q How old was she? A Eighteen or nineteen years of age.

The Court. Your entrance, that you used, is a different one?

Witness. Yes, sir; on Spruce street.

The Court. Is your name Abram or Abraham?

Witness. They call me Abraham and Abe?

20 Q What relations did you have with Rose? I mean your personal relations with her were what? A I don't quite understand you.

Q I mean as to whether you were keeping company with her or not? A Yes, sir.

Q How long had you been keeping company with her? A About year and a half.

Q And were you engaged to be married? A No, sir.

30 Q How intimate with her were you?

Mr. McDermit. I object. I don't think he has a right to show the relationship between the deceased and this witness as to any acts that may have been criminal in themselves.

The Court. You allowed the prior question.

40 *Mr. McDermit.* Even assuming that I did, I still object to the testimony on the part of this witness to show what his relationship may be by way of intercourse. That is intended to bring out—

Abram Goldstein, direct.

The Court. He cannot say that he was intimate with her. That is leading. Why can't he say what he did?

Mr. McDermit. I do not think it is proper to show the relationship between these people.

The Court. I will sustain your objection to this particular question but I think it is entirely proper to show what he did. I do not think he can characterize his relations as being intimate or otherwise. I think he has got to tell us what he did and what he said. 10

Mr. McDermit. I cannot see how the acts of this witness with the deceased or conversations of the deceased with this witness can be of any binding effect upon this defendant.

The Court. Conversations cannot be, but the question is whether this woman was pregnant, isn't it? 20

Mr. McDermit. Yes, sir.

The Court. If she had intercourse with somebody before the time when she is supposed to have been pregnant that is a circumstance of some weight. If it were entirely absent why it would be absolutely conclusive so far as the defendant's innocence would be concerned, therefore it is a circumstance that may be proved. 30

Mr. McDermit. I do not think that it is a proper line of proof at this time, or orderly line of proof.

The Court. How can it be proved?

Mr. McDermit. Produce the physician who performed the autopsy.

The Court. Your objection is sustained as to this particular question. 40

Abram Goldstein, direct.

Q Well, what did you and Rose do? A We had intercourse together—sexual intercourse.

10 *Mr. McDermit.* I object to that line of testimony. I knew very well that that argument would bring out the question what the relationship was. The Court will now say why don't you make your objection before the question is asked?

The Court. You simply object to his going on with the answer?

Mr. McDermit. Yes, sir. Object to the question.

The Court. The motion ought to be to strike out.

20 *Mr. McDermit.* I move to strike out.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, [L. S.]

Judge.

The Court. You have got to fix the time or else I will grant the motion.

30 Q When, as near as you can fix it, did you and Rose first have intercourse? A I don't exactly remember the date, I couldn't exactly tell you when.

Q Did you go down to the City Hall with her once? A Yes, sir.

Q What did you go down there for? A Was to issue marriage license.

Q Did you get it? A Yes, sir.

40 Q When was that that you went down there to get the marriage license? A In the month of January.

Abram Goldstein, direct.

Q Did you have intercourse with her before or after you went down to get your marriage license?

A I had intercourse before.

Q And how long before as near as you can fix it? A About three months.

Q And how many times did you have intercourse with her? A I had intercourse with her several times. 10

Q How frequently did they occur? A I don't quite understand.

Q How often? A About once a week.

Q Did you have intercourse with her after you went down for the marriage license? A No, sir.

Q Do you know the defendant, Dr. Shapiro? A Yes, sir.

Q Did you ever go to see him? A Yes, sir. 20

Q In connection with Rose? A Yes, sir.

Q Did you go alone? A No, sir.

Q Who went with you? A The young lady, Rose Lebowitz.

Q Did you go and see him before or after you got your marriage license? A I don't exactly remember. I believe it was after I had the marriage license; yes, sir.

Q Where is your marriage license? A City Hall. 30

Q Did you get a copy of it? A No, sir.

Q Did she? A Yes, sir.

Q Do you remember about when it was that you went to see Dr. Shapiro? A Yes, sir.

Q When was it? A In the month of January.

The Court. What year?

Witness. 1913.

The Court. Last year? This is 1914.

Witness. Last year; yes, sir. 40

Abram Goldstein, direct.

Q And do you remember about what part of the month it was? A The early part.

Q Where did you see the doctor? A At his office.

Q What time of the day was it, if you recall, that you went? A In the afternoon.

10 Q In what office did you see him—which room?
A Front room.

Q Was Rose with you at the time? A Yes, sir.

Q Was there anybody else in the room? A The doctor.

Q You three? A Yes, sir.

Q Did you have any talk with the doctor at that time—did you say anything to him? A Yes,
20 sir.

Q What did you say to him? A I asked the doctor whether the girl could be cured in the condition that she was in, that is in the family way, she was, at the present time; I asked him whether she could be cured.

Q Did you tell him what condition she was in? A Yes, sir.

Q What did the doctor say? A Why, he asked me how far she was gone.

30 Q Did you tell him? A Yes, sir.

Q What did you say? A About three months.

Q Well, what did he say then? A Why, he said he would have to examine her and see what it is.

Q And do you know whether he did examine her or not? A No, sir; he didn't examine her.

Q And what else did you say or he say? A I asked him what it would cost for her to be cured.

40 Q And what did he say? A He says it would cost \$40.

Abram Goldstein, direct.

Q Well, what else was said? A I asked him whether it was dangerous, that operation would be dangerous.

Q What did he say? A Why, he says why he could fix it up all right, and he could use a certain instrument which no other doctor uses and could cure her. 10

Q Well, do you remember anything else? A That is all, sir.

Q Did she say anything while you were there? A No, sir.

Q And then did you and Rose go away? A Yes, sir.

Q Did you see him again after that? A Yes, sir.

Q Alone or with someone? A Seen him with her brother-in-law. 20

Q What was his name? A Mr. Sommer.

Q Mr. who? A Sommer.

Q And where did you see him that time? A I seen him at the house, at 240 Prince Street.

Q That is whose house? A Mr. Sommer lived right next door to Miss Rose Lebowitz; that is her brother-in-law lived right next door to Miss Rose Lebowitz.

Q And what occurred there when you saw the doctor at Sommer's house? No. How long was that after you saw the doctor the first time? A How long after? 30

Q Yes. A Why, a day or two.

Q What occurred when you saw the doctor at Sommer's house? What happened when you saw him at Sommer's house? A When I seen Mr. Sommer's.

Q No; when you saw the doctor at Mr. Sommer's house? A Why, the doctor wasn't at Sommer's house. 40

Abram Goldstein, direct.

Q Oh. Mr. Sommer was with you. Where did you see the doctor? A At the doctor's house. I had Mr. Sommer there with me.

Q I beg pardon. At the doctor's house? A Yes, sir.

10 Q At his house or at his office? A At his office.

Q And what was said at that time? A Why, I told Mr. Sommer what the doctor told me and he went to see Dr. Shapiro and Dr. Shapiro told him the same thing as he told me.

Mr. McDermit. I ask to strike that all out.

By the Court.

Q Did you go with Mr. Sommer? A Yes, sir.

20 Q And did you hear what he said to Dr. Shapiro and what the doctor said to him? A Yes, sir.

Q And is this that you just stated what he said to the doctor and what the doctor said to him? Is what you have just told us— A Yes, sir.

Q —is what Mr. Sommer said to the doctor and what the doctor said to him?

Mr. McDermit. In your presence?

30 *The Court.* While you were there?

Witness. What the doctor said to him.

Q And what he said to the doctor? A What he said to the doctor I didn't tell you yet.

The Court. You haven't told us all?

Mr. McDermit. I object to anything he may have told the doctor unless this party was present.

40 *The Court.* He said he was there.

Abram Goldstein, cross.

Further direct.

Q What did Mr. Sommer say to the doctor when you saw him at that time? A Why, Mr. Sommer told the doctor that he was the brother-in-law of the young lady and he would like to know what could be done with her.

Q And what did the doctor say? A The doctor told Mr. Sommer that she could be cured all right and he would do the operation for \$40. 10

Q And what did Mr. Sommer say after that? A Then, so Mr. Sommer asked the doctor whether it was dangerous.

Q And what did the doctor say? A No, sir.

Q Did you see the doctor again? A After that?

Q After that. A No, sir.

Q When did you last see Rose alive? A January 20th. 20

Q Where did you see her then? A At her house.

Q What was her condition at that time? A Why, she was in the family way.

Q Her health—her other health; what was that? A All right.

Q Did you attend Rose's funeral? A No, sir.

Q Did you yourself ever pay Dr. Shapiro any money for this operation? A No, sir. 30

Cross examination by Mr. McDermit.

Q You have been in the court house before today, haven't you? A Yes, sir.

Q You have been convicted of crime here, haven't you, yourself? A Yes, sir.

Q And after this girl died in February, you ran away, did you not? A No, sir.

Q You ran away in January, didn't you? A No, sir. 40

Abram Goldstein, cross.

Q You know Dr. Shapiro for quite some time, don't you? A No, sir.

Q You visited the doctor to consult him on a number of occasions, haven't you? A I don't quite understand you.

10 Q You visited the doctor to get medicine for yourself, didn't you? A No, sir.

Q The doctor treated you for the gonorrhoea, didn't he? A No, sir.

Q And treated her for the gonorrhoea? A No, sir.

Q You were to his house perhaps a dozen different times, weren't you, with this girl? A No, sir.

20 Q You say that you never got any medicine for the gonorrhoea? A No, sir.

Q Who first brought you to Dr. Shapiro's office? A Nobody brought me there.

Q How did you come to go there? A I went there with the young lady.

Q Who introduced you to the doctor? A Nobody introduced me.

Q Who introduced the young lady to the doctor? A Nobody did.

30 Q Do you mean to say that you and the young lady went there together to have him perform some operation to relieve her from having a child without— A Yes, sir.

Q —anybody telling you to go there or without ever knowing the man before or she knowing him; is that so? A I had heard of him but nobody introduced me to him.

Q You heard of him? A Yes, sir.

40 Q Now, when was it that you and the girl went to Dr. Shapiro's house? A The month of January.

Abram Goldstein, cross.

Q What date? A I don't exactly remember the dates.

Q Why don't you remember the dates? A I don't remember it.

Q Was it on the 20th of January? A I don't remember the dates.

Q Was it on the 20th of January? A I don't remember the dates—I don't remember. 10

Q Don't you remember that Dr. Shapiro wasn't called in to treat her at her home until the 27th day of January, don't you? A No; I don't know that.

Q Don't you know a man by the name of—a druggist—man by the name of Schutzman? A Yes, sir.

Q You know him well, don't you? A Yes, 20
sir.

Q That is this gentleman sitting here, isn't it? A Yes, sir.

Q Do you remember when Dr. Shapiro was sent for to go to the home of the deceased girl? A No, sir.

Q On the 27th of January? A No, sir.

Q Dr. Shapiro had never been to your house or to her home before the 27th of January, had he? A I don't remember no dates, but he never was— 30

Q Don't you know as a matter of fact that—

The Court. Go on and finish your answer.

Witness. I don't remember the dates, but—I don't remember dates, but Dr. Shapiro never was to my house that I know of.

Q And he never was to your girl's house as far as you know until the 27th of January, was he? A I don't know. 40

Abram Goldstein, cross.

Q No. You say you had some talk with Dr. Shapiro and a Mr. Sommer, you, Sommer and Shapiro together? A Yes, sir.

Q Where was the talk that you and Mr. Sommer had with Shapiro? A At his office.

10 Q At what street is his office on? A Hillside Place.

Q When was the talk that Mr. Sommer and you had with the doctor? A When it was?

Q Yes? A I don't remember the dates but it was in the month of January.

Q Can't you say what time it was in January? A The early part.

Q The early part of January? A Yes, sir.

20 Q Relative to the time that you and deceased lady visited the doctor, was it before or after you and the girl went there? A I don't quite understand you, sir.

Q Did Sommer and the doctor and you have a conversation first or did the girl and you have a conversation with the doctor first? A The girl and I was there first.

Q Now, how long after you and the girl went to see the doctor about being cured was it that he met Mr. Sommer with you? A The next day.

30 Q The next day? A Yes, sir.

Q Then, you brought Mr. Sommer to Shapiro's office, did you? A Yes, sir.

Q You brought him back there? A Yes, sir.

Q And had you and the girl talked with Sommer the night before? A Yes, sir.

40 Q Had you gone back and—well, why was it you wanted to tell Sommer about what the doctor was going to do to the girl? Why was that? What was that his business? A I wanted him to know about it.

Abram Goldstein, cross.

Q You wanted him to know about it? A Yes, sir.

Q Why? A He is the brother-in-law, and I let her sister know about it also, and they are a young married couple; I thought it would be best for them to know.

Q So after you visited Dr. Shapiro, you and the girl went back and went to her family and saw her sister and saw her brother-in-law? A Yes, sir. 10

Q And they all agreed that it was a good thing to do, to go back and have Dr. Shapiro go on with it; is that right? A No, sir; they didn't think that.

Q Well, but you told us that Sommer and you went back the next day and saw the doctor? A Yes, sir; we did.

Q And tell us now, who introduced Sommer to the doctor? A I did. 20

Q And now, tell us what Sommer said to the doctor? A Why, Sommer told the doctor that he was the brother-in-law of Miss Rose Lebowitz—

Q. Yes. A —and asked him whether she could be cured of the condition that she was in, that is, the family way.

Q Yes. Now—

The Court. Go on.

A —and the doctor told him that he would cure her. Told me the same thing. 30

The Court. Never mind "the same thing." Go on.

Witness. Told him that it is not dangerous and it would cost \$40 for the operation.

Q Give us the exact language; the doctor's language to Sommer—give us his words. A I just exactly couldn't tell you the exact language, but that is the way he brought it out. 40

Abram Goldstein, cross.

Q Didn't the doctor tell you to take certain medicine and didn't you come back there for the purpose of changing it? A No, sir.

Q And then brought some man in there that you introduced under another name? A No, sir.

10 Q You told Shapiro who Sommer was, didn't you? You told him he was your intended brother-in-law, didn't you? A Yes, sir; no, sir; I didn't tell him he was my intended brother-in-law. I told him he was the brother-in-law of Miss Rose Lebowitz.

Q Now, how close was that to the day you got your marriage license at the City Hall? A About two weeks before.

20 Q About two weeks before. You didn't get your marriage license then until the last part of January, is that right? A It wasn't the last part of January.

Q Well, you went—you got your marriage license in January, as I understand it, two weeks after you visited the doctor, is that right? A I don't exactly remember the dates. About that time.

30 Q You do know you got your license in January? A Yes, sir.

Q And you do not know how many days after New Year's it was, do you? A No, sir.

Q You say the copy of the license is here? A I don't know. I haven't got a copy of it.

Q You must know who went with you to the City Hall to take out this license? A Miss Rose Lebowitz.

Q Who else? A And Mr. Lustic and Mr. Hearwaggon.

40 Q And you were to get married? A Yes, sir.

Abram Goldstein, cross.

Q Were you not? A Yes, sir.

Q When were you to be married? A We hadn't decided when we were to be married.

Q What did you want the marriage license for?
A I expected to get married.

Q You expected to marry her because you expected she would give birth to a child, is that the reason? A Not only that, but I liked the girl. I would marry her anyhow. 10

Q You would? A Yes, sir.

Q Why didn't you marry her? A I didn't have any—on account of my finances I couldn't marry her right away.

Q So it was cheaper to pay a doctor \$40 to get rid of the child than marry her and live with her, is that the idea? A I hadn't any intention to pay the doctor \$40 or make any arrangement. 20

Q You didn't pay him any money either, did you? A No, sir.

Q You didn't pay him for the other medicine that he gave you in the summer of 1912? A I never owed the doctor a dime.

Q When was it that you run away, can you place that date? A I didn't run away.

Q How long were you away from the city? A One year. 30

Q You knew the doctor before you went away?
A Yes, sir.

Q And you came to the doctor and got four or five bottles filled, saying you wouldn't be able to renew the prescription, saying that you had to go away out of the city and you wanted that for the gonorrhoea, isn't that so, or is it? A No, sir.

Q It isn't so? A No, sir; never got anything from him. 40

Abram Goldstein, cross.

Q How can you explain to the jury that you didn't know Dr. Shapiro until you went there January of this year when you now say you knew him about a year before you ran away?

Mr. Mott. Didn't say anything of the kind.

10 *The Court.* You object to the question on the ground that it contains a wrongful assumption of fact?

Mr. Mott. Yes, sir.

The Court. Objection sustained.

Q When was it that you were away for a year?

A This month.

Q One year ago? A Yes, sir.

20 *The Court.* You cannot be away a whole year and a month. When did it begin and end?

Witness. This month later. I went away in January and I come back this month.

The Court. You left in January, 1913?

Witness. Yes, sir.

The Court. And you came back this year, January?

Witness. Yes, sir.

30 Q What did you go away for? A To get work; have enough money to get married.

Q Why, wasn't she dead before you went away?

A No, sir.

Q You went away before she died? A Yes, sir.

Q Can't you give us the date you went away on? A No, sir.

Q Don't you know the date you went away on?

40 A Just a minute. I think I will be able to tell you—about January 21—20.

Abram Goldstein, cross.

Q Well, now, Rose was well at that time? A Yes, sir.

Q She was able to be up and around, wasn't she, when you left? A Able to do what?

Q She was in a good healthy condition when you left? A Yes, sir.

Q She was in a good healthy condition when you left her, that is true, isn't it? A She was in the family way, otherwise her health was all right. 10

Q Now, up to that time, the doctor had done nothing for her—Doctor Shapiro had done nothing for her? A Not as I know of.

Q You had gone down there to make some arrangement that wasn't carried out? A I didn't make any arrangement with the doctor.

Q The doctor didn't agree to perform any operation, did he? A I didn't ask him to, to perform an operation. 20

Q The doctor said he would make an examination, and as far as you know, to your own knowledge, he never made any examination of her? A He said he would like to examine her.

Q Yes; but he never did, as far as you know. A When it come to money matter I walked out.

Q When it came to the question of money you disappeared? A Yes, sir. 30

Q Now, however, up to the 21st of January, 1913, no operation of any kind had been performed as far as you knew and no examination had been made; is that right? A No, sir.

Q So that the day after that you went down with Sommer to see Dr. Shapiro, no arrangement was then made either, was it? A No, sir.

Q When did you first learn that this girl had died? A I had known that in the month of February. 40

Abram Goldstein, cross.

Q Did you know what date she died? A No, sir.

Q Where were you when you heard she had died? A In Detroit, Michigan.

Q And did you come on to the funeral? A No, sir.

10 Q You say that you had intercourse with this girl? A Yes, sir.

Q And you say you had intercourse with her once a week on the average; is that right? A Yes, sir.

Q How many years had you known this girl? A For about a year and a half.

Q When after you first knew her, did your intercourse commence? A Not quite a year.

20 Q So you seduced her, did you—you seduced her, did you? A I don't understand you.

Q You don't know what seduction means? A No, sir.

Q How old are you? A Twenty-one.

Q How did you come to have your first intercourse with her? Tell the jury how you first had your intercourse with her; your first intercourse—sexual intercourse?

30 *The Court.* You mean to state the physical conditions or mental conditions?

Mr. McDermit. All—both.

The Court. Direct his attention to what you want.

Mr. McDermit. He says he doesn't understand what the word seduction means.

40 *The Court.* He says so. There is a lot of other people who do not either. Ask him what you want.

Abram Goldstein, cross.

Q When did you first have intercourse with her? A I had intercourse with her about nine months ago, that is before this year.

Q Whereabouts, in the street, in the house, bedroom or where? A In the hall.

Q Whose hall? A Her hall.

Q Whose house is that? A Why, it is Mr. Lustbader's house at the present time. 10

Q What time of day was it? A In the evening.

Q Did you ask her to let you have intercourse? A Yes, sir.

Q And did she consent? Did she consent? A I don't understand you.

Q Did she say all right? A Yes, sir.

Q And from the night that you had intercourse in the hall, for nine months after that you had intercourse every week, did you? A No, sir. 20

Q When was the next time after you had intercourse in the hall that you had intercourse with her? A About six months later.

Q Up to six months later? A Yes, sir.

Q Now, when did the first intercourse commence? A About nine months.

Q Give us the date when it commenced—give us the name of the month? A I don't exactly remember the month. I was telling you about— 30

Q Don't you know whether it was winter time or summer time? A Why it was cold.

Q Cold weather, was it? A Yes, sir.

Q And for how many months did you have intercourse with her after that?

The Court. He says he did not—

Witness. I say I didn't have any intercourse after that for six months.

Q For six months? A Yes, sir. 40

Abram Goldstein, cross.

Q So you had intercourse with her once— A Yes, sir.

Q —and then you kept company with her and didn't have any more to do with her for six months, is that right? A Yes, sir.

Q Is that correct? A Yes, sir.

10 Q Then after the six months was up you had intercourse with her how long and how often? A About once a week.

Q How did you come to do that? How did you commence to start that after having that lapse of six months? A Why she left me.

Q She left you? A Yes, sir.

Q Keeping company with somebody else, was she? A Yes, sir.

20 Q So that the reason why you didn't have intercourse for that six months was because she was running with somebody else, is that it? A I know she was not with me at the time she was with somebody else; I didn't go with her at that time.

Q Well, after you and her made up again—can't you give us the date when you made up again? A No, sir.

Q Why? A I don't exactly remember the dates.

30 Q Now, you can tell us that you were gone a year this 20th of January, just a year today since you left Newark, and you mean to say you can't tell us when it was in 1912 that you last had intercourse with her? A No, sir.

Q Did you have intercourse with her in 1912 at all? A No, sir.

40 Q So the intercourse you had with her was in 1911, was it? A I had intercourse with her the last nine months—that is before this year that has passed.

Abram Goldstein, cross.

Q Then you had intercourse with her in February, 1912, did you? A I don't exactly know the year. It was a year before this.

Q You have been gone a year?

The Court. What year is this?

Witness. This is 1914.

The Court. And in February when you were in Detroit and heard she was dead, what year was that? 10

Witness. In the month of February.

The Court. Yes; what year was that in?

Witness. 1913.

The Court. Now, when was the intercourse? What year was that? Didn't you ever go to school?

Witness. 1913. 20

The Court. Didn't you ever go to school?

Witness. Yes, sir.

The Court. Well, the year before 1913, is 1912, isn't it?

Witness. Yes, sir.

Q And this girl died in 1913, didn't she? A Yes, sir.

Q And you had left—she died sometime in February and you had left Newark on the 20th of January preceding that February, which is 1913, didn't you? A Yes, sir. 30

Q And you have been gone ever since that time—one year—haven't you? A Yes, sir.

Q Did you have intercourse with her on the night of the 20th of January when you bid her good-bye, when you went away? A No, sir.

Q And how long before the night of the 20th of January had you had intercourse with her? A Oh, more than three months ago—more than three months. 40

Abram Goldstein, cross.

Q Why was it you said you hadn't had intercourse with her in nine months before that time? What did you mean by that?

The Court. He did not say that, Mr. McDermit.

10 *Witness.* I didn't say I had it before nine months.

Q What did you say about nine months? A I says I started in to have intercourse with her nine months ago before that time.

Q What you mean to say is you started your first intercourse with her— A Yes, sir.

20 Q —nine months before the time you went to the doctor, is that right? A The last nine months in the year and a half I have been going with her.

Q You have been going with her for how many years altogether? A For about a year and a half.

Q Now, for six months you were away from her? A She was away from me.

Q Six months she was away from you. You had no intercourse with her during that time? Tell us what that six months was—give us the dates of that six months. A I don't remember no dates.

30 Q Well, now, were you away from her in December, 1912? A I don't remember no dates.

Q December, November, October, September, August and July, were the six months you were away, separated from her? A It was in the summer time that I was away from her.

Q What was the trouble between you and her that you separated from her? A There was some other fellow that she knowed and she went with him.

40 Q How many times did you have intercourse with her altogether from the time that you first

Abram Goldstein, cross.

met her down to the time that you went away—how many times? A Since I know her how many times?

Q Yes. A I couldn't tell you; several times.

Q Fifty times? A No; I don't remember.

Q You told us you had intercourse with her once and then didn't have intercourse for six months, went with some other fellow, then you said she came back and you kept company with her regularly for a year yourself—six months—and you had intercourse about once a week. Now, how often did you have intercourse with her? 10

The Court. He did not say that.

Mr. McDermitt. All right. I will withdraw that from the record.

Q I will now ask didn't you say in answer to a question that you had intercourse with her about once a week? A Yes, sir. 20

Q Didn't you say that here this morning? A Yes, sir.

Q Now how many weeks at once a week did you have intercourse with her—how many weeks? A How many weeks?

The Court. How long did that go on, that you had intercourse with her once a week? 30
What is the matter with you? Don't you understand that question?

Witness. Yes, sir.

The Court. Well, answer it.

Witness. About four weeks.

Q Now, then you only had intercourse with her five times altogether, is that what you say now? A I had intercourse more than that.

Q More than that? A Yes, sir. 40

Abram Goldstein, cross.

Q Well, now, can't you tell us how much more than that you had intercourse with her? A When I met her once a week and I had more intercourse with her while I was with her.

Q So, instead of having one intercourse every night—sexual intercourse—you had several? A
10 Yes, sir.

Q Two or three? A Yes, sir.

Q Whenever you would want intercourse with her all you had to do was to go meet her and have intercourse, is that the size of it—is that right? A That is in regard to the intercourse I had once a week, but I seen her oftener than that.

Q You have met her oftener than that but once a week regularly you had intercourse? A Yes,
20 sir.

Q Did she ever make any resistance—did she ever object? A No, sir.

Q You never had to force her at any time? A No, sir.

Q Whenever you asked that, the first time or the last time, was just the same, was it? A Not exactly the same.

Q You know you gave her a disease, don't you?
30 A No, sir.

Q You know that you gave her gonorrhoea, don't you? A No, sir.

Q And you know you brought her to Dr. Shapiro to be treated, don't you? A In regard to the family way. I asked whether she could be cured. I didn't want him—

Q You knew—

40 *The Court.* Let him answer that question, counselor.

Abram Goldstein, re-direct.

Witness. I asked Miss Rose Lebowitz to go to Dr. Shapiro and ask the doctor whether she could be cured of the family way condition—of the condition that she was in.

Q You knew that you had the gonorrhoea, didn't you? A I never did have no gonorrhoea.

Q And the doctor was prescribing for you? 10

The Court. He has denied that four times, and it isn't necessary to waste the time of the court going over these same questions over and over again.

Q Didn't you take her there to be treated for gonorrhoea because you had given her the gonorrhoea, this girl that is dead? A I never had no disease of that kind.

Q Didn't you take her to the doctor's place to be treated for gonorrhoea? A No, sir. 20

Re-direct.

Q You say in answer to Mr. McDermit's question as to why you went to Dr. Shapiro that you had heard of him. How had you heard of him? A Why, there was a young lady that was cured by Dr. Shapiro before.

Q Cured of what?

Mr. McDermit. I object. No proof of any second abortion case here. 30

Mr. Mott. The situation is this, if the court please, Mr. McDermit asked the witness on cross examination, how he came to go to Dr. Shapiro, and the witness replied, "I heard of him." Now, I am simply following that up and asking what he means by that and how he had heard of him.

Mr. McDermit. I don't think that that is proper testimony. 40

Abram Goldstein, re-direct.

The Court. I think it is close to the border line. I am a little doubtful of it. Objection sustained.

Q You said you had been convicted of crime? Of what crime?

10 *Mr. McDermit.* I object.

Mr. Mott. I think that is proper, your honor. The only purpose of this is to affect his credibility.

The Court. What is the ground of the objection.

20 *Mr. McDermit.* He has no right to go into the question of what the conviction consisted of. The defense might have that right. I don't know that the State has a right. It is new law to me if it has. I object.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, [L. s.]

Judge.

30 Q What crime were you convicted of? A I was arrested—

The Court. Never mind telling us all about it. Give us the name of it.

Q Just tell us what you were convicted of? A Larceny—petty larceny.

The Court. When?

Witness. About three years ago—four years ago—three years ago.

40 Q Who is Mr. Lustic? A Mr. Lustic is a friend of my father's.

Abram Goldstein, re-cross.

Q You say he went with you when you went down to get your marriage license? A Yes, sir.

Q What was the name of the other man? A Mr. Hearwagon.

Q Who is he? A Friend of mine.

Q Where does Lustic live? A On Montgomery street.

10

Re-cross.

Q Did you ever write a letter to Dr. Shapiro after you left for Detroit? A No, sir.

Q Did you ever write a letter to the girl that died? A No, sir.

Q After you went to Detroit? A No, sir.

Q Did you ever write any letter to anybody? A Yes, sir.

Q Who to? A To my parents.

20

Q How long after you left Newark? A Right away.

Q And when did you write again? A Oh, I wrote often to my parents.

Q How did you get the information that this girl was dead? A Through a friend of mine.

Q Who was the friend's name—is the friend's name? A Mr. Baker; William Baker.

Q What is his business? A Jeweler.

30

By the Court.

Q Goldstein, when you went first to see Dr. Shapiro with Rose, you and the doctor and Rose all talked together, didn't you? A Yes, sir.

Q Did you speak in English or Hebrew or any other language? A English.

Q Do you remember now the exact words that you used to Dr. Shapiro? A Not the exact words, but I can give you an idea of what the conversation was.

40

Harry Sommer, direct.

Q Well, what did you ask him according to the best of your recollection, or Rose ask him, when you first went in there? A I asked the doctor whether Miss Rose Lebowitz could be cured of the condition that she was in; that was the family way condition.

10

HARRY SOMMER, sworn for the State.

Direct examination by Mr. Mott.

Q What is your name? A Harry Sommer.

Q And where do you live? A 240 Prince street.

Q Do you know the witness that was just on the stand? A Yes, sir.

Q Abe Goldstein? A Yes, sir.

20

Q Did you know Rose Lebowitz? A Yes, sir; I did.

Q Are you any relation by marriage to Rose?

A I am her brother-in-law.

Q You married her sister? A Her sister.

Q Do you know Dr. Shapiro? A Yes, sir.

Q Some time in January of last year did you go to see Dr. Shapiro? A Yes, sir.

Q Did you go alone or in company with somebody? A No, sir; I went with Mr. Goldstein.

30

Q And where did you see the doctor? A At his office.

Q Will you give the court and jury the conversation you had with the doctor at that time? A Well, I went in with this young man and he says to the doctor this is the brother-in-law of the girl that I was here with and he would like to ask you a few questions, so the doctor says "all right" and I asked him, the doctor, "Was this young man here before to your office with a young lady by the name of Rose Lebowitz" and he says "yes"; I says,

40

Harry Sommer, direct.

“Well, I suppose you know what purpose they were here for”; so he says “yes, I am pretty well acquainted with the circumstances”; and I says “I suppose you also know how far gone this thing is, about three months, as I understand”; so he says “yes, I am pretty well familiar with that”; then I said to the doctor, “I understand that a thing gone as far as three months is a pretty serious case and according to what I have heard about things of this sort I don’t think it would be very safe to perform an operation of that sort”; so the doctor said “I have methods that no other physicians use—ways and methods rather than no other physician uses and if I undertake this thing I am pretty sure my results will be perfect”; and then I asked him “if you should do anything like that what would your fees be—or charges rather”; so he said “forty dollars.” Well, that was all that I wanted to know and I says, “That is all” and we walked out. I told him that “if we should make up our mind to do that, sir, which I don’t know and can’t say, we will let you know about it.”

Q Did you ever see the doctor again about the matter? A I have seen the doctor again when she was in the hospital. My wife asked me to go up and see the doctor in regards to having him call at the hospital and see the girl, how she was getting along.

Q Now, when was it that you saw the doctor in the hospital? A I didn’t see him, the doctor, in the hospital at all.

Q Oh, you didn’t see him? A No.

Q Did you see him again? A I saw him again at his house.

Q Where was Rose at the time you saw him at his house the second time? A In the hospital, sir.

Harry Sommer, cross.

Q Which hospital, please? A Beth Israel Hospital.

Q And how long had she been there? A Oh, well, I don't exactly know, but I guess about a few days—about four or five days. I don't exactly remember now.

10 Q And you saw the doctor the second time at his house—at his office? A Yes, sir.

Q Did you have any conversation with him then? A No, sir; my wife spoke to him.

Q Were you present? A I was present.

Q What did your wife say to him? A She said to him that she had an idea that Rose Lebovitz isn't improving any; according to what she understands she looks worse than what she did
20 when she first went in the hospital, so he said he will be up there probably that same evening if he gets a chance and see what he can do about it.

Q Was there anything more said? A That is all.

Q Did you ever see him again? A No, sir.

Q Do you remember when Rose died? A Yes, sir.

Q When did she die? A February 12th.

Q Where, at the hospital? A At the hospital.
30 I believe it was the 11th and she was buried on the 12th. She died the night before.

Q Did you attend the funeral? A I did.

Cross examination by Mr. McDermit.

Q Now, you are acquainted with the fact that it is a crime to procure or aid in the procurement of an abortion, are you not? A No, sir; I am not.

Q You don't know that it is wrong to perform an abortion on a female? A Well, no, sir; I did
40 not.

Harry Sommer, cross.

Mr. Mott. One minute, your honor. As a matter of fact the witness is not liable under the statute.

The Court. He is asking him if he knows. Section 154 of the Criminal Procedure Act provides that any person who shall cause or attempt to cause the miscarriage of a pregnant woman shall be a competent witness and compellable to testify against any other person charged with so offending, but the testimony of such person given in any such case shall not be used in any prosecution civil or criminal against such persons so testifying, so he cannot claim his privilege. He may be compelled to testify, but whatever he had to do in the matter cannot be used against him at any subsequent prosecution, if any, against him. The statute gives him immunity. 10
20

Q You know what your legal position in this matter now is as to giving your testimony here today? A I am here as a witness, that is all I know.

Q You were to Dr. Shapiro's office as a witness too, were you not? A I went there to find out whether this thing was true or not; that is all. 30

Q Yes; you went there for the purpose of ascertaining whether or not he was willing to undertake the job to deliver illegally your sister-in-law? A That isn't so, sir. If you want to know just why I went there, why I will tell you.

Q You wait until I ask you. A All right, sir, I will do that.

Q You talked with the doctor and you heard him say that he would charge \$40 to deliver your sister-in-law, is that right? A I heard that. 40

Harry Sommer, cross.

Q And you talked with the doctor and asked him if it was a fact that he had made an arrangement with your brother-in-law or intended brother-in-law and the girl, is that right? A That is right.

10 Q And after you got the statement from him you retired to consider it, did you? A I retired to inform my wife. I thought that I had no authority at all to proceed in this matter since I was not yet quite far enough in the family. I thought probably if I told her sister, why she is more acquainted with her—I didn't really like to interfere with it or have anything to say whether they should do it or not.

20 Q You didn't want to express any opinion as to whether the doctor would proceed with the operation or not, did you? A That is the idea.

Q Now, you didn't want to pay the \$40? A I wasn't supposed to pay the \$40.

Q Nobody else in the family wanted to pay the \$40 either, did they, as far as you know? A I can answer for myself. I can't say for anybody else. I don't know.

Q You don't know anything about any operation that Dr. Shapiro performed upon this girl? A I didn't see it, sir.

30 Q You don't know anything about it yourself, do you, in any way, whether he got his \$40 or whether anything ever came of the conversation? A I didn't pay it to him.

Mr. Mott. What was that answer?

Witness. I didn't pay it to him.

Q You remember the 27th day of January, don't you? A I suppose there was such a date.

40 Q You remember that date, don't you? A I said I supposed there was such a date, but I don't know.

Harry Sommer, cross.

Q You remember being in the home of your sister-in-law or intended sister-in-law that night?

A I don't know whether it was that date or any other date because I don't exactly remember the date.

Q Don't you remember when she was taken sick? A No, sir; I don't know the right date. 10

Q Don't you know when they sent for Dr. Shapiro to come to the house? A I wasn't at the house when they sent for them.

Q Did you ever see Dr. Shapiro at the house? A I did; yes, sir.

Q You never knew that Dr. Shapiro had been there and attended your sister-in-law for about a week? A I was told that he came there to perform that operation but I didn't see him there. 20

Q You were told he came there to perform the operation, but you didn't see him there. Did you see him there on the 27th of January? A I don't remember the dates.

Q Did you see him there on the 28th of January last year? A I don't remember the date.

Q 29th or 30th? A I don't remember the date. He might have been there.

Q Did you see him there on the 28th of January

Q You know she was discharged cured, out of the house, don't you, after the doctor was there, visited here a week—that she was up and around? 30

The Court. "You knew that." You are asking him if he knows she was discharged cured out of the house?

Mr. McDermit. Yes; house.

The Court. You mean the house or the hospital?

Mr. McDermit. House.

The Court. Answer the question. 40

Witness. I know the doctor came—

Harry Sommer, cross.

Q Don't you know? (Read the question.)
(Question read.) A She wasn't able to get out of
the bed.

10 Q Do you know when she went to bed? A I
don't know the date. I wasn't home at the time. I
know when I left in the morning she was well and
when I came home at night I found her in bed.

Q Can't you tell us when that was, whether
January or February? A I don't remember the
date, sir.

Q Don't you remember whether it was before
your intended brother-in-law left for Detroit or
afterwards? Can't you tell us that? A It was
afterwards.

20 Q Then it must have been after the 21st, if he
left on the 21st. How long after that? A I don't
know what date he left—what date it was, and I
don't remember—

Q How many weeks after you were down to Dr.
Shapiro's house or days was it that you came home
and found her sick? A Well, I should say about
a week and a half probably.

30 Q There is nothing definite about the time as
far as you are concerned? A I don't exactly re-
member the right time or the dates because I didn't
put it down in any book for further reference.

Q Do you remember the date you were at the
doctor's office to see him? A The only positive
date that I remember is that I went down to see
Dr. Shapiro the first time the third Wednesday of
January, 1913.

Q Now, when was that? A The third Wednes-
day.

40 Q Now, let us get that date, please?
The Court. The 15th of January.

Harry Sommer, cross.

Q The 15th of January. Then a week to ten days succeeding that she was taken ill, was she, or you found her ill when you came home? A Well, I don't know just how many days it was.

Q Well, if the 15th of January was the third Wednesday, how long after that was it that this young man who got your sister in that trouble went to Detroit—how many days? A Well, on a Wednesday was when I found it out and on Monday following— 10

Q He went? A Well, I haven't seen him ever since, so I don't know whether he went that day or whether he went any other day.

Q You saw him the Monday following for the last time? A When I came home from work I met him going down town. That is the last I have seen of him. 20

Q That would be Thursday the 16th, Friday the 17th, Saturday the 18th, Sunday the 20th and Monday the 21st. That is what he says, he left on the 21st of January. Now how long after the 21st of January was it you came home from your shop and found your sister-in-law ill in bed? A don't remember how long after.

Q You said about a week or ten days. A I am not quite positive about the date or day. I don't remember. 30

Q It wasn't less than a week? A I don't know, sir; it might have been within that limit, but I wouldn't say because I don't exactly know the correct date or day.

Q You volunteered the information before that you thought it was probably a week or ten days or a little over a week. What is your recollection on that?

The Court. He says a week or a week and a half. 40

Harry Sommer, cross.

Witness. Around that. I am not quite positive. I wouldn't say any particular date for the simple reason that I don't know it.

10 Q Now, you know that there was other doctors attending her up to her home, don't you, while she was sick besides Dr. Shapiro? A I never seen any other doctor.

Q You know that you went to Dr. Shapiro's office to ask him to go up to the hospital to see if he couldn't do something for her? A He was at the house at the time—

Q Do you remember that? A I was also home; yes, sir.

20 Q And he was sent for to again take charge of the case at the hospital, wasn't he? A Well, he had charge of her all the while.

Q You know Dr. Ill, don't you? A Yes, sir.

Q You know Dr. Greenfield? A I don't know Dr. Ill, but I have heard of him. I have never seen him.

Q You know he was taking care of her up at the hospital, don't you? A No, sir, I do not.

30 Q How often were you over to the hospital? A I have only been up there once—or—once and then I have been up again when she died, the night that she died.

Q Don't you know that after the time that you first came home and found her sick that she was able to get out of bed and go around before she went to the hospital? A No; I never seen her out of bed. In fact she was getting worse all the time.

40 Q Don't you know before she was removed to the hospital—three or four days before she was removed to the hospital that she was up and around? A I haven't seen her.

Harry Sommer, cross.

Q Do you know that she wasn't? A I don't know. I haven't seen her.

Q What do you work at? A I work—that is I used to work for a jewelry concern at that time and I worked during the day and I wasn't home. When I came home at night I found her in bed.

Mr. Mott. He asks you what business you are in now? 10

Witness. Now, I am working for the General Electric Company.

Q You don't know anything about this matter other than the fact that you subsequently went with your wife down to the doctor's house and asked—told him that Rose was not improving and asked him to see what he could do about it; isn't that so?

A Yes, sir; that is so. 20

The Court. That is not what he says at all. I do not see why you waste time asking questions of that sort. He has explained that Rose was sick one day when he came home and she remained in bed all the time. He knew that and a lot of other circumstances. Why do you want him to summarize a few particular things?

Mr. McDermitt. The court may rule upon the question. 30

The Court. Get the question clearer.

Q Did I not understand you to say that after the deceased was in the hospital that you and your wife went to Dr. Shapiro's and waited upon him and told him Rose was not improving and told him to go to the hospital. Yes or no? A We asked him whether he has been there; we asked him whether he was going there. He said he might be there that night to see her, since we saw that she was in such a serious condition. 40

Harry Sommer, cross.

Q Wasn't that four or five days after she went to the hospital that you went to Shapiro's house?

A I don't know. It was on Saturday afternoon, I believe, if I am not mistaken.

Q In point of fact, when you went to his house she was in the hospital—when you and your wife
10 went to Dr. Shapiro's house the deceased was in the hospital, was she not? Yes or no? A Yes.

Q How long had she then been in the hospital, when you went there? A I don't exactly know how many days.

Q A week? A I don't know how many days.

Q You can't give us the date, can you, upon which she entered the hospital? A No, sir; I can give you no date at all.

20 *The Court.* With reference to the particular day that you came home, on the morning of which you left her home well and found her in the evening sick in bed, how long was it after that that she went to the hospital?

Witness. It is a year since, your honor, and I don't remember.

The Court. If you can not tell us say so. Was it a matter of days or weeks?

Witness. I don't remember now.

30 *The Court.* You can not recall?

Witness. No, sir.

Q Do you know anything about a visit by a man of the name of Schutzman, the druggist, to your home? A Yes, sir.

Q Can you tell us when that was? A That was the same night that that abortion was performed.

40 *Mr. McDermitt.* Now, I ask to strike that out, and ask the court to say to the witness

Harry Sommer, cross.

that he musn't make that sort of statement about the operation. He swore he knew nothing of the operation. He came home and found her sick there.

(Question and answer read.)

Mr. McDermit. I ask that that be stricken out. 10

Witness. I don't remember that, your honor.

The Court. Motion granted.

By the Court.

Q Did you see a Mr. Schutzman, or some such name as that, at your house. That was the original question? A No, sir. 20

Q Did you see him there? A No, sir; I didn't see him at my house.

Q Did you hear after he was there that he had been there? A No, sir; I haven't heard that he was there. I was at his place.

The Court. He is sometime remiss in answering the question, giving the yes or no and the question is asked in the negative form, probably. 30

Further cross.

Q Didn't you go to Schutzman's drug store and ask Schutzman to call up Dr. Shapiro to come to your house? Yes or no? A No.

Q Did Mr. Schutzman in your presence call up Dr. Shapiro to come to your house? A No.

Q Or to the house where this girl was sick? A No, sir.

Lillie Lebowitz, direct.

LILLIE LEBOWITZ, sworn for the State (through interpreter Cohen).

Direct examination by Mr. Mott.

Q Where do you live? A 240 Prince.

10 Q What relation were you to Rose? A I am her mother.

Q Do you know Dr. Shapiro? A Yes, sir.

Q Did you go to see him? A Yes, sir.

Q Did you go alone or with somebody? A With my girl.

Q Which girl? A Rosie Lebowitz.

Q Is Rosie dead? A Yes, sir.

Q How long before Rosie died was it that you went to see Dr. Shapiro? A Two weeks.

20 Q Where did you see Dr. Shapiro when you and Rosie went to see him? A In the doctor's house.

Q When you got to the doctor's house what did you do? A The doctor did—

Q What did you do? Did you give him anything?

Mr. McDermitt. Do I understand that they fixed the time when this was?

30 *The Court.* Two weeks before Rose died the testimony fixed it.

Witness. Sure.

Q What did you give him? A Forty dollars.

Q What did you give him \$40 for? A The doctor wanted to fix her—the doctor wanted to fix her from a baby.

Q Well, did you see the doctor do anything? A Yes, sir.

Q What did he do? A He used instruments.

40 Q Well, what did he do. Tell us all he did? A He used instruments inside.

Lillie Lebowitz, direct.

Q Rose was there? A Yes, sir.

Q Well, did he do anything with Rose? A Put her on a place where they are performing the operation.

Q What sort of a place was it? A It is a bed that you perform the operation on.

Q Then after Rosie was on the place where the operation was to be performed, what did the doctor do? A He did something inside with instruments. 10

Q Did you see the instruments? A Yes, sir.

Q Were you there when he put them inside of her? A Yes, sir.

Q How long did it take him to do it? A Two hours.

Q After he got through where did you go? A Went home to my home. 20

Q Rosie go with you? A Yes, sir.

Q Did Rosie get sick after that? A She was sick until Monday.

Q And then where did she go or what happened? A On Monday the doctor came to the house.

Q Doctor who? A Dr. Shapiro.

Q Well, before Dr. Shapiro came to the house had you seen the doctor? A No; he came on Monday.

Q But did you see the doctor before he came on Monday? A I was there Sunday. 30

Q And what did the doctor tell you to do? A On Sunday you mean?

Q Yes. A He told me to go home and on Monday he would be at my house.

Q And did Rosie—did the doctor come on Monday? A Yes, sir.

Q Did Rosie get better or worse? A At two o'clock he was there. He said that she should go to bed.

Q That is on Monday? A Monday. 40

Lillie Lebowitz, direct.

Q Yes. Did Rosie get better after that or worse? A Worse.

Q And did you see Dr. Shapiro again? A Yes, sir.

Q Do you remember what day that was? A Sure.

10 Q What day was it? A On Monday.

Q Where did you see him on Monday the second time? A He was at my house at two o'clock.

Q Yes. Now, did you see Dr. Shapiro after that on some other day? A He came every day.

Q Did you see him at his office? A Yes, sir.

Q When was that? A Before he fixed her I was there. I didn't go to him afterwards.

20 Q Well, did Dr. Shapiro ever tell you how to get him at the house if you needed him? A He told me to telephone for him.

Q Did he tell you how to telephone? A Yes, sir.

Q What did he say? A He told me to go to the drug store and telephone for him because "Your daughter is bleeding."

Q Where were you when he said that to you? A At the doctor's.

30 Q Did he want you to telephone for him or have somebody else telephone for him? A He told me I shall telephone for him.

Q Do you know Mr. Schutzman? (Stand up.) A Yes, sir.

Q What is his business? A Druggist.

Q Did you go to his drug store for anything?

A Yes, sir.

Q What did you go there for? A Went over there to telephone for Dr. Shapiro.

Q Did you telephone for him? A Yes, sir.

40 Q Did you do it yourself? A I told him to telephone.

Lillie Lebowitz, direct.

Q Who do you mean by "him?" A Mr. Schutzman.

Q Do you know whether Schutzman did telephone for the doctor or not? A Yes, sir.

Q Did he? A Yes, sir.

Q Now, did the doctor tell you why he wanted you to telephone for him? A Yes, sir. 10

Q Why? A It isn't allowed to go himself; he wanted me to telephone for him.

Q Now, what was it the doctor said why he wanted you to telephone for him? A I told him that he knows he has got to come himself. He says, "No; you had better telephone."

Q How many times did Dr. Shapiro come to your house to see Rosie? A Two weeks every day he came up. 20

Q Was this the only time you telephoned for him? A Yes, sir. Then he told me whenever she feel bad I shall telephone for him and tell him how she feels.

Q Well, did you telephone to him? A My son-in-law went to telephone.

Q Which son-in-law? A Harry Sommer.

Q Now, where was it that Dr. Shapiro put the instruments in her, was it in your house or in his office? 30

Mr. McDermit. She has testified that the instruments were at the home this Monday when he came there.

The Court. She has testified that they went to the office and it was done in his office.

Mr. McDermit. I suppose we have all got a right to remember, have we?

The Court. Yes. When you remember you want to remember correctly. 40

Lillie Lebowitz, direct.

Mr. McDermit. My recollection of the evidence was that she said that he came to the house there and put the instruments in her in the house.

10 *The Court.* No; the testimony distinctly was that she went with Rosie to his office and that there it was done. Now obviously the necessity of this question does not appear.

Q Where was it that Dr. Shapiro first put the instrument in her?

Mr. McDermit. Is this the first or the second.

The Court. Let the prosecutor finish the question.

20 Q (Continuing.) Where was it that Dr. Shapiro first put the instruments in Rosie, at the house or at the office—at his office?

Mr. McDermit. That is objected to.

The Court. On what ground?

30 *Mr. McDermit.* I stated, if I am not mistaken, that the proposition was that the instruments were used at the house. I was told there was no such record here. If there was only one set of instruments it must be at the house or the office. Which is it? He uses the word "first." I object to the use of the word "first." If instruments were used, where, and how often, not first used. That suggests that they were used more than once. The objection is, leading question.

The Court. That is a leading question now because there is not any testimony that he ever used any instruments except once.

40 Q Well, what did Dr. Shapiro do for Rosie at your house, so far as you saw? A He made syringes.

Lillie Lebowitz, cross.

Q To what part of her. Tell us just what—
A The place where you give birth to a child.

Q How many times did he syringe her there at the house? A Once a day, every day.

Q Did you have any other doctor besides Dr. Shapiro. A No.

Q Well, did Dr. Shapiro bring anybody with him to the house? A Yes, sir. 10

Q Who? A The doctor who gave her chloroform to sleep.

Q (Dr. Silverstein, stand up.) Is that the doctor that came with Dr. Shapiro? A Yes, sir.

Q How many times did Dr. Silverstein come to the house? A Once.

Q And did Dr. Shapiro bring anybody else besides Dr. Silverstein? A After two weeks, on a Friday night, when she felt bad he brought another doctor. 20

Q (Dr. Fischer, stand up.) Is that the doctor? A Yes, sir.

Q Did Rosie go to the hospital? A Yes, sir.

Q How long did she live after she went to the hospital? A Four days.

Q What hospital was it? A Beth Israel Hospital—Yiddisher hospital.

Q Were you present at the hospital when Rosie died? A Yes, sir. 30

Cross examination by Mr. McDermit.

Q On January 27, 1913, you were living at 240 Prince Street? A Yes, sir.

Q And a man by the name of Schutzman keeps a drug store how close to where you live? A On the second block.

Q Now, at one o'clock in the afternoon of that day did you go into Mr. Schutzman's place and ask him to telephone for a doctor, that your daughter was bleeding? A Yes, sir. 40

Lillie Lebowitz, cross.

Q And about a half hour afterwards did Dr. Shapiro come there with a black bag to your house?

A Yes, sir.

Q And when the doctor came there was your daughter laying upon the bed or not? A He told her to lay down.

10 Q And when she lay down upon the bed did you see the doctor examine her private parts with his fingers? A Yes, sir.

Q And did you see the flow of blood that was coming from your daughter there? A Yes, sir.

Q And did the doctor administer some medicine to her in her mouth? A No, sir.

Q Did he give her anything in her mouth? A The second doctor did; not this doctor.

20 Q Now, did he tell you—did Dr. Shapiro tell you at that time, after he examined your daughter with his fingers, that it was necessary to get somebody else to come there? A Who?

Q Did he say it was necessary to get another doctor? A He said he would go and bring one.

The Court. Is this on that Monday when he put Rose to bed, the first time he came to the house?

Witness. Yes, sir; it was two o'clock.

30 Q And did he go out and gone about twenty minutes—remained away rather about twenty minutes and come back with Dr. Silverstein? A Yes, sir.

Q And then, when Dr. Silverstein came back, did Dr. Silverstein administer chloroform to her nose and give her a drink in her mouth? A Didn't give anything in her mouth, only to the nose.

40 Q Did he put anything under her nose? A Yes, sir; gave her through the nose.

Lillie Lebowitz, cross.

Q Did she know what that was? A Chloroform.

Q Now, after this chloroform was administered the doctor did what then, Dr. Shapiro? A They carried her over from the table on the bed.

Q Now, while she was on the bed and under the influence of chloroform—while she was on the table under the influence of chloroform, didn't Dr. Shapiro use instruments upon her to scrape her uterus and insert instruments into her private parts? 10

Mr. Mott. I object to so much of that question as asks what the doctor used instruments for, because this woman cannot know. It is a question of whether he used instruments there or not.

The Court. Yes, revise your question. You were asking her to give expert knowledge as to whether it was scraping of the uterus. 20

Mr. McDermit. Strike it out.

Q Did Dr. Shapiro after your daughter was under the anaesthetic—chloroform—did he use instruments upon your daughter? A Yes, sir.

The Court. Now, who is "he?" In the asking of the question and withdrawal of it and then subsequent amendment it does not yet appear who was "he" who used the instruments? 30

Witness. Dr. Shapiro.

Q How long did it take Dr. Shapiro to perform this operation on the table at your home? A Two and a half hours.

Q Two and a half hours? A From two o'clock until four o'clock.

Q Now, after they got through with your daughter on the table where did they take her to? A They carried her on the bed. 40

Lillie Lebowitz, cross.

Q Did the doctor leave any prescription for medicine with you? A Yes, sir.

Q And where did you get that prescription filled? A Mr. Schutzman.

Q And what time was it the doctor returned that day, if he returned that day, to the house—to
10 your house? A The second day.

Q Did he not come back and see her at eight o'clock that night? A He said that we should telephone how she felt.

Q Did he not come back at eight o'clock that night and tell you—and take her temperature and feel her pulse and tell you that her bleeding had stopped? A No, sir.

Q And did he not call on her again at nine o'clock the next morning, that is Tuesday the 28th
20 of January? A Yes, sir.

Q Did he not then tell you that her temperature was normal and that her pulse also normal? A Yes, sir.

Q And did he not on the same evening, Tuesday, January 28, meaning Dr. Shapiro, call upon you and again visit your daughter? A Yes, sir.

Q And didn't he continue to visit her every day twice a day, for pretty nearly a week—say five days or thereabouts? A Once a day.

30 Q And how many visits did he pay this girl altogether after he came there at one or two o'clock on the afternoon of January 27th? A Every day until the day that she was taken to the hospital.

Q Now, on the following Monday, that is the Monday after the 27th of January—the Monday after the day of the operation—isn't it a fact that the doctor told you that it was unnecessary for him to call again? A Yes, sir. He said he wouldn't
40 come. If she shall feel bad, I shall come.

Lillie Lebowitz, cross.

Q Now, then isn't it so that he told her on February 3, 1913—that is the following Monday after the first Monday—that the daughter was cured and asked her whether the daughter wasn't out of bed?

A The doctor said so but she was sick.

The Court. Answer the question. Was she out of bed? 10

Witness. No, sir.

Q Did she get out of bed to go from one room to the other? A No, sir.

Q On the third day of February, he called for the last time until you sent for him again? When did he come again? A I was in his house and he told me to go telephone for him.

Q Isn't it a fact that he left upon Monday, February 3d, saying that she was cured and that you didn't see him again until the following Thursday, when he was called upon the telephone at five o'clock? A He came every day. 20

Q No. After that. He left her the week from the first Monday saying that your daughter was cured? A She fainted every time and I called him.

Q The doctor came there three or four days after he said she was cured on a second telephone call, did he not? A Once I telephoned for him, on that Monday. 30

Q Didn't he come there four days after the following Monday, Thursday, and find your daughter sitting up and wasn't your daughter vomiting? A She vomited every day that she was sick.

Q Well, was she sitting up in a chair upon one occasion when the doctor came there, vomiting? A No; she did not.

Q The doctor gave you other prescriptions for medicine besides the one that he gave you the first day, did he not? A He gave every day medicine. 40

Lillie Lebowitz, cross.

Q Well, now wasn't there an interim—wasn't there a distance—a time elapse between the first regular visits day in and day out up to the time when he stopped visiting for three or four days and then started visiting over again? A No, sir.

10 Q Now, isn't it so that on the occasion of his second visit—second set of visits that he called upon Dr. Fischer to come? A At the time that she had to be taken to the hospital—she fainted—we sent for Dr. Shapiro and then he said we shall—he needs another doctor.

Q Well, didn't he bring in Dr. Fischer? A He says, "All right, I will go and bring in a doctor."

Q Now, Dr. Fischer came there, didn't he? A Yes, sir.

20 Q And did you get a taxicab on that day when Dr. Fischer was there? A Yes, sir; at the time when Dr. Fischer said to take her to the hospital.

Q Now, you didn't go to the hospital with her? A No, sir.

Q You don't know Dr. Zimmerman, do you, of the Beth Israel Hospital? A No.

Q Do you know who the doctor was that had charge of your daughter from the time she got in the hospital there until she died? A The doctor of the hospital. I don't know him.

30 Q Dr. Fischer came to the hospital there too, did he? A I saw him once.

Q And Dr. Shapiro came to the house, didn't he? A Yes, sir.

Q How often did Dr. Shapiro go to the hospital while your daughter was there as far as you know? A I saw him that day when she died.

Q Was he at the hospital that day? A Yes, sir.

40 Q You had only been to the doctor's office once? A I was there twice or three times.

Lillie Lebowitz, cross.

Q You went there to tell the doctor to come up to the house? A Yes, sir; he said that he will come himself.

Q You were worried about the condition of your daughter and you went to the doctor's house, how many times to call him to come there after she got sick? A Friday night I was there and Saturday morning and he said to the girl that she will see how she will feel then she will come and tell him. 10

RECESS.

Q Now, you say that you went to the doctor's office three times, do you? A Yes, sir.

Q And you went there because you were worried about your daughter's condition? A Yes, sir.

Q And you went there to bring the doctor to the house? A Yes, sir. 20

Q And the \$40 that you paid the doctor you paid him for the work that he did in attending your daughter upon those different occasions at your house? A On Friday night I gave him the money.

Q That was the Friday night following the night—the time that she was bleeding at the house? A No, sir.

Q You paid him at your house? A No, by the doctor's house; in the doctor's house I paid him.

Q Well, now, you were at the doctor's house how often besides that Friday night then? A Twice. 30

Q Now, was you ever at the doctor's house on Sunday? A On Saturday.

Q Saturday. Now, wasn't it Saturday that you paid part of the money to him? A Friday night.

Q Didn't you also give him some money on Saturday? A Friday night.

Q Did you give Dr. Greenfield any money? A No, sir. 40

Lillie Lebowitz, cross.

Q Did you give Dr. Zimmerman any money? A No, sir; I did not.

The Court. Who is Greenfield?

Mr. McDermit. The doctor who gave her chloroform.

10 *The Court.* That is Dr. Silverstein, is it not, that stood up?

Witness. Yes, sir.

The Court. You did not give Dr. Silverstein any money?

Witness. No, sir.

Q Dr. Fischer? A Yes, sir; Dr. Shapiro told me to pay Dr. Fischer for his visit.

20 Q How much did you pay him? A Two dollars.

Q You didn't pay Dr. Fischer until after he made the visit, did you? A He wasn't any more than once.

Q Well, you paid him on Saturday, didn't you? A Friday night.

Q You paid him the same time you paid the doctor here? You gave the doctor \$20 and the other doctor \$2, didn't you, Dr. Fischer? A Dr. Fischer came two weeks after.

30 Q You were down to Dr. Shapiro's on Friday night, you were down there upon Saturday—what other day was you down there upon? A On Monday morning.

Q Monday morning. Now, were you down there the Monday morning that the doctor came to your house in the afternoon? A He said I shall telephone for him and he will come.

40 Q Were you down at his office on the Monday morning that he came in the afternoon to treat your daughter? A Yes, sir.

Lillie Lebowitz, cross.

Q Then you were down there the Friday night before that and the Saturday before that and you were down there upon this Monday that he came to treat your daughter, is that right? A Yes, sir.

Q Now, ain't you mistaken about that? A No, sir.

Q Didn't you go down to the doctor's house to get him to call and see your daughter—asking him to go to the hospital and also asking him to come to your house after he had been there on this Monday when he used those instruments? A I went over to Dr. Shapiro's asking him how she feels. 10

Q Over to the house? A To his house; yes, sir.

Q How often did you go to Dr. Shapiro's house asking him how your daughter felt? A Once. 20

Q Now, isn't it a fact that you went there and seen him three different times, twice after your daughter had gone to the hospital and once you came down to get him to come up to the house, two days after the operation at the house—the operation on Monday? A I was once there when she was in the hospital.

Q Now is that one of the three times that she refers to? A Once I went there when she was at the hospital. 30

Q Now, why did you go there upon Monday morning, to the doctor's house? A When do you mean, the second week?

Q Any time—any week, Monday? A They would not let me in the hospital. I wanted to know how she was.

Q Well, then she went to the doctor's house upon Monday. Did she see the doctor? A Yes, sir. 40

Lillie Lebowitz, cross.

Q And every time that you went to see the doctor you went there for the purpose of finding out what your daughter's condition was; isn't that so? A Yes, sir.

10 Q Then you are mistaken when you say that you was to the doctor's house on the Monday of the operation at your home in Prince Street? A I was in the doctor's house.

Q On that Monday? The same Monday that the operation was performed in the afternoon? A Yes, sir.

Q What did you go down there for? A I went over there to inquire whether I needed a table. I didn't know how to do it. So he says "all right, I will be over there and I will do it myself."

20 Q You went there upon Monday morning, the morning of the operation, to inquire if he needed a table? A Yes, sir.

Q Now, why did you go to inquire from him whether he wanted a table or not? Why did you go to inquire from the doctor why he wanted a table? A Because he needed to make an operation.

30 Q Who told you to get a table? Who told you he wanted a table? A I went over there to ask him whether he will do it in the bed or on a table.

Q Why did you go there on Monday if you had made your arrangements on Friday the night before that and paid your \$40? Why did you go there upon Monday morning to ask him whether he wanted to have you furnish a table or not? A He said that he will come to me. He said it is going to be in my house.

40 Q Why did you go and ask him whether he wanted a table? A He said he needed to operate on her.

Lillie Lebowitz, cross.

Q Therefore you went to him the following Monday and got a table, did you, from him? A I went over there asking him. He said, "All right; I will come over and make the operation."

Q Yes; but he didn't tell you anything about a table when you paid him the \$40? A No, sir.

Q And he didn't tell you anything about a table until you went there and asked him whether he wanted a table on Monday morning, is that so? A I only asked him whether I shall make the bed or prepare a table. 10

Q Do you know this gentleman here, Mr. Slutzky? A I know him since I come here.

Q How long have you known him? A Since I came over here.

Q How long have you been coming to this court house about this case? A Since my girl died. 20

Q And how often have you talked to Mr. Slutzky about this case? A When I was here. Since I came here to the trial.

Q Did you ever tell him anything about the doctor wanting a table? A They asked me at the other trial how it was and I said it was on a table.

Q Who asked you? A Nobody asked me.

Q Well, why was it that you say now that you went to the doctor's house upon this Monday to ask him whether he wanted a table or not, or that you should prepare a table? A The doctor told me he will have to make an operation. I didn't know how to do, so I went over and I asked him and he said "All right; I will be in the house." 30

Q Well, now, did you get a table? A I had a table.

Q Did you have to buy that table for this operation? A I did not.

Q Isn't that—wasn't that the table that was in the kitchen—your back kitchen? A No. 40

Lillie Lebowitz, cross.

Q What was it, a parlor table? What kind of a table was it? A I had a table in the bedroom.

Q Now, then, you went down once and paid him \$40, then you went back upon Monday again to ask him about the table and then once after she was in the hospital you went down to find out what her
10 condition was. Now am I right? A Yes, sir.

Q And why did you have to telephone the doctor that she was bleeding after you had been there that same Monday morning about the table? The operation hadn't been performed yet, had it? A He told me I shall telephone him before he came up.

Q But you telephoned to him that the daughter was bleeding? A The doctor told me I shall say so.

Q Didn't Slutzky tell you that you should say
20 that, that the doctor told you that she was bleeding? Isn't this the man that told you that? A No, sir.

Q Did you tell Slutzky that the doctor told you to telephone to his house that your daughter was bleeding? A No.

Q You didn't tell him that before? A No, sir.

Q And you never made that statement to him or to anybody else before you make it now on the witness stand? A Yes, sir.
30

Q Never did, eh? A No.

Q Then the doctor told you to telephone him when you were ready that the girl was bleeding, did he? A Dr. Shapiro told me to go home and to go to the drug store and call him up on the telephone telling him that my girl was bleeding.

Q Now, was your girl bleeding? A No, sir.

Q Had you examined her to see whether she was bleeding or not? A She didn't bleed.

Q Did you examine her to see whether she had
40 any blood or not? A She didn't bleed.

Lillie Lebowitz, cross.

Q Did you examine her that Monday to see whether she had any blood or was bleeding from her privates? A She didn't bleed.

Q Did you examine her yourself—did you look at her privates that Monday? A She didn't bleed.

Q Did you look at her privates to see whether she was flowing or not? Can't you put that question to her? A I looked at it; she didn't. 10

Q When? A Monday.

Q What time Monday? A In the morning.

Q Why did you look at her privates? A Because the doctor fixed her before and he said that she will have to bleed.

Q So that you were looking to see blood early in the morning, were you, and there was no blood? A I looked at it. 20

Q And the doctor told you there would be blood there and when there was blood to telephone him; is that what he told you? A There was no blood.

Q Well, why did you look for blood? A On Friday night, the doctor said that she needs to bleed?

Q She needs to bleed but she didn't bleed? A No.

Q And when you looked at her Monday morning she was not bleeding? A No. 30

Q And she wasn't bleeding any other part of the day, was she, until the doctor came there? A Until after the doctor left.

Q When the doctor left in the afternoon of Monday then she commenced to bleed, isn't that true? A After the doctor made the operation then she bled.

Q And before he made the operation, which was upon Monday in your house at two o'clock, had she been bleeding at all? A No, sir. 40

Lillie Lebowitz, cross.

Q Then when you had paid the money on Friday night the doctor told you that when she commenced to bleed that you should telephone him? Is that the reason why you examined her on Monday morning to see if she was bleeding? A No, sir; he told me to call him up on the telephone about the operation.

10 Q Well, why didn't you look for blood on Saturday and Sunday? Why did you wait until Monday morning to look for blood? A I looked. She didn't bleed.

Q And she didn't bleed upon Saturday, Sunday or Monday? A Until after the operation.

Q Then there was no operation performed before Monday afternoon, was there? A Friday night.

20 Q Well, she didn't bleed from the operation Friday night? A No; it wasn't blood.

Q Now, didn't he only make an—did he only make an examination with his fingers on Friday night of her? A Not with his finger, with instruments.

Q Now, then, were you there?

Mr. Mott. Where, Mr. McDermit?

Mr. McDermit. She knows where.

30 *Mr. Mott.* I don't.

Mr. McDermit. You ought to follow the testimony.

Mr. Mott. I think that is too indefinite. I can't tell where he means "were you there."

Mr. McDermit. Friday night at the doctor's house.

The Court. Was this Friday night or Friday afternoon?

40 *Witness.* Friday night.

Lillie Lebowitz, cross.

Mr. Mott. And where was this?

Mr. McDermit. With the doctor in his office.

The Court. Now, you are asked the question by Mr. McDermit, were you there?

Witness. Yes, sir.

Q Who else was there? A Nobody else. 10

Q Well, you didn't look at your daughter's privates at that time, did you? A When?

Q At the doctor's office, on Friday night? A I didn't look until she was home.

Q Yes. Now then, did your daughter bleed any time from the time that she left the doctor's office on Friday night until he came and performed the operation at your home on this Monday afternoon, two o'clock? A I didn't see any blood until after the operation. 20

Q Exactly. You were looking for blood on Monday morning, were you?

The Court. Which operation?

Witness. The operation he performed in my house.

Q And in the house, after the operation, was the first time you saw any blood, was it? A After the operation I saw blood. 30

Q And you are sure that you saw no blood before that time? A No, sir.

Q So that whatever he did on Friday night with your daughter at his office there was no blood as a result of that? A No.

Q When had she last had her monthlies, as you know, prior to that time? A In the summer before.

Q How late in the summer? A About three and a half months before the operation. 40

Lillie Lebowitz, cross.

Q Didn't she say that she didn't know when she had her monthlys last; didn't she say that to you?

A She told me that she is pregnant. I didn't know it.

Q When did she tell you that she is pregnant?

A At the time when she said she was going to the
10 doctor.

Q How long did she say she was pregnant then?

A In the fourth month—three months.

Q Did you send her to the doctor's? A No, sir.

Q Did you know she was going to the doctor's?

A At the time when she told me she wants to go I knew she wants to go to the doctor's.

Q Did you give her permission to go to the
20 doctor? A She wanted to go.

Q When did you last know that she had her monthlys? A Before, in the summer—middle of the summer.

Q Was there anybody else present in the house at the time that the doctor performed the operation upon Monday beside the doctor who administered the chloroform? A Nobody else but Dr. Shapiro and the other doctor.

30 *The Court.* She was there, was not she?

Witness. Yes, sir.

Q Now, were you in the same room where the operation was performed at your house while they were performing the operation? A I stood there a little while and then I left.

Q Weren't you sitting in the side room while this operation was being performed—sitting on a chair in the side room while the operation was being performed? A I stood a little while next to
40 her.

Lillie Lebowitz, re-direct—re-cross.

Q You told us that the operation lasted about two hours. How long did you stay there—you say a little while—alongside of her? How long did you stand alongside of her? A I stood alongside of her probably half an hour.

Q Did you supply any water—bring any water there or basin or towels or anything? A A water bag I had. 10

Q Did you bring anything else? A No.

Q Where did you get the water bag from? A I had it.

Q How long did you have it? A I had it in the house.

Q Whereabouts is your daughter's room in this house? A Second bedroom.

Q When did you last see the young man that went away, Abraham Goldstein? A Two weeks before that. 20

Q Are you sure about that? A One week before, and she was laid up for two weeks and a week before that I saw him.

Q Do you know what the date of this operation was, this Monday? A I don't know.

Re-direct.

Q You say that you paid the doctor \$40 on Friday night? A Yes, sir. 30

Q Did you pay him that \$40 before or after he put your daughter on the bed and put the instrument in her, as you say, that night? A He asked me to give him the money before that.

Re-cross.

Q Now, who paid Silverstein?

The Court. She has already answered that, that she did not.

Q You said in answer to Mr. Mott's question a moment ago that the operation was performed on a 40

Lillie Lebowitz, re-cross.

bed. Where is there a bed in the doctor's house?

A That bed which is standing in the office.

The Court. Was it covered with white covers or leather?

Witness. Covered with leather.

10 Q Now, then, did she lay down on that bed? A Yes, sir.

Q How long did she lay on the bed? A An hour.

Q An hour? A About that.

Q About an hour. Now, during the time that she was lying upon the bed who came into the office there? A Nobody.

Q What time Friday night was it? A I can't tell you. I think it is about seven.

20 Q And she remained there until eight o'clock? A Yes, sir.

Q Now, just tell the court and jury—just tell us all now what the doctor did to her during that hour there? Give us the whole story? A He used instruments. I stood there, and I couldn't stand it.

The Court. Go on and answer the question. What did he do for an hour?

Witness. He did something inside. I don't know what he did.

30 Q Well, how did he do something inside? A I saw that he used instruments inside and she made every time a painful outcry.

Q Now, what room was she in? A In the office.

Q What room were you in? A I stood a little while there, and I couldn't stand it so I went over to the other room.

40 Q So you were in the front office all the time, weren't you? A I stood alongside of her. I couldn't stand it. I went over there.

Lillie Lebowitz, re-cross.

Q Did the doctor tell you what was the matter with her? A Sure.

Q Did the doctor tell you she was suffering from any disease? A The doctor said that she is pregnant.

Q Well, how long after he examined her did he say that she was pregnant? A Friday night. 10

Q Well, after he had made the examination why he told you she was pregnant, did he? A Yes, sir.

Q And it took him an hour to make that examination before he could tell you she was pregnant, or not, is that right? A He examined her before that.

Q When had he examined her before that? A On Thursday night.

Q Was you with her on Thursday night there? A Yes, sir. 20

Q Then you had been to the doctor's house a good many more times than you stated before?

The Court. She stated before—

Mr. McDermit. Three times.

The Court. Oh, no. You have persistently asked her if she was there three times. She stated before that she was there—that is not a fair question—good many more times.

Q You now say that you were there Friday, Saturday, Monday and once after at the hospital and now Thursday before that, is that right? A I went over there to find out whether she is pregnant. The doctor examined her and the doctor said that she is pregnant and he told us to come the next day and he would make the operation. 30

Q And he told you to come the next day? A Yes, sir.

Q What is the matter? Ain't you feeling well, madam? 40

Ethel Sommer, direct.

The Interpreter. He told me to come the next day to perform the operation.

Q Then did you pay him money that night? A Which night?

Q Thursday night? A No.

10 Q What did he do on this examination Thursday night? How long did it take? A It took him a minute. He only examined her.

Q Well, why was it that he didn't finish the operation on Friday as he agreed to with you?

Mr. Mott. I object.

The Court. Objection sustained.

20 Q What hour was fixed in the Thursday night session with the doctor that you were to bring her there for an operation the next day—what hour was fixed? A Told us to come when we want.

Q So that was the arrangement, that you were to come over for an operation whenever you wanted to? A He says whenever I was able to pay I shall come and then I went to work and looked for the money and I came.

ETHEL SOMMER, sworn for the State.

Direct examination by Mr. Mott.

30 Q Mrs. Sommer, are you the wife of the Mr. Sommer who was a witness this morning? A Yes, sir.

Q What relation were you to Rosie? A It was my sister.

Q Do you know Dr. Shapiro? A No.

Q Well, have you seen him before? A Never.

Q Well, do you mean you never saw him before today? A No.

40 Q Now, do you understand my question? A Why—

Ethel Sommer, direct.

Q Did you ever go to Dr. Shapiro's office? A Yes, sir; I was once there.

Q When were you there once? When was it you went to his office? A Well, I don't remember the day, but I was there—it was on Thursday I was there.

Q How long before your sister died? A Well, 10
it was about three weeks.

Q And was your sister sick or well when you went to see the doctor? A She was never sick. She was well at that time.

Q What did you say to the doctor when you went to see him? A What?

Q What did you say to the doctor when you went there to see him? A Abe Goldstein was 20
there the night before me.

Q Who was there the night before? A Abe Goldstein.

Q And your sister Rosie? A No; himself.

Q Yourself? A He was himself there.

Q Abe was. Well, now, what did you say to the doctor when you went to see him? A I came to the doctor and I asked him if he would do something for her. He told me there was a boy—

Q "For her"; for who? A For Rosie. He 30
says "Yes"; I should bring over the girl to him.

Q What is that answer? A The doctor said—

The Court. Speak slower.

Q Now, won't you tell us just what you said to the doctor when you went to see him? A I told him "my sister is in the family way, if he can do something for her"; he says "Yes"; I should bring over the girl to him.

Q Did he say anything else? A No. 40

Ethel Sommer, cross.

Cross examination by Mr. McDermit.

Q Then you went over to see the doctor after Abie had been there? A Yes, sir.

Q And Abie had told you that he had your sister in the family way, had he? A Yes, sir.

10 Q And had Abie got the license to marry your sister then? A I didn't know nothing about it, see?

Q Well, you went over to see the doctor all alone, didn't you? A All alone, yes, sir.

Q And the doctor told you to bring your sister over? A Yes, sir.

Q And he examined her to see whether she was in the family way or not? A Then I went home and told my mother, and my mother went with her.

20 Q You didn't bring her over? A No.

Q What night was it Abie was there? A It was the night before, I don't remember the date.

Q Thursday night, probably? A Wednesday night.

Q Now, wasn't it Thursday night? A Wednesday night.

Q You didn't know Abie had gone over there with your husband, had you? A Yes, sir; I know that.

30 Q When had you first known that? A I was down stairs when he talked to my husband, see?

Q You said Abie was there alone? A He was there alone before.

Q How was it Sommer said he was over there with him? Why do you say Abie was over there alone? A He told me he was all alone there to ask the doctor—

40 Q Abie told you he was all alone and you didn't know until to-day that your husband had gone over there with him, eh? A Yes, sir; I know when he was with him.

Ethel Sommer, cross.

Q Why did you say it was the time that Abe went over there alone? What do you mean by that? A He was there alone, yes, sir.

Q Then, Mr. Sommer wasn't with him? A Yes; that was the day following that—that was Wednesday.

Q That was some other day.

10

The Court. Just a moment. You must give this witness a chance to answer anyway.

Q Now, go on and finish that answer.

The Court. You say you knew that Abe was there once alone. What do you know about Abe being there again with somebody else, if anything? Is that the question you want to ask?

Mr. McDermit. Yes, sir.

20

Witness. He was in my house and he told me he was at the doctor's himself and the doctor told him to bring the girl and he will do it for him.

The Court. You ask to strike out because the question is only relating to what she knows and Abie saying he was there on Thursday is hearsay. Motion granted.

Q Was Abie to your house the night he told you he was over alone to the doctor? A Yes, sir.

30

Q And then did you and your sister go over the following night? A No.

Q Did you go over yourself alone the following night? A Yes, sir.

Q And the night after you went over alone your mother and your sister went over? A Yes, sir; he told me we shall bring her over there.

Q Now, when was it that Sommer and Abe went over to see the doctor together? A I don't remember the date.

40

Dr. Benjamin Silverstein, direct.

Q Now, isn't it a fact that you never knew that Sommer, your husband, had visited with Abe to see the doctor about making the arrangement until he made the statement here this morning in court? A I do know.

10 Q Where was your husband the night before you went over? A We didn't know at that time yet.

Q Where was your husband when Abe came back and told you he had been over to the doctor's alone to talk to the doctor about performing an operation to Rosie? A In the house.

Q And Abe hadn't been out—Sommer and Abe hadn't been out together that evening? A No; my husband had a meeting that night.

20 Q What did the doctor say to you about the operation, anything? A Yes, sir; he told me that Abe was there the night before and he said we shall bring the girl.

Q Did the doctor tell you he had already prescribed for the girl or made an examination of her? A Didn't say anything.

DR. BENJAMIN SILVERSTEIN, sworn for the State.

Direct examination by Mr. Mott.

30 Q Doctor, you are a practicing physician of this county? A Yes, sir.

Q Have been for how long? A Since 1911, June 15.

Q Do you know the defendant? A Yes, sir.

Q Did you, some time in January of last year, go to see a girl by the name of Rose Lebowitz? A Yes, sir.

40 Q How did you come to go to see her? A Why, on that day—on that day in question—Dr. Shapiro called me up on the 'phone and he asked

Dr. Benjamin Silverstein, direct.

me to administer anaesthetic for him and I went down to the house and administered the anaesthetic.

Q And whereabouts in the house, as near as you can recollect it, was the patient—was the girl? A Why, she was in the bed—must have been a bedroom—there was a bed in there.

10

Q And did you administer the anæsthetic to her? A Yes, sir.

The Court. Whereabouts was the house? Was it in Newark or where?

Witness. It was here in the city, in Prince Street.

The Court. What number?

Witness. I don't know the number; it was near Spruce street, though.

20

Q Did you see the girl's mother there? A I saw a woman there. I don't know whether it was her mother or not.

Q The old lady that was just on the witness stand? A Yes, sir; the one that testified.

Q She was there? A Yes, sir.

Q Well, did you administer the anæsthetic? A Yes, sir.

Q What anæsthetic did you administer? A Chloroform.

30

Q And what did you do yourself besides administering the anæsthetic, anything? A That is all.

Q And after the anaesthetic was administered, what did Dr. Shapiro do, if you know? A You mean while I was administering the anaesthesia?

Q While he was administering? A I couldn't really watch Dr. Shapiro because she was vomiting all the time and I was busy at that time.

Q After she became under the influence of the anæsthetic what was done? A Well, Dr. Shapiro performed the curetting, seraping of the womb.

40

Dr. Benjamin Silverstein, cross.

Q How long did that take? A Why, it took probably about from half an hour to three-quarters of an hour—I don't think over a half an hour.

Q Painful operation, is that? A What is that?

10 Q Is that a painful operation? A If you give an anaesthesia it isn't painful.

Q You were devoting your time entirely to the patient from the anæsthetic standpoint, yourself?

A Yes, sir; oh, yes.

Q And that was the only thing—only part you played in this, was it, doctor—that is all you did?

A What do you mean by the only part played?

Q Administer the anæsthetic? A Yes, sir; that is all.

20 Q Do you know anything about what the condition of the girl was when you got there? A All I know is she was in bed and Dr. Shapiro when he called me up told me—

Q I don't care what he told you. A She was in bed. I just felt her pulse—it was kind of rapid—that is all. I didn't examine her any more than that.

Q How rapid was the pulse? A Normal pulse is from 72 to 80. Her pulse was about from 85 to 90.

30 Q Did you see her again? A What is that?

Q Did you see her again? A No, sir.

Q Did you and Dr. Shapiro leave together? A No, sir; when I was through I left the house.

Q And you left him behind? A Yes, sir.

Cross examination by Mr. McDermit.

40 Q You had no prearranged plan with Dr. Shapiro to be in reach where you could be called that day between two and three o'clock, had you? A No, sir.

Dr. Benjamin Silverstein, cross.

Q The first notion you got that you were required to assist in any way was when he called you on the telephone? A Yes, sir.

Q You didn't know anything about where these people lived or had never been there, the party that died, I mean—you had never been in their house?

A Not before I was called; no, sir.

10

Q You weren't their family physician? A No, sir.

Q And this was your first visit? A Yes, sir.

Q Now, when you got there what did you at first observe? A As I told Mr. Mott I found the patient in bed. I just felt her pulse to see whether her heart was good, and that was all.

Q What was the condition of the heart, did you examine it? A Well, it was beating rather rapid, probably slightly above the normal.

20

Q Then you assisted the doctor in removing her from the bedroom onto a table, did you? A Well, after I administered the anæsthesia, yes, sir.

Q You first applied your chloroform to her while she was in bed and after she was in a comatose condition you then removed her? A She wasn't in any comatose condition.

Q What kind of condition does that produce—state of coma? A I wouldn't call it coma.

Q What would you call it? A Unconsciousness. The difference between unconsciousness and coma—

30

The Court. Never mind that. Answer the question. She was unconscious after you gave her the chloroform?

Witness. Yes, sir.

Q How long did it take you to get her unconscious? A Probably about ten minutes.

Q Then you helped to carry her out on the table, did you? A Yes, sir.

40

Dr. Benjamin Silverstein, cross.

Q You undressed her? A Well, she was undressed; there was nothing to be removed.

Q You assisted in undressing her, did you? A There was nothing—she didn't have to be undressed.

Q She was then in a state of unconsciousness?
10 A Yes, sir.

Q And your duty had ended when she became unconscious, had it? A I had to keep her in that condition while the operation lasted.

Q So that during the entire time Dr. Shapiro was performing this operation you were present?

A Yes, sir.

Q That is correct, isn't it? A Yes, sir.

Q Now, just describe to the jury what that operation is that you saw him perform there? A I
20 was at one end of the patient and Dr. Shapiro was at the other end of the patient, and I was administering chloroform, which is quite a dangerous operation. I couldn't leave the patient at the time and see what Dr. Shapiro was doing, because my duty was just to administer the anaesthesia. I saw Dr. Shapiro handle instruments and probably go through the technique of curetting of the womb, that is scraping.

Q How long does it take to scrape the womb in
30 that kind of operation? A I wasn't there any more than three-quarters of an hour.

Q He had concluded the operation before you left, of course? A Yes, sir! of course.

Q The operation couldn't be continued successfully unless she was constantly unconscious? A
Yes, sir.

Q If there had been a child delivered there you would have known it, wouldn't you? A A child
40 delivered?

Dr. Benjamin Silverstein, cross.

Q Yes. If there was an abortion—you understand what I mean—if there was an abortion performed there and a child—foetus was taken from the womb—from the uterus, or any other part of the body, you would have known it? A In an operation of this sort you do not take the foetus out as a whole, you know, but simply go through the technique of cleaning out the womb. 10

Q You knew what he was doing there of course, you are a physician? A He was curetting the womb.

Q And you saw what was coming from the womb, of course? A No, I couldn't see that because I was at one end of the patient and the body of the patient was in my way.

Q Did you see anything that indicated that he was performing a criminal operation to produce a child? A No, sir.. 20

Q Wouldn't you have known whether he was performing such an operation or not if you were present aiding and keeping the victim unconscious? Wouldn't you know as a physician whether that operation was legitimate or illegitimate—the operation he was performing? A If I was watching the doctor from the start, while he was going through the technique, I could, having examined the patient beforehand to see whether the womb was open or not. 30

Q I am speaking of the operation that was performed at the time when you were present. You know this—the difference between coma and consciousness. I want to know the difference between whether you are a doctor or not when you are present at an operation.

Mr. Mott. Don't answer that because there are four questions involved in one. 40

Dr. Armin Fischer, direct.

Q What was this operation, to produce a miscarriage or an operation that was for the purpose of scraping the womb, you were present?

The Court. He has already answered that. He says he has got to know by making a physical examination first.

10

Witness. Yes, sir.

The Court. Ask him about that if you want to.

Mr. McDermit. No; I am satisfied.

Q What was your fee for your attendance there? A Five dollars.

Q Who paid you that? A The mother of that woman.

20

The Court. You are a regularly licensed physician to practice here?

Witness. Yes, sir.

The Court. And were in June, 1911?

Witness. Yes, sir.

DR. ARMIN FISCHER, sworn for the State.

Direct examination by Mr. Mott.

30 Q Dr. Fischer, you are a practicing physician of this county, I believe? A Yes, sir.

Q Have been for many years? A In this time I am here about twenty-three years.

Q Were you called at any time, doctor, in January of last year to attend the girl, Rose Lebo-witz? A Not in January.

Q When? A I think it was the 7th of February.

40

Q Where did you see her? A I saw her in her house.

Dr. Armin Fischer, direct.

Q Had you ever attended that family before?

A Never.

Q How did you come to go there? A Dr. Shapiro called me to consultation there.

Q And did you go there with Dr. Shapiro? A I came there to Mr. Schutzman; he was waiting for me in Schutzman's drug store and he was to take me to the house. 10

Q Schutzman? A By Schutzman, in the drug store.

Q The jury don't hear you. A I was called from Dr. Shapiro on the 7th of February, about evening, six o'clock, and he told me—

The Court. Never mind. You weren't asked that. You were called by Dr. Shapiro? That is what you were asked. 20

Q Did you and the doctor go to the house together? A Yes, sir.

Q And when you got into the house did you see the girl, Rosie? A Yes, sir.

Q Did you examine her? A Yes, sir.

Q What did you find to be her condition? A Her condition I found very sick woman; she was vomiting; she had bleeding from the nose; very rapid pulse; very feeble of the heart.

Q Very feeble pulse—rapid and feeble? A Feebled; yes, sir. Extended abdomen; flabby uterus; foully discharge from the vagina. The woman was very sick. I diagnosed this case at that time septicemia. 30

Mr. McDermit. Septicemia you say, doctor?

Witness. Septicemia; yes, sir.

Q And that is what? What is septicemia? A Infection—a blood infection. 40

Q A blood infection? A Infection.

Dr. Bernard H. Greenfield, direct.

Q Did you treat her? A No; I was seeing her and advised Dr. Shapiro that he should send right away the woman in a hospital.

Q And that is all? A That is all. I called up the Beth Israel Hospital that they should take the woman right away and they was take the woman
10 right in.

Q This was on the 7th? A 7th, in the evening—in the same evening the woman came in the Beth Israel Hospital.

Cross examination by Mr. McDermit.

Q And your advice was followed and the girl was removed to the hospital, doctor? A Yes, sir.

DR. BERNARD H. GREENFIELD, sworn for the
20 State.

Direct examination by Mr. Mott.

Q You are a physician? A I am.

Q Practicing physician of this county? A Yes, sir.

Q And have been how long, doctor? A Fifteen years and a half.

Q Are you connected with any of our institutions? A With the Beth Israel Hospital.

30 Q Do you remember whether you had under your care in that hospital a girl by the name of Rose Lebowitz? A I do.

Q Did you? A Yes, sir.

Q When did she come to your hospital? A I think she came on the 7th of February.

40 *Mr. McDermit.* I object, because in the indictment you set down the actual commission of this on the 15th of January. The proof doesn't seem to lead up to that. I call your attention to it now.

Dr. Bernard H. Greenfield, cross.

Mr. Mott. I think our proof is right on that; that is the time the abortion was performed—about that time. That is not the time she died, of course.

Q What time did you first see her, doctor? A I saw her the following morning.

Q Did you examine her at that time? A I did. 10

Q What did you find to be her condition? A She had a very sallow complexion; was bleeding from the nose; she had a very rapid pulse—rapid and feeble pulse; there was a foul discharge.

The Court. What is a rapid pulse?

Witness. About 140.

The Court. What was her pulse?

Witness. About 140 as near as I can remember. 20

Q And foul what? A Foul discharge from the vagina.

Q Did you say anything about the uterus? A I didn't examine her internally; no.

Q Well, any further physical symptoms? A Well, she was in a highly septic condition—that is suffering from blood poisoning. Looked as if she was going to die most any time.

Q Anything else? A That is all, sir. 30

Q Do you know whether she lived or died? A She died.

Q When? A I think she died the following Friday, that was about the 11th.

Cross examination by Mr. McDermit.

Q You have records, of course, at the hospital showing the date which she was admitted? A I believe we have; yes, sir; we usually have.

Q You know Dr. Zimmerman? A Yes, sir. 40

Dr. William H. McKenzie, direct.

Q He is a competent physician, is he not? A
Dr. Zimmerman?

Q Yes.

10 *Mr. Mott.* I object. I don't see why one
physician is called on to testify about the com-
petency of another.

Q He is in charge of the hospital ward there
where this girl was taken to, doctor? A At that
time?

Q Yes? A She was under my supervision.
Dr. Zimmerman was house surgeon.

Q He would have charge of her during your
absence? A Yes, sir.

20 *Mr. McDermitt.* I again call your attention
to the fact that the 15th of January is on Wed-
nesday, 1913, and the proofs in this case make
your operation upon Friday night and Monday.
If you rely upon those. If you want to get
down to the date in this thing all right; if not
we are prepared to go on on that date. I want
to again call the prosecutor's attention to that,
your honor.

The Court. The State has not rested yet.

30 DR. WILLIAM H. McKENZIE, sworn for the
State.

Direct examination by Mr. Mott.

Q Doctor, you are a practicing physician? A
I am.

Q And have been for how long? A Twenty-
one years.

40 Q And you hold a public office? A I do, county
physician.

Dr. William H. McKenzie, direct.

Q In your capacity as county physician did you perform an autopsy on the girl, Rose Lebowitz?

A I did.

Q When? A On the 12th of February last.

Q Where? A At Holle's morgue in the morning.

Q Where did you first see the girl? A I saw her in the hospital before she died on the 11th of February at Beth Israel Hospital, in the evening.

Q Now, what did you find as a result of your autopsy? A I found that the woman had a septic inflammation of the womb; there was a very bad discharge from the womb into the vagina, and the womb and the muscles were partly eaten away by this inflammation, so much so that it was almost eaten away through two spots in the posterial wall of the womb; she had a little reddening of the covering over the tubes. No other signs of peritonitis. The intestines showed no typhoid or other lesion. They had a dark brownish discharge in them. The lungs showed in spots a septic pneumonia; the spots were about as large as a pea—in several places—in both lungs. The liver and kidneys and spleen showed the changes that you would expect where a person had had a high temperature.

Q Did you turn over any parts of the organs to anyone? A To Dr. Martland.

Q What did you turn over to him? A The uterus.

Q The what? A The womb. Dr. Martland was there at the autopsy and took them right from there.

Q He was present? A Yes, sir.

Q Doctor, what is the ordinary method of performing an instrumental abortion?

Dr. William H. McKenzie, direct.

Mr. McDermitt. I object. How is that competent? We are not in a school of medical science. We are in a court of law.

The Court. That is one reason why you want to make known the legal objection to the question.

10

Mr. McDermitt. We are not looking for a dissertation upon the fact and the proposition of making a crime. I don't know whether he is an expert. I don't know whether he has ever been charged with the commission of any offense.

The Court. You may cross examine him.

Mr. McDermitt. I don't think cross examination is necessary.

20

The Court. You may cross examine the doctor as to his qualifications as a physician. What he knows about general practice and specifically as to abortion, or any other thing that you think is necessary to find out whether he is an expert.

Mr. McDermitt. I object to the question in the form it is in without an examination.

The Court. Upon what ground?

30

Mr. McDermitt. It is an effort for him to give a conclusion or notion from his mind of what would constitute an abortion. We are here to deal with facts, not his conclusion. I do not think it is necessary to go into the cross examination—with all due respect to your Honor—on that question. We decline to cross examine on it and I object to the question.

40

The Court. Now, you have got another ground, and that is that the question is not asked in a proper way.

Dr. William H. McKenzie, direct.

Mr. McDermit. Yes.

The Court. What have you got to say to that, Mr. Prosecutor?

Mr. Mott. I don't know what the objection is.

The Court. The question is not how an 10
abortion might be performed but what the doctor thinks from any information that you may put before him information which he has, as to whether or not such an operation was performed in this instance.

Mr. Mott. I know, sir; but I am not asking him how criminal abortion is performed.

Q Doctor, may I ask you this. What is the 20
meaning of the term abortion in medicine?

Mr. McDermit. That is objected to. The meaning of the word abortion is defined by the law.

Mr. Mott. The law says what criminal abortion is, not what abortion is.

The Court. Abortion in the law provides for a certain criminal offense known as producing unlawful miscarriage. I do not think that covers it yet. I think you have a right to ask the doctor what he thinks was the cause of 30
death in this case, if he has enough information. In other words, the defense objects, as the court understands it, for the reason that the question should be hypothetical.

Mr. Mott. The purpose of this examination is not to lay a foundation to ask the doctor what his opinion is as to the cause of death. I am asking him to state how a natural abortion can be produced. I will add to it with the 40
foetus three months developed only. The evi-

Dr. William H. McKenzie, direct.

dence, your honor, is that on a certain occasion on Friday night, the defendant inserted instruments into this girl. Now, I am asking the doctor to state how an abortion can be produced, adding "with the foetus three months developed."

10 *Mr. McDermit.* It may be produced in a million different ways.

Mr. Mott. I know that all well enough.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court; the same is allowed and it is sealed accordingly.

WM. P. MARTIN, [L. s.]

Judge.

20 *Mr. McDermit.* If your Honor will hear me in support of our position, I will say that it is fair to say this, that until they have established that the cause of this death was by a criminal abortion that this testimony isn't admissible. We have no right, whether it is excluded or not, to have it go to the jury before it is shown that the death was a result of the abortion.

30 *The Court.* It cannot be counted for anything unless it is connected.

Q (Question read as amended as follows: "Doctor, what is the ordinary method of performing an instrumental abortion with a foetus three months developed?") A The ordinary method, I think—the safest method in these methods is with a soft rubber catheter; dilation of the womb—or not dilation of the womb but just simply pushing it into the womb and leaving it there.

40 *Mr. McDermit.* Kindly repeat that, doctor. I think the court will permit it.

Dr. William H. McKenzie, direct.

Witness. Pushing a soft rubber catheter into the womb and leaving it there. The presence of the foreign body tends to expel the foetus. The womb contracts trying to expel the catheter and expels the foetus, too. Other methods, where they go in and puncture the membranes with a probe—a sound; or you can inject various substances into the womb which will set up an irritation and cause the womb to contract. You can go in deliberately and start to scrape the womb. 10

Q Describe that process, doctor? A That is just—a curette is an instrument with a—either sharp or dull ring on the end of it, with which they go in and scrape the walls of the womb.

Q And if there were in the womb a three months' foetus at the time the curetting was done what would be the result? A If the curetting was thorough, it would be brought out. 20

Q Were you able to form any opinion as to the cause of death in this case? A This woman died of septic poisoning from the womb.

Q Are you able to form any opinion as to how that septic poisoning was produced? A No.

Q Were the conditions you found there consistent with the theory of an instrumental abortion? A Yes, sir. 30

Q Are there any symptoms characteristic of an instrumental abortion previous to death? A Not if it is done properly.

Q Well, suppose it is done improperly, are there symptoms? A Yes, sir; might have perforation of the womb and things like that.

Q You found nothing of that in this case? A I found nothing like that. 40

Dr. William H. McKenzie, cross.

By the Court.

Q You mean by the word "properly," properly or successfully? A Maybe I had better say successfully.

10 Q I don't care to suggest which you should better say. I want to know which you mean? A If a man was going on and do a criminal abortion I would mean properly.

Q Leave out the criminal, and allude to it from the standpoint of making an abortion? A Sometimes we have to do it lawfully. If we did it in the same way he did it lawfully, then I would say properly.

Cross examination by Mr. McDermit.

20 Q Then there is no way of determining whether this party that is dead from your autopsy, died as a result of an illegal or legal operation? A No.

Q Or abortion? A No.

Q At the time that you made the examination of the deceased there was nothing that would indicate to your mind that any abortion had been performed? A I couldn't tell.

30 Q So that what she died from as far as the medical certificate is concerned, was blood poisoning? A From the uterus.

Q Blood poisoning from the uterus. Now, is there such a thing as gonorrhoeal blood poisoning from the uterus? A Yes, sir.

Q Would a person suffering from gonorrhoea for a long period, say six, seven or eight months, under treatment, be apt to have that character of discharge that you found in the uterus when you made the examination at this autopsy? A Not apt to.

40 Q What would show there? Smell be about the same as this smell? A Yes, sir.

Dr. William H. McKenzie, re-direct—re-cross.

Q The odor about the same? A Yes, sir.

Q Pretty difficult thing to say just exactly what was the primary cause of death? A Except that she had blood poisoning.

Q From the uterus? A From the uterus.

Q But what impregnated the uterus or what in any way affected, probably, to use a better word, the uterus by way of virus you don't know? A I don't know how she got infected. 10

Q Infected or affected? A Infected.

Re-direct.

Q Did you find any foetus in the womb? A I did not.

Q Would you say there was none there at the time you— A What is that?

Q Would you say there was any foetus present at the time you performed your examination? A There was not. 20

The Court. Did you observe any physical signs of the presence of the foetus?

Witness. It was impossible to.

The Court. You cannot say there were any physical signs in the uterus or symptoms as to whether or not curetting had taken place? 30

Witness. Personally, no. The whole of the inside of the womb was sloughed and diseased and had been that way for some time. 30

Re-cross.

Q Constant injection would produce that condition, wouldn't it, for gonorrhoea? A I don't think so.

Q Constant injection for mostly any purpose would have produced that condition? A I don't think so. 40

Dr. Harrison S. Martland, direct.

DR. HARRISON S. MARTLAND, sworn for the State.

Direct examination by Mr. Mott.

Q Doctor, you are a practicing physician of this county? A I am licensed to practice; yes, sir.

10 Q Do you hold any position? A I am pathologist at the City Hospital.

Q How long have you been pathologist at the City Hospital? A Since the beginning of 1909.

Q What experience have you had in the study and practice of pathology? A Before I came to Newark I was connected with the Russell Sage Institution of Pathology in Blackwell's Island for about three years—over three years.

20 Q And what studies have you had? A The ordinary studies before that of medicine with the internship in a large hospital.

Q Were you present at the autopsy on the body of this girl Rose? A I was.

Q Did you take away with you any of the organs? A I did.

Q What organ did you take? A The uterus or womb.

30 Q And you took that for what purpose? A for the purpose of mainly—two purposes—of finding what germ was the cause of the blood poisoning and of finding whether the womb was pregnant.

Q How do you determine whether or not the womb was pregnant? A In a great many cases you are able to determine with the naked eye. In this case you were not on account of the very rotten condition of the inside of the womb. Microscopical sections were made from the wall of the womb and examined for microscopic evidence of pregnancy.

40 Q And is this work within the field of pathology? A It is.

Dr. Harrison S. Martland, direct.

Mr. Mott. Do you want to examine the doctor's qualifications as a pathologist?

Mr. McDermit. I will waive that.

Q Doctor, will you tell the jury then what you did by way of examining as to whether or not this girl was pregnant at the time of death? A I cut from the wall of the womb, including the inside and also the exterior or outside of the womb, several sections with a sharp razor—cut microscopic sections and stained them and examined them. I found evidence of—that the womb was in a condition of extensive sloughing, the inside of the womb, what we speak of as a suppurative endometritis.

Mr. McDermit. Doctor, put that in English for us.

Witness. We will just say extensive sloughing of the inside of the womb involving the muscular coat extensively, and in two places with the naked eye—that is going almost to the surface. Microscopically the tissues stained very poorly on account of this extensive sloughing, and we found, however, evidence of placental tissue in appearance of old—what we speak of as old placental shadows. That is due to the pus formation in the inside of the womb. Otherwise they would stain much clearer.

The Court. What is placental tissue?

Witness. Placental tissue is the after-birth that comes after the child is born—a full term—a large fleshy mass that comes away usually after the child is born. We found also evidence in the muscular layer of the uterus of—what we call desidual cells, which is absolute proof of pregnancy. We found also that

Dr. Harrison S. Martland, direct.

as far as we could go the germ which caused this woman's death was the streptococcus. That was found deep—

10 Q What sort of germ is that? A That is the germ that causes a great majority of the cases of blood poisoning after child birth or after abortions, etc. That is from the uterus.

Q That is, in ordinary English, called an abscess, isn't it? A A streptococcus?

Q Yes. A No; that is the name of the germ.

Q Creates an abscess? A Sometimes it does and sometimes it doesn't.

Q Go on doctor. Have you told us the whole?

A That is all; yes, sir.

20 Q Now, from that are you able to say whether or not at the time previous to—at the time of her death this woman had been pregnant? A I am able to say that the woman was recently pregnant.

Q Is there such a thing as a gonorrhoeal germ?

A There is.

Q Was that present in this woman? A In the uterus I found no evidence of the presence of gonococcus that I could see from the serums taken from the womb. We didn't take serums further down. I don't know anything about that.

30 Q Well, if she had been suffering from gonorrhoea would you have found the— A We didn't take smears from where—gonorrhoea in woman is usually lower down. Sometimes you find it is high up in the womb too; but we didn't take smears from lower down. There were no—I found no gonococci in the serums from the uterus, only the streptococci and the bacillus.

40 Q Assume, doctor, that this woman had been three months or thereabouts pregnant, and that two or three weeks previous to the time you saw her an instrumental abortion had been performed

Dr. Harrison S. Martland, cross.

on her, were the conditions you found consistent with the theory— A They were.

Q —with that theory? A Yes, sir.

Adjourned until tomorrow morning at ten o'clock.

10

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

January 27, 1913.

STATE,

vs.

NATHANIEL SHAPIRO.

Indictment

No. 87.

Abortion.

20

SECOND DAY.

Appearances as before stated.

DR. HARRISON S. MARTLAND, resumed the stand for

Cross examination by Mr. McDermit.

The Court. Yesterday afternoon in the course of the direct examination by the prosecutor of Dr. McKenzie, the question was asked of the doctor, "What is the ordinary method of performing an instrumental abortion," and after some discussion by counsel and some statement by the court the question was not answered but what was asked was may I ask you this, "What is the meaning of the term abortion in medicine." That question was not answered but during the discus-

30

40

Dr. Harrison S. Martland, cross.

sion which ensued upon the asking of that question—the former question—the original question was amended and finally the original question was put “Doctor what is the normal method of performing an instrumental abortion with a foetus three months developed?”

10 The court overruled the objection of the defendant and allowed the defendant an exception. The answer was “The ordinary method—I think the safest method of these methods is with a soft rubber catheter dilation of the womb—or not dilation of the womb, but just simply pushing it into the womb and leaving it there; pushing a soft rubber catheter into the womb and leaving it there. The presence of the foreign body tends to expel the foetus.

20 The womb contracts trying to expel the catheter and expels the foetus too. Other methods where they go in and puncture the membrane with a probe or sound, or you can inject various substances into the womb which will set up irritations and will cause the womb to contract. You can go in deliberately and start to scrape the womb.” The court upon reflection has reached the conclusion that its ruling at that time was erroneous, and under those circumstances the court will now sustain the objection of the defendant to that question and will strike out all of the answer, and the jury are to disregard the answer, and, of course, the question, and treat the matter absolutely in their minds and upon the trial as if the question had not been asked and the answer not given.

30

Q Doctor, you were examined here yesterday
40 by Mr. Mott in this matter and among other answers you were asked the questions—among other

Dr. Harrison S. Martland, cross.

questions and answers, you were asked the question as to what organs did you take, and the answer according to the record was the foetus or womb. Did you make such answer as that yesterday? A No, sir. The uterus or womb.

Q You said that you had examined—you attended the autopsy for two purposes, and will you again repeat what those two purposes were? A To establish what germ caused this woman's death and to find whether the woman was pregnant.

Q Well, now, you attended that autopsy then with those two things in mind. You had been requested, I suppose to go there by the prosecutor's office of this county, had you? A I had been requested by Dr. McKenzie.

Q Dr. McKenzie, the county physician. Now, where was this autopsy performed? A At Holle's morgue.

Q And under what conditions was it performed? A It was February 12, 1913, and it was done—I think the day was a pretty cold day, as I remember it.

Q February 13th. A The 12th I said.

Q Did you make any written memorandum at that time of this autopsy? A I did not, only to note that I had taken the uterus. Dr. McKenzie made the—

Q How long a time did the autopsy take? A I don't believe not much over an hour and three-quarters.

Q Now, will you tell us from your recollection just exactly what you did there and what Dr. McKenzie did with this deceased body? Just describe the entire course you pursued from the time you went there to make this autopsy until you finished—what parts you examined and the method in

Dr. Harrison S. Martland, cross.

which you did it. A Dr. McKenzie and myself performed the autopsy together, the doctor doing the main part of the autopsy and I assisted him. We examined first the exterior of the body for wounds, for the condition of the *rigor mortis*—
 10 for post mortem rigidity—discoloration over the top of the body and so forth for any exterior evidence of injury. We next examined the genitals and I think, as I remember it, I made no memoranda.

Q What do you mean by genitals, if you can, doctor, confine yourself as nearly as you can to every day language? A The outside of the privates, vagina, the entrance of the vagina—the vulva, etc. And as I remember it there was quite a discharge coming out of the vagina.

20 Q What kind of a discharge was that from superficial examination? A Bloody, purulent, bloody, pussy discharge.

Q Obnoxious? A With the naked—

Q Strong odor? A Strong odor; yes, sir.

Q Go ahead. A Then we made an incision from the chin down to the scrobiculus—down to the pelvic bone, in front—just in front of the bladder. The abdominal cavity was inspected first
 30 for topography to see that all the organs were laying in their natural position. We found no evidence there, as I remember it, of a generalized peritonitis, that is of pus all over the abdominal cavity, but there was a slight amount of localized peritonitis over the posterior wall of the uterus and over both of the fallopian tubes which come off from the side of the womb, they were—the peritoneum—the covering over these organs—was markedly infected and red—angry. Finding nothing
 40 else in the abdomen at that time we next examined the chest cavity—we examined the heart

Dr. Harrison S. Martland, cross.

first—first opening the pericardial cavity—that is the sack in which the heart is enclosed—we found a small amount—a slight increase in the fluid. There is normally fluid in the pericardial cavity to lubricate the heart, so to speak, in its motion. This was slightly increased, as it sometimes is in cases of slow death. The heart showed no disease of the valves. The heart muscle showed what we call cloudy swelling—that is cloudy swelling is changes that occur in certain organs from the effect of long continued fever, as a rule—high fever for a few days. There was nothing else in the heart. We next examined the plural cavities, the left cavity first always, and found no evidence of fluid in the pleura as I remember it. There was none also in the right pleural cavity. We next examined the left and right lungs together and found that both lungs were riddled with quite a number of small abscesses. The average size of these abscesses were about the size of a pea. In other words a typical beginning of a septic pneumonia—a pneumonia due to the lodging of the germs from the blood stream into the lungs. We next went back to the abdominal cavity and examined the spleen. The spleen was slightly enlarged.

Q What is the spleen, doctor? A The spleen is an organ that lays in the left side under the ninth, tenth and eleventh ribs, and we—

Q What is its function? A There is doubt as to just what the functions of the spleen are. It is supposed mainly to enter as a filtering organ for certain—for filtering certain—especially filtering iron pigments from the broken down blood cells that are constantly breaking down in the body.

Q Now, that, of course, is an undetermined proposition, as to whether the spleen is beneficial

Dr. Harrison S. Martland, cross.

in the human body or not. A It is undoubtedly beneficial, but men can live with their spleens removed for some time.

Q What did you find the condition of the spleen? A The spleen showed what we term an acute splenitis. That is it was slightly enlarged and swollen and soft, light red and pulpy. That is a characteristic spleen in cases of sepsis, blood poisoning. We next examined the left kidney. The left adrenal—the small gland lying just above the kidney—the adrenal gland—there was nothing wrong with that, marked. The left kidney was next examined and found to be slightly larger than normal—red. Its cortex or the outer portion of the kidney swollen. The vessels injected in the cortex—the glomeruli, or very small portions where the urine begins to be secreted from—they are so small you can't only see them practically with the naked eye, when they are swollen, were swollen and red and projected above the surface of the coat of the kidney.

Q What was the weight of that kidney about? A The weight of that kidney? We didn't weigh it.

Q What would you say approximately? A I should say approximately 170 or 180 grammes.

Q What would that be reduced to fluid measure? A One hundred and seventy grammes, say, divided by thirty, would give you that in ounces.

Q How much is that, doctor, you are a mathematician as well as a pathologist? A Five and a half ounces.

The Court. It would be six.

Witness. Yes; about six ounces.

The Court. A little less than six.

Witness. A little less.

Dr. Harrison S. Martland, cross.

Q What is there abnormal about that, anything besides the size of that kidney? A I think the normal weight of the kidney is about 150 grammes.

Q That was a little heavier, was it? A That was slightly heavier. We put down the condition of the right kidney was practically the same in appearance. We put down the kidney condition as acute nephritis. We next examined the stomach and pancreas and upper portion of the small intestine and found those practically normal except from distension from gas. All the intestines were somewhat distended. The liver was next examined and was about normal in size and conformation, shape—and these showed also cloudy swelling the same as in the heart muscle. That is due to the effects of the fever and poisoning circulating in the blood. Then we went to the pelvic organs, the uterus and tubes and took those out, and I have already described that yesterday.

Q You needn't go over that again. Now what else was done? A I am not sure whether we opened the head or not.

Q Of course the opening of the head wouldn't be an absolute thing to establish the cause of death, would it? A In this case, no.

Q You would be able to determine without examination of the brain, conclusively the cause of death? A The cause of death in this case was conclusive enough without opening the head.

Q Well, to make a complete, absolute clean bullet-proof, conclusive determination of death, would it not have been necessary—the cause of death—would it not have been necessary to have opened the brain, examined the brain. I want an answer yes or no to that doctor? A An autopsy, the completeness of an autopsy always depends on

Dr. Harrison S. Martland, cross.

just how far you go. The further you go of course, the better it is.

Q That is not quite an answer. That is an explanatory answer. I want to know whether or not—

10 *The Court.* Why should he be confined to a yes or no answer?

Mr. McDermit. That is a question that I think is answerable by yes or no.

The Court. I will not confine him to a yes or no answer. I will let him go on with his answer.

20 Q I asked you the question whether or not the best evidence and the most conclusive evidence of death from the cause stated would not have been obtained by a more complete autopsy, by having examined the brain—whether that wouldn't have been the absolute test in conjunction with what you have done? A It would not.

Q So that the mere examination of the brain would have no bearing whatever? A No bearing whatever in this case.

30 Q Why did you say in the way of explanation a few moments ago that of course a complete autopsy would bring about that examination or words to that effect? What did you mean by that? A I mean the further you go in an autopsy the more complete your records were, of course. In this country, we don't go as far in our autopsies as they do abroad, because the law doesn't allow us. We can't disfigure the bodies as they do abroad.

40 Q The law doesn't prohibit you examining in this State—from examining the brain, does it? A No, sir; except in this case we were absolutely sure of our cause of death without caring what the brain showed.

Dr. Harrison S. Martland, cross.

Q Then in point of fact the brain was not examined? A I don't know. I am not sure on that.

Q Couldn't you remember, after giving the complete details that you have given to the jury here from the other organs that you examined—other parts of the body—whether the brain was examined or not? A I wouldn't be able to say that, no. I remember the organs distinctly—that is the part I was interested in at the time. If we opened the brain we did it after we opened the body cavity, and I saw it was very conclusive as to what—it was a perfectly simple case as to what the woman died of. 10

Q You have said that now, seven or eight times. I am pretty nearly inclined to believe you, but you haven't satisfied me yet. Now, what would be the condition of the brain, if opened, upon the condition you have now specified to the jury beyond what it would have been in a normal person—normal condition? A It might have been in one of three states practically. 20

Q In one or three states? A There might have been nothing at all there. Might have been from the naked eye appearance—and even a microscopical appearance, normal. There would be more apt to be, however, a slight active congestion of the brain which occurs with any high fever. There might be in such cases of sepsis a pus on the brain—a meningitis. 30

Q You couldn't—of course what you answer now is pure conjecture, because you didn't examine the brain—you are now telling what might occur—might happen in case you examined it, isn't that so? A Would have those three things.

Q What would be the condition of the blood? A How do you mean? 40

Dr. Harrison S. Martland, cross.

Q The appearance of the blood in the brain? A The blood where?

Q In the brain? A The same as it looks any place else. It is blood.

Q Would it look the same as it did in the cellular parts of the wall of the parts that you took? A
10 Practically no difference in the appearance of blood. Blood is blood.

Q Would the smear of the brain have been sufficient to have given you opportunity to draw the deduction of what caused death? A No.

Q You wouldn't have taken a smear of the brain in order to examine the conditions you found there, would you? A That depends on what I found there. If I found pus there I would probably have taken a smear from it.

20 *The Court.* What is a smear?

Witness. A smear is simply a wiping of a pus, for instance, over a glass slide, or taking a culture of it and growing to find what kind of bacteria are there.

The Court. That is taking a sample of the blood, isn't it?

Witness. Not so much the blood.

The Court. Or of the pus?

30 *Witness.* Pus; yes, sir.

Q Well, now, having been a germ there, you say, and that germ— A Where was that?

Q Had caused blood poisoning—we have finished your examination on the brain and other subjects—back to your cross examination now? A Yes, sir.

Q You say that you—

40 *The Court.* Where do you mean? You told him to omit all statements of what he found in the uterus.

Dr. Harrison S. Martland, cross.

Mr. McDermit. At that time, not now.

The Court. Bring his attention to where you mean.

Q You say mainly two purposes, was the finding what germ caused blood poisoning and finding whether the woman was pregnant—what germ was that that you found that caused the poisoning? A Streptococcus. 10

Q Now, you made an examination for no other purpose except discovering that one germ, is that so? A We made examination to discover any germ that was there. We didn't know what germ we were going to find until we found it.

Q Well, you did find in point of fact that there was blood poisoning there? A Blood poisoning where? 20

Q In the body? A Yes; certainly—most certainly.

Q Now, what was your process of coming to the conclusion that death was caused by blood poisoning and that germ existed? How do you prove that? A First because the autopsy showed characteristic lesions of blood poisoning in all the organs; metastatic abscesses in the lung; next because it was conclusively shown at the autopsy that the source of this infection was from the womb. 30

Q Now, then, how much of that womb did you take away from the autopsy with you? A The whole womb—all of it.

Q All of the womb? A All of it.

Q How much did the womb weigh? A I didn't weigh the womb.

Q And in what did you place that womb after you took it out of the body? A I took it to the laboratory back to the City Hospital fresh. 40

Q In what? A In nothing.

Dr. Harrison S. Martland, cross.

Q In what way did you wrap it? A It was cut very carefully at the autopsy and the inside of the cavity looked at and not touched and folded back carefully without touching the inside.

10 Q In what method was it wrapped? You didn't leave that loose out in the cold day with the temperature as you have described it? A I am explaining now after the uterus was cut open and laid out and examined it was then put back without touching the inside of it. That was wrapped, I think, in some newspapers that we had there.

Q Was there anybody there with you besides Dr. McKenzie—did you have any assistance there? A Dr. McKenzie is the only one I remember. There was probably a prosecutor's man there.

20 Q Any representative of the prosecutor's office? A I wouldn't be sure. I couldn't remember that. It is over a year ago, or pretty near.

Q After you had wrapped up that womb it was sent to the City Hospital, wasn't it? A I took it to the City Hospital.

30 Q You took it to the City Hospital. What did you do with it after you got it to the City Hospital? A I made smears from the inside of the womb and from the muscle layer of the womb, deep in the uterus. I made smears by taking a platinum wire, heating it in the flame—

Q When did you take those smears? A That same day; as soon as I got back.

Q Do you remember what time of day it was, the examination—the autopsy? A No; it was probably in the afternoon.

Q Do you know whether you had taken those smears by gas light, electric light or day light? A Day light.

40 Q Sure about that? A I am quite sure; yes, sir.

Dr. Harrison S. Martland, cross.

Q How long did it take to do that? A I suppose in all—of course while the smears are staining we can do some other work too, you know—right in the same room—right there—and everything—I suppose it took me about an hour.

Q You found those stains, of course, incomplete? A What is that? 10

Q You found the stains incomplete? A Incomplete?

Q Incomplete; yes. They weren't a natural stain, were they? A Of course. I don't understand what you—

Q Well, they weren't the same class of stain that would have been taken from a body where the blood was healthy and in good condition, were they? A No; this was taken from the tissue inside of the uterus—from rotten tissue. 20

Q Yes. Therefore, I say, the stains were not good stains—they were very poor stains? A They were very excellent stains; just the kind you want.

Q Very excellent stains. What did they show? A They showed pus cells. They were stained with aniline dyes you see, and examined under a microscope they showed pus cells, and they showed streptococci.

Q Now, what does that indicate? A That was also repeated by going deep into the muscle coat of the uterus so that we got away from the superficial part where there can be other contamination and found the same thing practically—a pure smear of streptococci, in deep. 30

Q That established—

The Court. Allow him to answer the rest.

Witness. That established that the affected organism was a streptococcus and not another germ. 40

Dr. Harrison S. Martland, cross.

Q As far as that organ was concerned? A That organ was established at the autopsy as the primary seat of the infection.

Q That established that as far as that organ was concerned that germ? A Yes, sir.

10 Q That germ then and there, at the examination at the hospital established to you that your original conclusion was right. A Ask that again.

Q Establish to you that your original finding at the autopsy was correct? A Yes, sir.

Q You understand me? A Yes, sir.

Q You never were called upon to examine a more rotten womb than that, were you? A I have seen several just as rotten.

20 Q Alcoholic wombs—the wombs of drunkards? A I don't think it makes any difference if they are drunk or not.

Q Doesn't make any difference, eh? A No, sir.

Q Doesn't make any difference what kind of infection the womb is, is that what you say? A I said I don't think it makes any difference—alcohol plays no part.

Q Alcohol might preserve the womb, perhaps—

30 *The Court.* Just finish your answer, doctor, regardless whether any other questions are asked of you?

Witness. I fail to see how alcohol can have any effect on the uterus in a sepsis case.

Q How many uterus cases have you examined where the same condition of blood poisoning existed? A That is sepsis followed from the uterus—from the womb?

Q Yes. A I couldn't tell you, but there has been quite a number.

40 Q What was the last examination you made before this present case? A I couldn't lay my hand

Dr. Harrison S. Martland, cross.

right now on it, but I should imagine we have sometimes two and three of these cases a month.

Q What would they come from? A They come from—some of them are cases of women that have had other children, full term, and become infected after; some of them are abortion cases—lot of them.

10

Q How long a time would this germ exist in the uterus and the party lived without dying—without medical attendance? A This germ we are talking about, this streptococcus?

Q Yes. A It may kill from all the way from thirty-six hours to even six months—may possibly longer.

Q May live a year? Right? A Yes; it would be unusual to do that.

20

Q Yes; it would be unusual, but you have known cases where they have lived nine months, haven't you—that that germ has been in existence nine months? A I think I have; yes, sir.

Q That is supposed to be the limit of life, is it—of human life—with that kind of germ? The germ will do its work and kill in that period of time? The germ will devastate—it will eat through—make the party die within nine months? A Some of them will recover from it.

30

Q Without treatment? A They recover better without treatment, than they do with it; sometimes.

Q Then, doctor, that is one time when the doctor can't help the germ, is it? A That is right.

Q Will you just tell us when—under what conditions—you could recover better without the physician's aid and treatment? Give us an illustration of what you mean by that? A Well, the whole question of sepsis after child birth or after abortion—there are two opinions really as to just what is the best treatment. There are some of the best

40

Dr. Harrison S. Martland, cross.

men in the world that practically say, "leave the woman alone," that is to not go in and do a curettage or anything.

10 Q What do you mean by curettage—the scraping? A Scraping of the uterus. That is leave them alone, and possibly by certain stimulants such as strichnine, whiskey and so forth, try to keep them alive as long as they can, and finally the body itself develops a resistance and they overcome the germ. Some of the best men in the world claim that in certain types of these cases that the women are more apt to recover if you leave them alone, than if you do anything.

20 Q Those are in well defined types—everything must be found to be in that particular type? A They are all well defined type.

Q They are? A Pretty near all.

Q And the other opinion is that they should be treated by scraping and by applications of douches and other injections, isn't that right? A There are equally good men that believe in such treatment.

Q What is your opinion? A I have no opinion because I don't deal with those kind of cases.

30 *The Court.* You do not deal—

Witness. I don't have anything to do with the treatment of obstetrical or—

Q You don't have anything to do with the treatment of such cases?

Witness. No, sir.

The Court. How long have you been a pathologist, doctor, of the City Hospital?

40 *Witness.* From the beginning of 1909—five years.

Dr. Harrison S. Martland, cross.

Q You found also in your examination from the parts that you took to the hospital what indicated to you recent—you testified—pregnancy? A Recent pregnancy.

Q Recent pregnancy? A I did.

Q Now, what is your test on the question of establishing by your methods recent pregnancy, and what do you mean by recent pregnancy? A It is impossible to put any definite time limit on what I mean by recent pregnancy, but I should think that the pregnancy from the time of the woman's death had existed not—probably not any longer than two months before the woman's death. 10

Q Might have existed a good deal less? A It might have existed I should say from ten days, that is, from the description of the uterus—from ten days to two months. Maybe a little over two months. Can't put any more definite time than that. 20

Q Of course, you are now assuming that this girl or person was then pregnant for the first time, are you not, in your examination that you are giving to us? A Yes, sir.

Q Now, if she had been pregnant before that time or had given birth to a child or if she had had a miscarriage, or abortion performed at any time prior to that three months—prior to that—or four months prior—five or six or a year prior to that and she had been pregnant for a period of over four or five or six months or had been pregnant for the full time, that evidence would be forthcoming at this autopsy, would it not? A I should think it would. 30

Q And you would be unable to say—are unable to say now that what you discovered there might not have been from a pregnancy other than the pregnancy that you had in mind; isn't that true? 40

Dr. Harrison S. Martland, cross.

A No, sir; it is not. It was there from the last pregnancy she had and none other.

Q Will you now say whether she had any pregnancies four months prior to that from your examination? Are you prepared to say that she was not pregnant four months prior to the time that
10 you made the examination at the hospital? A No. I can't say that. I don't know how far she was pregnant now.

Q You said that, as I remember it, a few moments ago, that the pregnancy that you spoke about might run down to ten days—might go from ten days to two months. Did I understand you correctly? A No; I didn't say that.

Q What did you say about that? A I said the woman before her death—that that child was expelled either ten days to two months before she
20 died. That is the last time—that when she was pregnant was—when the child was there—was ten days as far as you can—you can't put it absolute on the time, but say from ten days to two months.

Q Now, could you give the jury any idea as to how long she must have been pregnant at the time of the expulsion from the womb? A How far along in pregnancy?

Q How long in pregnancy she must have been
30 to have determined that condition, or is that determinable now? A I think at the autopsy—from the autopsy that she was at least the end of her third month in pregnancy, and that was from the fact that she had colostrum in both breasts, which occurs—begins to appear at the end of the third month.

The Court. What do you mean by that?

Witness. Colostrum is practically a fore-
40 runner of milk in the breast—a little whitish secretion.

Dr. Harrison S. Martland, cross.

The Court. That occurs three months after conception.

Witness. That occurs at the end of the month.

Q Did you make an examination of that? A Only by the naked eye. We squeezed it.

10

Q Did you make any other test of that, as you say now that that comes at the end of the three months? Do you want to go on record now by saying from the examination by the naked eye that that was three months she was pregnant—do you want to say that? A I say that both breasts when they were squeezed secreted colostrum, that colostrum begins to appear at the end of the third month in pregnancy.

Q That wouldn't mean that she wasn't pregnant six months, would it? A No, sir.

20

Q You wouldn't say she was pregnant nine months, would you? A No; except from the size of the uterus at the autopsy, I hardly think she was near full term.

Q You spoke about the placental tissues in the afterbirth in your testimony yesterday. Will you tell me again what that term means and what that afterbirth is, and whether you took any part—found any part of any afterbirth at this autopsy and whether you took any part of that afterbirth with you for examination? A The inside of this uterus was shaggy and rotten. On sectioning some of that tissue we found placental shadows.

30

Q Now, what do you mean by that? A I mean by that that it shows positively that that is a piece of the afterbirth which has been retained in a rotten uterus, and which is beginning to disintegrate.

Q Now, all afterbirths are attached and become detached from the womb by sloughing away, isn't that so? A By what?

40

Dr. Harrison S. Martland, cross.

Q Sloughing away—gradually rotting away? A You mean in a normal case?

Q Yes. A It don't rot away in a normal case.

10 Q How are they expelled? How do you get them off? A They are expelled at full term—there is something in nature that causes a hemorrhage between the—an effusion of blood between the surface of the placenta and the uterine wall, and that dissects it off from the wall and it comes off at the right time. That is not sloughing.

Q Don't you know there are thousands of cases where that doesn't occur and afterbirth comes afterwards? A Usually comes afterwards, in normal cases.

20 Q Either normal or any other kind of case, that it doesn't come first? A No, sir; it doesn't come first in the normal case; no.

Q Don't you know that afterbirths sometimes—in order to get those expelled it takes days and weeks to do it? A Well, there are cases in which portions have been left behind that long, yes, sir.

30 Q And how do they become loosened? A They become loosened in two ways. If there is any infection of the uterus they become loosened by a, what we speak of as an atrophy, that is a digestion of the placental tissue without the presence of the germ. If the germs are present and the uterus is infected, pus forms, and they slough away.

Q One is a normal condition and the other is an abnormal condition; one is an infected condition—now this was an infected condition? A Neither one are normal. In a normal case they ought to come away right after—soon after the birth of the child and that is all there is.

40 Q How soon after? A About half an hour or forty minutes.

Dr. Harrison S. Martland, cross.

Q What is the longest length that you have ever known of the afterbirth to have been taken away?

A You mean portions of the afterbirth?

Q Portions of the afterbirth? A There are cases—provided there is no marked infection of the uterus—there are cases in which the child has died and afterbirth and child and all have been retained for years in the uterus, so that they have become a saponified mass, like a cake of soap—hard soap—years afterward. 10

Q You are unable to give us any light, except by mere possibilities as to what caused this blood poisoning? You don't know?

The Court. Do you want the answer to the prior question? Four or five questions back you asked a question with four sub-divisions in it, and he commenced to answer the first and you interrupted him and started out on something else. Do you want the answer to the other three sub-divisions? You asked him about the indication of placental tissue in the interior of the uterus—what he found there—what he took away and what he did with it. 20

Q Was any part of the afterbirth taken for examination? A The uterus was taken, and only with the aid of the microscope were we able to prove that some of the afterbirth was there. In that way we took some of the afterbirth, naturally, with the uterus. 30

Q And to what extent was the afterbirth there—you saw shadows? A Well, it was so small that you couldn't distinguish afterbirth with the naked eye, but there was enough to distinguish with the microscope and prove pregnancy.

Q Now, was that the method by which you established to your mind that there was pregnancy? A Yes, sir; I said two. The finding of the placen- 40

Dr. Harrison S. Martland, cross.

tal shadows and the finding of the decidual cells in the muscular part of the uterus and in the superficial part. On either one of those—one alone, or both together, I made the absolute diagnosis of pregnancy.

The Court. How about the breast?

10

Witness. The breast signs were not absolute signs of pregnancy because they can occur with tumors of the abdomen sometimes, because it secretes off a milky like fluid.

Q How much percentage of the muscle layer did you have to operate on in making your examination? A Of the uterus?

20

Q Yes. A The sections were taken all the way through, showing the inside of the uterus—the whole thickness of the uterine wall.

Q How many sections did you take? A I have taken about fifteen sections.

Q Have you the sections here with you? A I have, in the prosecutor's office, some of them.

Q I asked you about whether you are prepared to say—no, I didn't ask you. I ask you now. You discovered no other germs in this examination except the germ that you have referred to? A I said yesterday that superficially, in the inside of the uterus there was also a bacillus present with the streptococcus.

30

Q What is that? A That is a rod shaped germ, but that was not found deeper in the uterus.

Q What was that—what is that? A I couldn't tell what germ.

Q Do you know anything about whether that was a germ that would produce death? A It might have been. It was probably the colon bacillus, but I couldn't say absolutely definitely at all.

40

Q You didn't concern yourself with any examination of that germ for the reason— A For the

Dr. Harrison S. Martland, cross.

reason, because it wasn't found deeper in, where the real trouble was.

Q Would you say how long that germ had been there? A No; I could not.

Q Give us approximately any idea? A No; I couldn't. It might occur—it might—we find sometimes after death that the body is invaded by outside germs very rapidly, in decomposition. 10

Q Well, what was the size of this germ—what was the weight and size of this germ you speak of as discernable, you say with the naked eye on the autopsy? A Not to the naked eye. I said in the smears. Can't see any germ by the naked eye.

Q You don't know to what extent from your microscopic examination of this second germ that that germ existed in her body, do you? A I said plainly that it existed very superficially inside of the uterus, and was disregarded because it wasn't found deeper. 20

Q And how long do you say that that other germ was in her body? A Which one?

Q The last one you described, that you say was superficially there? A I can't tell.

Q Not sufficiently imbedded to have given you the notion that it was a matter of serious notion as to exploitation? A That is it. I can't tell how long it was there. 30

Q You didn't search for any gonorrhoeal germ of the body, did you? A I said definitely that in the uterus I found no evidence of gonococci.

Q You wouldn't look for gonococcus in the uterus, would you? A That is one of the common places to find it, yes, sir.

Q Which is the most common place to find it? Which is the most common? A In the female?

Q Yes. A Probably in the vulva and at the mouth of the urethra opening going into the bladder. 40

Dr. Harrison S. Martland, cross.

Q You didn't examine there, did you? A We didn't examine that, no.

Q You don't know whether, therefore, there was any of those gonococci there as you call them or not? A No. I don't know. I know that they were not present in the uterus, which was the
10 cause of the blood infection.

Q Blood could become infected from the gonorrhoea, couldn't it? A Yes, sir; it does.

Q Blood could be infected from syphilis? A Yes, sir.

Q You are unwilling to say that this examination went to the question of whether she had syphilis or not? A I am unable to say whether she had syphilis or not.

Q You can't say no? A I can't say yes or no.
20

Q You don't know what the effect of treatment for gonorrhoeal disease for six or seven or eight months might have on the parts you examined, if anything? A Well, I shouldn't think they would—could cause the condition we found, no.

Q Wouldn't be willing to say absolutely that that is your decision in the matter, would you? A How do you mean?

Q That it wouldn't have produced the condition that you found? You don't mean to say that she couldn't have died from syphilitic blood poisoning and that could in some way affect the parts and made the rotten condition in which you found the walls and cellular tissue there? A She didn't
30 die of syphilis.

Q You made no examination for that purpose, did you? A She had no evidence at the autopsy of syphilis in her organs such as would cause death.

Q You didn't examine her for syphilis, did you? A You can see most syphilitic lesions that
40

Dr. Harrison S. Martland, cross.

cause death. You can see with the naked eye at the autopsy.

Q What kind of germs do you call those. A The germ of syphilis?

Q Yes. A You want to know the name?

Q Yes. A Treponemapallidum. 10

Q And those germs—that germ is distinguishable with the naked eye, is it? A Of course not. I said no germs are distinguishable with the naked eye.

Q I understood you to just tell me it was distinguishable with the naked eye? A I didn't say that.

The Court. He did not say that. If you would listen you would know that. He said that the lesions occasioned by syphilis where death is caused by syphilis are distinguishable to the naked eye. 20

Q Show me those plates, doctor, that you made this test on? A These are the last ones—the first ones. Those are taken from the uterus—the wall of the uterus.

Q How do you know that? A Because I took them.

Q What is there about that box to indicate that they are just the identical ones that you took? A Each slide here is marked with a label Lebowitz. 30

Q Who is Lebowitz? A Lebowitz.

Q Who is Lebowitz? A That is the name as I understood it of the woman that the tissue came from.

Q Name of the deceased? A Yes, sir.

Q Whose mark is that on there? A It is my mark.

Q Now, can you take one of those out without hurting them? A Yes, sir. 40

Dr. Harrison S. Martland, cross.

Q Take one out. Show it up to the light there, won't you. That is a clot of blood down below the line there? A That isn't a clot of blood; that is tissue.

10 Q That is tissue? And from that tissue you draw deduction confirmatory of blood poisoning, do you? A From that tissue I learned that the uterus is the seat of suppurative—pus formation, also that there is pregnancy there evidenced.

Q You know that— A That pregnancy—

20 Q Just a minute. Just hold that for a second. Does that draw any other conclusion to your mind, that there is no blood poisoning anywhere else in the body? Does that show there is no other blood poisoning in the body—that mere examination of that one smear? Does that indicate that there is
 20 no other blood poisoning in any other portion of the body? A No. That proves only the condition of the uterus alone. That is the examination of that slide to a pathologist knowing nothing about the history of the case, but just seeing that slide alone, he would be able to give you a diagnosis of the condition of the uterus, namely, that the uterus was septic and that the uterus was a pregnant uterus.

30 Q What are the other smears that you got there? A They are from different sections, taken from the same place—taken from different portions.

40 Q Why was it necessary to take five or six different sections of that same uterus in order to establish to your mind the condition that you have testified to? A Because it, as I stated yesterday—this uterus with the naked eye—you couldn't see that shadow evidence of pregnancy, that it was septic you could tell from the naked eye, but from
 40 the naked eye examination of the uterus you couldn't say that it was pregnancy. Sections had

Dr. Harrison S. Martland, cross.

to be taken from several parts of the uterus to establish the diagnosis of pregnancy. All of them didn't show it.

Q I see. The existence of pregnancy was so slightly defined or so slightly existent that it was necessary to take a number of smears or number of examinations to determine it, is that right? A 10
It was.

Q How many did you take altogether? A I said about fifteen, I think.

Q What has become of the other seven or eight?
A The ones that didn't show it I have thrown away.

Q Why did you do that? A Because they were of no use to me.

Q How do you know that? A Well—

Q How do you know they wouldn't be of some use to me? A I can cut you some more sections if they will be of any use to you. 20

Q Sections— A We still have the uterus.

Q The sections that didn't establish to your satisfaction what you wanted to maintain as your conclusion of the two points that you attended the autopsy for you threw away. They amounted to about ten by looking at that box, did they? There is only five there? A Possibly. I brought them all— 30

Q Did you bring the other ten to the prosecutor's office? A No, sir; I just brought these down. These show—

Q Did you submit them? A No; these are the slides that prove that pregnancy existed. That is all I cared about of those slides.

Q How can you now prove by those slides that pregnancy existed? How can you prove it to me or to us? A Because under the microscope those slides show placental shadows and decidual cells. 40

Dr. Harrison S. Martland, cross.

Q Have you your microscope with you? A I have not.

Q When did you last examine those slides? A Yesterday morning before I came away—yesterday noon, before I came down in the afternoon.

10 *Mr. McDermitt.* I ask that that box be marked for identification.

Box marked Exhibit D. 1 for identification.

Q How much more of the uterus have you got up there? A Practically all of it except where I have taken these sections away.

Q How have you taken care of it since that time? A It has been in the jar with five per cent formaline.

20 Q What? A Formaline—solution of five per cent. formaline.

Q What is that solution? A Formaldehyde.

Q What is that? A Formaldehyde is a chemical hardening agent, put out commercially as formaline—forty per cent. solution of formaldehyde.

Q What is the object of doing that, for the purpose of preserving it? A Yes, sir. All tissues are hardened and they can be kept indefinitely.

Q So you can go and take a part of that uterus and make additional smears? A I can.

30 Q And apply the same tests? A Not smears, sections—those are not smears.

Q Well, they would be in the same condition now upon examination, if made—will produce the same results as produced here? A Identically the same results except that after a long time in formaline the tissue stain a little more poorly—not so bright, but the same things are there ten years from now.

40 Q Will you tell us please, what the microscope will show on the examination of these five slides that you have got here that indicates what the

Dr. Harrison S. Martland, cross.

stage of the pregnancy was? A They only indicate that pregnancy was there in the uterus. They do not indicate what stage.

Q Is there any way in which they can show whether this pregnancy was four months, two months, three months— A From those sections?

Q Yes. A No. 10

Q Is there any other test that you know of that could demonstrate, from the autopsy or from any other character of examination, the length of the pregnancy positively? A Any other—

Q What is there? A —pathological test, you mean?

Q Yes. A No; not that I know of.

Q So that the mere question of pregnancy is one running from any period of time up to nine months so far as the general test of those—your test is concerned. A Of course in the very—very first few weeks of life, where the frætus is very small and everything, we do not get all these tissues. The placental tissues—what I call placental shadows are usually spoken of as developing around the third month, but they exist prior to that in practically the same condition, so that you really cannot tell them apart. 20

Q So that in other words you get it very feebly and very faintly in the original start of pregnancy—in other words that these here would show a stage of pregnancy as to probably thirty days? A Probably beyond the first two weeks anyway. 30

Q Might show a state of pregnancy from two weeks up to seven or eight months? A Just from those sections alone I couldn't say.

Q But from those sections alone you couldn't say? A No.

Q All those sections indicate is that there was pregnancy there at some time, isn't that it, doctor? 40

A There was pregnancy there recently, yes, sir.

Dr. Harrison S. Martland, re-direct.

Re-direct.

Q The examination of the breast, do you class that as a pathological test? A No.

Q Then outside of the pathological—I understood you to say that there is no pathological test which would enable you to determine the length of the pregnancy. A Yes, sir; unless I have the whole fœtus there and can examine it, and so forth.

Q But from the examination of the breast you are able to form the conclusions that you have stated? A Yes, sir.

Q Doctor, what is the effect of introducing into the privates of a woman—in the parts where the baby comes from—who is well and about three months pregnant.

20 *Mr. McDermit.* I object. He is trying to put up a hypothetical question here that cannot formulate on this record here. There is no such evidence as that. He concludes—deducts this presumption that he has established that there is a three months' pregnancy. That is for the jury to have established to them. That isn't the way of proving that proposition.

The Court. Is that your only objection?

30 *Mr. McDermit.* That is the only objection.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

40 *The Court.* The testimony is that somebody told in the presence of the defendant that she was three months pregnant. Answer the question, doctor, if you can.

Dr. Harrison S. Martland, re-direct.

Witness. The introduction of the rubber catheter, did you say?

Q Of an instrument? A Of an instrument. Can I have the whole question again, please?

Q (Question read.) A I should think the effect would be to produce an expulsion from the womb of the child—or the fœtus. 10

Q What is the cause of septicemia? A There are many. Septicemia is caused by the introduction of some germ either through a raw surface or some cut or from inflammation of certain organs, like for instance, the ear. You get an inflammation of the mastoid process back of the ear, with pus and get entrance of the pus to the bloodstream and go through the body and cause sepsis. Can get it from prick of a needle or anything,—why you can get sepsis from it; introduction of the germs into the uterine cavity, especially where they are taken up—they must be taken up in the blood stream or lymphatics. 20

Q If the fœtus is expelled as the result of introducing an instrument into the genital organs, would there be a raw surface left?

Mr. McDermitt. Objected to. Nothing upon this record to justify that question.

The Court. You mean expelled naturally. 30

Mr. Mott. I said expelled as a result of introducing an instrument into the parts.

The Court. The implication in that question is that there is some evidence tending to show that an instrument was introduced and that it in some way affected the fœtus so that the womb sought to expel it, and that it was expelled. Now the testimony on the contrary in this case tends to indicate that the fœtus was removed. 40

Dr. Harrison S. Martland, re-direct.

10 *Mr. Mott.* The girl's mother testifies that she saw the defendant introduce an instrument into her private parts—the parts where the baby came from. The doctor says that the doing of that act would tend to expel the foetus. He says the septicemia is caused by, the one method, by the germ getting into any raw—

Witness. Cut or surface.

Mr. Mott. —cut or surface. Now my question is, following that testimony which is in, whether if the foetus is expelled as a result of the introduction of an instrument a raw surface would be there.

20 *The Court.* There is not any evidence that it was expelled. Expulsion means by the—expulsion by labor means of the womb, and the testimony in this case is that it was removed. That is to say there is some evidence to show that it may have been removed. In other words, your question is very interesting, but it doesn't relate to this case, because in this case the foetus probably was removed on Monday, according to the testimony, when Dr. Silverstein and Dr. Shapiro were present. The difficulty with your question is that you say "expel."

30 *Mr. Mott.* Isn't that the term the doctor used?

Q Didn't you use that?

40 *The Court.* I don't know what the doctor used. We have got to go by what the testimony is. The testimony is not that it was expelled, which I understand means expulsion by nature—the womb tries to throw off any foreign body. Now, the testimony isn't that it was expelled, but the evidence, if it does anything, tends to show that the foetus was removed, if

Dr. William H. McKenzie, direct.

there was a fœtus there. I sustain the objection.

Re-cross.

Q Might septicemia be caused by normal intercourse—normal sexual intercourse? A I think there have been records where septicemia has been attributed to intercourse late in pregnancy; that is intercourse has been blamed for it right before the delivery of the woman. Of course there is a certain number of germs that may be present in the vagina of the woman and that any trauma, such as intercourse, could produce, late in pregnancy—might reasonably be that it would cause the woman to get septicemia if she goes— 10

Q And that will finally produce death, won't it, if unattended to? A Septicemia in a great many is a very dangerous thing—in very great number of cases produces death. There are a large number of cases that get better, too. 20

DR. WILLIAM H. MCKENZIE, re-called for

Direct examination by Mr. Mott.

Q Doctor, you said yesterday that you saw Rosie at the hospital? A I did. 30

Q How many times did you see her there? A Once.

Q When was it you saw her there? A In the evening of the 11th.

Q While there did you have a conversation with her? A I did.

Q Who was present at the time you had the conversation? A Officer Tuckman, Miss VanGilder, Miss Gross and Miss Potash.

Q And who are these ladies? A They are nurses at the hospital. 40

Dr. William H. McKenzie, direct.

Q Didn't she at that time make a statement to you? A She did.

Q In regard to this case? A She did.

Q And did she sign it? A She made her mark.

10 Q What was her mental condition at the time she made this statement? A Her mental condition was good.

Q What was her physical condition? A Bad.

Q Had you advised her as to her chances of recovery?

20 *Mr. McDermit.* I object. It is leading. In the first place it is an effort to get in a post mortem statement that is illegal from the foundation now laid. He can't attempt anything of that kind in that way. First shows mental condition, then her physical condition, shows some statement was made, shows that the statement was reduced to writing—statement that it was signed.

30 *The Court.* What would you say if the prosecutor should ask what was said by him to her? It would be such a broad question it would open the door entirely. Now, he confines it to the question of what did you say to her about her physical condition.

Mr. McDermit. I object to it. The defendant wasn't present in the first place.

40 *The Court.* If this is an alleged dying declaration the question for the court to determine primarily is whether or not it is competent evidence and the court must be satisfied beyond a reasonable doubt that Rose Lebowitz when she made her statement had a firm conviction of her impending death; that is to say that she believed that all chances were gone. Is not that the rule?

Dr. William H. McKenzie, direct.

Mr. McDermit. That is the rule; yes sir.

The Court. Now, then your objection is that the question is leading, but if I direct the prosecutor to make the question broader, then your other objection will be sound.

Mr. McDermit. The witness is so intelligent, through the explanation of your honor I presume he understands the situation. 10

The Court. Did you have a talk with her in reference to her physical condition?

Witness. I did.

The Court. When was that, doctor, with reference—as to the time—when did you have this conversation?

Witness. A little after seven o'clock in the evening of the 11th of February. 20

Mr. McDermit. I want to go upon the records as objecting to this line of examination, even under the rule laid down by your honor and laid down by the courts of this State. If the prosecutor of this county isn't going to offer this statement and if counsel afterwards asks for the statement, then, under the decision of the chief justice in a recent trial of a murder case upstairs, we are not to have it. I want the situation so raised upon this record as this defendant— 30

Mr. Mott. If I wasn't going to offer it I would not take up the time.

Mr. McDermit. Had the same ruling upstairs where a statement was showed by the prosecutor to the prisoner and when we called for the statement they refused it on a recent ruling. It don't make any difference to me who makes the ruling, it don't seem to me that it is a sound ruling. 40

Dr. William H. McKenzie, direct.

The Court. You are going way ahead of the present stage. You are not asking the court to rule upon something. You are warning the prosecutor.

Mr. McDermit. When that record comes in.

10 *The Court.* That is not a thing that the court can help you out on.

Mr. McDermit. It will go to the jury unless your honor strikes it out.

The Court. The interest of the defendant will be fully protected, in my judgment. Proceed.

Q What did you say to her in regard to that?

A I told her that she was going to die and asked her if she realized it and she said yes; and I asked her if she would make a statement of the facts in
20 her case in the presence of death and she did—she said she would.

Q And did you reduce her statement to writing?

A I did.

Q Have you it with you? A I have.

Q Let me see it.

30 *Mr. McDermit.* I object. I say the record don't show that he has laid the preliminary foundation that comes within the rule that entitles him to the examination upon the statement.

The Court. He simply produces a paper. The objection at this time is overruled.

Paper produced and marked S. 1 for identification.

Q I show you Exhibit S. 1 for identification and ask you what this is? A That is the statement that she made to me.

40 Q I see there are certain signatures attached to this. Do you know who signed Sarah Van Gilder?

A Sarah Van Gilder signed it.

Dr. William H. McKenzie, direct.

Q And Becky Gross? A Becky Gross; she signed it.

Q And Margaret Potash? A She signed it.

Q William H. McKenzie? A I signed it.

Q And there is a cross between the words "Rose" and "Lebowitz;" who made that? A Rose Lebowitz. 10

Q Why was a cross made there? A Because she wasn't able to write.

Q You mean she couldn't write or her physical condition— A Her physical condition was such.

Q And is this paper a correct record of what she said to you at that time? A It is.

Mr. Mott. Now, perhaps counsel has a right to cross examine.

Mr. McDermit. I don't want to cross examine. I want to object. You make your offer. 20

Mr. Mott. Very good. I am going to offer some more witnesses before I make my offer.

Mr. McDermit. I ask to strike out the testimony of the physician in relation to the statement entirely—all of it.

The Court. On what ground?

Mr. McDermit. Well, it is illegal. On the ground that it is improperly in the record now. He hasn't made his offer of this paper and he won't be qualified under other testimony to make the offer of that paper if the statement he made is the only statement made to the deceased—if that here testified to is the only conversation that was had then of course clearly the court's discretion must be exercised against the State—incompetent in every respect—just the testimony on that record of what the doctor said to the deceased and what the deceased said to the doctor isn't sufficient to justify the offer of that testimony, even if corroborated. 30 40

Sarah Van Gilder, direct.

The Court. It has not been offered; Dr. McKenzie is put on the stand as a witness whose testimony tends to lay a foundation. Now, if you want to cross examine him proceed and cross examine him.

10 *Mr. McDermit.* I don't desire to cross examine him. I think our interests are protected without cross examining him.

SARAH VAN GILDER sworn for the State.

Direct examination by Mr. Mott:

Q Your occupation is nurse? A Yes, sir.

Q Connected with any hospital? A Beth Israel Hospital.

Q And your position there as a nurse is what?

20 A Head nurse.

Q Do you remember the girl Rose Lebowitz? A I do.

Q Did you see her in your hospital? A Yes, sir; I did.

Q Were you present on the 11th of February last when Dr. McKenzie and Becky Gross and Margaret Potash were present? A Yes, sir.

Q And were you present when the girl Rose made a statement to Dr. McKenzie? A Yes, sir.

30 Q Did you hear Dr. McKenzie say anything to her as to her chances of recovery before she made her statement? A I did.

Mr. McDermit. I object to it as leading and improper.

The Court. I will hear you as to the impropriety of it. It must be leading because otherwise conversation will be called for which you may very properly object to.

40 *Mr. McDermit.* The law places in the possession of the court in cases where attempts

Sarah Van Gilder, direct.

are made to put in confessions or post mortem examinations, rather ante-mortem examinations, the power of examining for itself as to whether or not the State lays sufficient foundation to permit the statement to go in. Now, when the witness is asked a question directly—leading question—as to what was said to Dr. McKenzie, and after hearing what Dr. McKenzie has just said upon the witness stand in her presence, it isn't that character of evidence that the court ought to allow to go to the jury. In other words these witnesses all ought to be sequestered every one of them, who were present at this statement and examination made fully as to what did take place. I am not attacking her probity or integrity or veracity, but it is the method adopted to get at the situation. It is prejudicial to the defendant. 10 20

The Court. Why did not you ask for that before?

Mr. McDermitt. It had not occurred to me.

The Court. Now, that it has occurred, I will ask the prosecutor, if there are any other witnesses beside Dr. McKenzie and the witness on the stand in relation to this matter, to ask them to retire from the room. 30

Mr. Mott. There are two other nurses here.

The Court. Ask them to go to the Grand Jury room for a few minutes. The objection is overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S)

Judge. 40

A I heard Dr. McKenzie tell her—

Sarah Van Gilder, cross.

The Court. Did you hear that part of the conversation? That is the question. Answer that yes or no.

Witness. Yes; I did.

10 Q What did you hear him say to her? A I heard him tell her that she was going to die and soon, and that he wanted her to tell him what happened—as she was going to die soon he wanted her to tell him the truth and nothing but the truth.

Q And when he told her that she was going to die soon, what did she say, if anything? A He asked her if she understood that and she said, yes, she did.

Q And did she then proceed to make a statement? A Yes, sir.

20 Q And did Dr. McKenzie write it down? A He did.

Q Is that your signature? A Yes.

Q Do you know whether this was read to Rose after it was written out or not? A It was.

Q Who read it to her? A Dr. McKenzie.

Q And was it read to her before or after she signed it? A I don't remember. I think it was read to her before she signed it.

Cross examination by Mr. McDermit.

30 Q You don't know whether the statement was read to her before she signed it or not, do you? A I can't say positively, but I think she did.

Q Is what you have testified here before all that was said between Rose Lebowitz and Dr. McKenzie?

A Yes, sir.

Q There was nothing else said? A No.

Q You are sure the word "soon" was used?

A Yes, sir.

40 Q That was just the only word "you are soon to die," that is correct? A I don't remember just

Sarah Van Gilder, cross.

exactly the words he put it in but I know he said she was going to die very soon.

Q You say "very soon" now. That isn't what you said before, Madam or Miss. You said a few moments ago that Dr. McKenzie had told the girl that she was going to die soon? Now didn't you say that? Didn't you so say first? A I said she was going to die soon; yes, sir. 10

Q In answer to Mr. Mott. Now, you use the word "very soon." What makes you use that word "very" soon now. What do you mean by that? A Why, I don't mean anything particularly by it.

Q Then you mean that your recollection isn't perfect in regard to what was stated to this girl? A I know he told her that she was going to die soon. Whether he used the word "very" or not, I can't say. 20

Q You don't know whether the word "very" was used or not. Why did you suggest it? A I just happened to think about it.

Q Why did you suggest the word "very soon" when I started to ask you the question? A Not for any particular reason at all.

Q You don't know whether the word "very" was used or not? A I couldn't say. 30

Q You are not willing to swear it was used, are you? A No, sir.

Q Now, the doctor didn't tell her she was going to die in an hour—six hour? A No; did not.

Q Or she would die in one day, week or two weeks? A No.

Q But he told her that she would die soon? A Yes, sir.

Q That is all he said to her? A Yes, sir.

Q That is all you heard him say to her? A Yes, sir. 40

Sarah Van Gilder, cross.

Q She had been given a lot of hypodermic injections that day, had she not? A That I don't remember. I don't think she had.

Q Had been given some injections? A She had been given some medicine.

10 Q She had been given some strychnine injections that day, had she not? A I don't know. I don't remember.

Q Who had charge of giving her injections at the hospital? A Miss Gross.

Q You had nothing to do except the general supervision there? A Yes, sir.

Q Nothing to do with the detail work attending to the patients in way of treatment? A No.

Q How many days had she been in the hospital? A She came in on the evening of the 7th and she
20 died on the evening of the 11th.

The Court. What time did she die?

Witness. It was around seven o'clock.

The Court. What time was the statement made?

Witness. Why, I think it was just before seven that she made the statement.

The Court. What time did you hear Dr. McKenzie address her as you have stated?

30 *Witness.* It was around seven o'clock and she died fifteen minutes after she made the statement.

The Court. She died within fifteen minutes after she made the statement?

Q Now you say she made her mark? A Yes, sir.

Q And she made her mark with the pen? A Yes, sir.

40 Q (Let me see that alleged statement, please. You have showed the mark. I suppose I am en-

Sarah Van Gilder, cross.

titled to look at the mark). What was the condition of her hand when she made the mark? A I don't remember.

Q Do you know whether her hands were steady or unsteady? A It wasn't very steady, I know.

Q Now, you said before you didn't know. Now, you say it wasn't steady. Now, did you notice at all the condition of her hand? A Why, I couldn't help but notice her. I saw her making the mark. 10

Q She made that mark but her hand wasn't steady? A No, sir.

Q She made that mark without anybody's assistance? A Yes, sir.

Q She marked the paper herself? A Yes, sir.

Q With no one holding her hand? A No.

Q And fifteen minutes after that she died? A Yes, sir. 20

Q Nothing more said to her by anybody there present in regard to death impending except what Dr. McKenzie had said that she would die soon? A Yes, sir; that is all.

Q You heard the doctor say "Well, I want you to tell me the truth, the whole truth?" A Yes, sir.

Q You are certain about those words, too, are you? A Yes, sir.

The Court. Did she answer questions asked by Dr. McKenzie during the course of the making of the statement, or did she make the statement herself and he write it down? Do not tell me the details of the statement. I only want to know the way in which it was done. 30

Witness. She made part of the statement herself and Dr. McKenzie asked her one or two questions with regard to some remark that she had made.

The Court. She was in bed? 40

Becky Gross, direct.

Witness. Yes, sir.

The Court. And she had been in bed ever since the 7th of February when she was brought there?

Witness. Yes, sir.

10 Q Then as I understand you part of the statement was made by her but in narrative form, and the balance of the statement was obtained from her by the doctor asking her questions and she giving answers, is that right? A He asked her one or two questions, yes, in regard to something she had said.

Q She made a statement which the doctor took down as her own statement? A Yes, sir.

20 Q But part of the statement the doctor asked her questions and he took down her answers, is that it? A Yes, sir.

Q And her answers appeared to you to be intelligent? A Very.

Q And her mind was clear? A Perfectly.

Q And she died fifteen minutes afterwards, did she? A Yes, sir.

BECKY GROSS sworn for the State.

Direct examination by Mr. Mott:

30 Q You are a nurse? A Yes, sir.

Q Connected with what hospital? A With the Beth Israel Hospital.

Q Did you know the girl Rose Lebowitz when she was there? A Yes, sir.

Q Were you present when she made a statement to Dr. McKenzie? A Yes, sir.

Q You see your signature there? A Yes, sir; this one.

40 Q "Becky Gross," did you write that? A Yes, sir.

Becky Gross, cross.

Q Before Rose made this statement did you hear Dr. McKenzie say anything to her about her chance of recovery? A Yes, sir.

Q What did he say? A She is going—she is before her death.

Q What? A That she is going to die.

Q What did she say in reply to that? A She said she knows that. 10

Q And after that did she proceed to make this statement? A Yes, sir.

Q Did you see her—do you know who made that cross there? A Yes, sir; Rose Lebowitz.

Q And did you sign your name there as a witness? A Yes, sir.

Cross examination by Mr. McDermit:

Q Did you have charge of her yourself—your patient? A Yes, sir. 20

Q And you know she was unconscious that day, don't you, for over three hours in the morning, at half past eleven? A She wasn't saying anything for the reason she was too sick.

Q Wasn't she unconscious on the morning that she made this statement at half past eleven o'clock? Wasn't she in an unconscious state in the hospital so she couldn't recognize anybody? A I don't think she was unconscious, because she had a hemorrhage—that morning. 30

Q You know the doctors who were in attendance there? A Yes, sir.

Q What doctors are in attendance? A Dr. Greenfield was the attending physician but Dr. Zimmerman took charge in the time while Dr. Greenfield was absent.

Q What other doctor was present that day? A Dr. Ill was there that day. 40

Q Who else? A Dr. McKenzie in the evening.

Becky Gross, cross.

Q Who else besides Dr. Ill in the morning? A Dr. Shapiro was to see her.

Q Now, isn't it a fact that she had been unconscious upon three or four occasions there during that day? A Well, perhaps she was.

10 Q Isn't it a fact that she was unconscious as late as four o'clock that afternoon? A She was in a very poor state; she was weak.

Q Well, but wasn't she unconscious? Wasn't there a period of time during the afternoon in which she was absolutely unconscious? Yes or no. A What is that?

Q Yes or no. A I don't know.

The Court. What kind of a hemorrhage was this?

20 *Witness.* She had a hemorrhage from the vagina; she had a hemorrhage from her nose and from her mouth.

Q Now, she had hemorrhages from the vagina and hemorrhages from the nose and mouth? A Yes, sir.

Q All hemorrhages of blood? A Well, yes; couldn't be anything else.

Q Had she been placed in ice at that time? A Well, she had an ice cap to her head.

30 Q How long had ice been kept to her head? A Pardon me.

Q How long had that ice been kept to her head? A She had ice continuously on account of her high temperature.

Q So she was continuously under ice packs, is that right? A Well, sometimes, morning, when the temperature will go down, the ice caps were removed.

40 Q The ice caps would be removed when the temperature would go down. How high was her temperature? A As high as 104.

Becky Gross, cross.

Q As high as 104. And how frequently was her temperature as high as 104? A Usually raises in the afternoon higher than morning.

Q And did it raise each and every day in the afternoon to 104? A Yes, sir.

Q Have you a record of her temperature upon that afternoon? A We have the entire— 10

Q Have you a record at the hospital of her temperature upon that afternoon? A Yes, sir.

Q Do you keep a record of all patients as to their temperature? A Yes, sir.

Q How often a day do you take the temperature of your patients? A Every four hours; sometimes frequenter when the doctor orders it.

Q That same rule applied to her? A Yes, sir.

Q When was her last temperature taken? A 20
It was taken four P. M.

Q That is the last temperature for each day? A No; at eight o'clock. Sometimes it is taken oftener if the patient is severely sick.

Q What time did she die, between four and seven? A No; she died between seven and eight.

Q Between seven and eight? A Half-past seven.

Q About half-past seven. If she had been living at eight o'clock her temperature would have again been taken, is that right? A Yes, sir.

Q Wasn't she in a murmuring or muttering state all day long? A Oh, yes. 30

Q Wasn't she talking a little bit now and then? A Not she was talking that she didn't know what she was talking. She was quiet at times.

Q Wasn't she kind of talking in a low voice—kind of talking to herself, mumbling things—muttering something—kind of incoherent talk during the day? A Once she said I want to see Hymie. I asked who it was and she said it was her brother. 40

Becky Gross, cross.

Q That was the only statement she made during the course of the day that was an intelligent statement, wasn't it? A Well, she was sick. She never would do any talk of any kind—she always used to keep things to herself.

10 Q Now, before she talked to Dr. McKenzie there you were there? A Yes, sir.

Q And you know she was muttering a little bit then, talking? A Not that I can remember anything.

Q Wasn't talking at all, was she? A Very little. She never spoke much.

Q You know who Hymie is, don't you? A I didn't know at that time.

20 Q You know who it is at this time? A Well, I don't know the name.

Q You know it isn't her brother, don't you? A Well, I understood yesterday, the talk they had here in the court.

Q Who? A I understood who Hymie is now.

Q It isn't her brother; you know that, don't you? A Well, perhaps she has a brother Hymie, too, I don't know.

Q I don't know. Perhaps she has. A I don't know.

30 Q You had no talk with her at all during the number of days you were in there? A No.

Q She was given frequent injections? A Well, she received treatment, but she didn't talk to me.

Q How many uterine injections did she get a day? A I couldn't remember.

Q Ten? A No, sir; not that much.

Q Eight? A Usually ordered about every four hours, but I don't know how often she got it.

40 Q Do you keep a record of the number of uterine injections that are given? A Yes, sir.

Becky Gross, cross.

Q What constitutes a uterine injection? What is it? A Pardon me.

Q What is a uterine injection? A Well, it is a certain solution introduced through the vagina.

Q What does the solution consist of? A It is just what the doctor orders.

Q Is there any record at the hospital to show what the treatment of this girl was by way of solutions? A Yes, sir; everything is written on the chart what the doctor ordered—what orders are carried out. 10

Q Who was the doctor who gave the orders for the uterine injections in this case? What doctor?

A Dr. Zimmerman and Dr. Greenfield were the doctors that treated her.

Q And who gave those injections, yourself? A Yes, sir. 20

Q Are you sure, now, that you personally gave the uterine injections? A I gave her all the treatments. I don't remember what kind of treatments it was. If I should look at the chart it would state everything that was done for the patient.

Q You couldn't say that you gave this girl uterine injections in her vagina? A I don't remember the treatment, what was exactly given to the patient. It is a year ago.

Q But you were the person who gave the injections? A I was the person who treated her but I do not remember the treatment that was given. 30

Q Your memory isn't clear in regard to the facts surrounding that case, because it is a year ago, isn't that so? A The exact treatment—just how it was given—I don't remember.

Q Now, you have told us some things that occurred there? You told us that she didn't talk very much. How do you come to remember that so well? A Well, I happened to remember that because that wasn't written down. 40

Becky Gross, cross.

Q Who else would give injections in that ward if you didn't give them, anybody—would anybody else have the right to give injections there? A Well, the nurse that is next to me, the one that takes my place when I am absent.

10 Q What is her name? A Miss Potash was the night supervisor.

Q Who was the nurse that takes your place there. I don't mean the supervisor. I mean who is the one that succeeds you as nurse for the evening? A Miss Van Urdenstein.

Q Is she here? A No.

Q She had charge of her during the night? A Yes, sir.

Q At what time did your duties end there at that time? A Seven P. M.

20 Q Had Miss Van Urdenstein arrived there when this girl died? A Yes, sir; she—

Q Was she there when the girl died? A Yes, sir.

Q She wasn't asked to sign any paper? A No; I was on duty at that time.

Q You were on duty and remained on duty until— A Until seven P. M.

Q Then you went away, did you? A Yes, sir.

Q And you were not there when the girl died?

30 A No.

Q You turned her over to Miss—

The Court. What is the answer?

Witness. I wasn't there when the patient died.

Q You turned her over to Miss Van Urdenstein at seven o'clock? A Yes, sir.

Q How often had Dr. McKenzie been there to see this girl? A Dr. McKenzie was only once.

40 Q She was brought in there upon what date?
A Pardon me?

Becky Gross, cross.

Q What date was she brought in the hospital?

A She was at the hospital at the 7th of February.

Q Seventh of February, and died when? A The 11th.

Q Died on the 11th? She had been there four days practically? A Yes, sir.

Q Eight, nine, ten, eleven—four days. She was admitted in the afternoon of the 7th? A She was admitted about seven or eight P. M. 10

Q Of the evening? A Yes, sir.

Q She had just been there four full days then when she died. Now, Dr. McKenzie came there what time of day on the day of the 11th? A Sixty—between 6:30 and 7.

Q Have a talk with you? A Not with me.

Q Have anything to say to you at all? A Just—I was there present while he spoke to the patient, but he didn't say anything to me. Just said "How do you do," that was all. 20

Q That was all he said to you. How did you come to sign the paper? A I was present.

Q How did you come to sign your name to the paper? A I was asked to sign.

Q By who? A By Dr. McKenzie.

Q Now, will you just tell what Dr. McKenzie said to the girl. Give me his words, can you? A Well, I don't think I can give you exact the words. 30

Q Can't give us the words? A Not exact. He asked her what her name was and she told him; then he asked her whether she knows her condition, whether she knows that she is going to die and she said yes.

Q Well, now, was that all that was said? A Then he asked her whether she would give him any history of it when she is dying, what is the cause; she told him yes.

Q Now, was that all that was said? A Many questions were asked. 40

Becky Gross, cross.

Q Many questions were asked afterwards by Dr. McKenzie, that was? A Yes, sir; he asked her whether these statements are correct.

10 Q Yes. I understand that. Don't go into that part of it. But outside of the other statements that was all that was said before he started to take the statements—nothing else? A Not that I remember of.

Q You are sure that this was your recollection? A Yes, sir.

Q That is merely an impression now of what you get from what took place there, isn't that so? A Pardon me?

Q That is merely an impression of what took place there? A Yes, sir.

20 Q What you are testifying to? You can't at this time give us the exact language used by Dr. McKenzie to her or by her to Dr. McKenzie before he took this statement, can you? A That is all I can tell you.

Q I say you can't give us the exact words? A No, not exact words.

Q Used by Dr. McKenzie or used by her to Dr. McKenzie just before he took that statement, can you? A No, not the exact words.

30 Q Now, is it the custom there in the hospital for nurses to give nitro uterine douches?

Mr. Mott. I object.

The Court. On what theory is that question competent?

Mr. McDermit. It isn't competent now. It is premature now. Nevertheless I ask it.

40 Q How much time elapsed between the time that the doctor would ask a question of the deceased and she would answer the question? How much time elapsed? How long would it take before you

Becky Gross, cross.

would get an answer from her? A Not a second. She would answer to the question.

Q She would answer to the question. As he asked a question she would answer the question, then he would take it down—he would write it down, would he? A Well, he asked her whether she was willing to have it written down and she said yes. 10

Q Then he wrote it down? A Then he wrote down every word she said.

Q I ask you this question—you say that you are the person that gave her the nitro uterine injections—the douches—are you? A I don't remember the treatment—what was given, because everything is written down on the chart and it is in the hospital.

Q Didn't you say you gave her the injections before? A I don't remember the treatment. 20

Q Didn't you say here this morning to the court and to the jury that you gave her these injections? That you were the person who had charge of her—give her the injections? A There are several kinds of injections to give.

Q Don't you know what kind of injection you gave? A There were several injections given to Rose.

Q Don't you remember what? A Hypo injections given through the skin and stimulants and give injections in the rectum, which I call enemas. 30

Q Didn't you give her uterine injections—uterine douches? A I don't remember.

Q Didn't you say so this morning? You did say! Didn't you tell me in answer to the question that you did. A I don't think so.

Q You remember that, don't you? A Well, so many injections were given.

Q You remember me asking you whether you gave her uterine douches and you said yes. Do 40

Becky Gross, cross.

you remember that, this morning, here? A I don't remember it. I don't remember what was given.

Q You don't remember what was given?

10 *The Court.* What do you mean, you don't remember what you said in answer to questions that were asked here today or you don't remember whether you gave her the uterine injections?

Witness. I said I gave her the injections but not vaginal injections—injections by hypo.

The Court. You did not give her vaginal injections?

Witness. No, sir; but there were injections by hypo that are also called injections.

20 *The Court.* You gave her the hypo injections?

Witness. Yes, sir.

The Court. That is in the skin, is it?

Witness. Yes, sir.

The Court. What other kind of injections did she have to your knowledge, and did you give them to her or did somebody else?

30 *Witness.* Rectal injections I gave her and hypo.

The Court. You gave her rectal injections?

Witness. Yes, sir; and rectal injections I gave her.

The Court. Did you give her the vaginal injections, if any?

Witness. No.

Q Who gave the vaginal injections to her? A I don't remember.

40 Q Don't you know that she received them? A Well, I don't remember that.

Becky Gross, cross.

Mr. Mott. I object, your honor. I don't see that that is competent at this time. I don't know what bearing this line of examination has on the question now before the court and for that reason I object.

The Court. The question is her condition. You have allowed it to go this far. If you had made your objection at the start it would have been proper. I think I will allow the answer now. 10

Q (Question read). A I don't remember.

Q Now, you remember yourself giving her some injections, do you? A Yes, sir, hypo injections.

The Court. You have been all over that. This case has got to be finished some time.

Q What kind of injections was it you gave her? What did you use in the hypodermic or other injections that you say you gave her? A Strychnine. 20

Q Who told you to use strychnine? A The doctor ordered that.

Q How much strychnine did you use? A I don't remember exactly the doses. It is written down.

Q How many doses of strychnine did you give her that day—the day she died? A I don't remember, one or two. 30

Q What part of her body did you administer the strychnine to? A In her arm.

Q What part of the arm? A In the muscle.

Q Both sides? A No, on that side (indicating the upper arm).

Q Did you give her that injection of strychnine on the right arm or left arm? A I don't remember whether it was given on the right or left. It makes no difference. 40

Margaret Potash, direct.

Q How many injections of strychnine did you give her? A I don't remember. One or two—one I remember sure.

Q One a day only? A Not every day. It was only ordered when her heart was weak.

10 Q How much strychnine did you use? A I don't remember the dose.

Q You know what constitutes an ordinary dose of strychnine? A Usually give from 1-30 to 1-60 of a grain.

Q Who prepares the solution? A It comes ready prepared in tablets. They dissolve the tablet in sterile water into the hypo.

20 Q Who would have the right to give her injections—vaginal injections—if they were called for? Who would be the proper person to have treated her with those injections? A The doctor or the nurse.

Q You don't know then—you remember nothing of those injections? A I don't remember giving her vaginal injections. I gave her the other.

Q You won't say you didn't give them to her? A I am sure I couldn't remember.

MARGARET POTASH sworn for the State.

Direct examination by Mr. Mott.

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Q You are a nurse? A Yes, sir.

Q At which hospital? A Beth Israel.

Q And did you know Rose Lebowitz there? A Yes, sir.

Q And were you present on one occasion when Dr. McKenzie was there and took her statement?

A I was present; yes, sir.

Q And did you sign your name here to this paper? A Yes, sir.

40 Q And do you know who made the cross there?

A Rose Lebowitz made this cross.

Margaret Potash, direct.

Q Do you remember whether Dr. McKenzie said anything to her about the possibility of her recovering, before she made this statement? Did he? Yes or no. A I wasn't present at that time. I came in after the statement was taken up. When Dr. McKenzie read the statement before Rose Lebowitz and asked her if everything was just so and she said yes—she agreed that every thing was true that this paper said. 10

Mr. McDermitt. I object to the further examination on that. The question here before the court is as to the propriety of the admission of this statement. She says clearly that she came in after the statement was prepared and the doctor was then reading the statement to the patient, as to whether it was true or not.

The Court. Proceed. Are there any more questions? 20

Mr. Mott. That is all.

Mr. McDermitt. No questions.

By the Court.

Q Miss Potash, were you there when she died? A Yes, sir; I was there.

Q What time did she die? A Well, I don't exactly remember the time, but I believe it was between eight or 8:30 or so. I don't exactly remember. 30

Q How long after this statement was read and signed by Rose Lebowitz by a cross was it that she died? A I can't say, but it was a short time after.

Q What do you mean by a short time? A I can't say just how long it was.

Q What is a short time? Ten minutes, half an hour, hour and a half— A I believe it was an hour or hour and a half, but I don't remember positively. 40

William H. McKenzie, direct.

WILLIAM H. MCKENZIE, recalled for the State.

Direct examination by Mr. Mott.

10 *The Court.* I suppose counsel will agree on the record that when the prosecutor has spoken to the witnesses, Miss Van Gilder, and Miss Potash and Miss Gross, that he referred to S1 for identification?

Mr. McDermit. Yes; we will make that admission.

Q Doctor, I show you S1 for identification and ask you whether Miss Lebowitz made to you the statement contained in the last sentence of that paper at the time that you wrote it here? A She did.

20 *Mr. Mott.* I now offer the statement in evidence and I suggest that if the court is in doubt that under the rule as to confessions, that inspection of the paper under the testimony of the doctor just given, in the absence of the jury, might relieve the court of any possible doubt if it has any.

The Court. You offer the document in evidence?

Mr. Mott. Yes.

30 *Mr. McDermit.* I move to strike out the last answer of the doctor because he attempts to answer as to only a portion of that statement.

The Court. He has already said that he went over it in detail with her.

40 *Mr. McDermit.* He has now added—the prosecutor has added that one single isolated sentence, whatever it may be as to whether he remembers that sentence. I can't see what the object of that is, nor do I see the propriety of that character of declaration being admitted,

William H. McKenzie, direct.

whatever it may amount to,—that statement being admitted at this ime. He is either entitled to the whole of that statement or he is entitled to none of it.

Mr. Mott. I am offering the whole of it.

By the Court.

Q How was this statement made, doctor? Don't tell us what she said to you or any of the information given to you, if there is any information in this paper about the circumstances or cause of her death, but let me understand how the paper was made—how the facts were developed? A I asked her a question—some questions. I asked her to tell me her story. I am not going to say anything about what is in it. 10

Mr. McDermit. Your Honor will pardon me. I am asking for a ruling on that motion to strike out that part of the answer in regard to the doctor identifying the last statement in the statement. I would like an opportunity for an exception. 20

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly. 30

WM. P. MARTIN, [L. S.]

Judge.

Q Now, proceed. A I asked her to tell me her story of what had happened to her and to tell it to me so I could put it down and I followed the story as she told it to me, asking her questions at the time—suggesting to her how she could word it, at the time, making it in the first person; and then after that I read the statement back to her and asked her if that was her statement and she said yes. 40

William H. McKenzie, direct.

The Court. Is there any testimony you desire to produce on this question?

Mr. McDermit. No, sir; but I desire to be heard before the court comes to its conclusion.

The Court. You haven't examined the statement?

10 *Mr. McDermit.* No, sir. I desire to be heard before the court comes to its conclusion on its admissibility.

I object to the statement being allowed to go in evidence. The foundation that is necessary to lay has certainly not been proven in court here. The evidence testified to by Dr. McKenzie and the nurses that the doctor said that she was soon to die is not such a condition of her mind which would justify the court in believing that she was facing impending death. It is necessary in order to admit a statement of this kind that she must be impressed with the belief that absolute death is imminent—immediate—in order to show that. Now, where is the impression? The mere fact that he said to her "Why, you are going to die soon," and she says, "I know that"? Does that special evidence give the court the right to admit this confession here? Is that the class of evidence upon which this court will stand as having admitted this particular statement? Nothing at all here to show that the deceased was impressed with what the doctor said; nothing at all here to show that she was in that state of belief that death was impending and that it was immediate and that she had no chance to live, that she must go and go as a result of sickness or injury. Where is that testimony? How can you by the strongest and widest possible deduction of that evidence draw that

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William H. McKenzie, direct.

inference? It isn't a question at all for the jury. It is a question for the court. This character of statement must be, upon the evidence they produce. Don't make any difference whether that testimony is corroborated. As to the declarations. Just what are those declarations? Will this court say that the mere statement that the doctor told her "You are going to die soon" and she said "I know that,"—is that that character of statement in the law which the court can under the ruling and adjudications upon the question of admission of the statement say that that is complete and that that carries to the mind of the court an abiding conviction that she was impressed of the immediate fact that she was about to die? How can that be drawn—how can that be assumed—how can that be reached as a conclusion of the court on the mere say so of Dr. McKenzie and the mere record that he said to her "You are soon to die" and "I know it"? That isn't the class of testimony before a court that would impress the court with a duty. That appears to be all that they can get. We require no further examination upon that scope or score. They haven't established testimony to come within the theory. The rule of the court is that a statement of that kind must be shown to the court that the deceased knew that death was impending, that it was immediate, that there was no hope, and that she was impressed with it. I say it is impossible to be deduced from the evidence the state has offered—such a conclusion. That is the reason why I say that we do not care for the cross examination of the situation. The only question before the court is the question of the taking of that statement. The question is

William H. McKenzie, direct.

10 whether or not at the time she made that statement she was in a lucid condition, whether her mentality was clear and whether she was impressed with the grave importance of her death. Now, is the court impressed with that testimony as coming within the rules? I do not believe so. I do not believe your Honor will admit that statement.

20 *The Court.* The question is not whether she believed she was going to die that day. The question is whether she believed that all chances of living were gone—"all worldly hope," is some of the cases—"an absolute belief in impending death," as other cases say. And even though that element may not be required by the cases, it is here present, because she believed, under the testimony given by Dr. McKenzie and Miss Van Gilder, that she was going to die very soon, and the doctor said (from the testimony) "You understand that you are going to die very soon" or "soon" "that you have got to die," and she said "yes." Miss Van Gilder said it was "soon" or "very soon." One of the other nurses, Miss Potash, didn't know anything about that part. It seems to me that under the circumstances the statement is admissible.

30 Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. Mott. I will read the statement to the jury with the court's permission.

40 (*Reading.*) "I, Rose Lebowitz, was with a fellow about four months ago in a room in Summerset street. He went away after that.

Nathaniel J. Shapiro, direct.

I didn't tell my mother because he promised to marry me. I took his word. Then he said he didn't want to live with me because he had no job. I asked why he did that. Then he said to see Dr. Shapiro who lived I think on Waverly avenue. He said he would fix me all right for \$70. I went to Dr. Shapiro about four weeks ago. He put me on a table and put me to sleep. This was at my house. My mother was there and a young fellow, I didn't know his name, I was faint and couldn't eat and Dr. Shapiro came to see me every day. Came to hospital last Friday night. I wasn't flowing before Dr. Shapiro put me to sleep. I hadn't done anything else to myself before he put me to sleep. Hyman Goldstein of 172 Spruce was the man who got me into trouble. I paid Dr. Shapiro \$70 from my own money. I say this knowing I cannot get well and in the presence of death." Signed "Rose Lebovitz" and the other witnesses.

Paper marked Exhibit S1.

RECESS.

STATE RESTS.

Mr. McDermit opened for the defense.

NATHANIEL J. SHAPIRO, sworn in his own behalf.

Direct examination by Mr. McDermit.

The Court. What is your name?

Witness. Nathaniel J. Shapiro.

The Court. What is the name in the indictment?

Mr. Mott. Nathaniel Shapiro.

The Court. Do you move to amend?

Nathaniel J. Shapiro, direct.

Mr. Mott. I move to amend.

The Court. There being no objection the motion is granted.

Mr. McDermit. Do you still want to amend on the 15th or not?

10 *Mr. Mott.* No. I don't think it is necessary.

Q Doctor, how long have you lived in Newark?

A About nine months.

Q Where are you a graduate of—what college?

A Electric Medical College of New York City.

Q Where is it located? A 14th street.

Q What is your age? A Thirty-three.

Q And are you married or single? A Married.

20 Q Where do you now reside? A West Hoboken.

Q How long have you been married? A Little over five years.

Q Have you any family by reason of you marriage? A Yes, sir.

Q How much of a family? A Two children.

Q You located an office for the practice of medicine in Newark, did you? A Yes, sir.

30 Q Whereabouts in Newark? A 69 Hillside Place.

Q What section of Newark is that in? A Why, I think it is called the section of Waverly. I don't exactly know.

Q When did you open that office? A I believe some time in—I really can't remember. Let me see—

Q Do you know what year you came here in? A I think some time in August.

Q August of what year? A August, 1913.

40 Q August, 1913? A Yes, sir—August 12, I mean; I beg pardon.

Nathaniel J. Shapiro, direct.

Q Where had you practiced before that time?

A In Brooklyn.

Q How long had you been practicing in Brooklyn? A Why, about five or six years.

Q How did you come to open your office at Newark? How did you come to come here? A Well, I was advised by friends that I would do better here and that is why I came here. 10

Q Well now, did your wife come with you? A Yes, sir.

Q Did your children come along? A Yes, sir.

Q Was your wife and children living with you at this number in Hillside Place? A Yes, sir.

Q And was your office connected with it there?

A Yes, sir.

Q How many rooms did you occupy for your office and living apartments altogether there? A Five rooms. 20

Q And were they situated upon one floor or more than one floor? A One floor.

Q What was it, what you call a flat? A Yes, sir; flat.

Q Who was the owner of the house there—who was your landlord? A Party by the name of Mrs.—I can't think of the name.

Q That is immaterial. A My wife is here; she can bear me out. 30

Q You started what part of the month of August? A I think it was the early part of the month of August.

Q And what did you do, did you put a sign out there? A Why, as usual, put sign in the windows, Doctor, and the name.

Q Well, now, what does your office consist of? A Why, it consisted of operating chair, of an instrument case, instrument and—combination instrument and medicine case and a nebulizer. There 40

Nathaniel J. Shapiro, direct.

was some books in there and an ordinary desk to write on.

Q Now, then, that was your office room, was it?

A Yes, sir.

Q Now, was there a reception room adjoining that? A Yes, sir.

10 Q Now relative to the entrance from the street which came first, the reception room or the office room? A The office room.

Q And the reception room was the second room, was it? A Yes, sir.

Q And what were the other three rooms? A The other three rooms were the kitchen and two bedrooms.

20 Q Now what part of the flat was the kitchen located relative to the office, was it in the rear of second room or third room or last room towards the rear of the house? A The third room.

Q So that the flat consisted of an office first, then a reception room, then a kitchen and then two bedrooms behind that, is that right? A Yes, sir.

Q Is this a single flat or double flat house? A Single flat.

Q How many other families occupy apartments in that house? A One family, the owner.

30 Q Two flat house, was it? A Yes, sir.

Q With the owner living upstairs? A Upstairs.

The Court. The people who came in from outside of the apartment did not go first into the office did they?

Witness. No, sir; went through the hall.

Q Was there a door that leads from the office into the hall? A Yes, sir.

40 Q You kept that door closed, did you? A Most of the time.

Nathaniel J. Shapiro, direct.

Q And patients coming in would go to the second room where there was also a door, and would remain there and when they were treated or you were through with them they would pass through the door from the office into the street, would they—into the hall? A Yes, sir.

Q Now, do you know of a family, by the name of Lebowitz? A Yes, sir. 10

Q Living at 240 Prince street? A Yes, sir.

Q Where is 240 Prince street relative to where your office was—how many blocks away? A Well, about fifteen blocks, I should judge.

Q And do you know a young man by the name of Hyman or Abraham Goldenfield? A Goldstein.

Q Goldenstein or Goldstein?

The Court. Goldstein?

Witness. Yes, sir. 20

Q Goldstein. And is he the young man that testified here in court yesterday in this case? A Yes, sir.

Q When did you first form his acquaintance? A Sometime in October, 1913—no; October, 1912. I beg pardon.

Q And where was it that you formed his acquaintance?? A It was at my office.

Q And what were the circumstances under which you formed his acquaintance. Detail your first talk with him to the jury. A Why, he came in as any other patient and explained to me about his condition—he had suffered with a gonorrhoea—and wanted me to treat him. Of course I agreed to treat him and I did. 30

Q Well, how often did he call at your office in connection with that treatment? A About three weeks.

Q That was during the month of October, wasn't it? A Yes, sir. 40

Nathaniel J. Shapiro, direct.

Q Now, this Lebowitz girl that died, when did you first form her acquaintance or know her? A I got to know her through this same young man.

Q And where was it you first met her with him? A At my office.

10 Q How did she come to come there? A He brought her up.

Q And when was that? A That was some later. I suppose that was in the middle of the month of October.

Q And for what purpose, if any, had he brought her to your office? A He told me that his girl is suffering when she is urinating and he wanted me to know what was the trouble with her and when I examined her I found she was suffering from gonorrhoea as well.

20 Q And did you do anything for her? A I gave her several treatments.

Q And did you finally discharge her? A I did.

Q From her gonorrhoeal treatment? A I did.

Q And when was it you last treated her for her gonorrhoeal trouble? A That was the latter part of October.

Q And when did you next see her? A On the 27th of July, 1913.

30 Q Where was it you found her on the 27th of January? A At her home 240 Prince street.

Q When had you last seen Hyman Goldstein prior to the time that you went to Prince street?

The Court. Who?

Mr. McDermitt. Hyman Goldstein.

The Court. You mean Abraham Goldstein?

40 *Mr. McDermitt.* Abraham is called Hyman in the statement by the girl, and called Abraham. I don't know whether his name is Hyman or Abram.

Nathaniel J. Shapiro, direct.

The Court. The man you mean is the first witness in the case?

Mr. McDermit. Yes.

A I have last seen him in October when I discharged him.

Q October. And was his gonorrhoea cured at that time? A Yes, sir. 10

Q Did you ever make any arrangement with him to charge him the sum of \$40 in order to procure an abortion on the body of the Lebowitz girl? A No, sir.

Q Did you ever make any arrangement with his mother whereby you were to charge \$40 in order to procure the miscarriage of her daughter? A No, sir.

Q Did you ever make any arrangement or agreement or make any statement in the presence of a man—Sommer—that you were to perform an abortion and they were to pay you \$40 for it? A No, sir. 20

Q Did you at any time in your office use any instruments upon the defendant—upon the deceased, instrumental or otherwise for the purpose of bringing on an abortion? A No, sir.

Q Did you upon any occasion take and lay her on the bed in your office while her mother was present there and insert instruments or anything else for the period of about an hour? A No, sir. 30

Q Did you on the Friday night preceding the time that you treated her in Prince street on the 27th have a visit from her mother and herself to your office? A Please repeat that.

Q Did you prior to the Monday the 27th, when you treated the girl have any visit from the mother or daughter with the mother to your office? A No, sir. 40

Nathaniel J. Shapiro, direct.

Q Did the mother visit you on Saturday and pay you \$40 before the Monday that you came to her place? A No, sir.

The Court. She didn't say she did. She said she paid him Friday night.

10 Q Did she pay you \$40 upon Friday? A No, sir.

Q Prior to the time that you treated the girl? A No, sir.

Q Did she come to your office upon Monday morning, the day you treated the girl and ask you whether or not she would provide you with a table?

A No, sir; I had never seen her before that day.

20 Q When in point of fact did she pay you any money, if she paid you any at all? When did the mother pay you any money if she paid you any money at all? A She has paid me some money on the 31st of January, 1913.

Q What was the amount of it? A She paid me \$25.

Q Did she pay you any money after that? A No, sir.

The Court. How was it paid to you, in cash, was it?

Witness. In cash.

30 *The Court.* Where?

Witness. At my office.

Q Did she pay Dr. Greenfield? A I don't know.

Q Did you pay him? A No, sir.

The Court. You mean Dr. Silverstein, the one that was there on Monday, January 27th.

Mr. McDermitt. Yes, sir.

40 *The Court.* You said Dr. Greenfield. Dr. Greenfield is an interne at the hospital.

Nathaniel J. Shapiro, direct.

Q The doctor whose name was? A Dr. Silverstein.

Q Did you pay him any money? A No, sir.

Q Was he paid any money? A Yes, sir.

Q Who paid it? A The woman paid it; Mrs. Lebowitz.

Q How much did she pay? A \$5. 10

Q Had you ever received any \$70 from the deceased in your life time for treatment of her? A No, sir.

Q Had she ever made any arrangement with you to pay you \$70 for the purpose of securing an abortion? A No, sir.

Q Under what circumstances was it that you went to 240 Prince street on January 27th? A I was called up by the druggist, name of Schutzman, at one o'clock in the afternoon and he told me to come down because there is a woman bleeding. 20

Q Where is Schutzman's drug store located? A On Prince and Spruce streets.

Q Is that the man that was sitting here yesterday? A I don't see him here now. He was here yesterday.

Q What did he say to you? A Why, he called me up asked me to come down and told me there was a woman bleeding. 30

Q How long had you known this druggist before that time, if you knew him at all? A I hadn't known him very long.

Q Well, how long? A I don't know. I have seen him probably once before—short time before. I don't know.

Q Now, was that all he said to you that the woman was bleeding? A That is all, through the telephone. Of course he gave me the address.

Q Was that all he said to you, that she was bleeding? A That is all. 40

Nathaniel J. Shapiro, direct.

Q Did she say where she was bleeding? A Why, no.

Q Well, now after you got that message what did you do? A Why, I took my bag and went down to 240 Prince street and there I found a young girl laying in bed, as I then thought was a new married woman, and upon looking close, why
10 I recognized it was the same girl that I had had in my office in October.

Q Now, what condition did you find there? What physical condition did you find? A I found she was bleeding from the mouth of the womb.

Q How extensively was she bleeding? A Well, quite profusely.

Q And what did you do? A Why, I have examined her and found that there was something
20 lodged in the mouth of the uterus, or the womb, and I tried to dislodge it with my fingers, but I found it impossible. I administered a dose of ergotol to control the bleeding.

Q What did you say, doctor? A I say when I found that she had something in her uterus and I tried to dislodge it and couldn't, I administered a dose of ergotol.

Q What is that, ergotol? A Ergotol is a remedy to control bleeding.
30

Q And in what way is that administered—how do you administer it? A You can administer it hypodermically and per mouth.

Q What way did you administer this ergotol? A I think I gave it to her by mouth. I am not quite sure. I don't remember.

Q Then what did you do? Was her mother there? A Why, yes.

Q Was there anybody else there? A Yes, her
40 sister.

Nathaniel J. Shapiro, direct.

Q Then what did you do? A I waited a little while and when that—the ergotol didn't take any effect I told her mother that I would have to curette her—I would have to remove something I thought was in the womb.

Q You would have to curette her? What do you mean by curetting? What is that? A What I mean by curetting is by scraping the womb, in order to clean out whatever contents there may be there. 10

Q And then what did you do after you told that to the mother? A Why, after I told her this was the only way to control the bleeding she consented for me to do it. I told her I can't do it myself I must have somebody to help me to anaesthetize the patient. And of course she agreed to it. I went downstairs into the drug store and telephoned for Dr. Silverstein and he come. 20

Q How long had you known Dr. Silverstein? A Why, only known him shortly.

Q Well, had you had any arrangement with Dr. Silverstein before the time you called for him upon the telephone to come there and treat that girl? A No, sir.

Q Did you find Dr. Silverstein on the telephone?

A Yes, sir. 30

Q What did you say to Dr. Silverstein upon the telephone? A I told the doctor there is a case of bleeding, I want you to come down and anaesthetize the patient for me.

Q Did he come? A Yes, sir.

Q How long was he getting there? A Why, about fifteen or twenty minutes.

Q Fifteen or twenty minutes. Now, then, what did you do, and what did he do? A Why he anaesthetized the patient in the bed while I was getting the hot water douche ready and boiling my in- 40

Nathaniel J. Shapiro, direct.

struments and everything else, and then we put her on the table—I believe it was in the kitchen—and I curetted her.

Q Now how long a time did that take? A Why, that—I don't believe the actual curettement took any more than about twenty-five or thirty minutes.

10 Q What did you remove from her body, if anything, or from her vagina or womb? Did you remove anything during that operation or during that scraping? A Yes, sir; I removed some threads and some clots.

Q What did they consist of—what were they? A Well, to my knowledge they consisted of placental tissue or something like that.

Q Did you make any minute examination of that in any way? A Why, I looked at it.

20 Q What did you suppose brought about the conditions in which you found her?

The Court. He cannot suppose. He has got to tell us what he observed—what the symptoms were, and tell us what his judgment was about it.

Q Well, do you know what brought about the condition that you found there when you first went to treat her? A Well, when I examined the patient it looked to me as if she had aborted and that there was something remained there.

30

Q Then the situation as it presented itself to you was that it looked as though an abortion had been performed? A An incomplete abortion.

Q An incomplete abortion. Did you say anything to her or to her mother about it? Did you talk to her about it after she came to? A I don't remember having any conversation with her then but after, in the course of the treatment, why I did have a conversation with the girl and of course she told me about her friend Hymie and—

40

Nathaniel J. Shapiro, direct.

Mr. Mott. I object to what the girl told him.

The Court. It is competent if she told him about her physical condition for the purpose of having him treat her.

Mr. Mott. He isn't testifying from that standpoint.

10

(Question and answer read.)

The Court. Objection overruled.

Q And what else, doctor, did she say? A Well, she told me about her friend Hymie and how he had left her and ran away from her and all that, and how he lived with her.

Q Now, did you remove—was it a fœtus that you removed? A No, sir.

Q Was there any fœtus there when you performed this scraping operation upon Monday? A No, sir.

20

Q Had you ever removed the fœtus or performed any act that would lead to the expulsion of the fœtus? A No, sir.

Q Was there a fœtus in existence as far as she was concerned to your knowledge? A There might have been. I don't know.

The Court. Now, you just said a moment ago that the conditions there indicated that there had been an abortion?

30

Witness. I haven't seen the fœtus.

The Court. You were asked to your knowledge.

Q Do you know whether the fœtus existed there or not? In point of fact do you know whether there was a fœtus there at any time or not? A Well, if I wasn't mislead about the membrane that I saw. I deducted from that that there must have been a fœtus there.

40

Nathaniel J. Shapiro, direct.

Q You have no knowledge of the fœtus except such knowledge as you claimed—

The Court. Do not argue with the witness. Ask him to tell you what he does know. He isn't supposed to be hostile yet.

10 Q After you had performed this operation on Monday what did you next do? A Why, we put her to bed and I prescribed for her so as to—in case there was any further bleeding—so as to control that, and I left her that day until about eight o'clock that night, and I came back and I found her fairly comfortable; asked how she felt and she said "All right;" and of course I told her mother how to take care of her and I left her. That very night, of course, took the pulse and temperature and
20 found that to be quite normal and left her for the night.

Q When did you next visit her after those two visits upon Monday? A I saw her again Tuesday morning and found that she had had a comfortable night and that—when I took her temperature and pulse again and found that to be normal and of course I advised the mother what to give her and I left her.

30 Q Then what did you do after that? A I saw her again the very same night and found her to be in the same condition, and haven't done anything else for her that night.

Q That was Tuesday? A Yes, sir.

Q What about— A Again Wednesday and the same results. I prescribed—Wednesday morning I prescribed, I believe, a certain antiseptic called lysol, and told the mother to use that.

40 Q Where was this antiseptic to be used? How was it to be used? A That was supposed to be used vaginally—as a vaginal douche with water.

Q What does that antiseptic consist of—what

Nathaniel J. Shapiro, direct.

was the ingredients? A Simply—lysol I believe is a carbolic preparation—lysol; and told her to use that in hot water and make the patient a douche with that—vaginal douche, and of course I left her with that.

Q That was Wednesday. Now, when did you next see her? A I saw her again Wednesday night. 10

Q That was the sixth call, was it? A Yes, sir.

Q What was the condition of her pulse and what was her general condition Wednesday night? A Why, Wednesday night her pulse was about 84 and her temperature was about 99.

Mr. Mott. Was about what?

Witness. Her temperature was about 99 degrees fahrenheit. 20

Q What did you do then?

The Court. Pulse was 84?

Witness. Yes, sir.

A Why, I directed the mother how to take care of her for the night and I left her.

Q Well, when did you call on her again? A I saw her again Thursday morning and she felt quite comfortable and I gave her the very same directions and I left her. 30

Q When did you see her again? A I saw her again Friday and about the same thing.

Q Did you go back there the second time on Thursday? A No, sir.

Q You went back there upon Friday at what time? A Yes, sir.

Q What time Friday? A Why, Friday morning. I saw her about nine o'clock.

Q And how long did you remain there then? A Friday—oh, I must have remained there about half an hour probably. 40

Nathaniel J. Shapiro, direct.

Q And what did you do during the time that you were there? A Examined her pulse and temperature and asked her how she was feeling and asked her condition of bowels and so on, and I told her mother to keep on douching and to give her a liquid diet and I left her.

10 Q Did you tell her what kind of a liquid diet to give her? A I told her to give her oatmeal, milk and chicken soup, I believe.

Q Did her mother ever ask you what was the matter with her upon any of those visits you made at the house? A Why, no.

Q Two upon Monday, two Tuesday, two Wednesday, one upon Thursday and one upon Friday—did the mother ask you what was the matter with the daughter? A Why, she did not.

20 Q When did you next visit her again after Friday? A Saturday—Saturday morning.

Q And what was her condition on Saturday morning? A Very same way; found her sitting up in bed, feeling pretty fair.

Q Well, when did you next visit her? A Sunday.

Q What date was that? A Why, I believe it was the 2d of February.

30 Q And what did you find her condition to be that day? A Why, the very same as before, setting up and feeling good.

Q When did you next visit her? A I visited her Monday morning.

40 Q What was the situation Monday morning? A She felt pretty good and I found she was in the kitchen. She was in the kitchen. In fact I told her—I asked her why she got out of bed before I told her to and she said she felt cold in the bedroom and so she went into the kitchen, and when I was after examining her I found everything, her

Nathaniel J. Shapiro, direct.

pulse and temperature was normal and everything very well, I discharged her.

Q You supposed then—

The Court. That is a conclusion. You say you discharged her. What did you do? What did you say?

Witness. I discharged her as cured. 10

The Court. Tell us what you did or said.

Witness. Why, when I saw her Monday morning I gave her directions not to exert herself and be in a calm condition, and of course I advised her as to what food she should take and I told her she was well, or at least she said so, she was well, and I left her that way.

Q Did you tell her you were through with your visits to her? A Yes, sir. 20

Q That was understood? A Yes, sir.

Q Did you tell her mother that too? A Yes, sir.

Q And did you give her mother any instructions as to how she was to take care of her? A Yes, sir.

Q And when did you hear from her again, or from anybody in the house after this Monday? A On the following Thursday. 30

Q And how did the matter come to your notice on the following Thursday—what manner? A Why, I believe I was called up again on the telephone. I am not quite sure whether I was called up there on the telephone or whether her mother called me up but I know I was called on Thursday and when I came to her house why I found her sitting up and vomiting.

Mr. Mott. Sitting up where?

Witness. Sitting up and vomiting. 40

Nathaniel J. Shapiro, direct.

Q What was the matter with her then? A Why, I found—that is on questioning—I found at that time that she was overfed.

Q What? A Overfed.

Q Overfed? A Yes, sir.

10 Q Well, what did you do then? A Well, I prescribed, I believe, certain medicines to control this vomiting and for her condition of the bowels and I left her and told her to let me know the next morning.

Q Well, when did you next hear from her? A Next morning, Friday, why I believe her mother called me and I was over to the house and found her still in the same condition—vomiting.

20 Q What did you do then? A I believe I prescribed again some similar mixture to control the vomiting and I left her until I got there again Friday night.

Q What did you do there in the morning? Did you put her back in bed after you found her vomiting the second day?

Mr. Mott. I object.

The Court. That is not proper at all to ask such a leading question as that. Objection sustained.

30 You cannot ask that question in another form now. You can come back later.

Mr. McDermit. I ask you to let me have an exception to the ruling.

The Court. Exception allowed, certainly.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

40

WM. P. MARTIN, (L. S.)
Judge.

Nathaniel J. Shapiro, direct.

Q What did you do on Friday when you came back the second time? A When I came back the second time, when I found that she was still vomiting, I decided that I better call in a consultation.

Q Now, go on and tell the court and jury exactly what you did. A And I consulted her people about her and they agreed with me that I should call in consultation, so I sent down to the same drug store and I called up Dr. Fischer. 10

Q Who is Dr. Fischer? A This gentleman who testified here yesterday.

Q Well, what did you tell the doctor and what did you do? What did you and the doctor do? A I told the doctor what I have done for the young lady and how I have treated her and the condition she was in, and when he looked her over he told me that it would be best to send her to the hospital, and I being a new man in town and not having any connection with a hospital, and I asked him to call up the hospital for me, which he did. 20

Q What, if anything, did he say was the matter with her? A Why, that night he hadn't said anything to me at all—he hasn't given any opinion. He simply said the best thing would be to send her to the hospital.

Q Did he make any examination of her in your presence? A Why, I don't remember whether he examined her internally. 30

Q Did he ask you anything about the method of treatment you had been giving her. A Yes, sir.

Q And what time was that she was removed to the hospital? A Why, it was Friday night. I think it must have been about eight o'clock that night. I am not sure as regards the hour.

Q When was it that you next seen the deceased after she was removed to the hospital? A I saw her the next morning in the hospital. 40

Nathaniel J. Shapiro, direct.

Q And that was what day of the week? A That was Saturday.

Q And what day of the month? A Why, it must have been about the 8th, I think, of February.

Q And how long did you remain at the hospital? A Why, few minutes.

10 Q Who did you see at the hospital there? A I saw this young woman involved and a few nurses.

The Court. Who?

Witness. I saw Rose Lebowitz, the patient.

Q Did you make an examination of her? A Why, no.

Q Did you speak to her? A Yes, sir.

Q Take her temperature? A No, sir.

20 Q Why? A Because I wasn't permitted. She was out of my jurisdiction.

Q Well, did you inquire of what doctor was taking charge of her? A Yes, sir.

Q Who was taking charge of her? A Dr. Zimmerman and Dr. Greenfield.

Q Did you have a talk with them? A I don't quite remember. I think I spoke to Dr. Zimmerman.

Q And did you give Dr. Zimmerman a history of the case? A Yes, sir.

30 Q And tell him how long you had been treating her? A Yes, sir.

Q And told him what you done for her? A Yes, sir.

Q Tell him about the scraping of her womb? A Yes, sir.

Q Tell him about the hemorrhage? A Yes, sir.

Q Tell him about the vomiting spells? A Yes, sir.

40 Q Give an entire history of the case to him? A Yes, sir.

Nathaniel J. Shapiro, direct.

Q Just as you have described it on the witness stand?

Mr. Mott. I object.

The Court. Pretty near time an objection was interposed. Objection sustained.

When you went there with Dr. Fischer where was Rose? 10

Witness. She was at her home in bed.

The Court. Where, in bed?

Witness. In bed.

The Court. How long had she been there?

Witness. Why, she had been there since morning.

The Court. Where was she on Thursday, February 6th, when you went there? 20

Witness. She was sitting up in bed.

The Court. Sitting up in bed?

Witness. Yes, sir.

Q When did you next visit her at the hospital after visiting there this Saturday morning? A Why, I saw her Sunday again.

Q What time, Sunday? A I don't remember whether it was in the morning or afternoon. I know I was down there. 30

Q What did you do when you went there Sunday? A I went over and spoke to her and asked her how she felt, she said she felt quite comfortable, the vomiting was controlled a little and she told me she felt better.

Q When did you next see her after that, doctor? A I saw her again Monday.

Q What time Monday? A I think it was Monday noon time.

Q What did you do then? A I beg your pardon. It was Monday afternoon when I saw her. 40

Nathaniel J. Shapiro, direct.

Q Well, the afternoon. What did you say to her or she to you, if anything? A I saw her Monday afternoon and she didn't feel quite as well as she did the other day, and of course I didn't have much of a conversation with her.

Q Did you have a talk on Monday with Dr. Zimmerman? A No; I didn't meet him.

Q Or with the nurses? A I believe I spoke to the nurses but I don't exactly remember now what I said.

Q They understood that you had a right to come in there, if you desired, to see this patient? A Exactly.

Q But they were treating the patient? A Yes, sir.

Q When did you next see the patient after that? A I think I saw her the—I don't remember whether I saw her the same night—I don't remember. I think the next day I saw her was Tuesday.

Q Do you remember when she died? A Why she died Tuesday night.

Q Had you seen her Tuesday morning? A Why, yes.

Q Had you talked with her? A Why I had a little conversation with her.

Q What was her condition as to mentality Tuesday morning? A Why she was very poor in mentality. Her conversation was very incoherent.

Q What do you mean by saying her voice was very incoherent? A I mean her thoughts were not connected in any way. She was saying different things. You could hardly understand her.

Q You mean by that that she was muttering? A Yes, sir.

40 *Mr. Mott.* I object, and ask to have that question and answer stricken out. I had no chance to object.

Nathaniel J. Shapiro, direct.

The Court. Objection to the question is sustained and the answer stricken out.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge. 10

Q Describe fully what you observed Tuesday morning when you visited her there at the hospital? A When I got to the hospital Tuesday morning I was told that the patient felt a very uncomfortable night and I looked at the chart and found the patient had been bleeding during the night and that she had received an injection of, I believe it was glycerine and iodid—I am not sure. I know it was iodid. I am not sure whether there was glycerine with it. And that she had—her temperature and pulse had run up after the injection, and of course when I went over to her and begun to talk to her why it looked as if she didn't recognize me at first, and finally she has grabbed my hand and I begin to ask her how she feels and she begun to say something but I couldn't understand what she said, but what she did have in mind—what I did hear her say is that she was calling for Hymie—Hymie. 20

Q What? A She was calling for Hymie. 30

Q Now was there anything else that you could have done at any time in the knowledge of your practice to have relieved her suffering other than what you did do? A Well, if I had her under my jurisdiction then I might have done something.

The Court. You mean when she was under his professional care?

Mr. McDermit. Yes, sir.

Q Under your own care? A Well— 40

Nathaniel J. Shapiro, direct.

Q Was there anything else that you could have done to relieve her condition other than you did do, as you found the things under your own jurisdiction? A I don't know whether I could have done anything more for her.

10 Q In the matter of scraping her womb, why did you do that, doctor, the first day that you went there? Is that the proper thing to do? A Why, yes; under the condition that she was in it was the most proper thing to do.

Q And where bleeding is found is that one of the things that is done, is the scraping of the womb? A Yes, sir.

20 Q What condition did you find her in that morning? Anything more that you want to add in addition to what you said in regard to how you found her? A What morning?

Q As to the performance of your operation there for your work there upon the womb?

The Court. Monday, January 27th.

Q Did you find any membrane there? A You mean after I operated on her—during the time?

Q Yes. A Why, yes; I found some membranes there.

30 Q What would that come from? What would cause that? A As I said before it might have been an incomplete abortion, or something like it.

Q You ain't prepared to say it was an incomplete abortion? A No, sir; I am not.

The Court. You said "Placental tissue?"

Witness. Yes, sir.

The Court. Is that the same as your counsel calls "membrane" now?

Witness. Yes, sir.

40 *The Court.* Then he asked you if there was anything that you had not mentioned. You

Nathaniel J. Shapiro, cross.

had mentioned the placental tissue, had you not?

Witness. I mentioned placental tissue.

The Court. He wants to know if you found anything more on Monday morning, or any time on Monday, January 27th, than you have mentioned? 10

Witness. Nothing more, except a few clots of blood, that is all.

The Court. You mentioned them.

Q You said you had used your finger? A Yes, sir.

Q And you could—there was obstruction of some kind there? A Yes, sir.

Q You subsequently removed that obstruction. What I want to find out is what was that obstruction after it was removed. Tell the court and jury. 20

The Court. He has already told us.

Witness. This obstruction—

The Court. One moment. He has already told us it consisted of clots and shreads and placental tissue. Now was there anything more than that that it consisted of? 30

Witness. That is all I found.

Cross examination by Mr. Mott:

Q Doctor, I understand you to say that outside of treating Rose for gonorrhoea you never treated her for anything or saw her professionally until the 27th of January? A Yes, sir.

Q That is right? A Yes, sir.

Q And she hadn't been to your office for any other treatment than for gonorrhoeal treatment? A No, sir. 40

Nathaniel J. Shapiro, cross.

Q And you didn't know that she was in the family way? A No, sir.

Q And she and the young man didn't come to your office to see you about treating her—relieving her of her condition of pregnancy? A No, sir.

Q No member of the family said anything to you about her being pregnant previous to the 27th of January? A No, sir.

Q And previous to the 27th of January, no member of the family had applied to you at any time to treat her for her pregnancy? A No, sir.

The Court. When that question is asked, Doctor, do you include in that as a member of the family, Harry Sommer?

Witness. Why, yes, sir.

20 *The Court.* You didn't speak to Abram Goldstein or Rose Lebowitz or Mrs. Lebowitz or Harry Sommer or his wife in the week preceding the 27th of January, or at any other time about this matter?

Witness. No, sir.

Q And Rose and the young man Goldstein didn't come to your office and ask you to treat her for pregnancy? A No, sir.

Q You are sure of that, Doctor? A Yes, sir.

30 Q Do you know Mr. Kaas? A Yes, sir.

Q Did you see him the night of February 11th shortly after she died? A Why, yes.

Q Where did you see him? A He was over in my office.

Q And did you at that time say to Mr. Kaas that Rose and the young man came to you and asked you to treat her for her pregnancy and that you refused? A No, sir.

40 Q Now, you never treated Rose for anything except the gonorrhoea previous to the 27th of January? A No, sir.

Nathaniel J. Shapiro, cross.

Q And you never prescribed for her for anything except for the gonorrhoea previous to the 27th of January? A No, sir.

Q What? A No, sir.

Paper marked Exhibit S 2 for identification.

Q I show you Exhibit No. 2 for the State for identification and ask you if you have ever seen it before? 10

Mr. McDermit. I would like to look at that before you answer that question.

The Court. You have no right to. It is not a matter that is offered in evidence.

Mr. McDermit. I desire to take exception to the court's ruling that I have no right to look at this piece of paper at this time when he has asked the question to identify it, as to whether it is his hand-writing or not. 20

The Court. Exception allowed.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)

Judge.

Q Have you ever seen that before? A It looks like a prescription that I generally write.

Q Is that not one of your prescriptions? 30

Mr. McDermit. I object as to being immaterial and irrelevant to the issue as the record now stands as to whether that prescription is one of his prescriptions or not, unless it has a bearing on this generally.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.) 40

Judge.

Nathaniel J. Shapiro, cross.

Q Doctor, is that not one of your prescriptions?
A I generally write that formula. It is on my prescription, but I don't know whether I wrote this in particular.

Q Isn't your name signed to it, sir? A Name is signed to it.

10 Q Your name is signed to it. And isn't that a prescription that you wrote for Rose Lebowitz?
A I don't remember.

Mr. McDermit. One minute.

Mr. Mott. Oh, he don't need your help, Mr. McDermit in this way.

Mr. McDermit. I desire to interpose an objection to the question.

20 *The Court.* Your objection is too late. He has already answered it and says he does not remember.

Q Why were you—did it take you so long to answer the question as to whether that was one of your prescriptions when you now say that your name is signed to it? A Simply because this is a formula which every doctor can write and I want to be sure whether I wrote it or not.

30 Q But you said your name was signed to it? A I say there is my name on it but I didn't say that I signed it.

Q Do you mean to say that you are in doubt, as to whether that is your handwriting?

Mr. McDermit. I object.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

Nathaniel J. Shapiro, cross.

The Court. Now answer the question, Doctor.

Witness. The name here looks kind of incomplete, your Honor.

The Court. That is not the question at all. The question is do you mean to say that you have any doubt as to whether or not the handwriting on that paper, S 2, is in your own handwriting. 10

Mr. Mott. I have got all the afternoon, if necessary, to answer the question.

Witness. Will you please repeat the question.

The Court. Repeat the question asked by Mr. Mott.

Q (Question read).

The Court. Referring to S 2 for identification. 20

A Why, yes.

Q What? A As far as the name is concerned.

Q Is what? A That I am in doubt whether I signed this prescription.

Q You are in doubt whether that is your handwriting or not, are you? A It looks like my handwriting.

Q Are you in doubt, sir, whether that is your handwriting? 30

Mr. McDermit. I object. He has answered that question.

Defendant's counsel prays an exception to this ruling of the court, and the same is allowed and sealed accordingly.

WM. P. MARTIN, (L. s.)

Judge.

Q Answer my question. A Why, this looks like my handwriting. 40

Nathaniel J. Shapiro, cross.

The Court. That is not the question, what it looks like to you. The question is whether or not you in your mind are in doubt as to whether or not it is in your handwriting.

Witness. Well, I am in doubt.

10 Q What makes you in doubt? A Because the name is incomplete.

Q Did you use for your prescriptions a paper with the printing on that is on this paper? A Yes, sir.

Mr. McDermit. I object. I must object unless he lays the time when this prescription was, within the statute of limitations. It is impossible for the witness to know when this prescription was given?

20 *The Court.* In Newark.

Mr. Mott. Oh, yes; in Newark.

The Court. Answer the question, Doctor.

Q I ask you if you used for your prescription a form with printing similar to the printing on this one? A Yes, sir.

Q What is the printing on there?

30 *Mr. McDermit.* That is objected to. He can read it as well as the witness. The witness isn't obliged to answer that question. I object to it. I will claim the right to see it now if he asks him to read the printing on it.

The Court. He says it is the same. Objection sustained.

By the Court.

40 Q What do you finally say, doctor, is that your prescription or isn't it? A Why, this prescription looks like the formula that I generally write. As far as the printing goes it looks like my prescription. There is a name on it.

Nathaniel J. Shapiro, cross.

Q I don't want to know what it looks like. The question you were asked is whether or not that is your prescription? A Well, if I wrote that it must be my prescription.

Q Well, is it? A Well, this is the blank I generally used.

Q Well, you can answer once more. A What 10
is the question?

Q Is it or is it not your prescription? A Yes, sir.

The Court. Now proceed. The witness has answered that it is his prescription.

Paper marked Ex. S. 3 for identification.

Q I show you Ex. No. 3 for the State and ask you whether that is a prescription in your handwriting? A Yes, sir. 20

Q Why, was it you are able to tell that so quick and it took so long to tell the other? A Because I know I wrote this.

Q What is the characteristic difference in the writing of the two? A Well, it looks about the same.

Paper marked Ex. S. 4 for identification.

Paper marked S. 5 for identification.

Paper marked Ex. S. 6 for identification. 30

Q I show you Ex. No. 6 for the State and ask you whether that is your handwriting? A Yes, sir.

Q Can you tell when you wrote that prescription? A I believe it was during the time she was vomiting.

Q And this is the prescription for her vomiting? A Yes, sir.

Q Then this is a prescription that you wrote for Rose, is it? A Yes, sir. 40

Nathaniel J. Shapiro, cross.

Q How is it that you were able to tell that No. 6 was your handwriting and took so much time to tell whether No. 2 was.

10 *Mr. McDermit.* I call upon the prosecutor to give counsel for the defendant an inspection of the different exhibits he has handed to the witness.

The Court. If the witness needs that in order to answer the question.

Witness. I don't find anything out of the ordinary about this prescription in any way.

The Court. Referring to which one?

Witness. To the first one; that is S. 2 for identification.

20 *The Court.* Answer the question, Doctor. You are not asked whether you find anything out of the ordinary in the prescription. The question is whether there is any difficulty about your being able to say whether or not it is your handwriting as distinguished from your aptitude in stating—with your quickness in stating that the others are in your handwriting.

30 *Witness.* Well, because the formula in there misleads me to some extent, and—pardon me, your Honor, if I may correct a statement I made. I meant to say that the formula was an unusual formula and that is why I didn't recognize it.

Q You do now recognize it? A Yes, sir.

Q And that is a prescription that was written on the 20th day of December, 1913, isn't it?

The Court. Referring to S. 2 for identification.

40 Q Or 20th day of January I mean, 1913?

Witness. Not that I know of.

Nathaniel J. Shapiro, cross.

Q What do these marks here mean so far as you know. A I don't know what they mean. I haven't wrote them.

Q Do you know whose handwriting they are? A No, sir.

Q And isn't the reason that you were reluctant to admit that this was your handwriting due to the fact that the paper shows on itself that it was written and filled on the 20th of January, 1913? 10

A No, sir.

Mr. McDermitt. What exhibit is that?

The Court. S. 2 for identification.

Q What did you write this prescription for, doctor?

The Court. Referring to what?

Mr. Mott. S. 2. 20

Mr. McDermitt. I think I am entitled to see that Ex. S. 2.

Mr. Mott. You may, my friend, if you can make more out of it than I can. Nobody else is to see it but you, please.

Mr. McDermitt. I am not going to show it.

Mr. Mott. If you can make anything out of it you can do a good deal better than I can.

Mr. McDermitt. If the court will give me an opportunity to read it. 30

Mr. Mott. You can't read it any more than I can.

Mr. McDermitt. All right. I am willing to admit it is all Hebrew to me.

Q What did you write that prescription for, Doctor? A Why, this prescription is for pain?

The Court. For what?

Witness. Pain.

The Court. Pain? 40

Nathaniel J. Shapiro, cross.

Witness. Yes, sir; and it is good for—in case there is any excess of urine it controls it. It may be given for female troubles of any kind.

Mr. McDermit. We do not get the benefit of what you are reading.

10 *The Court.* He is not reading. He is telling us what the prescription is good for. The question is what did you write it for?

Witness. I can't recall, your Honor.

Q Now, it was the 7th of February that you called in Dr. Fischer, was it? A Yes, sir.

Q And she was then in fairly good condition, you say? A The 7th of February?

Q Yes. A No, sir.

20 Q What did you say her condition was at that time? A I said she was vomiting.

Q Yes; well, what else was the matter with her? A She was sitting in bed at the time and of course her stomach was out of order.

Q And what else? A Why, she felt uncomfortable. That is about all I can say. I can't remember—

Q Well, you didn't find anything serious with her, did you? A What date?

30 Q Up to the time that Dr. Fischer got there nothing very serious had been the matter with her, had there? A Well, I think she was serious, otherwise I wouldn't have called him in consultation.

Q Well, now, what was there about her condition? As I understand you found her in pretty good shape on the day before, didn't you? A Excepting she was vomiting.

40 Q Well, anything else besides vomiting? A Stomach out of order—stomach trouble. That is all. That is all I could see.

Nathaniel J. Shapiro, cross.

Q That is all you could see. You mean when Dr. Fischer made his examination. A Yes, sir.

Q Did you see her bleeding from the nose at that time? A No, sir.

Q Did you find at that time that her pulse was very feeble and rapid? A Well, her pulse was a little above the average, but not very feeble or rapid. 10

Q Did you know that her abdomen was extended? A No, sir.

Q Did you know that her uterus was flabby? A Why, yes.

Q Did you know that there was foul discharge from the vagina? A No, sir.

Q Did you know at that time that septicemia had set in? A No, sir.

Q Are you willing to say that Dr. Fischer is wrong? A No, sir. 20

Q In thus describing her condition? A I don't know.

Q If that was her condition, as Dr. Fischer found it, why could you not have discovered those symptoms and those conditions? A She didn't have any of those conditions when I saw her.

Q Why, sir, you saw her but a few minutes before Dr. Fischer got there, didn't you? A Yes, sir. 30

Q And you went out and telephoned for him? A Yes, sir.

Q And you want us to understand that between the time that you saw her and went to telephone that these conditions developed? A No, sir.

Q And then why couldn't you see them at that time? A Simply because she didn't have those conditions at that time?

Q Then I say those conditions developed between the time that you went to telephone for Dr. Fischer and the time he got there, did they? A 40

Nathaniel J. Shapiro, cross.

Why, I hadn't seen those conditions at the time Dr. Fischer examined her. The only reason I called him is because she was vomiting and I have seen no other cause there to make her vomit, and that is why I called in Dr. Fischer.

Q If you didn't find these conditions that Dr. Fischer said he found, why did you send her to the hospital? A Well, because Dr. Fischer advised me to send her to the hospital.

Q Well, sir, are you a physician? A Yes, sir.

The Court. Are you regularly licensed to practice?

Witness. Yes, sir.

Q When were you? A 1907.

Q When did you graduate? A 1907.

The Court. When did you get your license to practice in New Jersey.

Witness. Oh, New Jersey; I got that in 1912.

Q From whom? A The State Board of Examiners.

Q Again I ask you if you were unable to discover the conditions that Dr. Fischer says he found why you sent her to the hospital? A Why, simply because I prescribed certain treatments and the mother didn't follow them up.

Q Then you sent her to the hospital not because of her physical condition but because the mother didn't follow your directions in treating her, is that it? A Exactly, yes, sir.

Paper marked Ex. S. 7 for identification.

Q I show you Ex. S. 7 for the State, and ask you whether that is your signature? A Yes, sir.

Q What is this paper?

Nathaniel J. Shapiro, cross.

Mr. McDermit. I object. The prosecutor knows what it is. Show it to me, I will tell you. He asks him whether that is his signature and shows him a paper.

The Court. And asks him what it is?

Mr. Mott. Yes.

The Court. This is cross examination. 10

Q What is that, Doctor? A Why, this is questions to answer, that is all.

Q Well, this is a statement you made at the police station, is it not? A Yes, sir.

Mr. McDermit. I object to the examination and ask the court to rule upon it.

The Court. I overrule the objection.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly. 20

WM. P. MARTIN, (L. S.)

Judge.

Q Made in the presence of Captain Vogel and others? A Yes, sir.

Q And in this statement you tell of your relations with this girl, do you not, and how you treated her?

Mr. McDermit. That is objected to.

The Court. Upon what ground? 30

Mr. McDermit. Upon the ground that it is only a partial statement. It isn't shown to be a complete statement. "Did you tell of your relationship with this girl"?

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.) 40

Judge.

Nathaniel J. Shapiro, cross.

Q Don't you, Doctor? A Why, yes.

Q At that time did you say anything to the officers about gonorrhoea or about having treated her for gonorrhoea? A They never—

Mr. McDermit. I object.

10 A (Continuing.) —asked me about that.

Q Did you say anything?

Mr. McDermit. I object. The question is objected to. You take the statement as a whole and not as a part.

The Court. If any questions are objected to just wait until the court has a chance to rule on them. The objection is overruled.

20 Defendant's counsel prays an exception to this ruling of the court; the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q What do you say? A Why they haven't asked me any other questions.

Q Do you say that you didn't say anything there except in answer to questions that they asked you? A Exactly.

30 Q Do you say that you didn't proceed and make a statement yourself without questions being asked? A Why, they asked me what happened the 27th of January and I told them. This is a statement of what happened on the 27th of January.

Q Why didn't you say to them at that time something about gonorrhoea? A They didn't ask me.

40 *Mr. McDermit.* One minute. Don't answer the question. I object. I say such a proposition between the Doctor and his client is

Nathaniel J. Shapiro, cross.

privileged. He isn't obliged to make the declarations in there. I object to that proposition.

The Court. There is not any such ruling at common law, and it is only true in States where there are statutes upon the subject. In the second place it is for the protection of the patient, and not for the protection of the doctor. Objection overruled. 10

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. s.)
Judge.

Q Why didn't you tell them about the gonorrhoea? A I simply didn't answer because they didn't ask me any questions. They simply asked me what happened the 27th of January and so on and I answered. They haven't asked me what happened before that. And furthermore it is ethical in the profession not to mention any contagious or any such diseases, which might be immoral, and that is why,—not to implicate anything of the kind,—I kept quiet on the subject. 20

Q Well, if it is ethical why have you violated the ethics here today? A Which? 30

Q You understand.

The Court. Do you object to that.

Mr. McDermit. Yes, I object to the question. Obviously because he has been compelled to tell his story?

Q Why?

The Court. You do not admit there is a principle of law which protects a physician in confidential communications, do you? 40

Nathaniel J. Shapiro, cross.

Mr. Mott. I admit he is entirely protected on his entire direct examination. He was not obliged to tell it. He told this thing—blurted it out on his direct examination.

10 *The Court.* Objection sustained. He did not blurt it out. Very carefully told us all about it.

Mr. Mott. I mean he volunteered it on his direct examination.

The Court. The objection is sustained. Were you in custody then?

Witness. Why, no.

The Court. Is this operating table that you said you had in your office an operating chair, that you said you had in your office?

20 *Witness.* This is a table, your Honor.

The Court. Did you say you had an operating table or operating chair?

Witness. I think an operating table I said.

The Court. Is that operating table covered with leather, Doctor?

Witness. Yes, sir.

Q Now, will you tell me about the conditions that existed on the 27th of January, which induced
30 you to curette this Rose? A Why, when I was called into the house and after I examined her and I found that there was something lodging in the vagina and that she was bleeding, I immediately deduced or concluded, rather, that she was bleeding because there was an obstruction in the mouth of the womb, and I tried to remove it—to dislodge it with my fingers. I couldn't. So after I administered ergotol per mouth I thought I would
40 wait and see whether this would have any effect and when I found that it didn't have any effect I thought that the best treatment is, and which

Nathaniel J. Shapiro, re-direct.

treatment others are giving, is to remove this obstruction by instruments.

Q Did you do anything to her before Dr. Silverstein arrived? A No, sir.

Re-direct.

Q Is there any other explanation you want to make or anything further that you have omitted?

10

Mr. Mott. I object. I don't know what the doctor is going to say to that. If the doctor will indicate what is coming some way. It may be competent and it may not. I have no objection to your asking him while he is on the witness stand what it is you wish to ask him about.

Mr. McDermot. Shorter proposition to ask him whether there is anything else he desires to say in the matter in the way of his treatment of this matter.

20

The Court. Confer with your client, and get the information to base the question on.

Mr. McDermot. It is in relation to the prescriptions.

The Court. Ask your questions.

30

Mr. Mott. Let me ask one question before you start. Doctor, how profusely was she bleeding on the 27th?

Witness. Why, she was bleeding enough to soak the bed clothes and everything that was around her.

Mr. Mott. So that at a glance on entering the room you could see that she was bleeding profusely?

40

Witness. Yes, sir.

Nathaniel J. Shapiro, re-direct.

Q What did the prescription that the question was raised about, Ex. S. 2 for the State for identification—what is contained in that prescription?

Mr. Mott. I haven't asked a word about that.

10 *Mr. McDermitt.* You have got that in. His theory is that he is entitled to explain the prescription.

The Court. You asked him what he give that to Rose Lebowitz for and he answered that he did not remember, and he went on and said that it was given sometimes for excess of urination and some other features that he described.

Mr. McDermitt. What I want to do now is to ask what that prescription contained.

20 *The Court.* You did not want to ask him what it contains until it is offered. It is not worth while going into. Just reframe your question.

Q What did the prescription Ex. D. 2, what did that formula contain? What is in that formula? What are the constituent parts of the formula? A It is tincture of viburnum, prumifolium, mistura, hellomus compound.

30 Q Start to read that over again? A Mistura hellomus compound.

Q What extent, how much? A How much, two grammes.

Q Go ahead. A Fluid extract of ergot.

Q How much of that? A Three grammes.

Q What else? A Tincture of opia—opium, one gramme.

Q What else? A Elixir of simplex to make two ounces. Teaspoonful every hour.

40 Q That is what that says, does it? A That is all.

Nathaniel J. Shapiro, re-cross.

Q Is that prescription used for headaches—backaches? A It is used for pains, you see. The reason for this prescription—those two ingredients—

The Court. What is the necessity of going into what it is used for. The question is what he gave it to her for. 10

Mr. McDermit. There is no proof here that he gave it to her.

The Court. Did you not say that you gave it to Rose Lebowitz?

Witness. No, sir; I didn't say I gave it to her. I said that this looks like my prescription, but I don't remember giving it to her. If I may explain, your Honor, why I was in doubt before as to this prescription; this has two ingredients here, one is to control bleeding and one is to produce bleeding and another to control bleeding. Now, I don't believe I would, or any other doctor, write up a prescription like that to try at the same time to stop bleeding and at the same time to produce bleeding. Now, this formula is rather unusual. I do not remember writing such a formula and that is why I was in doubt whether it is my prescription or not. 20 30

Q That formula is given for a great many different ailments, is it not, to relieve pain? A It may.

Re-cross.

Q And just because you didn't understand why you had written this prescription that way you are in doubt as to whether it was your handwriting or not, are you? A Yes, sir.

Q You mean that, do you, doctor? A I mean to say that I was in doubt as to whether I wrote it. 40

Nathaniel J. Shapiro, further cross.

Q Well, all right. And that is the reason why you was in doubt? A Yes, sir.

Q What is there in there to stop bleeding? A The ergot.

Q Anything else? A Excuse me, the opium.

Q Well, which is it? A The opium.

10 Q And you say there is opium enough in this prescription to do that? Do you? A Yes, sir.

Re-direct.

Q Will ergot stop bleeding, too? A What is that?

Q (Question repeated). A Ergot may act both ways; may stop and produce it.

Q So either one will stop or produce? A Yes, sir.

20 Q That is the reason why you thought the prescription was peculiar, is it? A Yes, sir.

Q Because it seemed to be one element against the other? A Yes, sir.

Q In cases of confinement where there is much bleeding ergot is good to stop it, isn't it? A Yes, sir.

Q And there is nothing unusual about the use of ergot, is there? A No, sir.

Further cross.

30 Q Why is it you can't tell us whether this was for Rose or not? A Well, I don't remember writing this prescription for her. I don't deny entirely that I wrote it but I don't know whether I wrote it for her or not. Such a prescription in pencil may be copied or anything like that.

40 Q Doctor, you know whether it is your handwriting or not? Nobody with pencil can copy your handwriting. Are you again in doubt as to whether that is your handwriting? A Well, I don't deny the prescription.

Nathaniel J. Shapiro, further cross.

Q Answer my question, sir, are you in doubt as to whether or not that is your handwriting? A No.

Q Then why do you make these makeshifts? A On account of the formula.

Q Are you ashamed of the formula? A Yes, sir. 110

Mr. McDermitt. Wait a minute. That isn't fair.

The Court. What was the answer he made?

Q Why are you ashamed of that formula? A Because it is two elements working against each other.

Q Well, it is your handwriting? A Well, I must admit it if you want me to.

Q Why, my dear sir, I don't know as I care 20 whether you tell the truth or not. I should think you would want to. I am not asking you to tell the truth. A I want to tell the truth.

Mr. McDermitt. Yes, you are asking him to tell the truth.

Q I don't want you to admit anything. I am asking you is that your handwriting? A I said it was.

Q Then why do you qualify it every other time? 30 A I don't understand you.

Q What? A I don't understand you.

By the Court.

Q When you sent for Dr. Fischer, were you there, on Friday, February 7th, when he arrived? That was the day he arrived? A Yes, sir.

Q Were you there? A Yes, sir.

Q Did you look at her first? A Yes, sir.

Q And was she bleeding from the nose? A No, 40 sir.

Dr. Louis Reich, direct.

Q Did you examine her private parts? A Yes, sir.

Q And there was foul vaginal discharge? A No, sir; not at that time, when I examined her. I may add that Dr. Fischer exaggerated the thing.

10 Adjourned until to-morrow morning at ten A. M.

ESSEX COUNTY GENERAL QUARTER
SESSIONS COURT.

January 28, 1914.

20	STATE <i>vs.</i> NATHANIEL SHAPIRO.	}	<i>Indictment No. 87 Abortion.</i>
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THIRD DAY.

Appearances as before stated.

DR. LOUIS REICH, sworn for the defendant. ?

30 *Direct examination* by Mr. McDermit.

Q Doctor where do you live? A 677 High street.

Q In the City of Newark? A Yes, sir.

Q And how long have you resided in the City of Newark? A Over twenty-two years.

Q Are you a practicing physician? A Yes, sir.

Q How long have you practiced? A Be eight years next May.

40 Q And a graduate of any medical college? A Yes, sir.

Dr. Louis Reich, direct.

Q What college? A Medical Chirurgical College of Philadelphia.

Q And when were you graduated from that college? A It was either the 28th or 29th of May, 1906.

Q You are licensed to practice in New Jersey, are you? A Yes, sir. 10

Q Do you know where the Beth Israel Hospital is in Newark? A Connected with it.

Q And what is your connection at the hospital? A Adjunct surgeon.

Q What? A Adjunct surgeon—assistant surgeon.

Q Do you know Dr. Shapiro, the defendant? A Know him by sight.

Q And were you attached to the Beth Israel Hospital in February, 1913? A Yes, sir. 20

Q And was your attention attracted in any way to a patient there by the name of Rose Lebowitz? Was your attention in any way directed to a patient there by the name of Rose Lebowitz? A Yes, sir.

Q And did you treat her? A No, sir.

Q Who had charge of taking care of her? A She was in the gynecological ward and she was under Dr. Greenfield—either Dr. Greenfield or Dr. Parsonnet. They are the two men that have charge of that ward, but I understood it was Dr. Greenfield's case at that time. 30

Q Do you remember when she died? A I saw her only once, the day—the morning of the day that she died.

Q And what time was it, doctor, that you saw her on the morning of the day that she died? How did you come to see her? What brought you to that room? A I had a patient on the bed next to her. I went to see that patient and this girl's condition was such that it attracted my attention. She 40

Dr. Louis Reich, direct.

was in—moaning and very restless. She kept on hammering her chest with her hands all the time, and I naturally—my attention was drawn to it and I went over at the time and spoke to the nurse that was standing alongside of her. It was Miss Gross at the time and I asked her what was the
10 trouble.

Q Now, what else did you—not what you told Miss Gross—but what did you do, if anything—what other observation did you make as to the patient? A Well, as far as I can remember correctly, and I believe it is just what occurred, I went over to the bed and saw the patient was unconscious and she was so very restless that it drew my attention to it. I had no interest in the patient. And the nurse told me that—

20 Q Not what the nurse told you. You found that she was unconscious? A Yes, sir.

Q What do you mean by that, doctor? A She was moaning and she was absolutely unconscious. And I tried—I took her pulse, which was very feeble—she was almost pulseless, and I—well, the only way I can say is what I inquired.

Q You can't tell us?

The Court. Only what you saw.

30 *Witness.* I saw the girl was unconscious and expressed my opinion that she would be dead in a couple of hours time.

Q Now, do you know anything about what instrumental abortion is? A Do I know?

Q Yes. A Read a good deal about it.

40 Q Now, what would be the method of treatment of a case where it appeared upon your arrival that blood was flowing profusely from the private parts and where it appeared by a digital examination of those parts there was some obstruction at the mouth of the womb, and the obstruction was not

Dr. Louis Reich, direct.

of a very large amount, but that you were unable to remove it, and what would be—what would you do in such a case as that?

Mr. Mott. If this question assumes that the physician knew that an abortion had been performed—it partly assumes that—all good and well. I wouldn't have any objection to the question; but I think the facts of whether an abortion had been performed or whether the practitioner knew it should either be distinctly stated or entirely eliminated, because it makes a difference—would make a difference in the answer. 10

The Court. Your objection is that the hypothetical question does not include possibly all of the facts which the defendant's testimony tends to show, because the defendant, as the court remembers it, stated that in his opinion the woman had aborted. 20

Mr. Mott. Yes, sir.

The Court. Not that an abortion had been performed, but that she had aborted. I do not think it is necessary to put in a hypothetical question all of the facts. Is not the question only whether the facts which are in the hypothetical question have been shown? 30

Mr. Mott. Yes. My only objection to this question was not that it did not involve all of the facts, but simply that it is not clear whether the question assumes that the practitioner knew that the woman had aborted. If that is made clear I haven't any objection to the question.

The Court. There is another criticism to the question which runs to the helpfulness of the answer and that is that the question con- 40

Dr. Louis Reich, direct.

tains the statement that she was bleeding from the private parts. That is altogether too indefinite. You will have to state—in order to get a definite answer, more particularly what particular—

10 Q Bleeding through her private parts. A You mean the uterus.

The Court. You mean the neck of the uterus?

Mr. McDermit. Yes, sir.

The Court. What have you got to say to the prosecutor's objection as to whether or not there is to be included in your question the further fact that she had aborted?

20 *Mr. McDermit.* I have expressly excluded—my question that I am trying to get from the doctor is assuming that he was called in where there was a discharge—flow of blood of the character in question and where he had made a digital examination and found some obstruction, what his course of procedure would be. That is the question, and that is the proof in the case so far as the defendant is concerned, as to his acts. It is not a complete hypothetical question, but it will be followed by the
30 other questions. I am not obliged to put those all in one question the same as the famous lawyer did in the case in New York that came from the west—asked a hypothetical question twenty days long—the celebrated Thaw case I think it was. I am trying to get intelligent answers and I think legally I am entitled to put that in.

The Court. It is left out?

40 *Mr. McDermit.* It is left out, yes, sir.

Dr. Louis Reich, direct.

The Court. You want the witness to assume now, that there had not been any abortion?

Mr. McDermit. No.

The Court. That is to say that the foetus had been in no degree removed or expelled.

Mr. McDermit. No, your honor, I don't assume anything of the kind. 10

The Court. You leave that out of consideration?

Mr. McDermit. Leave that out altogether. That condition showing, after he made the digital examination, what he found, what he as a practitioner would have done—course he would pursue.

Mr. Mott. I object to the question as it has no bearing or relation to this case, for Dr. Shapiro said that he was of the opinion at that time that the woman had aborted, and the treatment for a woman who had not aborted has no relation to this case, and I object to it. 20

Mr. McDermit. He said in his testimony upon cross examination that he was of the opinion that there may have been an abortion. He didn't know definitely. He believes—it is his opinion. Now, we are speaking of the treatment and of the facts in the case as they are on the record. I have a right to sub-divide my proposition as long as I stay clearly within the record. 30

The Court. Let us have your proposition. Your question as originally asked was amended by the examining counsel after some suggestions, and then there has been so much discussion that perhaps it would be wise to restate the question.

Mr. McDermit. I will withdraw that question. 40

Dr. Louis Reich, direct.

Q If you were called on a message—telephone message—that the woman was bleeding, and you responded to the call, and you found upon your arrival at the house a young woman in the neighborhood of nineteen or twenty years of age, lying in the bed profusely bleeding from—what do you
10 call the technical name— A Neck of the uterus.

Q Neck of the uterus, and you made a digital examination with your finger and you found some obstruction near the mouth or neck of the womb, whichever may be the technical term for it, and you were unable to remove that; the obstruction, however, was not large—but you were unable to remove it by the mere use of your fingers or hands, and the bleeding was continued, what
method would you adopt for its treatment?

20 *Mr. Mott.* I object because unless this was a case of abortion it has no bearing on this issue because Dr. Shapiro says that from his examination he concluded that the woman had aborted, naturally perhaps—didn't say how—but that she had aborted, and therefore, he gave certain treatments. Now, that is the very crux of the situation and it has no relation to this case unless that fact is incorporated.

30 *The Court.* The difficulty with your position, Mr. Prosecutor, is this, that, assuming the situation as stated in the question—the physician calling and acting in the utmost perfect good faith, what would he do at that point without anything else. That is what I understand your learned adversary is trying to develop. Upon that situation what would be the judgment of this physician as to what would be the right thing to do. The difficulty
40 with the question seems to me is that it in-

Dr. Louis Reich, direct.

volves the idea—forced upon the witness—that it is at once advisable to remove whatever was in there. He hasn't yet stated that it is the necessary or proper thing to do. Perhaps it might be very proper to try to stop the bleeding or to treat the patient in some other way. You have got to first ask him what his opinion is and what the situation is at the point before what the treatment was going to be. If you change the end of your question about asking what the treatment is and ask him first to tell what he thinks the situation is, then he can go on and tell us what he thinks is the proper thing to do. 10

Q Now, assuming that the conditions exist that I have placed in the question that I have already asked you and you were called there, what would be your opinion as to the situation there? A I would be governed by the case. If the patient had no temperature— 20

The Court. Never mind going on about what other things were in it. The question is can you on that state of facts give an opinion as to what is the trouble—what is the difficulty with the woman?

Witness. Yes, sir. 30

The Court. Is that enough?

Witness. Well, the fact that she is bleeding and there is a protrusion there shows she has either aborted part of the foetus or she is going to abort the entire mass, and the treatment of the case would be governed entirely by the condition of the patient. If the patient—

The Court. On that state of facts it might be a cancer, might it not, that caused a chronic bleeding? 40

Dr. Louis Reich, direct.

10 *Witness.* A patient nineteen years of age you wouldn't think of that. If it was a forty year old patient or forty-five it might strike you it would be a cancer, but not in a 19 year old case. As the case presents itself here if the patient would have fever and suffered pain, I would suggest that the patient be curretted, immediately, that is be put to sleep, or if the womb is open sufficiently and there isn't too much in there it could be removed without putting her to sleep, just causing a little pain. But if the patient was a very nervous patient and too much to be removed I would put her to sleep and remove it. But if there was no temperature—if the patient had
20 no temperature, which we meet every day, and just bleeding, I would just pack her and try to stop that bleeding, and the rest would come away by itself. It would be governed entirely by the condition of the case. Those are the two methods that could be applied, either packing or removing.

 Q What would be prescribed by way of prescription, anything? A All depends on the condition, if you were to remove I would prescribe nothing—I would prescribe the ether or chloroform, whichever you might choose.
30

 Q That would be for the purpose of— A Curretting.

The Court. For the purpose of relieving the patient of the pain, would it not?

Witness. Pain and the temperature which the conditions might cause blood poisoning, if you didn't remove the parts which are causing the trouble—the foreign matter.
40

NOT CROSS EXAMINED.

Sarah Van Gilder, direct.

SARAH VAN GILDER, sworn for the defendant.

Direct examination by Mr. McDermit.

Q You are the young lady that is the directing nurse at the Beth Israel Hospital? A Yes, sir.

Q You have already been sworn in this case for the State? A Yes, sir.

10

Q I asked you to bring in some records of the hospital this morning showing the keeping of the temperature of Rose Lebowitz from the time of her admission in February in your institution until the time she died. Have you brought them with you? A Yes, sir.

Q I see on the outside of the book the name "Miss Rose Lebowitz, admitted 2-7-13, died 2-11-13" that is the record of her admission and death?

A Yes, sir.

20

Q Your handwriting? A No, it is not.

Q Whose handwriting is that in? A The bookkeeper's.

Q I show you seven different papers and ask you to place those in their regular order commencing from the first day of the patient's admission and tell me whether or not those are the records kept by the hospital for this particular patient?

Mr. Mott. These records are not in the handwriting of this witness. 30

Mr. McDermit. You better wait until you see. There is quite some different handwriting on there.

Mr. Mott. I object to the question until counsel finds out whether they are her handwriting or not. I may say to counsel I do not intend to make the slightest objection about the production of these nor do I intend to require the person to be brought here who did write them, but I want that determined. 40

Sarah Van Gilder, direct.

The Court. You want the facts?

Mr. Mott. Yes, sir.

The Court. They are not legal evidence because they are not officially kept as records. The only legal evidence would be the people who made the record who might use the record for the purpose of refreshing his memory. As I understand it you waive that, Mr. Prosecutor?

Mr. Mott. For the present, yes. I am not objecting on that ground now but I want counsel to develop all the facts as to whose handwriting they are.

Mr. McDermit. I will develop that. I will first ask that this one paper be marked.

Paper marked Ex. D. 2 for identification.

20 Q There is some printing on the top of that sheet. I show you D. 2. Where does this come from? What is the name of the institution which this comes from? A Newark Beth Israel Hospital.

Q That appears upon that sheet, does it? A Yes, sir.

Q You are directing nurse there, are you? A Yes, sir.

30 Q And were directing nurse in charge of all the other nurses in February, 1913? A Yes, sir.

Q And you had access to all the different papers made there and supervision of them, had you not? A Yes, sir.

Q And these papers were made under your supervision? A Yes, sir.

Q Now these reports were given to you daily? A No; they are always kept on the ward and I always looked over them as I went into the ward.

40 Q You examined them each day, did you? A Yes, sir.

Sarah Van Gilder, direct.

Q Is that one of the reports had by that hospital at that time? A Yes, sir.

Q And look at the handwriting. How many different kinds of handwriting are there if there are more than one? A There is only one on this.

Q Whose handwriting is that, do you know? A No; I couldn't say. 10

Q What does that paper purport to be that you have in your hand? A This is the temperature chart.

Q And is that exhibited upon the wall during the time that the patient is in the ward? A Yes, sir; it is always there.

Q And the handwriting would be, in the particular ward she was in, in whose handwriting? Who had charge of her? A Why, this was made out at night, and I think it is either Miss Potash or Miss Venidenstein's handwriting. I couldn't say just which one it is. They were both on duty. 20

Q Don't you see their handwriting often and sufficient enough to be acquainted with them? A Yes, sir; but when you have twenty-five handwritings to look after you can't always distinguish one positively.

Q You think that is in the handwriting of Miss Potash or— A Miss Venidenstein. 30

Q I show you another paper to be marked D. 3 for identification headed "Laboratory findings" and ask you whether that is part of the record that your hospital kept at that time—the time Miss Rose Lebowitz was there? A Yes, sir; it is.

Q What does that paper purport to be? A The examination of the urine.

Q Whose handwriting is that? A One of the physicians.

Q Which physician, do you know? Can you identify that handwriting? A No, I cannot. 40

Sarah Van Gilder, direct.

Q Have you seen that paper before to-day? A Yes, sir.

Q That paper came under your observation at the time? A Yes, sir.

Q Do you know whether that is Dr. Greenfield's handwriting? A No. I know it isn't, because
10 Dr. Greenfield is the visiting doctor. One of the house doctors.

Q Dr. Zimmerman? A No.

Q Look at the back of that and see what the back is endorsed. Any handwriting on the back of that? A One of the nurses has written this.

Q Now, what case is that in? A In the case of Rose Lebowitz.

Q And does it say anything about the names of any physicians there in attendance? A Dr. Green-
20 field and Dr. Zimmerman.

Q Who was Dr. Zimmerman? A He was an interne at the hospital at that time.

Q Is he still there? A No; he is not.

Q How long has he been gone? A I think he left the 1st of June.

Q Where is he now? A Brooklyn.

Q And whose handwriting is that on the back of that paper? A Why, I think it is Miss Veni-
30 denstein's.

Q She is here? A No; she is not.

Q Was she here yesterday? A No.

Q That was handed in to you, was it? A It was handed in to the office, where the records are kept.

Q Was handed to you first? A No.

Q Now, I show you exhibits for identification D. 4, D. 5, D. 6, D. 7 and D. 8. Now these several
40 exhibits from D. 4 to D. 8 I hand to you and ask you whether they are sheets of the Newark Beth Israel Hospital that have to do with the treatment

Sarah Van Gilder, direct.

of the case of Miss Lebowitz who died at your hospital on February 11th. A They are the records kept of Miss Lebowitz while in the hospital.

Six papers marked Exhibits D. 3 to D. 8 for identification.

Q Put those in order, commencing with her admission on the 7th, and give me the sheets in rotation, first Monday, Tuesday, Wednesday—whenever the days were—you are familiar with the sheets. 10

The Court. February 7th was Friday.

Q Now, what does the first sheet show of the date of entry into the hospital? A Do you want me to read the chart?

Q No, just answer the question, please. A Please read the question. 20

Q What does that show the date of entry into the hospital? A Shows the entrance, the date and time of entrance into the hospital, and also the treatment of the patient as soon as she was admitted.

Q Yes. Now, what date does that show the patient was admitted and who does it show was admitted? A Miss Lebowitz, admitted February 7, 1913, at 7.35 P. M. 30

Q Now, does that statement show her physical and mental condition at the time of her admission or just her physical— A Just her temperature, pulse and respiration.

Q And can you say in whose handwriting that was? A I think it is in Miss Potash's.

Q She is still with you at the hospital? A No; she is through at the hospital.

Q She was here yesterday, however? A Yes, sir. 40

Sarah Van Gilder, direct.

Q Where is she working now? A At the Isolation Hospital at Soho.

Q Now, does that sheet show the different number of times from the time she was admitted until the time that she died—her temperature? A Yes, sir.

10 Q And how often was her temperature taken?

A It was taken every four hours as a rule. Sometimes it was taken a little before the four hours and sometimes a little after.

Q What was her temperature according to the record of the hospital that you had in your hand at her admission?

Mr. McDermit. I understand the prosecutor isn't objecting to the temperature, as far as the temperature is concerned. Is that right?

20

Mr. Mott. I have made a suggestion, if I am allowed to see those sheets—I haven't any doubt, your honor, that the record is correct—the hospital record is correct. I am not going to contest that. I am not questioning the record of the hospital.

Mr. McDermit. There are the laboratory findings.

30

Mr. Mott. That is on a different basis. I don't know anything about that.

Mr. McDermit. It may be that we may agree upon some parts of the record. If so, it will probably expedite the matter some.

Mr. Mott. May I ask the witness a question? Are these rectal or mouth temperatures?

Witness. Rectal temperatures.

40

Mr. Mott. I am willing that the witness should refer to these sheets and state what the temperatures were.

Sarah Van Gilder, direct.

Q Now, will you just take the first exhibit and just, if you will, please read first the temperature as taken from the time she was admitted until the last temperature was taken. There are not so many. Read slowly. A February 7, 7:35, pulse 106—

Mr. Mott. Just the temperature, please. 10

Witness. Temperature 102.1.

Mr. Mott. That is one-tenth.

Witness. One-fifth.

Mr. Mott. I won't object to your stating the pulse either—both pulse and temperature.

Q Just distinguish, say temperature, or pulse, so and so. A At that time the pulse was 106, respiration 26.

Mr. Mott. Give the three. 20

Mr. McDermitt. Why not let the remarks go in?

Mr. Mott. No. I am willing that the witness may read the temperature, respiration and pulse.

The Court. You better start over again. Start Friday night.

Witness. February 7, at 7.35, pulse 106, temperature 102.1, respiration 26.

Q Now, so we may understand that at the start, the temperatures are rectal temperatures, are they? A Yes, sir. 11 P. M., pulse 90, temperature 101.2, respiration 22. February 8th, 1913, 4.00 A. M., pulse 110, temperature 103.2, respiration 22; at 5:30 A. M., pulse 104, temperature 101, respiration 26; 8.00 A. M., pulse 98— 30

Q What date? A February 8th, 8.00 A. M., pulse 98, temperature 100.1, respiration 24; 12.00 noon, pulse 86, temperature, 98.2, respiration 22; 4 P. M., pulse 96, temperature 88.2, respiration 24; 40

Sarah Van Gilder, direct.

8 P. M., pulse 96, temperature 102, respiration 22; 12 midnight, pulse 92, temperature 100.2, respiration 22. February 9, 1913, 4 A. M., pulse 90, temperature 98.1, respiration 22; 8 A. M., pulse 92, temperature 98, respiration 22; 12 noon, pulse 106, temperature 100.2, respiration 24; 4 P. M., pulse 98, temperature 99, respiration 24; 8 P. M., pulse 90, temperature 99, respiration 24; 12 midnight, pulse 86, temperature 98, respiration 22. February 10, 1913, 4.20 A. M., pulse 112, temperature 103.3, respiration 26; 6.45 A. M., pulse 114, temperature 102, respiration 26; 8 A. M., pulse 104, temperature 101, respiration 24; 12 noon, pulse 110, temperature 99, respiration 26; 4 P. M., pulse 116, temperature 101.4, respiration 24; 8 P. M., pulse 112, temperature 100.2, respiration 24; 12 midnight, pulse 96, temperature 100.2, respiration 22. February 11, 1913, 4.45 A. M., pulse 122, temperature 101.4, respiration 20; 8 A. M., pulse 128, temperature 101, respiration 26; 12 noon, pulse could not be taken, the temperature was 102.3, respiration 28; 4 P. M., pulse not taken, temperature 103.3, respiration 28; at 7.45 P. M., temperature 102.2, pulse and respiration not taken.

Q The last temperature and pulse and respiration was taken when? A The last temperature was just the temperature taken; the pulse was imperceptible.

Q Pulse was imperceptible. At what time was that? A 7.45.

Q In the morning? A In the evening.

The Court. She has already given that. No use taking the time asking the same information over again.

Q Now, on these same sheets, start back again with the first sheet showing the day of entrance into the hospital, please.

Sarah Van Gilder, direct.

Mr. McDermit. I now offer to prove—

The Court. Ask the question before you make the offer. There isn't any open question on the record.

Q What is your position at the Beth Israel Hospital?

10

The Court. You have asked her that. What is the information you want?

Mr. McDermit. I want to get the information from these sheets.

The Court. Ask her the question and then see if it is objected to.

Q I hand you these exhibits again, the exhibits 4 to 8 inclusive, and ask you whether those records there do not show each day the remarks of the physicians and nurses in attendance as to the condition of this particular patient?

20

The Court. Answer that question yes or no.

A Yes, sir; they do.

Q Now, I ask you to read—I ask you if there is any other record at the hospital that is kept of these cases? A No; there is not.

Q That is the original record, is it? A Yes, sir.

Q And that record is in your possession, is it?

30

A It is in the possession of the bookkeeper at the hospital.

Q You identify that as the record, do you? A Yes, sir.

Q Now, in whose handwriting are the remarks on the first day there? A Why, it is in the handwriting of either Miss Potash or the night nurse on duty there.

Q Now, the remarks would be either by the day or night nurse—either by Miss Potash or the other

40

Sarah Van Gilder, direct.

nurse? A Some are by the night nurse and some by the day nurse.

Q Nobody else except those two nurses would have any right to make any entry on that particularly? A If one nurse relieves and the other off duty, the other nurse would make the record
10 of the time she was on duty.

Q Is there a chronological statement from the time she was admitted until the time she died—Miss Lebowitz—contained in your record there, showing remarks each day as to her situation, outside of the respiration, pulse and temperature? A Yes, sir.

Q There is no other record, is there? A No other record.

Q And no one had authority to make this record there except the nurses under your employ? A The nurses that are taking charge of the patient.
20

Q Read the first day's report as shown by your records there under the head of remarks.

Mr. Mott. I object because this is not a public record, and this witness has no—

The Court. It is incompetent and hearsay. Why is this record any better than a docket's entry of some action that a lawyer takes in a law suit and puts in his book in his office. What is the difference?
30

Mr. McDermit. Why, a great deal. This record has now been admitted, as far as our record is concerned here, to contain the temperature, pulse and respiration, by consent.

Mr. Mott. I beg pardon. Nothing has been admitted. I consented that the witness might testify and read from the papers, but the papers have not been admitted.
40

Sarah Van Gilder, direct.

Mr. McDermit. I must have misunderstood the prosecutor's attitude because he said he had no objection to having the temperature taken stated.

The Court. The temperature, pulse and respiration has gone in by consent. Now, you are asking that the remarks of some interne or physician in the hospital, entered on some record kept in the hospital, shall go in evidence. It is hearsay and totally incompetent. 10

Mr. McDermit. Your honor may overrule it, but I want to be in position to state my position.

The Court. I am waiting for you to state it.

Mr. McDermit. The State can't consent that part of the record go in and then object to the balance. 20

Mr. Mott. I haven't consented to anything.

Mr. McDermit. The record is or is not—

The Court. The record has not gone in evidence. It was allowed to be used by this witness to testify, just as if you and Mr. Mott had stipulated that the temperature was such and such. Mr. Mott allows it to come in for whatever it is worth. You accepted that consent. 30

Mr. McDermit. I offer in evidence the temperature, pulse and respiration.

The Court. It is already in.

Mr. Mott. I think there will be a misapprehension. Counsel says he offers in evidence the temperature, pulse and respiration. I apprehend he means so much of that report as regards that. I want to know what the understanding is. If that is his understanding I object to that. 40

Sarah Van Gelder, direct.

The Court. It is perfectly clear what the legal situation is.

Mr. McDermit. If your honor please, the court I understand rules with me and says that that is in evidence now.

10 *The Court.* No. The fact has been testified to by Miss Sarah Van Gelder, the witness, by consent.

Mr. McDermit. Now, I offer the record.

The Court. You ought to finish one thing at a time. The question now before the court is whether or not Miss Van Gelder should be permitted to answer the question. You asked her if she would read from the record.

Mr. McDermit. I withdraw that question.

20 *The Court.* What is the next offer?

Mr. McDermit. I offer now the records of the hospital as testified to by Miss Van Gelder showing the pulse, temperature and respiration of the deceased.

Mr. Mott. I object.

The Court. Objection sustained.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

30 WM. P. MARTIN, (L. S.)
Judge.

The Court. That is contained in exhibits 4 to 8 inclusive for identification.

40 Q I ask you to look at the handwriting on the exhibit at 12 noon on Friday 9, written in black ink, and ask you whether you know whose handwriting that is in? A I couldn't say positively. I think it was Miss Gross wrote that. She was on duty—she was in charge of the ward at the time.

Becky Gross, direct.

Q This lady that was over here? A Yes, sir.

Q I ask you to look at the other handwritings in black through the different pages of them and ask you whose handwriting they are? A Why, some of it is Miss Gross and some of it is one of the other nurses. I don't remember just which one it was. ~ 101

Q Is there any part of this handwriting your handwriting? A No.

Q How much of it, if any, was made while you were present by anybody? A Not any of it.

Q Not any of it? A No.

NOT CROSS EXAMINED.

BECKY GROSS recalled for the defense.

Direct examination by Mr. McDermit.

20

Q You are connected with the Beth Israel Hospital, I believe? A Yes, sir.

Q Sworn yesterday? A Yes, sir.

Q And you are a nurse there? A Yes, sir.

Q And you made records in the case of Miss Lebowitz? A Yes, sir.

Q Will you turn to those papers and tell me what records you made and then read the records?

The Court. Referring to exhibits D. 4 to 8 inclusive for identification. 30

Mr. Mott. I object.

The Court. You haven't laid any foundation for it. Objection sustained.

Q You are a nurse in the hospital there? A Yes, sir— not at present. I was.

Q You were in attendance upon this girl? A Yes, sir.

Q I asked you a question a moment ago, whether your handwriting was there upon these records. Yes or no. A Yes, sir. 40

Becky Gross, direct.

Q And are they—is it a record in regard to this particular case—this Lebowitz case? A Yes, sir.

Q Where is your first entry? A This is my handwriting.

The Court. What are you referring to?

10 *Witness.* To this case.

The Court. Do not tell us what it is. Let me see the sheet. Is it the first item?

Witness. Second page.

The Court. This first item?

Witness. Yes.

The Court. First item on Ex. D. 7 for identification.

Witness. Shall I read it?

20 *The Court.* No; do not read it. You have answered the question.

Q You wrote something there, did you? A Yes, sir.

Q Now, turn to any other part of that same exhibit—that same particular page—and see if you have written anything else on that page? A No; not on this page.

Q Turn over to the next page, to the next exhibit. A I wrote this (indicating).

30 *The Court.* What are you referring to, what is in black ink?

Witness. In black ink; yes, sir.

The Court. And referring to D. 5 for identification.

Q Turn over to the next one. A Yes, sir.

Q There is a large number of entries there, are there? A This is my handwriting (indicating).

40 *The Court.* Referring now to something in black?

Becky Gross, direct.

Witness. Yes, sir.

The Court. You made these entries at the time, did you not?

Witness. Yes, sir; every time the patient—

The Court. You made them at the time?

Witness. Yes, sir; at the time of the treatment. 10

The Court. At the time the matter in the entry happened?

Witness. Yes, sir.

The Court. D. 4 for identification.

Q Now, turn to the next page, please, your entry there. A This is my handwriting (indicating).

Q You made the last entry? A Not the last of the red ink, but with the black ink. 20

Q The last in black ink? A Yes, sir.

The Court. D. 6 for identification is the last page.

Q Now, turn to the first page, D. 8 for identification, and tell me whether that handwriting is yours? A No, sir.

Q Do you know whose handwriting—

The Court. She did not identify anything on that. Proceed. 30

Q —is any of that your handwriting? A No, sir.

Q Do you know whose handwriting this is in?

The Court. Referring to something in black on D. 8 for identification?

Mr. McDermit. Yes.

Witness. I couldn't say. It looks like Miss Schwartz, one of the nurses that took charge of the patient some times. 40

Becky Gross, direct.

Q Now, you had taken her temperature? A Yes, sir.

Q And you had also made your report? A Yes, sir.

Q On the same page? A Yes, sir.

10 Q And you have taken the temperature, respiration— A And pulse.

Q And pulse; and you report daily? A About treatment?

Q About treatment. That is in your handwriting? A Yes, sir.

Q Pulse taken, at the time you took it? A Yes, sir.

Q At the Beth Israel Hospital? A Yes, sir.

Q In charge of this woman? A Yes, sir.

20 Q And written out immediately? A Yes, sir.

Q At the time that you did it? A Yes, sir.

Q Read from the report—read from the Exhibits that you have selected as showing your handwriting as to the pulse, respiration, temperature and condition of the patient made upon those sheets.

The Court. In her own handwriting?

Mr. McDermit. Yes, sir.

30 *The Court.* You are confining it to that?

Mr. McDermit. Yes, sir.

The Court. And you are asking for information in addition to the pulse, respiration and temperature?

Mr. McDermit. Yes, sir; in her own handwriting.

The Court. You do not want her to read the pulse, respiration and temperature over again.

40 *Mr. McDermit.* No, sir.

Becky Gross, direct.

The Court. You have included it in the question.

Mr. McDermit. I know, but you have excluded the other. I am now asking to put it in. As I understand the record they are all excluded, pulse, respiration and temperature.

The Court. No. What Miss Van Gilder said is in evidence. The paper itself is not in evidence. 10

Mr. McDermit. I want to get the paper in about pulse, respiration and temperature.

The Court. Objection sustained, because the consent of the prosecutor does not go that far. Your question is at this time, as the court understands it, and the court desires to be corrected if it does not, "Read from that record the pulse, respiration and temperature, and read also the remarks which you have made." 20

Mr. McDermit. I withdraw that question. That is not the question I want to put. The court is right in its ruling. It is indefinite.

Q Read from that paper the temperatures personally taken by you and recorded in that paper, the pulse taken by you and recorded upon that paper, the respiration taken by you and recorded upon that paper, and such other remarks as you have recorded upon that paper at the time you took the pulse, temperature and respiration, applying to the deceased. 30

Mr. Mott. I object to the latter part, so far as it involves such other remarks.

The Court. Objection sustained.

Mr. Mott. May I make a suggestion? Here is a memorandum made at the time by the witness. I suggest to counsel if he will ask 40

Becky Gross, direct.

any questions the witness would have a right, if she doesn't remember, to refer to this memorandum to refresh her memory.

10 *The Court.* It has not been demonstrated yet that she does not remember. She can not use the memorandum until it is demonstrated that she does not remember. That is the trouble with the question. Ask her if she can remember without looking at it first.

Q Can you remember what the temperature of this woman was without refreshing your memory from your notes? A No, sir.

Q You have hundreds of patients, don't you? A Yes, sir; I couldn't remember.

20 Q You couldn't remember any particular case, any of the details, could you A I could remember some details, but I couldn't remember exact temperature, pulse, respiration which is charted—recorded on the paper.

Q These matters are taken by yourself there, those that are recorded in your handwriting? A Yes, sir.

Q And they represent what actually existed at the time, don't they? A Certainly.

30 *The Court.* Then she may refer to the memorandum and testify after refreshing her memory by examining the record. Now what questions do you want to ask her?

Q Look at the different memoranda made by you of temperature, respiration and pulse, commencing with the first exhibit, upon which you made the memorandum, which is marked D. 7. Now, give us all memoranda upon that sheet that are made in your handwriting?

40 *Mr. Mott.* I object.

Becky Gross, direct.

The Court. Objection sustained. She cannot give us the memoranda. She can give us the information after refreshing her memory from the memorandum.

Q What did you do at 4 P. M. upon this date, and what date was that—what year and what month and what place—what city? 10

The Court. Is that Saturday, February 8th?

Witness. No, this is Friday, February 9th, 4 P. M.

The Court. Friday?

Witness. Yes, sir.

The Court. Friday?

Witness. Yes, sir; no, Saturday, February 9th— Saturday. 20

Q Now, what did you do at that time? A Four P. M., February 9, at Beth Israel Hospital, pulse and temperature was taken. Pulse 96, temperature 98.2, respiration 24.

Q That was taken by you? A Yes, sir.

Q Now, did you make any further entry upon that day? By looking at that can you see any other— A No; after that I was off duty. That is somebody's else handwriting in red ink, not my handwriting. 30

Q Go down to the next date please. A The next day at 8 A. M.

Q Were you present there at that time? A Yes, sir; this is my handwriting.

Q Your handwriting? A Yes, sir.

Q And can you tell what occurred at that time from reading the memorandum in your handwriting? A Pulse was taken—

The Court. Answer yes or no. 40

Witness. Yes, sir. Pulse 92—

Becky Gross, direct.

The Court. Do not go on. You have answered "yes." Now, what is the next question.

Q What did take place there? What did you do there?

10 *Mr. Mott.* I object.

Q What was the condition of the pulse? A Pulse was 92.

Q Was this Miss Lebowitz's pulse? A Yes, sir.

Q What was the condition of Miss Lebowitz's respiration? A 22.

Q What was the condition of Miss Lebowitz's temperature? A 98.

20 Q What other thing did you observe there that this record would make you remember that you can testify to?

Mr. Mott. I object.

Mr. McDermit. Question withdrawn.

Q Did you make any other writing at that time in your own handwriting concerning Miss Lebowitz? A Yes, sir.

30 Q Can you refresh your memory now by looking at this paper memorandum made at that time and tell us what it was? A "Patient"—

Mr. Mott. I object.

Q Can you refresh your memory by looking at it? A Yes, sir.

Q Does it refresh your memory? A Yes, sir; this is my handwriting.

Q This is your handwriting. State what you did—what Miss Lebowitz's condition was at that time.

40 *Mr. Mott.* I object.

Q If you remember after reading that paper.

Becky Gross, direct.

Mr. Mott. I object. If counsel would ask this witness any question as to her condition that is relevant and the witness has to refer to the paper to answer it all good and well, but I insist that he shall ask the question so I will know what is coming.

The Court. Have you a right to demand a 10
leading question?

Mr. Mott. No, sir.

The Court. This question is competent, "What happened at four o'clock." Whether the answer is or not I don't know. You may answer the question.

Witness. "At 8 A. M."—

The Court. Don't read that record. State your recollection after you have refreshed 20
your memory.

Witness. Used strychnine sulphate, 1/60 of a grain.

The Court. Did you say 1/60 or 1/16?

Witness. Sixtieth.

Mr. Mott. What was that day, please?

Witness. On Saturday, February 9th.

The Court. That is Sunday, February 9th.

Witness. Or Sunday, yes, sir. 30

The Court. She went in Friday evening, February 7th.

Witness. Yes, sir.

Q Well, now, what else did you do at that time towards the patient or for the patient? A Also gave her spirits fermenti one dram.

Q What else? A And quinine sulphate grains five.

Q What else? A Vaginal bychloride douche 40
1 to 5000.

Becky Gross, direct.

Q Anything else at that time? It also states "The patient"—

The Court. Not what it states.

Q Just what you gave there. A The patient vomited.

10 *The Court.* Did you give her a vaginal douche?

Witness. Yes, sir.

The Court. Is that in your handwriting?

Witness. Yes, sir.

The Court. And it refreshes your memory?

Witness. Yes, sir.

The Court. And you gave her a vaginal douche?

20 *Witness.* Vaginal douche.

The Court. Do not state anything that you did not do or that you did not see done. You can only state what you gave. You cannot tell what somebody else told you.

Q Now, what else did you do at that time? A Twelve o'clock, same day, pulse, temperature, respiration, I took.

Q You made a memorandum of that, did you, at that time? A Yes, sir.

30 Q And the memorandum is before you now? A Yes, sir.

Q And you are refreshing your memory as to the temperature, &c., by reason of that memorandum? A Yes, sir.

Q What was the temperature of Miss Lebowitz at that time? A 100.2.

Q Respiration? A 24.

Q Pulse? A 106.

40 Q Any other handwriting of yours there that recalls— A Not at this place; no.

Becky Gross, direct.

Q Now, I call your attention to Ex. D. 5 for identification and ask you to look at this paper and see whether that paper shows anything concerning the treatment of Miss Lebowitz, the deceased? A Yes, sir; this is my handwriting (indicating).

Q Now, I ask you what the date of that treatment was? A This is February 11th, Tuesday. 10

Q And what time of day? A At eight A. M.

Q Now, did you make a memorandum in your own handwriting? A Yes, sir.

Q At that time, of what she did and what you observed there? A Yes, sir.

Q And by reading the memorandum I hand to you does that refresh your memory as to what did take place there that day? A Yes, sir.

Q And was it a memorandum made there and then of what took place? A Yes, sir. 20

Q What does it say? Kindly read it?

Mr. Mott. I object.

The Court. Read it and then state whether or not it refreshes your memory, and if it does, then state what happened.

Witness. Pulse was taken.

Q Pulse was taken. How much was the pulse?

A Pulse was 128.

Q What was the respiration? A Respiration 26 and temperature 101. 30

Q Now, what if anything, did you do for the patient at that time besides taking the pulse, respiration and temperature? A Yes, sir.

Q What did you do? A I gave her spirits fermenti 1 dram and quinine sulphate grains, 5, and fluid extract of ergot 1 dram.

Q What else did you do? A Three thirty P. M. I gave her strychnine sulphate, grains 1-30, by hypo. 40

Becky Gross, direct.

The Court. You gave her 1-30 of a grain of strychnine?

Witness. Yes, sir.

The Court. By hypodermic injection?

Witness. Yes, sir.

10 Q What else did you do at that time? A Dig-
itiline I gave her 1-50 of a grain, also by hypo.

Q What else? A Alcohol sponge.

The Court. What is that? That does not mean anything. Alcohol sponge bath?

Witness. Yes, sir; alcohol sponge bath.

Q What else did you do that day? A That was all in my handwriting.

20 Q Now, turn to exhibit D. 4 for identification and I call your attention to this date. Is that also a record made at the hospital there? A Yes, sir.

Q Of Miss Lebowitz's condition at that time? A Yes, sir.

Q What date of the month and year was that? A That was February 10, 1913, on Monday, at 8 A. M.

Q Now, can you tell by refreshing your memory from the record what you did at that time? A Yes, sir.

30 Q Is that record in your own handwriting? A Yes, sir.

Q And was that record made at that particular time after you had taken the temperature, pulse and respiration? A Yes, sir.

Q Now, will you say what you did? A I took her pulse, 104, and her temperature, 101, her respiration 24. Then I gave her spirits fermenti one dram, strychnine sulphate 1-60 grain.

40 Q How is that administered. How did you give her that? A By mouth.

Becky Gross, direct.

Q And was any other mixture with it? A Quinine sulphate, grains 5.

Q Anything else besides that mixture with it?

A Yes, sir; serum oxalate, grains 5.

Q Was that all made in one mixture? A Yes, sir.

Q Do you know at whose direction you did that? 10

A Under the doctor's direction.

Q And did you prepare this mixture yourself?

A Well, it is separate on the ward each drawer.

Q You have those all ready? A Yes, sir; on the ward, in the medicine chest.

Q What else occurs there?

The Court. You mean as to her condition or as to what the witness did?

Mr. McDermitt. What the witness did. 20

Witness. Applied an—

The Court. Did you do anything else?

Witness. Yes, sir; I applied an ice cap to her head and also to her abdomen.

Q What else did you do? A Patient vomited.

Q What kind of vomit was it? A Dark brown fluid.

Q How much did she vomit? A It doesn't state.

Q Do you remember about that? A I don't re- 30 member how much she vomited.

Q Had she vomited before that day? A Yes, sir.

Q How often? A I couldn't say. It doesn't state. It just states—

Q I am not asking you that question now, what it states, I am asking your memory without the paper. How often had she vomited? A I couldn't say how often.

Q Very often? A Well, she used to vomit at 40 times but I couldn't say how often. She used to

Becky Gross, direct.

vomit after taking her medicine and after taking nourishment.

Q She would vomit regularly after taking nourishment or medicine, would she? A Not regularly. At intervals. Sometimes she would vomit and some she wouldn't.

10 Q And what was the character of the vomit, do you know, as to its appearance or odor or color? A Well, it was a dark brown fluid.

Q Was there anything else upon this day? A That is all I can see.

Q Why, how about 4 P. M.? A That isn't my handwriting.

Q Whose handwriting is 4 P. M.? A Miss Schwartz.

Q Is she still employed by the hospital? A
20 She has graduated from the hospital.

Q Whose handwriting is this at twelve noon? A That is my handwriting.

Q Now look at that and see whether you made that memorandum at that time. A Twelve o'clock midday.

Q Yes?

The Court. What day?

Witness. On the same day, February 10th.

30 *Mr. Mott.* Is this something you knew or something that somebody told you?

Witness. No, I was present.

Q Now, what do you say about the temperature at that time after reading the paper made at that time? A Her temperature was 99, 110 pulse, and 26 respiration.

Q That was noon time on the 10th? A Yes, sir.

40 Q Now, what else was done at that time for the patient, if you remember?

Becky Gross, direct.

Mr. Mott. I object to that in that form. Not what else was done. What else did you do.

Q What else did you do or what else was done in your presence? What you did or anybody else did in your presence at that time? A Well, the patient vomited, I stated before.

Q Well, what else. What is this here (indicating)? A This not my handwriting. 10

Q I asked you, however, at noon time on that date whose handwriting is that in? A This is my handwriting.

Q That is noon time? A Yes, sir; that is about twelve o'clock.

Q Now, you were present and took the temperature and respiration, but this is somebody else's handwriting? A This is my handwriting, "Patient passed small pieces of blood." 20

Q That is what we want. What did the patient pass, you say? A "Patient passed small piece of clot."

Q Clots of what? A Blood.

Q What else? A And she vomited.

Q That was noon time? A Yes, sir.

Q Then she vomited twice, had she, that day? A Yes, sir.

Q Vomited in the morning and vomited at noon time. What else did you observe there? A I also report, which I remember, patient feels—felt very weak. It was reported to Dr. Zimmerman. 30

Q What—did you record her condition at that time? A Yes, sir.

Q How did you record her condition at noon time when you reported the fact that the patient was very weak to Dr. Zimmerman? How would you record her physical condition? A Well, by taking her pulse and looking at the patient's condition of the face and how the patient acted. 40

Becky Gross, direct.

Q Yes. What in your opinion you say you reported the condition to be? A She felt weak. I could see that, and I reported that to Dr. Zimmerman.

10 Q Well, what was your opinion as to anything else in regard to that weakness—what did you think as to her physical condition? A Well, as a weak condition.

Q Well, nothing beyond—can't you say anything beyond that? A The patient had weak rapid pulse and flushed face, as I can remember at that time.

Q Talk to her? A Yes, sir; I asked her how she felt and she told me she is feeling weak.

Q What is this (indicating) your handwriting too? A Yes, sir.

20 Q Your handwriting, same date? A Yes, sir.

Q Now, what else did you do to the patient at that time? A Well, I assisted Dr. Zimmerman in the packing of iodoform emulsion of 10 per cent.

Q Packing? A Packing her vagina.

Q Packing her vagina. And what time of day was that? A That was at that time. Must have been about three o'clock.

Q Three o'clock in the afternoon? A Yes, sir.

30 Q And what else was done at that time, anything? A That was all.

Q Now, was that—anything else? A Patient had bowel movement—watery stool.

Q What was the nature of the bowel movement? A Brown watery stool.

Q What time was that movement? A Around that time too.

Q And you took her pulse at four o'clock, didn't you? A No; this is not my writing.

40 Q That isn't you handwriting. Whose handwriting is that in, do you know? A It looks like Miss Schwartz, I couldn't state for sure.

Becky Gross, direct.

Q Whose handwriting is that, Tuesday five P. M.
A That is my handwriting.

Q That is your handwriting. Now, by looking at that memoranda does that refresh your memory of what took place there at five o'clock.

The Court. You don't have to go all over that. Ask her what took place at five o'clock. 10

Witness. Five o'clock patient passed brown stool containing blood, very foul odor.

Q Very foul odor? A Yes, sir.

Q What else? A Dr. Ill called and Dr. Greenfield.

Q Dr. Ill you mean, don't you? A Yes, sir.

Q And Dr. Greenfield? A Yes, sir.

Q At five o'clock. Is there any other entry there now? A Not in my handwriting. 20

Q Not in your own handwriting? A No, sir.

Mr. McDermitt. Now, I offer this memoranda or writing as far as it affects the testimony given by this witness in support of her testimony.

Mr. Mott. I object.

Mr. McDermitt. On the basis also that it was a memoranda,—original memoranda made at the time showing the conditions—made in the witness' own handwriting. I offer these exhibits in evidence as far as they apply to the respective pieces of testimony that she has given touching those particular events. 30

The Court. The document is not a proper offer. It is not competent evidence and even if it were it would not be a proper way to get it into the evidence. The proper way is to mark it for identification and read into the record the relevant part. Objection sustained. 40

Becky Gross, cross.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

10 *The Court.* Yesterday when you mentioned the doctor whose name sounded like Hill, did you mean Ill?

Witness. Yes, sir; Dr. Ill.

The Court. Dr. Charles or Dr. Edward?

Witness. Edward Ill.

Q Look at exhibit D. 3 for identification and see whether there is any of your handwriting on that?
A No, sir.

20 Q Look at exhibit D. 2 and see whether that contains any of your handwriting? A The fever chart is made out by my handwriting.

Q Those fever charges that are on the chart contain the same as shown— A It has every day copied.

Q The same as shown on the other chart? A Yes, sir.

Q Is this a duplicate of that other chart, pulse, temperature and respiration? A Yes, sir.

30 Q Anybody else's handwriting upon that slip?
A The name of Miss Lebowitz. This is not my handwriting (indicating).

Q All the rest is yours, is it? A Yes, sir.

Q Is that an exact counterpart of what you have testified to? A Yes, sir.

Cross examination by Mr. Mott.

40 Q Whatever medicine that you gave her did you give it to her under the direction of the physician?
A Yes, sir.

Silvia Shapiro, direct.

Re-direct.

Q Did you notice whether the patient Miss Lebo-
witz had any chills at any time while she was there?

A I didn't notice any.

Q What did you give her the quinine for? A
Why the doctor ordered it and I am supposed to
carry out the doctor's orders. 10

Q Well, don't you know—

The Court. Don't answer this question.

Q How often did you give her quinine? A It
states on the chart each time it was given because
we charged each time.

The Court. You have already told us that,
have you not?

Witness. Yes, sir. 20

Q Do you know what a congestive chill is? A
Yes, sir.

Q Did she have a congestive chill there? A
No; not in my presence.

Q Not during your time. That is all.

The Court. Miss Gross, are you the witness
who testified yesterday that you had never
given the patient a uterine injection?

Witness. Yes, sir.

The Court. And this vaginal injection that
you have referred to is not a uterine injection? 30

Witness. No, sir.

SILVIA SHAPIRO, sworn for the defense.

Direct examination by Mr. McDermit.

Q Are you the wife of Dr. Shapiro, the defend-
ant? A Yes, sir.

Q And you lived at Waverly Place, Newark, or
Hillside Avenue, Newark? A Yes, sir. 40

Morice B. Pearlstin, direct.

Q And do you know about the furnishing of the doctor's office? A Yes, sir.

Q Is there a bed there or not? A No, sir.

Q Was there ever a bed there? A No, sir.

NOT CROSS EXAMINED.

10

MORICE B. PEARLSTIN, sworn for the defense.

Direct examination by Mr. McDermitt.

Q Doctor, where do you live? A Brooklyn.

Q And how old are you? A Thirty-eight.

Q And what is your business? A Physician and surgeon.

Q And how long are you practicing? A Fifteen years.

20

Q Where were you graduated from? A Eclectic Medical College of the City of New York.

Q Are you connected with any institutions there now? A I have been for the past ten years.

Q What institutions? A The Eclectic Medical College of the City of New York and then several institutions in Brooklyn.

Q In what capacity? A Gynecologist and surgeon.

30

Q Do you know Dr. Shapiro, the defendant? A I do.

Q How long have you known him? A About nine or ten years—ten years I should judge.

Q Do you know what his qualifications are as a doctor?

Mr. Mott. I object.

The Court. Objection sustained.

Q What was the reputation of Dr.—

40

The Court. Do not answer the question until the court passes on the objection.

Morice B. Pearlstin, direct.

Q What was the doctor's reputation, if you know, in Brooklyn, as a physician, as to his skill?

A Good.

Mr. Mott. Wait a minute.

The Court. Have you ever testified in a court before, Doctor?

10

Witness. In this court.

The Court. In any court.

Witness. Yes, sir.

The Court. Do you understand that when the court directs you to take a certain course that that is the course that must be pursued, sir?

Witness. Yes, sir.

The Court. The court has now admonished you, and you will not transgress again.

20

Mr. Mott. I move to strike out the answer.

The Court. The answer is stricken out and the jury will disregard the answer. The objection to the question is sustained.

Q Assuming, Doctor, that you were telephoned for and the telephone message stated that a woman was bleeding profusely from the vagina—

The Court. From the neck of the uterus.

30

Q (Continuing). —neck of the uterus, and you went there and found her lying upon a bed and you made a digital examination of her parts and found some obstruction at the neck or near the neck of the womb and you were unable to remove that obstruction, whatever it might be, with your finger, what course would you adopt by way of treatment of that person—what would you do? A I would first ascertain the cause of the trouble—ascertain her condition both verbally and physically—ascertain the symptoms as well as the diagnosis—if I found that

40

Morice B. Pearlstin, direct.

it was a case of pregnancy and that it was inevitable abortion—or incomplete abortion, that I would proceed to complete it by removing this mass.

Q Well, what would you do? How would you do it? A I would place her on a table, get her ready for an anaesthetic, have someone to assist with the
10 anaesthetic and after careful surgical procedure I would remove that mass by means of instruments by means of curetting, keeping her perfectly quiet in bed afterwards and giving her the after treatment such as is required.

Q Well, what would be the treatment following that? A Quietness in bed, liquid diet and leaving the parts alone.

Q Can blood poisoning follow normal confinement? A I don't quite understand when you say
20 confinement. You mean a complete term or incomplete term?

Q Complete. A Can blood poisoning follow?

Q Yes. A Yes, sir; it can.

Q Is it a fact that no matter how great a precaution may be taken or precautions may be taken sepsis will sometimes follow?

The Court. Follow what?

Q Follow that character of operation?

30 *Mr. Mott.* You haven't suggested any operation.

The Court. Your question isn't sufficiently clear.

Q In curetting treatment? A I don't quite understand the question.

Q Will sepsis follow any curetting treatment?

A It can follow.

Q Even where the conditions have been normal?

40 A Where the conditions are normal we do not curette.

Morris J. Schutzman, direct.

Q Well, after incomplete abortion what will be the situation? A Well, that would depend a great deal upon the after treatment.

Cross examination by Mr. Mott.

Q Doctor, you used the term "inevitable abortion," what do you mean by inevitable? A An uncontrollable abortion. 10

Q What I would call an abortion that comes on of itself? A Yes, sir; or even if it doesn't come on of itself, inevitable means an abortion that we can't stop—that we cannot control.

MORRIS J. SCHUTZMAN, sworn for the defense.

Direct examination by Mr. McDermit.

Q Doctor, where is your place of business? A 20
178 Spruce.

Q And how long have you been in business there? A Going on eleven years there.

Q Are you a physician? A No, sir.

Q You are a druggist there, are you? A Yes, sir.

Q Now, you know Dr. Shapiro, the defendant here? A I do.

Q And you know Mrs. Lebowitz, the mother of Rose Lebowitz, the deceased? A I do. 30

Q And do you remember whether or not she called to your drug store one day in regard to some telephone message? A Well, what time do you mean—when?

Q Well, do you know whether she called at any time? A She did.

Q Well, do you remember her coming to you, asking you to call Dr. Shapiro? A I do.

Q Upon a certain occasion? A I do. 40

Morris J. Schutzman, direct.

Q And do you know what message she desired to have you send to him, and what she told you to do?

The Court. Fix the time first, Doctor. When was it?

10 *Mr. Mott.* What time do you refer to, Mr. McDermit?

Mr. McDermit. I am trying to refer to the 27th day of February, 1913.

The Court. You mean January?

Mr. McDermit. January.

Witness. I remember.

Q You remember that, do you? A Yes, sir.

20 Q What time of day did she come to your drug store? A Well, it was morning. I can't recall just what time.

Q You can't recall what time? A Morning—well before twelve o'clock.

Q What did she request you to do? A She asked me to call up Dr. Shapiro.

Q Did you do so? A I did.

Q Did she ask you to call him up any time after that? A Several times after that.

30 Q And how long after that was it she asked you to call him up again? A I presume the day following.

Q Well, don't you know. I don't want any presumption about it. I want your best recollection. A Well, I can refresh my mind from the various descriptions I had.

Q You could refresh your mind from the various descriptions? A Yes, sir.

Q I haven't asked you to refresh your mind from those. A I can't remember those.

40 Q You say she came to your drug store three times, or twice after the first time that you called

Theodore Adlerman, direct.

Dr. Shapiro, asking you to call him? A I didn't say that.

Q What did you say? A I said she was in the store several times to call the doctor.

Q Several times. What do you mean by "several"? A A few times.

Q Well, what do you mean by "few times"? A 10 Well, I can't say how many.

Q Three or four times? A Probably that many; yes, sir.

Q Five times? A Well, I wouldn't be sure how many times, several times.

The Court. How far is your store from 240 Prince street?

Witness. It is just across the street.

NOT CROSS EXAMINED.

20

THEODORE ADLERMAN, sworn on the part of defendant.

Direct examination by Mr. McDermit.

Q Doctor, where do you live? A Brooklyn, New York.

Q. Do you know Dr. Shapiro, the defendant here? A I do.

Q How long have you known him? A About 30 four or five years.

Q. How long have you practiced medicine? A Twenty-two years.

Q And are you a specialist in any line? A Nervous and mental diseases.

Q Are you attached to any State institutions in New York or hold any position in connection with any institution of that State? A I do.

Q What is your position? A I am the official 40 lunacy examiner of New York State; I hold clinics

Theodore Adlerman, direct.

in the Manhattan City Insane Asylum, and I am professor of nervous and mental diseases in the Eclectic College of New York.

Q You have been in attendance at this trial during the testimony that has been given here in relation to the disease of one Rose Lebowitz? A
10 Yesterday and to-day.

Q Where did you graduate from? A I hold two degrees, one from the University of Nebraska and one from the New York Eclectic College.

The Court. Did you graduate.

Witness. I did.

Q If it is shown that a person has been treated and an operation performed, say upon the 27th day of January, A. D., 1913, at the hour of one or two o'clock in the afternoon—operation performed
20 upon a woman—which results in the scraping of the womb and the taking away of some matter, membrane, or whatever it may be, and it is shown at the time the physician came there that she was bleeding, and bleeding heavily—or bleeding profusely—and that he diagnosed the case as one that required immediate treatment, and he proceeded to call in the assistance of another physician who administered an anaesthetic, and then he performed
30 the operation called curetting, and after that he put the patient back into bed again; she lay for four or five or six days under his attention, when she was seemingly well and got up and went into the kitchen of the house where the operation had been performed, which was her living residence, and subsequently the doctor was called back who performed the operation and another physician was called in and he found conditions that justified him from his standpoint in having her removed to a hospital, and in that hospital her temperature had run up
40 variously from the seventh day of February, when

Theodore Adlerman, direct.

she was admitted from 102½ down to about 98 on the 10th day of February, pulse 92, respiration 22; on the following morning, the 10th, temperature 103, pulse 112, respiration 26, and upon other days following that showing temperature 114, 110, 116—pulse 116, pulse 122, pulse 128, and upon the days upon which pulse was 122 and 128 a physician who was the assistant surgeon of that hospital brought alongside of the deceased who died upon that same day at the hour of seven or 7.15, looked over and examined her and found that she was substantially pulseless and that she was in an unconscious condition, and the evidence shows that she had been treated for blood poisoning and that before her admission into the hospital on the 7th day of February, the odor from a discharge through her vagina was marked to such an extent that it had a foul smell, and if that patient had not been given any solids from the time she was admitted except occasionally some fermenti and strychnine injections, and there was muttering at eleven o'clock in the morning, and was unable to identify a doctor—two doctors—who called to see her, what would you say as to her ability at seven o'clock that evening to be in a position to make a mental statement as to what had caused her injuries or sufferings?

Mr. Mott. I won't object if the doctor thinks he has facts there that he can determine mental condition from.

Witness. I have facts. Considering the case and history, I would think that her mind was not clear.

The Court. This has got to be based on the question, sir.

Witness. Well, based on the question I would consider her mind entirely unfitted to make any statement.

Theodore Adlerman, direct.

Q Why do you say, doctor, that her mind would be unfit mentally to make any statement? A Well, if she was murmuring, muttering, as you describe it—

10 *Mr. Mott.* The witness is now introducing the element of muttering and murmuring, which wasn't included in the question.

The Court. Yes, it was, that on the day she died she muttered in the morning.

Mr. Mott. I didn't catch that.

20 *The Court.* There was also included in the question that she was seemingly well six days after the operation, and she was muttering and ill on other days after February 10th, and there was only one day when she was alive after February 10; also the question included the proposition that she was unconscious at the time she made this statement; and the question also includes the further proposition that she had had no solids since she came to the hospital, and there isn't any evidence about it. Are you answering, doctor, from your own opinion of what the testimony is or from this question—the prior long question?

30 *Witness.* I am answering from my own opinion and from the question given to me.

The Court. You were not in court this morning for ten or fifteen minutes after the court opened?

Witness. Perfectly true, I was not.

The Court. Then I will allow the testimony.

Witness. I know part of it and from the question that is given by counsel—

40 *The Court.* Answer this question. You were asked to state your reasons for your answer.

Theodore Adlerman, direct.

Witness. All right. She was murmuring, she was muttering, she was unconscious, her temperature was running from 98 to 104—103, 101, her pulse varied, ice kept to the head, she didn't recognize witnesses at that time. In my opinion she wasn't able to make any statement that could be relied upon.

10

Q What do you say if such statement was made fifteen minutes before she died? A I wouldn't take any of it in—or any stock in it, if you like to have it that way.

Q Another witness in the case stated that she thought she died an hour or an hour and a half afterwards? A Well, then—

The Court. That is not a question. When a question is unintelligible the witness is not expected to answer. That is nothing but a declaration. That is all it amounts to. Wait until the lawyer finishes his question.

20

Witness. Thank you, sir.

Q Are there any further reasons for making you think this woman could not be in a mental condition to make declarations that would be intelligent or lucid?

The Court. He can't tell us what he thinks. He has got to state the reasons for his opinion.

30

Q Are there any other reasons that you haven't given us for the opinion that you have expressed? A Yes, sir; there are.

Q What are they? A If a patient, or a case, has suffered from exhaustive disease, septisemia—blood poisoning—a condition which attacks every vital organ—every part of the body, both mental and physical, where, as you state, she has taken no solid nourishment, receiving stimulants, fermenti, strychnine—where she wasn't able to recognize any-

40

Theodore Adlerman, direct.

body—where she died in such a short time, it is entirely impossible for anybody, whether it is this case or any other, to make any statement that could be entirely clear to the person that took it, unless they gave the answers and questions and took them down as they gave them.

10 Q You heard the statement read here in court.
A I did.

Q And you know the character of the statement?
A I do, sir.

Q And the statement that I am now alluding to is that particular statement? A Yes, sir.

Q I ask you whether that statement which you heard read and which I—

The Court. Exhibit S. 1.

20 Q (Continuing.) —whether that statement and I show it to you, so that there cannot be any mistake as to the record, and I ask the stenographer to read it into the record at this time—

The Court. The stenographer cannot change the record. He can say that by consent the witness is given a stenographic copy of S. 1.

Mr. McDermitt. And which I presume to say is a correct copy.

30 *The Court.* Yes. There is no objection. That is a correct copy. That must be agreed to before he can look at it. Mr. Mott agrees on the record.

Q Now, you heard that declaration in court? That is a correct copy of it (handing witness paper), A I did, sir.

40 Q Now, could a patient make such a statement under those conditions? A In my opinion positively not.

Theodore Adlerman, cross.

Cross examination by Mr. Mott.

Q Is it not a fact that in incurable septisemia ordinarily the mind remains perfectly clear up to the end—death? A It is not.

By the Court.

10

Q In the question, doctor, the facts were assumed that this patient, after five or six days, got up and went in the kitchen and was seemingly well. If that is not so would it make any difference in your opinion? A Will you kindly repeat the question again? I do not understand it entirely. You mean if she got up on the fifth day?

Q (Question read.) A None whatever, sir.

Q And it was also assumed in the question that at the time of making the alleged statement the patient was unconscious. If the patient were in point of fact conscious at that time would it make any difference in your opinion? A No; it would not. I can explain it if you will allow me.

20

Q I am asking you would it. Yes or no. A Why it wouldn't.

Q So it don't make any difference when a person makes a statement whether he is unconscious or conscious? A It wouldn't make any difference whether the person is conscious. If he is unconscious how could he make the statement?

30

Q If he is unconscious he cannot make a statement? A Yes, sir.

Q And he may be conscious and not make a sensible statement, is that it? A Yes, sir.

Q That is what you mean to say? A Yes, sir.

Q And eliminating the further fact which was included in the question hypothetically propounded to you that the woman at the hospital had no solids, would that make any difference? A Yes, sir; it

40

Theodore Adlerman, cross.

would. It would produce weakening of the entire body. Certainly it would.

Q That would make a difference? A Yes, sir.

Re-direct.

Q Assuming that we omit the kitchen part from
10 the original question and assuming that we omit
the solid from the original question and assuming
that we omit the immediate unconsciousness of the
party who died—eliminating both those proposi-
tions, solids and the kitchen, and putting you back
to this question, that day, eleven o'clock in the
morning upon which she died, the house physician
—assistant house physician—came to her bed and
found her practically pulseless and that she was
unconscious, what would you say?

20 *The Court.* That won't make any difference,
what the house physician saw. You have got
to put in your question what her condition was
at the time.

Q At eleven o'clock in the morning she was
found by the house physician unconscious. Is that
correct, your Honor?

The Court. That is the idea.

30 Q And that the examination of her pulse showed
that she was practically pulseless, what would you
say then?

The Court. Muttering and beating her chest.

Q (Continuing.) And beating her chest, and
muttering, what would you say then as to her men-
tal condition to make a statement fifteen minutes
before she died? A Why I would have to give
this—

40 *The Court.* You mean her mental condition
at eleven o'clock in the morning?

Theodore Adlerman, cross.

Mr. McDermit. No, her mental condition at seven o'clock when she made the statement, as a result of her depression.

The Court. Take it with that amendment, Doctor, as fixed by counsel for the defendant.

Q (Continuing.) Put out the solids, put out the question of walking to the kitchen, and taking the original question amended and put it in shape, that the unconsciousness was at eleven o'clock that morning, that she was muttering, unable to recognize either that doctor or the defendant who visited her, say what her mental condition was? A You want an answer with explanation or simply yes or no? 10

Q Explanation.

The Court. You have given the explanation. 20

Witness. I have given it; yes, sir.

A I would not change my opinion, sir.

Q You would not change your opinion? A Certainly not.

Q So that no elimination suggested by the court or other counsel changes your opinion on the proposition?

The Court. What is that question? 30

Mr. McDermit. No elimination of the kitchen; no elimination of the facts as stated by the court—omitting the kitchen and omitting the question of unconsciousness at seven o'clock changes his opinion when I place it back to eleven. Is that correct? Is that right, your Honor?

The Court. Yes.

Witness. Considering the history of the case—general conditions—it does not. 40

Morice B. Pearlstin, direct.

Q I also intended to have said—when your Honor asked the question—the solids. I think I have included that before. That would make no difference? A No.

MORICE B. PEARLSTIN, recalled for

10

Further direct examination by Mr. McDermit:

Q When you were on the witness stand before I omitted to ask you a question or two in regard to abortions. What causes an abortion? Are there more than one cause? A Oh, yes.

20

Q Will you kindly define what they are—say what they are from your experience and practice and knowledge? A We have natural abortions due to various illness—various sickness, such as gonorrhoeal infection or syphilitic—various skin diseases, extreme anemic condition—*anemia*, as we call it.

Q Now— A Then again—pardon me—then again various kidney lesions—troubles to kidney trouble such as albumen urine or diabetes; then again we have grief, worries, shocks or overwork, over taxation.

30

Q What about the question of disappointed love affair. Does that ever produce abortion? A Beg pardon?

The Court. He says mental shock or grief.

Q None of those abortions that you have enumerated are caused by instruments? A None of those that I have enumerated. We have the instrumental abortions. I might have added accidents, such as falls and blows—sudden falls.

40

NOT CROSS EXAMINED.

Sarah Van Gilder, direct.

SARAH VAN GILDER, recalled for defense.

Direct examination by Mr. McDermit:

Q You examined the different reports made by your nurses to you, in the hospital, of course? A Yes, sir.

Q And you must remember a great deal about this case from memory on account of death happening there, isn't that so? A Well, I remember quite a little about it. 10

Q Yes; and you remember because you were one of the witnesses that signed the name to the statement Dr. McKenzie has offered here? A Yes, sir.

Q And you knew about the application—

The Court. Dr. McKenzie hasn't offered any statement here. This isn't a case between Dr. McKenzie and the defendant. This is a case between the State of New Jersey representing all the people of the State of New Jersey against this defendant. 20

Q Statement drawn by Dr. McKenzie at the hospital. You remember that you signed it? A Yes, sir.

Q Now, you remember about the application of ice packs to the head? A Yes, sir. 30

Q And to the stomach? A Yes, sir.

Q Were you personally present and did you see anything done to this patient? A I saw the ice caps on the head and on the abdomen.

Q You know also that she slept with very short intervals, don't you? A Only what I saw on the chart.

Q You know of your own knowledge that she had chills there? A I didn't see her have any. 40

Sarah Van Gilder, direct.

Q Do you know that she vomited after she had taken some milk? A Only what I saw on the chart.

Q You know that she wasn't fed any—

10 *The Court.* The question of what is on the chart you do not know unless you are personally present, do you?

Witness. I don't see it.

The Court. Only tell us about what you saw. Just answer no.

Q You know of your own knowledge that she vomited? A No; I didn't see her.

Q You don't know that? A No.

20 Q What do you know of your own knowledge concerning her condition? A Why, all I know is that several times during the day when I went in there she was very sick from the time she was first taken into the hospital, and her condition was continually growing weaker.

Q She grew weaker from the time she entered until she died, didn't she? A Yes, sir.

Q You saw her from day to day? A Yes, sir.

Q Your duty is to inspect all the patients there from day to day? A Yes, sir.

30 Q And you noticed what her condition was and also noticed some of the treatment that was being applied to her, didn't you? A I never saw the girl get any treatment except that I saw the ice pack on the head and the ice pack on the abdomen.

Q Do you remember anything about her passing some small blood clots? A No.

Q Do you know anything about her being packed with iodoform? A No.

40 Q Do you know Dr. Schwartz—Dr. Zimmerman? A Yes, sir.

Sarah Van Gilder, direct.

Q Are you certain in regard to the question of not knowing that this woman had a chill there?

A No.

The Court. Now, just exactly what do you mean by that answer? You mean you do not know whether she had a chill or not, do you not? 10

Witness. Yes, sir.

Q Well, what did you observe as to her condition the second day after she was admitted, if anything, different from what you observed the first day she was admitted? A There was very little difference in her condition in the first and second day.

Q Now, she was given stimulants, of course, wasn't she? A Yes, sir. 20

Q And what kind of stimulants was she given, if you know? A She was given strychnine sulphate and whiskey.

Q You know what she was suffering from? A Yes, sir.

Q That she was suffering from blood poisoning? A Yes, sir.

Q And it was diagnosed by the people there as what? A Septicemia, following abortion.

Q Septicemia— 30

Mr. Mott. What is that?

Witness. Septicemia.

Mr. Mott. What was the rest of it?

Witness. Following abortion.

Q Septicemia following abortion. In those cases do you feed solids? A No, sir.

Q Therefore she could have had no solids? A No, sir.

Q During that time? A No. 40

NOT CROSS EXAMINED.

Sarah Van Gilder, cross.

Mr. McDermit. We are ready to rest with the exception of Miss Potash and Miss Feldenstein. I think we ought to have them here. With that reservation we will rest.

Cross examination by Mr. Mott.

10 Q Will you kindly look at these charts and refer to the last day and tell me when her pulse was taken last?

Mr. McDermit. I object.

Mr. Mott. I mean when it shows that her pulse was taken.

Mr. McDermit. Don't make any difference what it shows.

20 *The Court.* She has already answered that. You can look at it and see.

Mr. Mott. I mean as to time.

The Court. It is already in evidence.

Mr. Mott. Then you needn't bother if that is in.

Mr. McDermit. Four o'clock in the afternoon she died.

30 *The Court.* You are quoting the testimony incorrectly.

Mr. Mott. 7.45.

The Court. It wasn't taken 7.45 or was not taken four o'clock. Five something.

Mr. McDermit. We couldn't show that last pulse because it wasn't in the handwriting of the witness we had on the stand.

The Court. No; but you have shown that by consent.

40 (The testimony of Miss Van Gilder, on this point was read).

George E. Kaas, direct.

The Court. You may rest making that reservation.

DEFENDANT RESTS.

GEORGE E. KAAS, sworn for the State in rebuttal.

Direct examination by Mr. Mott. 10

Q Mr. Kaas, you are connected with the Police Department of Newark? A Yes, sir.

Q In what capacity? A Plain clothes man.

Q Connected with which precinct or headquarters, which? A Fourth Precinct.

Q Do you know the defendant? A Yes, sir.

Q When did you first see him in connection with this case? A February 11, 1913.

Q Whereabouts? A At his office. 20

Q What time A About 8.15.

Q And did you then have some conversation with him? A Yes, sir.

Q And did he then say to you that the young man and the young woman had come to him, informed him that she was pregnant and requested him to perform an operation and that he had refused to do it and sent them away?

Mr. McDermit. I object on the ground that there is no time specified as to the time this conversation took place. 30

Witness. Took place 8.15 P. M., February 11.

Mr. McDermit. No time specified as to when this conversation took place between this defendant and the boy and girl that came there.

The Court. The question is whether he made that statement. Dr. Shapiro denied that he made that statement on the witness stand. 40

George E. Kaas, direct.

Mr. McDermitt. I think we are entitled to know what year—what time. I can't object to it unless he—

The Court. That is the statement that he made. Objection overruled.

10 Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

A Yes, sir; he made a statement to me.

Q Did he make that statement to you? A He didn't put it in those words.

20 *Mr. McDermitt.* I ask to strike out the answer and the question because the witness says he didn't put it in those words.

The Court. You do not want the answer stricken out?

Mr. McDermitt. Why not. Even if it is favorable, it is a matter of duty of counsel if he thinks it ought to go out. The court can protect the defendant. The court is bound to accept the motion.

30 *The Court.* I will strike it out. Now answer over again.

Witness. Which, the last question?

The Court. Did he say that?

Witness. No; he didn't say that, not in that way.

The Court. Now, what is the next question?

Mr. Mott. I will withdraw the witness.

40 *Mr. McDermitt.* You are sure that he said no—you are sure that your answer is no to this question?

Nathaniel J. Shapiro, cross.

Witness. Mr. Mott put the question in such a way that I can't answer it in any other way but no.

Mr. Mott. May—recall the defendant for one question on rebuttal?

Mr. McDermit. I object. We decline to let him be recalled. 10

The Court. The defendant may be recalled for further cross examination.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

NATHANIEL J. SHAPIRO recalled for 20

Further cross examination by Mr. Mott.

Q Doctor, on the evening of February 11th, last, about 8.15 P. M., at your office did you say to Mr. Kaas that this young fellow and girl had come to see you about three weeks previous and she told you she was pregnant and wanted to be helped out of her trouble and you said you wouldn't help her and the next you heard of the matter was on the 27th of January? A I did not. 30

Mr. McDermit. Wait. Don't answer that question. Whether it is favorable or unfavorable I am addressing my remarks to the court. I object to that question because it isn't proper cross examination. If he wanted to have laid the foundation for a rebuttal he should have asked that on his main examination. While courts have the right under the rule of this State up to almost the time the case goes to the jury to reopen, and do reopen for sub- 40

Nathaniel J. Shapiro, re-direct.

10 stantial justice, where the prosecutor has been called upon to change the date in his indictment where he still seeks to continue without that change and places the time down to the 27th of the month, where the proof shows, I say he has not the right now to reopen the case now for rebuttal.

The Court. You have already made that objection and it is overruled and you are allowed an exception to that. Now what is your specific objection to this question?

Mr. McDermitt. It isn't cross examination.

20 *The Court.* It certainly is cross examination. He has testified that he never saw this girl between some time in October—never treated her between some time in October and January 27th, when he was called. If he made this statement to Mr. Kaas it is a contradictory statement.

Mr. McDermitt. When did he make it to Mr. Kaas?

The Court. February 11, at 8:15 P. M., is what the question says.

Mr. McDermitt. I desire to take an exception to the court's ruling.

30 Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

The Court. Answer the question.

Witness. I didn't make that statement.

Re-direct.

40 Q What statement did you make to him, if anything? A I tell you what I did say to him when we were walking up—I said, "By trying to

George E. Kaas, direct.

do good to people we get in trouble." What I meant to say by that was—

The Court. What did you say?

Witness. I said "by trying to do good to people—for people, you get into trouble." That's all I said.

Mr. McDermit. Mr. Kaas.

10

Mr. Mott. Never mind.

Mr. McDermit. I want to call Mr. Kaas and examine him on your former question.

The Court. Just a moment. Do you rest now?

Mr. McDermit. The case is opened.

The Court. Do you rest now as to your defense?

Mr. McDermit. No, sir.

20

The Court. What do you want?

Mr. McDermit. I want to ask him a question.

The Court. On further cross examination? He was called in rebuttal.

Mr. McDermit. I know. I want to ask a question. I think it is proper to ask.

The Court. You rest and want the case to go over to rebuttal for the State, and you want the State to call Mr. Kaas as its witness and you want to cross examine him; is that it? 30

Mr. McDermit. No, not exactly.

The Court. You may cross examine him.

GEORGE E. KAAS resumed the stand.

Mr. McDermit. Can I make a private communication to the court without any one hearing it?

The Court. No, sir. You can make a public communication to the court. 40

George E. Kaas, cross.

Mr. McDermit. I want to say this because the question of veracity may arise here that may be determined by this jury as between Shapiro and this witness, and before I put that question—

10 *The Court.* Why do you not let Mr. Kaas testify in rebuttal for the State and then ask him anything on cross examination that you want to.

Mr. McDermit. I will ask him after the adjournment hour.

The Court. Ask your question, Mr. Mott.

Further direct examination by Mr. Mott.

20 Q Mr. Kaas, on February 11, did you see the defendant? A Yes, sir.

Q Whereabouts? A At his office.

Q About what time? A About 8:15 P. M.

Q At that time did you have a conversation with him? A He and I was in the office alone.

Q Did you have a talk with him? A Yes, sir.

Q Did you have a conversation with him? A Yes, sir.

30 Q And did he then say to you this young fellow and girl came to him about three weeks previous and she told him she was pregnant and wanted to be helped out of her trouble and he said no he wouldn't help her and the next he heard of the matter was on January 27th? A Yes, sir.

RECESS.

Cross examination by Mr. McDermit.

Q Dr. Shapiro and yourself had a conversation, you say, at his office? A Yes, sir.

Q When? A February 11, 1913.

40 Q And how did you come to go there? A Ordered there by the captain of the Fourth Precinct.

George E. Kaas, cross.

Q Did you have a warrant at that time for his arrest? A No, sir.

Q Did you state anything to him that he was going to be arrested in connection with any charge?

A Yes, sir.

Q Who was present besides himself? A He and I.

10

Q His wife there? A No, sir.

Q What time of night was this? A I should judge about 8:15 as near as I can recall it.

Q Were you alone? A Officer Cort was outside.

Q Officer Cort didn't go in with you? A He come in about—I should judge after I had been there probably about five minutes or more.

Q Was Officer Cort in there during any part of the talk between you and the doctor? A Yes, sir.

20

Q What did you say to the doctor when you went in? A I rang the bell and a gentleman opened the door. I was told to go into a front room. There was a desk in there and medical case such as instruments are kept in.

Q Was there any bed in that front room? A No, sir.

Q That was the office? A That was the office, I think. There was one of these medical chairs, or whatever you might call them, besides that and some other chairs in there. I took a seat—

30

Q In the office? A In the office.

Q How did you get to the office, through the door leading from the hall into the office or through the second door leading into the reception room?

A First door.

Q You were let in by some gentleman—you don't know who? A I don't know who the gentleman was.

40

George E. Kaas, cross.

Q Young man or old man? A I should judge a man probably about thirty-three to thirty-six years old.

Q Did you state that you wanted to see Dr. Shapiro? A I did.

10 Q Did he say he was there? A He didn't say anything. He merely ushered me into this room.

Q How long had you waited until you saw Dr. Shapiro? A Two or three minutes.

Q The doctor came in, did he? A Yes, sir.

20 Q Now, just detail the entire conversation, what you said to the doctor and what the doctor said to you. Give me the detail. A The doctor came in and after bidding me the time of the day asked me what he could do for me. I told him there wasn't anything he could do for me regarding myself but that I had been sent there by the captain of police, that I wanted—he would have to go to the Fourth Precinct with me. He asked me what the trouble was and I asked him did he know this girl—this Rose Lebowitz. He said he did. He wanted to know why he was wanted at the Fourth Precinct and told him that I had just come from the Beth Israel Hospital, that the girl had died.

30 Q Then this was before the actual death of the girl, was it, sergeant? A Immediately after.

Q Immediately after? But as far as you know she was still dying and was not dead when you arrived at the house of the doctor? A Oh, no; she had died while I was at the Beth Israel Hospital.

Q She had died? A Yes, sir.

Q Then it was immediately after her death that you and Officer Cort had left the Beth Israel Hospital to go to the home of Dr. Shapiro? A Yes, sir.

40 Q And how long before you had left the Beth Israel Hospital with Officer Cort was it that you

George E. Kaas, cross.

had conversed with Captain Vogel? A I conversed with Captain Vogel immediately after Miss Van Gelder brought word into the room we were sitting in and announced the girl had died. I immediately went to the telephone and notified Captain Vogel.

Q Told the captain she was dead? A Yes, sir. 10

Q And after you got the instructions he gave you you proceeded to Dr. Shapiro's house to ask him to come to the police station to give an account of his stewardship in that matter, is that right?

A Yes, sir.

Q So that when you got to his house he wanted to know what he could do for you and you told him there was nothing he could do for you, that the captain wanted him to come and report to the police station and you asked him if he knew Rose Lebowitz and he told you that he did? A Yes, sir. 20

Q Then what next transpired? A He spoke about the girl and another young man—he didn't mention the name—he didn't mention no name.

Q Just in what language—give the language that he alluded to the young girl and the other young man? A He said he didn't know what the captain would want him for, that she had been placed in the hospital, and that—just the exact words I can't give you, but the drift of it was that he had been called there at January 27th. I asked him then had he ever saw the girl before? He says yes, some three weeks previous to February 11th, that she had been there with some young man. 30

Q Didn't he say three months, sergeant? A No, he did not. If he had why I wouldn't say three weeks, if he said three months. 40

George E. Kaas, cross.

Q I don't believe you would. I do not challenge your word under the circumstances—I do not challenge you. Now, you may be mistaken about those three weeks or three months? A No; I couldn't be.

10 Q You didn't make any memorandum at the time? A No; I can remember the coincident very well.

Q Well, he made no denial of treating this girl? A No, sir; he did not.

Q He was frank in every other respect to you—told you of the story of the whole situation? A Everything. Everything—

20 *The Court.* One moment. If you want an answer you better let the witness have a little chance.

Witness. Everything Dr. Shapiro stated here yesterday from the 27th day of January, he said, with the exception of stating that that I said before that he had seen this girl some three weeks previous to the 11th day of February.

30 Q You heard his statement on the stand yesterday and you had interrogated him the night he was asked to go to the police captain's office and he told you the story that night? A He told it to Captain Vogel and also to Cort and I was present.

Q And as he told that story on the stand yesterday in regard to his relationship with the woman, every bit of it corresponded to the story he told you then except the question of the three weeks? A Yes, sir.

40 Q That he hadn't seen this girl in three weeks? Outside of that every detail he has here put before the jury is correct? A Yes, sir.

George E. Kaas, re-direct.

Re-direct.

Q You do say though that he said to you that the girl told him that she was pregnant? A Yes, sir, I do.

Q And asked him to cure her? A Asked him to help her; yes, sir.

Q Help her? And you say that he made that statement—do I understand you to say that he made that statement in the presence of Officer Cort and Captain Vogel? A No, sir. Regarding the three weeks, that conversation was held between the doctor and I in his office, and then after that—after Officer Cort come in—I had been in there probably five minutes when Officer Cort rung the bell and interrupted our conversation. Then we proceeded on to the precinct and Dr. Shapiro made a statement to Captain Vogel and Officer Cort and myself in the captain's office.

Q And did he in that second conversation repeat the statement about the girl having been to him? A He did not.

By the Court.

Q You said that he said to you that "the girl," meaning Rose Lebowitz, and some fellow— A Some young fellow.

Q —some young fellow had been to see him some three weeks before. Now, was that three weeks before the date of the operation of January 27th, or was it three weeks before February 11th, the day that he was talking to you, or didn't he say before what? A He did not. From the drift of the conversation—

Q No. Or didn't he say? A He didn't say. He says "About three weeks ago."

Q What? A He says "About three weeks ago."

Alfred J. Cort, direct.

Q Three weeks ago? A "About three weeks ago."

ALFRED J. CORT sworn for the State in rebuttal.

10 *Direct examination by Mr. Mott.*

Q You are a member of the Newark Police force? A Yes, sir.

Q You know Officer Kaas? A Yes, sir.

Q On the evening of February 11th last, were you with him at the hospital? A Yes, sir.

Mr. McDermit. What is the necessity of this testimony? What part of the case are we at now, rebuttal? What stage does the prosecutor claim we are at now?

20 *Mr. Mott.* Rebuttal.

The Court. When you make your objections they should be addressed in the proper way. You are now making an inquiry as to where the case is. It is in rebuttal.

Mr. McDermit. I object to this testimony because there is no foundation laid for it.

The Court. There is not any question before the court.

30 Q And did you and Kaas go somewhere from the hospital? A Yes, sir.

Mr. McDermit. I object because it is immaterial, irrelevant and is not rebuttal.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

40

WM. P. MARTIN, (L. S.)
Judge.

Alfred J. Cort, direct.

Q Where did you go? A 69 Hillside Place.

Q And what was that? A Dr. Shapiro's office and living apartments.

Q And when you got to your office did Kaas go anywhere? A Kaas went in the house. He went in by the front door and I went around the rear of the house.

10

Q And did you subsequently go into the house? A Yes, sir.

Q And when you went into the house whom did you see there? A Well, I was ushered in by some man that answered the door bell and I seen Mr. Kaas and the doctor there.

Q And where were they? A They were at that time in the office.

Q About how long a time had elapsed when you went in there from the time that Kaas went in?

20

Mr. McDermit. I object. I think the entire line of examination is improper. No necessity of corroborating Kaas' position because there isn't any dispute between the defendant and Kaas as to the conversation. There is no dispute as to the fact that they were both alone, nobody else present. How can this be rebuttal?

The Court. Objection overruled.

30

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. s.)

Judge.

A About five minutes.

Q Did you overhear any of the conversation between Kaas and the doctor? A No, sir.

Mr. McDermit. Wait a minute. I object to it.

40

Morris J. Schutzman, direct.

The Court. Objection overruled.

Mr. McDermit. Can't in rebuttal contradict his own witness.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

10

WM. P. MARTIN, (L. S.)
Judge.

NOT CROSS EXAMINED.

Mr. McDermit. I want to call those witnesses I reserved.

Mr. Mott. You better do it now.

MORRIS J. SCHUTZMAN recalled for the defense.

20 *Direct examination* by Mr. McDermit.

Q Look at exhibit for the State S. 2 and see whether you filled that prescription or not? A I did.

Q On what date of the month and year did you fill it? A I would have to have my book to ascertain the date. They are here.

Mr. McDermit. I ask for the production of the book.

30

Mr. Mott. There it is.

Witness. January 30.

Q January 30,—not January 20th? A January 30th.

Q January 30th. Now, look at all the rest of these prescriptions marked—I guess some are unmarked. A All marked.

Q All marked? A Yes, sir.

40

Mr. Mott. I don't think they are. He means marked in one way, but you and I mean a different thing from what he does by "marked."

Morris J. Schutzman, direct.

Q Now, look at this exhibit S. 3 for the State?
A January 22nd.

Q Now, look at S. 4 for the State. When was that prescription filled? A January 29.

Q Now, look at this prescription marked exhibit S. 5 for the State. When was that prescription filled? A February 7th. 10

Q Look at exhibit S. 6 for the State. When was that prescription filled? A February 2nd.

Mr. McDermit. I offer these respective prescriptions in evidence for the defense. They were marked for the State for identification. The State closed its case without putting them in evidence. I ask leave to offer S. 2 and the succeeding exhibits which were marked for identification for the State and not offered in evidence. 20

The Court. What book is that you have there, doctor? Turn to January 30?

Witness. (Handing book to the judge).

The Court. Any objection?

Mr. Mott? I think not, sir.

Papers marked exhibits D. 9, D. 10, D. 11, D. 12, D. 13.

Mr. McDermit. I offer the book in evidence. 30

Mr. Mott. I object.

The Court. Produce the book and have it marked for identification. If there is some particular part of the book read it in evidence.

Mr. McDermit. Nothing except what will allude to this testimony.

Mr. Mott. No controversy over this witness' testimony. 40

Dorothy Feldenstein, direct.

DOROTHY FELDENSTEIN, sworn for the defendant.

Direct examination by Mr. McDermit:

Q What is your first name? A Dorothy.

Q Where do you live? A 27 Avon Place.

10 Q In Newark? A Yes, sir.

Q Do you know where the Beth Israel Hospital is? A Yes, sir.

Q And were you employed in that hospital in January and February, 1913? A Yes, sir.

Q And in what capacity were you employed there? A As a nurse.

Q Do you remember the admission of a Miss Rose Lebowitz to the institution there in January or February of last year? A Yes, sir.

20 Q And did you have charge of her at the time? A Yes, sir.

Q And what did you serve there as, day or night nurse? A Night nurse.

Q And did you make memoranda at that time in regard to her condition as to her pulse, respiration— A Yes, sir.

Q Temperature? A Yes, sir.

30 Q And did you also keep some little written report of each day upon her? A Yes, sir.

Q I show you exhibit for defense for identification and ask you whether the handwriting in the red ink—look at it carefully—is your handwriting? A Yes, sir.

Q Is all of that red ink upon that page in your handwriting? A Yes, sir.

Q Can you remember without looking at this memoranda what your report about what the temperature, etc., shows? A No, sir.

40 Q Would you be able to tell us what her condition or what her temperature was, etc., if this

Dorothy Feldenstein, direct.

memoranda was handed to you? A If I read it off the report.

Q You would remember? A If I read it off the report.

Q That would refresh your memory, would it?
A I couldn't say—

Q You can't remember without? 10

The Court. Let her look at it and see whether it would.

Q Now look at it. That is your handwriting?
A Yes, sir.

Q And those things were jotted down by you at the time the dates show, were they? A Yes, sir.

Q The time Miss Lebowitz was there? A Yes, sir. 20

Q And they show the different days and times of the day when temperature, pulse and respiration, do they? A Yes, sir.

Q And her general condition? A Yes, sir.

Q Now, after looking at that, can you tell me what the condition of her pulse was upon Friday, February 9th, and what her physical condition was and what you, if anything, administered to her upon the date of Friday the 9th? You may look at that and refresh your memory. What did you do? What was her condition? A Do you want me to read this off? 30

Q Well, from that tell us what you know about her condition at that time. What did you do? What condition was she in? A She came in and I reported it to Dr. Schectman, who is the interne.

Q Was he an officer of the institution? A She was an interne at the time.

Q Is he still connected with your institution? A No, sir. 40

Dorothy Feldenstein, direct.

Q Where is he now? A It is she. I don't know.

Q Oh, it is a missus. Now, what—after you reported to Dr. Schectman, what then? A Spirits fermenti, dram 1, was ordered, Q 2 H; quinine sulphate, grains 5, Q 3 H.

10 *The Court.* What is "Q 3 H"?

Witness. Every three hours. Dr. Schectman examined her.

The Court. You say every three hours. Don't fill the record up with a mass of stuff that nobody understands.

Witness. There was an ice cap applied to her head and abdomen.

20 Q Ice cap applied to her head and abdomen by who? A By me.

Q How long was the ice cap kept upon the abdomen and upon the head? A I don't remember.

Q Does your memorandum show? A No.

Q Was it constantly kept upon her head and abdomen? A As long as her temperature was up and if she had pain she kept it on.

Q What else do you recall about that? A Bichloride douche given.

30 Q What is that, bichloride douche? A It is a—injected.

The Court. Did you give it to her?

Witness. Yes, sir.

The Court. Vaginal douche, isn't it?

Witness. Vaginal douche.

Q And how often did you give her that? A Every four hours.

Q During the night? A During the night.

40 Q Do you know what that consisted of—the ingredients of it? A One to five thousand.

Dorothy Feldenstein, direct.

Q Of what? A Of bichloride.

Q And what else? A That is all.

Q What else did you do? A She vomited.

Q She vomited? How often did she vomit? A
Twice this night.

Q Twice during that night? And what was the
character of the stuff that she vomited? A The
first time she vomited was dark green fluid. 10

Q And was there any odor to it? A No, sir.

Q How much fluid—dark green fluid—did she
vomit? A About six ounces.

Q About six ounces. When she commenced—
what did you do for her after she did that; what
did you apply, if anything, or what did you give
her after? A I haven't charted here.

Q Nothing upon the chart to show, but do you
recall what you did after that for her? A Gave
her some cracked ice. 20

Q Gave her some cracked ice? In what way
did you give her the cracked ice, in the mouth too?
A By mouth; yes, sir.

Q And how long did you continue to feed her
upon cracked ice? A Generally give it at the
vomiting.

Q After vomiting, I suppose you mean? A
Yes, sir. 30

Q When did she next vomit? A 11.35.

Q How long was the difference between the
time that she vomited first and the time she vom-
ited the second time? A Two hours and thirty-
five minutes.

Q What was the kinds of vomit the second
time? What was its color? A Dark green fluid
containing curds of milk.

Q Dark green fluid? A Yes, sir.

Q Containing what? A Curds of milk. 40

Dorothy Feldenstein, direct.

Q Containing curdled milk, do you mean? A
Curds.

Q What time of night was that? A 11.35.

Q What next occurred after that? A There
was an alcoholic sponge bath also given.

Q What time was that administered? A That
10 was given at 10.35.

Q Did you give her ice again after the second
vomit? A I guess I did. I don't remember.

The Court. Ask her what she did and let
her give it as quick as possible.

Q Just read from that—

The Court. Don't read from what is on the
paper but what did you do? Formulate your
answer with the assistance of the paper.

20 Q What did you do after that? A Another
bichloride douche was given at 4 A. M.

Q How long would it take to give that douche?
A Takes about ten minutes.

Q About ten minutes. Then what was done? A
Another alcoholic sponge bath was given.

Q Then what was done? A She coughed con-
siderably during the night, and she was awake the
entire night.

Q She was awake the entire night? Did she
30 have any fever? A 101.

Q What was her pulse at three o'clock in the
morning?

The Court. You have been all over that.

Mr. McDermit. I beg your Honor's pardon,
we have never been over this with her.

The Court. We have had the pulse read by
consent by Miss Van Gelder.

Q What else was done? A There was a speci-
40 men of urine sent to the laboratory and at 6.30 A.
M. there was a bichloride douche given.

Dorothy Feldenstein, direct.

Q Was there anything given to her during the night to eat? A I don't remember.

Q If there was anything given to eat to her it would be on that chart wouldn't it? A It would be on the chart if there was.

Q Any of these others yours? Look at those different— A The red ink is mine. 10

Q On the second page? A That is mine.

Q That is your third page? A That is not mine.

Mr. McDermit. I now offer Ex. D. 8 for the defense in evidence. I have shown by both witnesses a complete handwriting made at the time of the making of the record. I offer that in evidence.

Mr. Mott. I object.

The Court. Objection sustained. 20

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. s.)

Judge.

Q Look at D. 7 and look at your handwriting there starting 8 P. M. Tell me what date that is; tell me what the condition of the patient was at that time and what you did—what you observed? 30

A It was February 8th.

The Court. That is Saturday, February the 8th?

Witness. Bichloride douche was given every four hours; vomited small amounts of light brown fluid.

The Court. You were the night nurse then, were you not?

Witness. Yes, sir.

The Court. What time did you get on duty? 40

Dorothy Feldenstein, direct.

Witness. Seven o'clock.

The Court. What time did you go away from duty?

Witness. Seven o'clock the next morning.

10 *The Court.* So that when you speak of February 8th you are speaking of the evening of February 8th?

Witness. Yes, sir.

The Court. Go ahead and tell us all the rest of it.

Witness. She got spirits fermenti, gram 1, every two hours, and quinine sulphate, grains 5. This is February 9th.

20 Q Now, upon February 9th— A Magnesium sulphate was given, ounces 7, and slept at short intervals.

Q What was the magnesia given to her for? A Cathartic.

The Court. She does not know what it is for. She is not a doctor.

Mr. McDermit. Some nurses are better than most doctors.

The Court. That does not make any difference; she has not qualified yet as a doctor.

30 Q What was the next item there, Miss Feldenstein? A She had an ice cap on her head and abdomen.

Q How long had that been continued? A I couldn't say.

Q Had you placed the cap on the abdomen and head? A Yes, sir.

Q What next did you do? A Bichloride douche every four hours.

40 Q What next? A Spirits fermenti, dram 1, every two hours; quinine sulphate, grains 5, every

Dorothy Feldenstein, direct.

three hours; serum oxalate, grains 5, every two hours.

Q Then what? A February 10—

Q Go ahead now. You are doing first rate. A Considerable bleeding from nose and mouth, reported to Dr. Schectman, slept about two hours after a hypo.

10

The Court. "Hypo" is hypodermic injection?

Witness. Hypodermic injection.

Q Then what? A Large clot of blood passed through mouth.

Q Large clot of blood passed through mouth?

A Yes, sir.

Q How large a clot about? A I couldn't say.

Q Then what? A Got spirits fermenti, drams 2, every two hours; quinine sulphate, grains 5, every three hours; fluid extract of ergot, dram 1; cocaine, grains 6; and she got hypodermic of morphine sulphate, grain a quarter, and atropin sulphate, grains 1-150.

20

Q Then what? A February 11. This was at 2:15 A. M. She got another hypo of morphine sulphate, grain 6; atropin sulphate, grains 1-150; she vomited large amount of blood, reported to Dr. Zimmerman. A creolin chloride applied to the nose by Dr. Zimmerman; nose packed by Dr. Zimmerman.

30

Q What date was that that he packed the nose?

A February 11th.

The Court. What is the time?

Witness. 4:30 P. M.

Q Then what? A Murphy drip of saline solution.

Q Then what? A Slept about two and a half hours during the night.

40

Dorothy Feldenstein, direct.

Q Then what? A That is all.

Q I call your attention to some writing on this exhibit D. 6 for defense for identification. A Stopped to breathe at about eight P. M.

Mr. Mott. Is that your writing?

Witness. Yes, sir.

10

The Court. When was that, February 11th?

Witness. February 11th; yes, sir.

Q What other memoranda is here in your writing? A 7:45 P. M. That was her temperature, 102.2.

Q No pulse? A No, sir.

Q No respiration? A No, sir.

Q Did you give quinine to her after any chill?

A I don't remember.

20

Q Did she have any chill? A I don't remember.

Q You don't remember? A It would be on the chart if she had one.

Q There are some other writings on the chart but there is nothing alluding to that in your writing there? A No, sir; she didn't have any.

Q You have no knowledge of any chill while you had charge of her? A No, sir.

30 Q I call your attention just once more to this in red ink and I understood you to say particularly that that red ink was not your writing? A No, sir.

Q Whose writing was that? A I don't know, sir.

Q It isn't yours? A No, sir.

Q You don't know whose writing that is? A No, sir.

The Court. What exhibit is that?

40

Mr. McDermit. That exhibit is exhibit D. 4 for identification.

Dorothy Feldenstein, direct.

Q Well, now, that must have been somebody that was employed there as a nurse which had charge of this patient during part of the time, wasn't it? You were the night nurse, you told his honor? A Yes, sir.

Q And there was a day nurse? A Yes, sir.

Q Now, was there a relief nurse in between that would have the right to make a record in this case and keep account of what the patient's condition was? A There might have been. I don't know whose writing that is though. 10

Q But, nevertheless for that one particular half day, that is in the handwriting of somebody else other than yourself and the other nurse, the regular attendants, is that right? A Yes, sir.

The Court. Was that the system, for the night nurse to write in red ink and day nurse to write in black ink? 20

Witness. Yes, sir.

Mr. McDermit. In one of the writings outside of the two we identify, black and red, there seems to be another red ink. Looks as if the black ink pen had been dipped into the red ink bottle or red ink dipped into the black ink bottle. I will ask your honor just to look at it. 30

The Court. What does Miss Van Gelder say about the writing?

Mr. McDermit. She didn't seem to know, your honor. Your honor understands why I would possibly like to get that in.

Mr. Mott. I haven't any objection to it going in. I assume that the fact recorded there is true and am willing that it should be read into the record. 40

The Court. Formulate your stipulation.

Sarah Van Gilder, direct.

Mr. McDermit. It is marked February 10, Monday.

The Court. What is the hour?

10 *Mr. McDermit.* It seems to say 3.50 and then 4.30 and says continued on headline. It says continued, that is the "remarks." It doesn't make any difference whether that is part of the page we spoke about—

The Court. Recall Miss Van Gelder and let her put it together the way it was before counsel unpinned it, and let her read it by consent.

SARAH VAN GILDER, recalled for defendant.

Direct examination by Mr. McDermit.

20 Q Will you please put those together commencing with the first time she came in the hospital.

The Court. What charts have you got?

Witness. The temperature charts and laboratory charts.

The Court. Those do not belong in.

Q See where it says continued here? Do you know whose handwriting that is in? Now, where is that continued from? A No.

30 *The Court.* The witness answers no.

Q From the other page? A It looks to me as though this is—the one sheet had been destroyed and a new sheet had been made over.

The Court. Is that at the top of the sheet that you are now looking at the continuation of the sheet which preceded it?

Witness. Yes, sir.

40 *The Court.* Tell her to read it by the consent of the prosecutor.

The Court. Just those two lines.

Sarah Van Gilder, direct.

Witness. February 10, 4.20 A. M., patient had severe chill, lasted for thirty minutes. The temperature after—

Mr. Mott. That is all.

Mr. McDermit. No, read it all.

Mr. Mott. No, that is all I admitted. You said you wanted to get the chill in. 10

Mr. McDermit. The judge has ruled the temperature is in fully.

Q Now, see if there is any other—I want to get in the rest of the record there all of it.

Mr. Mott. Alcohol sponge bath given.

Mr. McDermit. Let her read the whole business. Don't be scared.

Mr. Mott. I am not scared. I am disposed to help you out if I can.

Witness. Alcohol sponge bath given; slept very little during night. 20

Q Go ahead, and finish it.

Mr. Mott. No.

The Court. That is all there is in red ink, is it not?

Witness. Yes.

Q Well, now, am I mistaken or does that state something about temperature after bath here or can't I see any more? A "Temperature after bath." 30

Q That is there, isn't it? A Yes, sir.

Q In the same ink—same writing? A Yes, sir.

Q Does it say what the temperature was after bath? A Yes, sir.

Q What was it? A Pulse 114, temperature 102, respiration 26.

NOT CROSS EXAMINED.

DEFENDANT RESTS.

Dr. Benjamin J. Silverman, direct.

DR. BENJAMIN J. SILVERMAN, recalled in rebuttal for State.

Direct examination by Mr. Mott.

10 Q Doctor, on the 27th of January, you went with Dr. Shapiro to the home of the girl and you administered the anaesthetic as you have described, did you? A Yes, sir.

Q At that time, on the bed or on her clothing or anywhere else, did you see any blood?

Mr. McDermit. One minute. How can this be in any way rebuttal testimony?

20 *The Court.* The doctor introduced an entirely new fact in the case that did not appear in the State's case and that is when he went there or January 27th to perform the operation—when he went there, regardless of what he went there for, he saw blood on the bed—and she was bleeding profusely.

Mr. McDermit. There is no contradiction of that, is there?

The Court. I do not know. The doctor has just been asked the question and you object to the answer.

30 *Mr. McDermit.* He was fully examined upon that question on the main case, as to what he observed there.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

40 Q (Question read.) A No, sir.

Dr. Benjamin J. Silverman, cross.

Cross examination by Mr. McDermit.

Q You remember what you testified to here before, don't you? A Yesterday?

Q Yes. A Well—

Q You remember what you testified to yesterday? A Yes, sir.

Q I asked you the question whether you noticed what the doctor was doing when he performed that operation? A Yes, sir. 10

Q And whether you—one minute now—and whether you noticed him remove anything or whether you noticed any blood there or anything else, you said you were too busy attending to your own work, didn't you? Yes, or no. A Yes, sir.

Mr. Mott. You do not have to answer yes or no, doctor, because the answer that you have to give is in reference to the condition you found before the operation began, isn't it? 20

Witness. That is right.

Mr. Mott. And then you did not see any blood on the bed?

Witness. No, sir.

Mr. Mott. Before the operation began?

Witness. No, sir.

Q Didn't you say in response to a question put by me that you did not participate in undressing her and that she was already undressed and ready for the operation when you came there? A Mr. Mott asked me now— 30

Q No, no. Didn't you say—

Mr. Mott. One moment.

The Court. You answer the question. Take your time. Do not allow any comments to interfere with your deliberations. Just proceed and answer. 40

Dr. Benjamin J. Silverman, cross.

Witness. Mr. Mott asked now whether I saw blood on the bed there before the operation and I answered no.

Q That isn't what I asked you at all. You paid no attention to my question. (Question read.)

A Yes, I said that.

10 Q You made no examination of any bed for blood, did you? A No, sir.

Q Nor you made no examination for any purpose? A No, sir.

Q And you never looked at her vagina or any of her private parts? A No, sir.

Q And did nothing in connection with the operation? A No, sir.

Q Except to administer the ether? A Yes, sir.

20 Q And you don't know what the conditions were there, whether there was blood there or not, do you? A No; I do not.

The Court. Did you see the bed, doctor?

Witness. Well, I did see the bed, your honor.

Q You had no reason to see the bed except to lift her off the bed? A Yes, sir.

30 Q That is all. You didn't go back to the bed-room again after you lifted her off? A No.

Q You didn't make any examination of that bed? A No.

Q. Microscopic or otherwise, did you? A I didn't have any microscope.

The Court. Did you chloroform her in bed?

Witness. Yes; your honor.

The Court. Then you helped her out of the bed and carried her onto the table, is that it, with the other doctor?

40

Witness. Yes, your honor.

Dr. Walter S. Washington, direct.

Re-direct.

Q When you took her off from the bed did she have any garments on her? A She had just the under-shirt.

Q And did you notice any blood on that? A No, sir.

10

WALTER S. WASHINGTON, sworn on the part of the State in rebuttal.

Direct examination by Mr. Mott.

Q You are a practicing physician of this county, doctor? A I am.

Q And have been so for how many years? A I have practiced medicine for thirty-eight years.

Q And how long in this country? A Twenty-eight years nearly.

20

Q And are you familiar with the disease known as septicemia? A I am.

Q And do you know the effect that septicemia has on the mental faculties? A I do.

Q In the case of incurable septicemia? A What kind?

Q Incurable? A Oh.

Q Where during the last four days of the patient's life the temperature ranged from 98 to 103 and only three times during the last four days raised as high as 103, can you tell what effect the disease would have on the mental faculties? A Probably none whatever.

30

Q How does septicemia affect the mental faculties? A A septicemia accompanied by a long continued period of high temperature might produce some mental confusion—some delirium at times, but it is a well-known fact that septicemia, the mental condition in it, is unusually clear, even when the temperature is high or even when the

40

Dr. Walter S. Washington, cross.

10 membrane involving the brain, that is covering the brain, are involved, that the mental faculties are perfectly clear up until the end. In cases where the temperature is as low as the record of four days here, there is no possibility of there being any impression of any kind either one way or the other made on the mental faculties. It is not sufficient. Part of the time—nearly half the time—the temperature was 98 or 99, and then two or three times above 100—two or three times 101 and only three times 103 and that only for a very short period.

Cross examination by Mr. McDermit.

20 Q And most of the time, if you had been a close student of this proceeding, oftener the temperature of those four days was over a hundred isn't that so? A Most of the time?

Q. Yes? A Probably more than half the time. I couldn't tell you without looking at it. That is a very low temperature.

Q What are you, a general practitioner or are you a specialist? A General practitioner.

Q How many cases of septicemia have you had yourself? A Have I seen?

30 Q Yourself—have you treated? A Personally?

Q Yes; that you can produce the record to show. A I couldn't produce the record, I don't think. I don't keep record of them, I have seen in thirty-eight years—I have seen a great many cases.

40 Q How many have you had under your personal charge? Give us the names of a few patients? A I couldn't do that. I wouldn't do it if I knew. I probably have had twenty. I think that would be a very mild number.

Dr. Walter S. Washington, cross.

Q You think that the effect of temperature at 103 and pulse 122—that the patient is in a clear mental condition, do you, able thoroughly to understand what they are doing? A At 103?

Q Yes; 103 temperature? A Oh, sure.

Q And pulse 122? A That doesn't have anything to do with it. 10

Q Doesn't have anything to do with it? A No, sir.

Q If the patient had been unconscious and had laid unconscious for several hours and was muttering and mumbling and talking incoherently six or seven hours before death would you say that that mind—that mentality was in good condition?

A It might be just as good as it ever was.

Q Do you think it was in very good condition just at that particular time? A What time? 20

Q At the time of the unconsciousness? A Oh, no; certainly not.

Q And you think that if a party was without pulse, so that no pulse could be taken, and made a statement—that there was absolutely no pulse could be obtained—that that statement showed great mentality? A I shouldn't think so.

Q Do you think so? A It wouldn't show a great mentality. There isn't anything in particular to show that it would, but it might show a perfectly clear one. 30

Q No pulse? A Even when the pulse was uncountable, in septicemia.

Q Is that so? A Yes, sir.

Q You are supposed to be a specialist on mind disease, once in a while I have observed in the public press? A No; I don't pretend to be a specialist in mental diseases. I have had some little experience in them. 40

Dr. Walter S. Washington, cross.

Q You are in the employ of course of the State now and have been for a couple of days in this case? A Oh, yes.

Q And getting paid for it? A I hope so. I think so.

10 Q Yes. And paid of course for your testimony to-day here? A Paid for my time or my testimony, I don't know which.

Q Probably your time, doctor. Put it in that shape? A Yes, sir.

Q You think that a statement taken from a person who you have heard describe in court here—treatment that she had received—you have heard the doctor testify—you heard Dr. Fischer's testimony? A No.; I didn't hear that.

Q Didn't hear that? A No, sir.

20 Q Didn't hear about what he testified her condition was? A I heard it repeated here in court, but I didn't hear the doctor's testimony.

Q You have read it, have you?

The Court. Dr. Fischer?

Witness. Yes, sir.

Q Dr. Fischer was the gentleman who was called in by Dr. Shapiro and got this woman removed to the Beth Israel Hospital?

30 *The Court.* Yes. The doctor who testified about her condition at the hospital the morning of the day she died was Dr. Louis Reich.

Mr. McDermit. Yes.

Q You, of course, knew that this statement was taken fifteen minutes before she died—you heard that testimony? A I suppose I did hear it. I don't remember the exact time, but I think I did hear that statement made; yes, sir.

40 Q That would have no effect upon her mentality, the fact that she had suffered, without solids,

Dr. Walter S. Washington, cross.

or any character of nourishment other than food that was given to her in the shape of fermenti and other injections to keep her alive—would have no effect upon her mentality? A Not necessarily.

Q Her mentality would be absolutely clear and no fever or nothing of that kind? A It might be.

Q If rigor mortus had set in, that would make no difference to your opinion as to her mentality? A Oh, yes; good deal. 10

Q. .Would it? A Yes. I wouldn't go quite that far.

Q You wouldn't go quite that far?

The Court. The evidence now is that the statement was finished and signed at 7.15 and she died at eight o'clock.

Mr. McDermit. I beg your honor's pardon. There is conflicting testimony on that question according to the record. 20

The Court. *Then proceed, if there is conflicting testimony.

Q What is septicemia, doctor? A Blood poisoning.

Q What else is it? A What else?

Q Yes. What does the medical dictionary give the definition as? A I don't know.

Q It doesn't make any difference, does it? A To me? 30

Q Yes. A Not any special difference. I know what it is and I have told you what it is and that is quite sufficient for me.

Q You have given us that Washington definition? A No, the common, well known definition that all physicians and surgeons are acquainted with.

Q Is Gould's medical dictionary looked upon as a leading work on some questions? A I suppose it is. I don't know anything about it. 40

Dr. Walter S. Washington, cross.

Q Do you know anything detrimental about it?

A I don't know enough about it to pass any opinion of any kind upon it.

Q You never looked at his work? A I don't look at medical dictionaries.

Q You don't know how he defines septicemia?

10 A No; I do not.

Q You couldn't say. Well, Gould's book says that it is a—

Mr. Mott. One minute. I object unless the doctor recognizes the book referred to as an authority. You cannot read from it.

The Court. Have you got Gould's dictionary there?

20 *Mr. McDermit.* We have got the next thing to it.

Q I give you this definition and ask you whether this isn't a definition that is all right for septicemia. Now just listen and get it. I want to see if I have first got it myself. "A morbid condition from the absorption of septic products." Is that a proper definition of septicemia? A Certainly.

Q It is? A Certainly.

30 Q Then you don't disagree with Mr. Gould? A I agree with him.

Q Then it is a morbid condition? A Certainly; always.

Q Then the mentality can't be very strong if the person is in a morbid condition, can it? A That is a morbid physical condition; that isn't a morbid mental condition.

Q Has no application at all to the mentality? A It isn't meant in that sense at all.

40 Q It is immaterial to the mental condition, no matter what the physical condition of the body is;

Dr. Walter S. Washington, cross.

is that your position? A I wouldn't always say that. I have said very distinctly what I do mean and that is this that this blood poisoning—and as you say it is a morbid condition—that it is not a morbid mental condition; that it is a morbid physical condition, and that in this morbid physical condition it is a well known fact that the mind is clear beyond that of any other condition—especially any very dangerous or serious condition. It is well known that the mind continues clear and one may make a statement that is lucid and perfectly reliable up to within a few minutes of death. That is not anything that can be disputed. It is well known. 10

Q Now, doctor, you have got off what you have to explain on that subject— A Through on that subject. 20

Q Give me a little attention.

The Court. That comment is entirely superfluous and will be stricken from the record and the jury will disregard it.

Q Blood poisoning affects every organ of the body, doesn't it? A Not necessarily.

Q Doesn't it affect the brain? A Sometimes. You mean is there blood poisoning of the brain itself? 30

Q No, I am talking about septicemia. You know what I am talking about. A I know what you are talking about but I don't know just what you mean by that particular question.

Q You claim to be educated here on that question. I am asking you whether septicemia affects the brain or not. Yes or no.

The Court. Oh, no.

Witness. I couldn't answer it that way.

The Court. You answer it your own way. 40

Dr. Walter S. Washington, cross.

10 *Witness.* I couldn't answer it that way. I have been trying to tell Mr. McDermit, for fifteen minutes that the brain may be just as clear even if the membranes are involved—that the mental condition may be just as clear and just as lucid as if the patient had nothing at all the matter with him, as far as that particular feature is concerned. On the other hand if it was a very continued high temperature for a long period, then there might be some delirium and some mental confusion that would be very apparent, but not in a mild case and not in all cases that are severe.

20 Q Now, you sub-divide the human body into two parts, do you; the head having one—blood and the balance of the body the other? A Oh, no.

 Q You don't do that? A No.

 Q Are you willing to admit that the blood that goes through the balance of the body goes through the brain and head? A Oh, yes.

 Q Are you willing to admit that? A Yes, sir.

 Q Are you willing to admit that if the blood is poisoned that goes through the body it goes poisoned through the head? A Yes, sir.

30 Q Thank you doctor. That is all. A Don't mention it.

By the Court.

 Q Doctor, in a young woman nineteen years old or thereabouts what would be a normal pulse? A Well, that varies very much, probably 70, 72, 74.

 Q What would be a normal temperature? A 98.

 Q Were you finished with the other answer? A Yes, sir.

40 Q What would be the normal temperature? A 98 3-5 is the normal temperature.

Dr. Walter S. Washington, cross.

Q And the normal respiration? A About 18. Those are probably an average normal—well, one might have a pulse ten beats higher than another and yet be perfectly normal for that person or might be ten beats lower than someone else, but I think probably 72, 74 would take in the very large proportion. The temperature would be the same no matter what the pulse was. The respiration would be affected somewhat. Sometimes it is lower and sometimes a little more, but on the average. 10

Further cross.

Q You think that a person having a continuous pulse of from 108 to 122 would be in normal condition, do you? A Mentally or physically?

Q Any condition, mental or physical. 20

The Court. He has already answered that question.

Q What is the normal pulse? A What do you mean? I have explained three times already. What do you mean, the beat or what.

Q I mean just exactly what I say. What is a normal pulse? If you don't know— A The pulse of say yourself or Judge Mott might be 74, and I should say your pulse beats 74 regularly through the day, if you are not subject to unusual excitement, when it might go up a little bit, and at night when you are quiet and reserved it might go down a little bit. That might be the normal pulse for you. That wouldn't be a normal pulse for someone else. 30

Q What pulse have you got now? A I should say about 72.

Q You have never had 122? A Never in my life—yes; I have been ill when I think my pulse has been a little more than normal, but I don't believe 40

Dr. Walter S. Washington, cross.

it ever was that amount unless I run for a trolley car.

Q You don't think that your mentality that you are offering in court to-day on cross examination by way of expert on septicemia is that character of an opinion you would have if your pulse was
10 122? A Yes, sir.

Q You think your opinion would be just a bright? A Yes, sir; I have suffered during many years before I came to Newark and sometimes since with malaria; I have had chills and I have had high temperature, and I never remember but what my mind was just as clear at one time as what it is at another. I have no recollection of there being any disturbance whatever mentally, when I have had this temperature.

20 Q You never had the same amount of fermenti and other things administered for four days to you that the patient in this case did, had you? A I hope not.

Q You wouldn't be qualified then to judge such standard? A The amount of fermenti administered to her was intended to counteract the other poison and I don't suppose it had the same effect as it would have on a normal person like myself.

30 Q You wouldn't be likely to use that character of treatment? A I wouldn't need that much.

Q That wouldn't affect your mentality rather? A No; I wouldn't need that much either.

Q So that even after death the mentality is just as strong in the deceased as far as your standard is concerned as fifteen minutes before death, is it?

40 *The Court.* You need not answer that question, doctor. It is almost an insult to the intelligence of the jury. It will be treated as an insult to the intelligence of the court if it is

Dr. Walter S. Washington, re-direct—re-cross.

repeated. There is a line beyond which counsel may not go and counsel has pretty nearly reached that point.

Re-direct.

Q Doctor, I forgot to ask you one question, whether chills are characteristic of septicemia? A 10
Oh, it is one of the most common symptoms, probably aside from the actual fever itself. Chills are a symptom that are invariably present, except the rise of temperature at different times. For instance, a septic fever is one that goes up and down. You will see by this chart here the temperature is down to 98, then suddenly she is up to 103; that particular time, or just prior to that time, is almost invariably accompanied by chill. That is a characteristic; don't know whether it is 20
puerperal septicemia from any infection whatever, chill is one of the very frequent symptoms that go with it.

Re-cross.

Q Wouldn't those chills indicate that she might have died from another cause? A No, certainly not.

Q How do you make that out? Why do you say that is so? Doesn't chills cause death? A 30
No.

Q Congestive chill doesn't cause death? A
Congestive chill?

Q Yes. A What is that? I have never heard of it only among some old ladies. Never heard of it among intelligent people.

Mr. McDermitt. I move to strike the answer out.

The Court. Motion denied. 40

Abram Goldstein, direct.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. s.)
Judge.

10 ABRAHAM GOLDSTEIN, recalled in rebuttal.

Direct examination by Mr. Mott:

Q Abraham, the defendant says that in October, 1912, you came to him for treatment for gonorrhoea or some form of venereal disease, is that true? A No, sir.

Q Did he ever treat you for any such disease? A No, sir; never seen him at that time.

Q And he says that frequently you brought
20 Rose to his office and told him that she had some disease and asked him to treat her?

Mr. McDermitt. I object. All the testimony in this case has been gone over on this same point.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

30 WM. P. MARTIN, (L. s.)
Judge.

Q Is that true? A The same month?

Q No; sometime after that? A Well, I have been there with Rose in the month of January in regard to the condition that she was in, that is the family way.

Q No, but he says that after you went—

Mr. McDermitt. I ask to strike out that answer as not being responsive and not rebuttal.

40 *The Court.* Motion denied.

Abram Goldstein, cross.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q He says that you went there once with Rose to him and said she had a venereal disease and asked him to treat her for that, is that true? A No, sir. 10

Q Did you ever go with Rose to his office for any other purpose than the occasion of January when you went there to have her treated for her pregnancy? A No, sir.

Cross examination by Mr. McDermit.

Q You was at the house of the doctor on 20th or 21st of January, were you? A No, sir. 20

Q You testified in the case here yesterday that you were at Rose's house at that time? A No, sir.

Q Didn't you? A No, sir.

Q Didn't you say that you had left on the 20th or 21st and gone away, didn't you? A Yes, sir.

Q Didn't you say you left the 20th or 21st? A Yes, sir.

Q Didn't you say that you were at Rose's house the night of the 20th before you left? A Not up to the house. 30

Q That you seen her? A Yes, sir.

Q Where did you see her? A Downstairs.

Q Downstairs. She was up then, wasn't she? A Not up to the house.

Q She was downstairs with you, was she? A Yes, sir.

Q Whereabouts downstairs? A Mrs. Sommer's. 40

Jacob B. Tuckman, direct.

Q At Mr. and Mrs. Sommer's house? A Mr. and Mrs. Sommer was downstairs.

Q Was that the last night that you were at Sommer's house or the Lebowitz house? A Last; yes, sir.

Q Did you ever see her again?

10 *The Court.* Sommer and Lebowitz and Rose, did they all live together there?

Witness. Yes, sir.

The Court. In the same apartment?

Witness. Same house, yes.

The Court. In the same house, yes; but in the same rooms; same apartments?

Witness. Not in the same rooms; no, sir.

Q But when you left Rose it was on the 20th or 20 21st of January? A Yes, sir.

Q And you never saw her again since that time, did you—after that time? A No, sir.

Q And when you left her on the 21st of January, she was in a healthy condition, was she not? A Yes, sir.

Q You and her didn't go to the doctor's that night, the night of the 21st? A No, sir.

Q Nor did you and her go to the doctor's after the night of the 21st, did you? A No, sir.

30 Q You are sure about that, are you? A Yes, sir.

JACOB B. TUCKMAN, sworn for the State.

Direct examination by Mr. Mott.

Q You are a member of the Newark police force, are you? A Yes, sir.

Q Connected with which precinct? A Fourth.

40 Q On the evening of or late afternoon on the 11th of February last, were you at the home of the girl Rose who died? A No, sir.

Jacob B. Tuckman, direct.

Q Were you at the hospital? A Yes, sir.

Q And were you there while Dr. McKenzie was there? A Yes, sir.

Q And were you there while the statement was being taken by the doctor? A Yes, sir.

Q And did you hear the girl talking at that time? A Yes, sir. 10

Q What do you say, officer, as to the clearness of her mental condition? A She spoke plain.

Mr. McDermitt. I object. Is he also an expert to mental diseases?

Mr. Mott. No.

Mr. Mott. If he is I desire to have him qualified. I object to the question.

The Court. Objection sustained.

Q Did you hear her talk? A Yes, sir. 20

Q Did she talk rationally or irrationally?

Mr. McDermitt. Objected to as leading and improper.

The Court. Objection sustained.

Q With whom was she talking or to whom was she talking? A Dr. McKenzie.

Mr. McDermitt. I object as not being rebuttal. We weren't present when she died—don't know anything about it—haven't attacked that part of the case—the defendant hasn't been asked that question or anything else—it is re-opening the main case without the consent of the court and without the consent of counsel. I object to it. 30

Q Won't you describe her manner in her talk to Dr. McKenzie?

Mr. McDermitt. I object.

The Court. Why was not this man called in the main case. 40

Jacob B. Tuckman, direct.

Mr. Mott. Because I didn't suppose there was going to be the slightest question about this thing.

10 *The Court.* It is very reasonable to suppose that practically everything in the case is going to be controverted. There was not anything offered by way of objection on the part of the defense to the testimony laying the foundation for the introduction of the alleged dying declaration. This is testimony as to the condition of the woman at the time of the alleged dying declaration. The defense came in and said that she could not have made a clear statement. I think in the discretion of the court I will allow it in.

20 Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Mr. McDermit. I object to this entire line of testimony and move to strike it out on the ground stated before.

The Court. Motion denied.

30 Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.)
Judge.

Q Will you describe her manner while she was—

The Court. How can he describe her manner? Why can he not tell us what he saw or heard?

40 Q Tell us what you saw or heard? A Dr. McKenzie called me upstairs in the ward where

Jacob B. Tuckman, direct.

the girl was laying, looked at the girl and he says—

The Court. Never mind what he said. Was she in bed?

Witness. Yes, sir.

Q Well, after the doctor got there what did she do? A She made a statement. 10

Q Did you hear what she said? A Yes, sir.

Q What was her manner of making the statement?

Mr. McDermit. I object.

The Court. Objection sustained. He cannot state her manner; he can state what she did.

Q Well, what did she do? I don't mean now to ask you what she said, but what did she do? 20

A Why, she was laying in bed. That is all I could see.

Q Well, then what did she do? A She spoke to Dr. McKenzie.

Q And after she got through do you know whether or not the doctor presented a paper to her? A He read a paper to her.

Mr. McDermit. I object as leading.

The Court. Let him state what he saw and what he remembers. 30

Q Just state, officer, all you saw done there. A Dr. McKenzie asked her what happened to her and she made a statement. She said about four months ago she met a young man—

Mr. McDermit. I object to the statement because it is a contradiction of the State's own case. The witnesses here have testified upon this record as it appears when nobody else was present at the time the statement was made except those who witnessed the statement. 40

Jacob B. Tuckman, cross.

That is the record as it now stands. He is impeaching his own record.

The Court. Dr. McKenzie said the officer was there.

10 *Mr. McDermit.* These officers who were called this afternoon, Officer Cort and the other party, swore they were present and had left the hospital when she had just died.

The Court. They did not say they were present when any statement was taken. You object to the statement of what the girl said because what she said was followed up with a written statement which she signed. That is perfectly valid. The objection as to that is sustained.

20 *The Court.* Did she go on and tell the doctor something?

Witness. Yes, sir.

The Court. Then after she did that what happened?

Witness. The doctor read the statement to her and he asked her "Do you understand what I am reading to you?"; she nodded her head—she said yes.

The Court. Which did she do, nod her head or say yes.

30 *Witness.* Nodded her head; then he asked her whether she could sign it; she took the pen on her hand—it was a fountain pen—the pen didn't feed freely; she couldn't sign her name; kind of weak; and he asked her to make a cross.

Q And did she? A Yes, sir.

Cross examination by Mr. McDermit.

40 Q Was her eyes open when she nodded her head? A Part of the time.

Jacob B. Tuckman, cross.

Q No, officer, was her eyes open when she nodded her head indicating yes? A No.

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

Q They were closed? A They were closed.

Q They were closed? And when she made her mark to the paper they were closed too, wasn't they? A What? 10

Q When she made her mark to the paper were her eyes closed? A I couldn't say for sure whether they were.

Q They were closed? A I couldn't tell; I can't remember.

Q You can't remember whether her eyes were closed or not at the time she made her mark upon the paper? Did you hear Dr. McKenzie say anything to her before he took this statement? A Yes, sir. 20

Q What did you hear him say? A He says "Young woman, you are sick, and do you know that you will never get well."

Q What else did he say, anything? A That is all. He says, "Tell us what happened to you."

Q He says, "Young woman, you know that you are sick and you will never get well. Tell us what happened to you." Now, that is all that took place? A Yes, sir. 30

Q And you were there while the entire statement was being taken and while Dr. McKenzie was there? A Yes, sir.

Q He called you upstairs and you were there with him? A Yes, sir.

Q Until the witness signed the statement? A Yes, sir.

Q You didn't sign the statement? A Yes, sir.

Q You signed the statement, did you? A Yes, sir. 40

Jacob B. Tuckman, cross.

Q How long after she made that mark did she die, do you know? A I couldn't tell. I was downstairs. I left her and I was downstairs in the office.

Q Well, now, while the statement was being read to her was she breathing heavily? A Well, 10 I couldn't notice that.

Q Well, you noticed that she was moaning? A No; she wasn't moaning.

Q You noticed she was muttering kind of? A Talking.

The Court. What is the answer.

Witness. She was talking.

Q And you noticed she was striking her breast? A No, sir.

Q And you couldn't understand sometimes what she said? A Yes; most of the time. 20

Q But not all the time? A Yes, sir.

Q How close were you to her? A Close to the bed.

Q Did you ask her any question yourself? A No, sir.

Q Did anybody else ask her any question? A No, sir; Dr. McKenzie, that is all.

Q Did Dr. McKenzie feel of her pulse? A I can't remember. 30

Q Did he make any examination at all of her outside of asking those questions? A No, sir; I don't remember.

Q Did he tell her she was going to die right away? A No.

Q Did he tell her she would die very soon? A No, sir.

Q Did anyone make the remark there that she would die soon or very soon? A No, sir; I haven't 40 heard that.

STATE RESTS.

Jacob B. Tuckman, cross.

Mr. McDermit. I renew the motion to exclude the statement made originally in the case on the strength of the motion heretofore made and on the strength of the State's last witness as to whether impending death was there or not. The proof before the court at the time the court passed upon that— 10

The Court. Do not need any argument. State the ground of your application.

Mr. McDermit. Only the additional testimony that is laid before the court. Here is additional proof as to witnesses present and in considering the application now you will consider my application now on the entire proof before you.

The Court. This does not change the situation. 20

Application denied.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is sealed accordingly.

WM. P. MARTIN,
Judge.

CASE CLOSED.

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Charge to Jury.

January 29, 1914.

STATE, vs. NATHANIEL SHAPIRO,	}	<i>Indictment</i> <i>No. 78.</i> <i>Abortion.</i>
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FOURTH DAY.

Appearances as before stated.
 Counsel summed up.

CHARGE.

MARTIN, J.

20 Gentlemen of the jury. The court has noted with
 a great degree of interest and approval the very
 careful and painstaking manner in which you have
 followed the testimony as it has been presented to
 you in this case. The case has taken more than
 three days to try and it is a matter of very great
 importance not only to this defendant but to the
 State of New Jersey, and under the circumstances
 you have spent your time well.

30 The function of the court is to instruct the jury
 in reference to the principles of law governing the
 case. The principles of law as charged should be
 accepted as a correct statement of the law. The
 jury is the sole judge of the facts, weight of testi-
 mony, credibility of witnesses, inferences to be
 drawn from the evidence and it to determine the
 conclusions to be reached upon the facts. The
 court in referring to the evidence is not to be under-
 stood as deciding any fact, but merely as attempt-
 ing to illustrate or explain the application of prin-
 40 ciples of law. If the court errs in the statement
 of any of the evidence the jury is to rely upon its
 recollection and not upon the recollection of the

Charge to Jury.

court. If any part of the evidence is referred to, seemingly giving it particular emphasis, the jury is not to disregard other evidence which it may deem of equal or greater importance. It is the duty of the jury to consider and weigh all the evidence and pertinent proof bearing upon the question of the guilt of this defendant, not only the evidence that is mentioned by the court but also all of the facts which may appear by the testimony. If it has been suggested or stated during the course of the trial that some facts have or may have occurred, or evidence has been offered and excluded, or evidence has been presented and subsequently stricken out, the jury should disregard all such suggestions, statements, offers and excluded matter. The mere asking of a question conveying an inference, which is not supported by the answer, is not evidence. The verdict can, therefore, lawfully and properly be based only upon the evidence remaining in the case.

The law presumes that the defendant is innocent. This presumption can be overcome only by evidence showing beyond a reasonable doubt the guilt of the defendant. The State must show the essential elements of the crime beyond a reasonable doubt and the burden of proving them rests upon the State throughout the whole case and does not shift.

“Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they can-

Charge to Jury.

10 not say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and 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. This is taken to be proof beyond a reasonable doubt; because if the law should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether."

20 The defendant is presented here upon an indictment of the grand jury containing four counts. The first count is that Nathaniel J. Shapiro, of the City of Newark, did, on the fifteenth day of January, unlawfully, maliciously, and without lawful justification, in and upon one Rose Lebowitz, a woman then pregnant with child, used divers instruments to the grand jurors aforesaid unknown, with intent to cause and procure the miscarriage of the said Rose Lebowitz. The second count is a charge of advising or procuring or causing the administration of
30 medicine or other noxious thing or poison to accomplish that object. The third is the use of some means unknown to the grand jurors. The second and third counts of the indictment are hardly supported by the testimony, drawing the inference most favorable from that which has been introduced by the State, and therefore, the second and third counts of the indictment will be withdrawn from the jury, so that the jury will not consider them. The
40 fourth count is that Nathaniel J. Shapiro, on the fifteenth day of January, 1913, did, maliciously and

Charge to Jury.

without lawful justification, with intent to cause and to procure the miscarriage of one Rose Lebowitz, a woman then pregnant with child, use in and upon said Rose Lebowitz divers instruments to the grand jury aforesaid unknown, in consequence whereof the said Rose Lebowitz died. The first charge is a charge of performing or causing to be performed an unlawful abortion. The second charge is of performing an unlawful abortion resulting in the death of Rose Lebowitz, and the statute affecting those crimes is the 119th section of the Crimes Act; which I will now proceed to read, in substance, to you: 10

119. "Any person who maliciously or without lawful justification, with intent to cause or procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug or medicine or noxious thing; or who maliciously or without lawful justification, shall use any instrument or means whatsoever, with the like intent, shall be guilty of a high misdemeanor, and punished accordingly; and if the woman or child die in consequence thereof, be punished." * * * 20

And the punishment is thereupon prescribed. The elements which must be shown, therefore, to the jury by the testimony before it, are as follows: (1) that the defendant either maliciously or without justification performed the act. That hardly needs further explanation. (2) That in the performance of the act it was done with intent to cause or procure the miscarriage of the woman. That does not seem to need any particular further explanation. (3) That the woman must have been then pregnant with child; but it is not necessary to show in order to prove intent that the defendant knew that the woman was pregnant with child. It is sufficient if 30 40

Charge to Jury.

the accused entertains a belief or suspicion of her pregnancy. (4) That the act shall be done by the use of any instrument or other means. Those elements, if found, are sufficient for the jury to find a verdict of guilty under the first count of the indictment. The fifth element is that the woman dies in
10 consequence thereof. If you find the fifth element in addition to the others mentioned, then there is sufficient upon which to find the defendant guilty under the fourth count of the indictment.

It is unnecessary for the court to state in detail the testimony of all of the witnesses in the case. The State has presented in support of both charges the testimony of a great many witnesses, and possibly a mere outline will be sufficient for the present
20 purpose of the court.

Abraham Goldstein testified that some nine months before Rose Lebowitz died he had intercourse with her once and that after that for a period of some months, possibly six as the court recalls his statement, he either did not see her or had nothing to do with her,—at all events he said he had no intercourse with her, and that his relations were resumed about three months before her death. He said at that time she became, so far as he understood the situation, pregnant. That along in the
30 early part of January, 1913, he went with Rose to see the defendant at his office and there had a conversation with the defendant in which both Rose and he joined, stating to him her condition and asking him if he could relieve her of that condition, and he said that he could, and Abraham Goldstein stated that at that time the defendant mentioned as his price for so doing the sum of forty dollars. Harry Sommer testified, as also did Abraham, that he
40 went with Abraham a night or two, apparently, after this first visit to see the defendant and the de-

Charge to Jury.

defendant had a conversation with those two in which about the same statements were made. Not in detail, of course, but in substance. That is to say that he stated that he could relieve this girl. Harry Sommer said that "I understand she is now three months pregnant and it is exceedingly dangerous to do it at such a late time," and the defendant assured them that by the method which he had the danger was practically eliminated. Ethel Sommer, the wife of Harry Sommer and the sister of Rose Lebowitz, stated that she also called on the doctor. Lillie Lebowitz, Rose's mother, testified that she went at a time which she fixes as either about Wednesday or Thursday night, apparently, prior to the Monday, January 27th, when there was a further operation performed at the home of Rose Lebowitz, and she, with Rose, talked to the doctor and she was assured that the procedure about to take place was perfectly safe and that she then went back with Rose the next evening and paid the doctor the forty dollars, and she says that Rose was put upon a bed in the doctor's office—whether the word "bed" is a word inadvertently used by her or mistake or wilful misstatement, of course, is a matter for the jury's consideration. But at all events, in the doctor's office, there was an operating table with leather on it, and she says that Rose was put on something in that office, and the doctor—this defendant—used some instrument or instruments upon Rose in her private parts and Mrs. Lebowitz says that when the doctor did that Rose screamed, that after it was performed—after whatever took place was completed—Rose was told to go home and she was informed by the doctor in the presence of Mrs. Lebowitz that she would very soon bleed, but she did not bleed, according to Mrs. Lebowitz, the next day, and she did not bleed on Sunday, and she

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Charge to Jury.

apparently became in a condition which even frightened people of their limited understanding and education, and finally, on Monday, Mrs. Lebowitz went to see this defendant again and stated to him that Rose had not as yet been bleeding, and he said that he would have to go over there and told her to go
10 to a drug store and telephone him that Rose was bleeding and to come at once. Mrs. Lebowitz says the doctor came and examined Rose and called for Dr. Silverstein, and that Rose was put under the influence of chloroform and an operation was then performed, and that up to the time of this operation Mrs. Lebowitz says that Rose did not bleed. After that Mrs. Lebowitz says that Rose apparently became suddenly worse, that she did not get up out of bed either that week or the following week and
20 that she was not out of bed to the knowledge of Mrs. Lebowitz and in the kitchen at any time, either when the defendant was there or not. Subsequently, the patient, becoming very much worse, was visited by Dr. Fischer who testified to the symptoms which I think have been described in the course of the testimony as being symptoms of a very severe case of septicemia, and she was removed to the hospital on Thursday, the seventh day of February and died on Tuesday the eleventh day of February. Shortly
30 before her death, which occurred apparently at eight o'clock in the evening, and probably about quarter past seven on the evening of February 11th, Rose made a statement which has been described as a "dying declaration."

"I Rose Lebowitz was with a fellow about 4 months ago in a room in Sommerset St. He went away after that I did not tell my mother because he promised to marry me. I took his word. Then he said he did not want to live with
40 me because he had no job. I asked why he did

Charge to Jury.

that. Then he said to see Dr. Shapiro who lives I think on Waverly Ave. He said he would fix me all right for \$70. I went to Dr. Shapiro about 4 weeks ago. He put me on table & put me to sleep. This was at my house. My mother was there & a young fellow I do not know his name. I was faint & could not eat & Dr. Shapiro came to see me every day. Came to Hospital last Friday night. 10

I was not flowing before Dr. Shapiro put me to sleep. I had not done anything else to myself before he put me to sleep.

Hyman Goldstein 172 Spruce was the man who got me into trouble. I paid Dr. Shapiro \$70 from my own money.

I say this knowing that I cannot get well & in the presence of death. 20

her
Rose X Lebowitz
mark

Witnesses

Sarah Van Gelder

Becky Gross Off Jacob B. Tuckman 7.15

Margaret Potash Wm. H. McKenzie

Feb 11-13 P. M.

Dr. Silverstein testified that he was called upon to go to the home of Rose Lebowitz on the afternoon of Monday, January 27th, and when he arrived there he administered the chloroform to Rose and that Rose was then in bed, and after she became unconscious he assisted Dr. Shapiro in removing her and that he noticed no blood upon the bed, nor did he notice any blood upon the person of Rose Lebowitz, which I think he described as being somewhat exposed. Dr. Fischer testified to certain symptoms observed by him upon the occasion of his ex- 30 40

Charge to Jury.

amination on February 7th. Kaas said that this defendant stated to him on the evening of February 11th that he had seen this girl and some young fellow three weeks before who came to ask him if he would help them, in substance, to get rid of the child.

10 The State claims from all this testimony, and some of the other evidence in the case, that it has successfully shown that an arrangement was made by Rose and her mother with the defendant, after negotiations by other members of the family and Abraham Goldstein, whereby he would perform an abortion for the purpose of getting rid of the child; not because there was some question as to preserving the girl's life or because of his opinion that that was the proper thing to do from a medical stand-
 20 point, but solely because Rose desired to get rid of this foetus; that he inserted an instrument into the neck of the uterus, probably, which either killed or commenced the destruction of the foetus; that ordinarily it was expected and the defendant believed that nature would expel this foreign substance within the uterus, and that that was the reason why he told them that she would bleed within a very short time; that subsequently, discovering that the operation was not successful, it then became neces-
 30 sary to perform the operation of January 27, 1913.

The defendant has, on the other hand, testified that he had never met Abraham Goldstein or Rose Lebowitz except on some occasion in October, 1912, upon which occasion or occasions he first treated Abraham for gonorrhoea and subsequently treated Rose for the same disease, and that at all events he did not see them or either of them from a date which the court recollects was October 27, 1912. Of
 40 course that is a matter for your consideration. At all events for some considerable period of time in

Charge to Jury.

the fall up to and including the 27th day of January, 1913, this defendant says that he did not see Rose Lebowitz or Abraham Goldstein. He says that he had no conversation with Mrs. Lebowitz and that he was telephoned for by Schutzman, the druggist, to come at once because a girl was bleeding, and he thereupon picked up his valise which evidently contained the instruments necessary for the purpose and went to the home of Rose Lebowitz and found her bleeding and bleeding profusely from the neck of the uterus, and that he concluded under those circumstances, after a digital examination, that there was some foreign substance there and without further determination—without further consideration—he reached the conclusion that it was necessary to operate, and that he sent for Dr. Silverstein, and he operated, performing the operation of curetting, which is the removal—as the court gathers it from the evidence in this case—of whatever may remain of a foreign substance, either of the foetus itself or the placenta, from the interior of the uterus. The defense is that whatever operation was performed on Monday, January 27, 1913, was performed by the defendant as an entirely proper operation, and that under all the circumstances it was reasonably required and would have been performed by any physician or surgeon of ordinary skill, because of the situation as it presented itself at that time, and the defense is that if as a result of that operation the girl died because of septicemia, he is not responsible because he did not perform and had nothing to do with the abortion, which is left either to be performed, under the testimony of the defendant, by someone else or else to have been the product of some event—some accident or some trouble of some character. The defense also is, in relation to the statement of Rose Lebo-

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Charge to Jury.

witz, that it is not reliable, that the course of the disease in the hospital, her pulse and respiration and other symptoms, plainly indicate that she was so ill on Tuesday, February 11th, when she is alleged to have made this statement, that she was unable to make a coherent and correct statement.

10 That was supported in some degree by the testimony of one of the experts introduced on behalf of the defendant. The defense therefore is, that the operation which the defendant performed was a proper operation and that he had nothing to do with this patient in her illness prior to January 27th. The answer made to that by the State in its case is that it may very well be true that the defendant acted in an entirely proper manner on January 27—it may be that it was proper to curette the uterus at that

20 time—but the State says that it is left entirely as a matter of veracity between Abraham Goldstein, Rose Lebowitz, Harry Sommer, Ethel Sommer and Lillie Lebowitz, on the one hand, and the defendant on the other—that it is left as a matter of veracity between Dr. Silverstein and the defendant as to whether or not there was blood before the operation of January 27; that there is some question of difference between this defendant and Dr. Fischer's recollection of the symptoms on the occasion of February 7th,

30 and that there is a difference in the recollection of what the defendant said, if anything, to Officer Kaas on the evening of February 11.

Gentlemen of the jury, it is for you to consider and weigh this testimony, to carefully analyze it and ascertain where the truth lies. You have a right to consider the manner and appearance of a witness upon the stand, his demeanor, his accuracy of recollection, his capacity of observation, his

40 power of memory, and all such other things as jurors find in their ordinary experience to assist

Charge to Jury.

them in ascertaining the truth of a statement and its reliability. Amongst other things, of course, the jury may consider the interest of a witness in testifying. The jury may consider the interest of all of these witnesses, Abraham Goldstein, Rose Lebowitz, Harry Sommer, Ethel Sommer, Lillie Lebowitz, the mother, and all these other witnesses in the case, and amongst the witnesses in the case is the defendant. The jury has the right to consider the defendant's interest in testifying, and whether or not that interest would influence the truthfulness of the statements which he makes upon the witness stand. The fact that a person has been convicted of a crime is no evidence of his guilty participation in the matter under inquiry at the trial. It is evidence, however, which is admitted under the statute of the State of New Jersey for the consideration of the jury as to whether or not a person who has been convicted of a crime is a credible witness. And you may consider in your deliberations as to Abraham Goldstein, whether or not you believe him to be a credible and trustworthy witness because of the fact that he was convicted of some crime a few years ago.

If it has been suggested that some of the witnesses or all of them, were members of the family and principally concerned in the matter, were accomplices in this act, you have a right to scrutinize very carefully—and you should scrutinize very carefully their stories. But, if you believe the testimony of these witnesses is entirely credible and trustworthy, you have a right, under the law, to rely absolutely upon those stories.

It has been suggested that possibly the date in the indictment has not been shown to be the correct date of the first introduction of an instrument by the defendant into the person of Rose Le-

Charge to Jury.

bowitz. If the jury find that the 15th day of January is not the correct date but that some other date at or about that time is the correct date, the jury have a right under the indictment, and it is their duty, to find this defendant guilty.

- 10 If, upon careful consideration, upon the principles of law as charged by the court, the jury reach the conclusion that the defendant is guilty as charged in the fourth count, the verdict of the jury will be guilty as charged in the fourth count. If, however, the testimony falls short of this, and upon the principles as stated, the defendant is guilty beyond a reasonable doubt as charged in the first count, the verdict will be guilty as charged in the first count. If, however, the testimony falls short of this, then the verdict must be not guilty.
- 20 If the jury find the defendant guilty on both of the counts submitted, that is to say the first and fourth counts, then the verdict may be simply guilty.

- 30 This, gentlemen of the jury, is a very important case. It is a very important case to the people of the State of New Jersey. It is a very important case to this defendant. It deals with a crime of a very serious nature, affecting, as it does, almost the foundation of society. The jury must determine a case that is presented to them for consideration upon the evidence in the case. It is not fair to the State of New Jersey, it is not fair to the defendant, to determine it upon anything other than the testimony in the case—the evidence in the case. No sympathy should sway a juror in the performance of his duty. The duty of a juror under the law is to follow his oath and bring in a verdict upon the evidence as it is presented. The effect upon the defendant—
- 40 what punishment, if any, shall be meted out, are all matters which are either placed upon the court

Charge to Jury.

itself or left to society at large, and they are matters with which the jury has no concern.

Gentlemen, the court's duties in this case are now completed and yours is about to begin.

Defendant's counsel prays an exception to that portion of the judge's charge in which the court charged the jury that the evidence of accomplices may be received and accredited as evidence, without qualifying that statement the same is allowed and it is sealed accordingly. 10

WM. P. MARTIN, (L. S.)
Judge.

Defendant's counsel prays a general exception to the charge, the same is allowed and it is sealed accordingly.

WM. P. MARTIN, (L. S.) 20
Judge.

After the jury had retired the following question was sent to the court:

"Honorable Court: Is it within the province of the jury to make any recommendation as to mercy." Whereupon the jury was called back and the court charged as follows: The court has received a written communication from the jury. (The court here read the same.) The court has already stated the principles which control the making of the verdict and the duty of the jury to arrive at a verdict upon the evidence in the case. The fundamental feature of the verdict is the result whether or not defendant is guilty. 30

The "recommendation," "within the province," I suppose, means is it proper—within the proprieties—to make a recommendation as to mercy? As to that there is no objection to the jury making such recommendation to mercy as it deems proper under the circumstance. As you have not agreed you may now retire. 40

Certificate of Judge Martin.

Certificate.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> vs. NATHANIEL SHAPIRO, <i>Plaintiff in Error.</i>	}	<i>In Error.</i>
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20 I, William P. Martin, presiding judge of the Court of Quarter Sessions and Oyer and Terminer, and the judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said 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.

Dated May 19th, A. D., 1914.

30 WILLIAM P. MARTIN,
Presiding Judge of the Court of Quarter Sessions and Oyer and Terminer of Essex County, New Jersey.

Assignments of Error.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, <i>Defendant in Error,</i>	} <i>In Error.</i>	10
<i>vs.</i>		
NATHANIEL J. SHAPIRO, <i>Plaintiff in Error.</i>		

Afterwards, to wit, on the return day of said writ before the Justices of the Supreme Court of Judicature at Trenton, comes the said Nathaniel J. Shapiro, by McDermit & McDermit, his attorneys, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid there is manifest error in this to wit—

1. In that upon the trial of said cause the court before whom it was tried permitted the State's witness, Dr. William H. McKenzie, to answer the following question asked by the prosecutor, to wit, "Doctor, what is the ordinary method of performing an instrumental abortion with a fetus three months developed"?—against the objection of defendant's counsel.

2. In that upon the trial of said cause the court before whom it was tried permitted the State's witness, Harrison S. Martland, to answer the following question asked by the prosecutor, to wit, "Doctor, what is the effect of introducing into the privates of a woman—in the parts where the baby comes from, who is well and about three months pregnant, of an instrument"—against the objection of defendant's counsel.

Assignments of Error.

3. In that upon the trial of said cause the court before whom it was tried permitted the prosecutor to ask the State's witness, Dr. William McKenzie, the following question to wit, "Doctor I show you S. 1, for identification, and ask you whether Miss Lebowitz made to you the statement
10 contained in the last sentence of that paper at the time that you wrote it there," and that the court erred in allowing the witness to answer, and in refusing to strike it out.

4. In that upon the trial of said cause the court before whom it was tried, permitted to go in evidence a written statement alleged to be a dying declaration, to wit, Exhibit S. 1, against the objection of counsel for the defendant, to his great injury and prejudice in maintaining his defense on
20 the merits of the case.

5. In that upon the trial of said cause the court before whom it was tried, permitted the prosecutor to question the defendant, with reference to an alleged statement said to have been signed by the defendant, if whether or not he did or did not say certain things therein contained when the proper foundation for the admission of such testimony had not been laid to all of which
30 defendant's counsel duly excepted to the ruling of the court.

6. In that upon the trial of said cause, the court before whom it was tried, refused to allow in evidence a certain hospital record being marked exhibits, D. 1, 2, 3, 4, 5, 6, 7, and 8, respectfully, for identification.

7. In that upon the trial of said cause the court before whom it was tried, allowed the prosecutor to recall the defendant to again testify for
40 the purpose of laying a foundation to contradict him upon an alleged statement, when the defendant

Assignments of Error.

had already testified, and the defense had rested its case, and the prosecutor was putting in rebuttal testimony to which ruling the defendant's counsel duly excepted.

8. In that upon the trial of said cause, the court, before whom it was tried, allowed Alfred J. Cort, a witness for the State, to testify in rebuttal and contradict the State's own witness, George Kaas. 10

9. In that upon the trial of said cause, the court, before whom it was tried, permitted the prosecutor to recall Abram Goldstein, a witness for the State, in rebuttal to testify to matters which he had previously testified to and denied in his, the witness's, direct and cross examination of the main case on the part of the State. 20

10. In that upon the trial of said cause, the court before whom it was tried, after the evidence was closed, charged and instructed said jury, among other things, a misstatement of the testimony of the State's witness, Kaas, as follows, "Kaas said that this defendant stated to him on the evening of February 11, that he had seen this girl and some young fellow, three weeks before, who came to ask him if he would help them, in substance, to get rid of the child." 30

11. In that upon the trial of said cause, the court before whom it was tried, after the evidence was closed, charged and instructed said jury among other things as follows, "If it has been suggested that some of the witnesses or all of them, were members of the family and principally concerned in the matter, were accomplices in this act, you have a right to scrutinize very carefully, and you should scrutinize very carefully their stories. But, if you believe the testimony of these witnesses is entirely 40

Assignments of Error.

credible and trustworthy, you have a right, under the law, to rely absolutely upon those stories.”

10 12. In that upon the trial of said cause, the court before whom it was tried after the evidence was closed, charged and instructed said jury among other things, as follows, “It has been suggested that possibly the date in the indictment has not
20 been shown to be the correct date of the first introduction of an instrument by the defendant into the person of Rose Lebowitz, if the jury find that the 15th day of January is not the correct date but that some other date at that or about that time is the correct date, the jury have a right under the indictment, and it is their duty, to find this defendant guilty.”

Wherefore, the said defendant, Nathaniel J. Shapiro, prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing, and that he may be restored to all things he has lost on occasion thereof.

McDERMIT & McDERMIT,
Attorneys for Plaintiff in Error.

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*Joinder in Error.***Joinder in Error.**

Filed June 19, 1914.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, <i>Defendant in Error,</i> <i>vs.</i> NATHANIEL J. SHAPIRO, <i>Plaintiff in Error.</i>	}	<i>In Error.</i> <i>Joinder in</i> <i>Error.</i>	10
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And hereupon, afterwards, to wit, on the nine-
 teenth day of June, A. D. Nineteen Hundred and
 Fourteen, the said The State, by Louis Hood,
 Prosecutor of the Pleas, its Attorney, comes into
 Court and says that there is no error either in the
 record and proceedings aforesaid, or in giving the
 judgment aforesaid, and he prays here, that the
 Court here, may proceed and examine as well the
 record and proceedings aforesaid as the matters
 aforesaid assigned for error, and that the judg-
 ment aforesaid, in manner aforesaid given, may in
 all things be affirmed, etc.

LOUIS HOOD,
Prosecutor of the Pleas,
Attorney for Defendant.

Opinion of Supreme Court.

Opinion.

Filed June 17, 1915.

NEW JERSEY SUPREME COURT.

February Term, 1915.

10

THE STATE,

v.

NATHANIEL J. SHAPIRO.

20 Submitted February 28, 1915; Decided June 17,
1915.

ON ERROR.

Before Gummere, *C. J.*, and Justices Garrison and Minturn. For the plaintiff in error, McDermit & McDermit. For the defendant in error, Wilbur A. Mott, Louis Hood.

Per Curiam.

30 The plaintiff in error was convicted of performing an abortion upon one Rose Lebowitz who died thereof.

The dying declaration of the woman was admitted in evidence. There was no error in law or abuse of discretion in the admission of this evidence. The essential preliminaries to its admission were proved by legal testimony that the trial court was amply justified in believing.

40 It was not error to refuse to admit as exhibits the hospital records. They were permitted to be used by the witnesses who made them to refresh their recollection, and their data as to temperature,

Opinion of Supreme Court.

pulse and respiration were admitted by consent. The records themselves with any remarks that were written upon them were not evidence and their exclusion as exhibits was not error.

There was no error in the admission of testimony that prejudiced the defendant.

The comments of the Court upon certain testimony and its importance or significance were not abuses of judicial discretion and were not in a legal sense injurious to the defendant. 10

The judgment of the Essex Sessions is affirmed.

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Remittitur.

Remittitur.

Entered June 19, 1915.

NEW JERSEY SUPREME COURT.

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THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

NATHANIEL J. SHAPIRO,
Plaintiff in Error.

*On Writ of
Error.*

Remittitur.

20

The above stated cause having been duly submitted on brief at the Ferbruary Term nineteen hundred and fifteen, of the New Jersey Supreme Court by Frederick F. Guild, of counsel for the defendant in error, and Frank M. McDermit, of counsel for the plaintiff in error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex County Sessions Court;

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It is thereupon ordered and adjudged that the judgment of the Essex County Quarter Sessions Court, removed by writ of error in this cause, be affirmed in all things with costs, and that the record be remitted to the Essex County Quarter Sessions Court to be proceeded with according to law and the practice of said Court.

Entered June 19, 1915.

On motion of

FREDERICK F. GUILD,

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*Prosecutor of the Pleas of Essex County,
Attorney of Defendant in Error.*

Remittitur.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

[L. s.] In testimony whereof I have set my hand and the seal of said Court at Trenton, this second day of July, A. 10
D. nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

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Assignment of Errors.

Filed.

New Jersey Court of Errors and Appeals

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<p style="text-align: center;">THE STATE OF NEW JERSEY <i>Defendant in Error,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">NATHANIEL J. SHAPIRO <i>Plaintiff in Error.</i></p>	}	<p><i>On Writ of Error.</i></p> <p><i>Assignment of Errors.</i></p>
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Afterwards, that is to say, on the return day of said writ of error in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, comes the said Nathaniel J. Shapiro by McDermit & McDermit his attorneys and says, that in the record and proceedings aforesaid and also in the matters recited and contained in the said bill of exceptions and also in the giving of the verdict and judgment there is manifest error in this, to wit:—

30

1—Because the court permitted the State's witness, Dr. William H. McKenzie, to answer the following question asked by the prosecutor, to wit, "Doctor, what is the ordinary method of performing an instrumental abortion with a foetus three months developed?"—against the objection of defendant's counsel.

40

2—Because the court permitted the State's witness, Harrison S. Martland, to answer the following question asked by the prosecutor, to wit, "Doctor, what is the effect of introducing into the privates

Assignments of Error.

of a woman in the parts where the baby comes from, who is well and about three months pregnant, of an instrument?"—against the objection of defendant's counsel.

3—Because the court permitted the prosecutor to ask the State's witness, Dr. William McKenzie, the following question to wit, "Doctor I show you S. 1, for identification and ask you whether Miss Lebowitz made to you the statement contained in the last sentence of that paper at the time that you wrote it there," and that the court erred in allowing the witness to answer, and in refusing to strike it out. 10

4—Because the Supreme Court upheld the trial court in permitting to go in evidence a written statement alleged to be a dying declaration, to wit, Exhibit S. 1, against the objection of counsel for the defendant, to defendant's great injury and prejudice in maintaining his defense on the merits of the case. 20

5—Because the court permitted the prosecutor to question the defendant, with reference to an alleged statement said to have been signed by the defendant, if whether or not he did or did not say certain things therein contained when the proper foundation for the admission of such testimony had not been laid, to all of which defendant's counsel duly excepted to the ruling of the court. 30

6—Because the Supreme Court upheld the trial court in its refusal to allow in evidence a certain hospital record being marked Exhibits, D 1, 2, 3, 4, 5, 6, 7 and 8, respectfully, for identification.

7—Because the court allowed the prosecutor to recall the defendant to again testify for the purpose of laying a foundation to contradict him upon an alleged statement, when the defendant had already testified, and the defense had rested its case, 40

Assignments of Error.

and the prosecutor was putting in rebuttal testimony, to which ruling the defendant's counsel duly excepted.

8—Because the court allowed Alfred J. Cort, a witness for the State, to testify in rebuttal and contradict the State's own witness, George Kaas.

10 9—Because the court permitted the prosecutor to recall Abram Goldstein, a witness for the State, in rebuttal, to testify to matters which he had previously testified to and denied in his, the witness's, direct and cross examination of the main case on the part of the State.

10—Because the court erroneously charged and instructed the jury as follows:

20 “That the woman must have been then pregnant with child; but it is not necessary to show in order to prove intent that the defendant knew that the woman was pregnant with child. It is sufficient if the accused entertains a belief or suspicion of her pregnancy.”

11—Because the court charged and instructed the jury, a misstatement of the testimony of the State's witness, Kaas, as follows:

30 “Kaas said that this defendant stated to him on the evening of February 11, that he had seen this girl and some young fellow three weeks before, who came to ask him if he would help them, in substance, to get rid of the child.”

12—Because the Supreme Court upheld the charge of the trial court that:

40 “If it has been suggested that some of the witnesses or all of them, were members of the family and principally concerned in the matter, were accomplices in this act, you have a right to scrutinize very carefully, and you should scrutinize very carefully their stories. But, if you believe the testimony of these witnesses is entirely credible and

Assignments of Error.

trustworthy, you have a right, under the law, to rely upon those stories."

13—Because the Supreme Court upheld the charge of the trial court that:

"It has been suggested that possibly the date in the indictment had not been shown to be the correct date of the first introduction of an instrument by the defendant into the person of Rose Lebowitz, if the jury find that the 15th day of January is not the correct date but that some other date at or about that time is the correct date, the jury have a right under the indictment, and it is their duty, to find the defendant guilty." 10

14—Because the court after the evidence was closed and the jury charged and instructed, and the said jury had retired, the following question was sent to the court by the jury, "Is it within the province of the jury to make any recommendation as to mercy," whereupon the jury was called back and the trial judge charged them in part, in answer to said question as follows: 20

"The recommendation, within the province, I suppose, means is it proper within the proprieties to make a recommendation as to mercy? As to that there is no objection to the jury making such recommendation to mercy as it deems proper under the circumstance. As you have not agreed you may now retire." 30

Wherefore plaintiff in error Nathaniel J. Shapiro prays, that the judgment aforesaid be reversed and altogether held for nothing, and that he may be restored to all things he has lost by reason of the said judgment, etc.

McDERMIT & McDERMIT,
Attorneys for Plaintiff in Error.

FRANK M. McDERMIT,
Of Counsel for Plaintiff in Error.

Specification of Causes.

Service of the within Assignments of Error hereby acknowledged this 20th day of July, 1915.

FREDERICK F. GUILD,
Attorney of Defendant in Error.

10

Specification of Causes.

Filed.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20 THE STATE OF NEW JERSEY,
Defendant in Error,

vs
NATHANIEL J. SHAPIRO
Pl'tiff in Error.

*On Writ of
Error.*

*Specification
of Causes.*

30 Nathaniel J. Shapiro, plaintiff in error, by Mc-
Dermitt & McDermitt, his attorneys hereby specifies
the causes in the record relied upon for relief or
reversal in the aforesaid cause as follows:

1—Because there was no evidence that the de-
fendant inserted any instruments into the person
of Rose Lebowitz on January 15th, 1913, as averred
in the indictment or on any other date at or about
that time to commit an abortion.

40 2—Because the first and only time that defendant
used or inserted instruments on the person of Rose
Lebowitz was on January 27th, 1913, which actions
on his part were proper and lawful.

Specification of Causes.

3—Because the operation performed by the defendant on January 27th, 1913, was perfectly proper and lawful, and of a necessity.

4—Because the condition of Rose Lebowitz as found by the defendant at the time that he performed the operation on January 27th, 1913, was such as to have arisen from some source of accident, worryment or the act of some one else. 10

5—Because the court allowed the State's witness, Dr. William H. McKenzie, to answer the following question asked by the prosecutor, to wit, "Doctor, what is the ordinary method of performing an instrumental abortion with a foetus three months developed?" against the objection of defendant's counsel.

6—Because the court allowed the State's witness, Harrison S. Martland, to answer the following question asked by the prosecutor, to wit, "Doctor, what is the effect of introducing into the privates of a woman in the parts where the baby comes from, who is well and about three months pregnant, of an instrument?"—against the objection of defendant's counsel. 20

7—Because the court allowed the prosecutor to ask the State's witness, Dr. William McKenzie, the following question, to wit, "Doctor, I show you S-1 for identification and ask you whether Miss Lebowitz made to you the statement contained in the last sentence of that paper at the time that you wrote it there," and that the court erred in allowing the witness to answer, and in refusing to strike it out. 30

8—Because the court allowed to go in evidence a written statement alleged to be a dying declaration, to wit, Exhibit S-1.

9—Because the court allowed the prosecutor to question the defendant, with reference to an alleged 40

Specification of Causes.

statement said to have been signed by the defendant, if whether or not he did or did not say certain things therein contained when the proper foundation for the admission of such testimony had not been laid.

10 10—Because the court refused to allow in evidence a certain hospital record being marked exhibits, D 1, 2, 3, 4, 5, 6, 7 and 8 respectively for identification.

11—Because the court allowed the prosecutor to recall the defendant to again testify for the purpose of laying a foundation to contradict him upon an alleged statement, when the defendant had already testified, and the defense had rested its case, and the prosecutor was putting in rebuttal testimony.

20 12—Because the court allowed Alfred J. Cort, a witness for the State, to testify in rebuttal and contradict the State's own witness, George Kaas.

13—Because the court allowed the prosecutor to impeach his own witness, Abram Goldstein.

14—Because the court erroneously charged and instructed the jury as follows:

30 “But it is not necessary to show in order to prove intent that the defendant knew that the woman was pregnant with child. It is sufficient if the accused entertains a belief or suspicion of her pregnancy.”

15—Because the court erroneously charged and instructed the jury a misstatement of the testimony of the State's witness Kaas, as follows:

“Kaas said that this defendant stated to him on the evening of February 11, that he had seen this girl and some young fellow three weeks before, who came to ask him if he would help them, in substance, to get rid of the child.”

40 16—Because the court erroneously charged and instructed the jury, as follows:

Specification of Causes.

“If it has been suggested that some of the witnesses or all of them, were members of the family and principally concerned in the matter, were accomplices in this act, you have a right to scrutinize very carefully, and you should scrutinize very carefully their stories. But, if you believe the testimony of these witnesses is entirely credible and trustworthy, you have a right, under the law, to rely absolutely upon those stories.” 10

17—Because the court erroneously charged and instructed the jury, that,

“It has been suggested that possibly the date in the indictment has not been shown to be the correct date of the first introduction of an instrument by the defendant into the person of Rose Lebowitz, if the jury find that the 15th day of January is not the correct date but that some other date at or about that time is the correct date, the jury have a right under the indictment and it is their duty, to find the defendant guilty.” 20

18—Because the court erroneously instructed the jury in answer to a question submitted by them to the court, that,

“The recommendation, ‘within the province’ I suppose, means is it proper within the proprieties to make a recommendation as to mercy? As to that there is no objection to the jury making such recommendation to mercy as it deems proper under the circumstance.” 30

19—Because the court erred in giving further instructions to the jury, after the jury had retired and begun their deliberations, without the consent of the accused.

McDERMIT & McDERMIT,
Attorneys of Plaintiff in Error.

FRANK M. McDERMIT,
Of Counsel for Plaintiff in Error.

Joinder in Error.

Joinder in Error.

Filed July 22, 1915.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

THE STATE

vs.

NATHANIEL J. SHAPIRO.

In Error.

*Joinder in
Error.*

20 And hereupon, the said The State, by Frederick
F. Guild, Prosecutor of the Pleas, its attorney,
comes into Court and says that there is no error
either in the record and proceedings aforesaid, or
in giving the judgment aforesaid, and he prays
here, that the Court here, may proceed and ex-
amine as well the record and proceedings aforesaid
as the matters aforesaid assigned for error, and
that the judgment aforesaid, in manner aforesaid
given, may in all things be affirmed, etc.

30 FREDERICK F. GUILD,
*Prosecutor of the Pleas of Essex County,
Attorney for Defendant.*

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